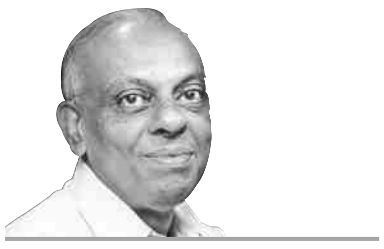
Handicapped by short tenures

Chief justices have little time to improve the system due to quick arrival and departure



OUT OF COURT

M J ANTONY

One of the situations the makers of the Constitution seem to have left out to consider is the tenure of chief justices of India, leaving it to be evolved through convention. Thus, we have three chief justices this year, the present one's eight-month term ending this week. There have been judges with only 41, 35, or 17 days while one had a run of more than seven years.

According to convention, the senior-most judge is elevated when the incumbent retires, irrespective of the length of tenure. Several jurists have suggested a fixed, longer tenure for chief justices, so that they can give a consistent direction to the court. But the idea has its own perils. The second senior judge, along with those in the line of seniority, would be miffed if a junior with longer tenure is elevated over his head. Indira Gandhi superseded the senior-most judge twice, not on the principle of long tenure, but on the theory that judges should be committed to the economic and social philosophy of the government of the day. Though it is the dream of every government to get fellow travellers as judges, the two decisions led to unsavoury results. No government has tried to burn its fingers again.

The Law Commission recently suggested a two-year fixed term for the CJs. According to it, the suggestion could be implemented from 2022, when the junior-most judge, who is slated to be CJ, retires. This would not upset the line of seniority of the current batch of judges. The government has also mooted the idea, with one year as the minimum term. Data from 1997 show that out of 17 chief justices appointed, only three had tenures of more than two years. The short terms do not allow them to take long-term decisions.

If the plan is implemented, the government will have one more criterion in choosing judges. At the time of appointment, the calendar will show whether the judge would become the CJ at a later time, following the seniority convention. The two-year term will be an additional factor. This, along with informal norms like representations based on language, geography, religion, caste and sex would make selection a complex process, not to speak of the divisions in the collegium selecting judges and the court's own differences with the government.

There are unstated criteria too, like the ideological background of the candidates. In a glaring case, when V R Krishna Iyer's name came up in the past, there was a huge protest because of his avowedly communist background. In this Aadhaar era, it is possible to trawl the judgments and find out the political and social philosophy of a judge. In the US, the legal profession and media tend to paint judges as conservative, liberal, affirmative and in other rainbow colours. Commentators in this country have largely avoided such paintbrushes. One reason apparently is that the chief justices have short tenures, allowing them little time to leave their stamp on the judiciary or improve its working.

Expecting judges with long tenures to make substantial reforms may be aspirational. Though there have been CJs with comfortable tenures, their reigns have not been remarkable for any major reforms. In fact, the descent of the system was unremitted during the regimes of the 44 CJs so far. The backlog of cases has only gone up, digitalisation is far behind the times, the chaos inside the court reminded the former CJ of a fish market.

Most CJs have stuck to their judicial work and administration has taken a back seat. The present incumbent, J S Khehar's administrative hands were full protecting the independence of the judiciary against executive pressure. The CJ-designate, Justice Dipak Misra, has to continue the struggle in his one-year term and deal with sensitive issues like Ayodhya. He has been criticised for making the singing of the National Anthem compulsory in cinema halls, upholding the validity of widely-misused criminal defamation, widening the net of obscenity benefitting moral policing and sex discrimination by ruling that only male make-up artistes in Bollywood can become members of their association. Cynics might join the dots and find in them a reflection of the current zeitgeist.

For the moment, we could relax (if we can) reading his judgments containing some of the longest sentences ever written, packed with intriguing expressions. His criminal defamation judgment "exposits cavil in its quintessential conceptuality and percipient discord between venerated and exalted right of freedom of speech and expression of an individual, exploring manifold and multilayered, limitless, unbounded and unfettered spectrums, and the controls, restrictions and constrictions..."

CHINESE WHISPERS

Rally around or against?

Rebel leaders of Janata Dal-United (JD-U), who support Sharad Yadav (*pictured*), have been barred from the party's national headquarters at 7, Jantar Mantar in New Delhi. Police personnel have been posted at the gates to check the identity of visitors. The JD-U led by Bihar Chief Minister Nitish Kumar has threatened to get Yadav disqualified from the Rajya Sabha, and is busy building a case against him. However, Yadav has not indulged in any anti-party activity inside Parliament, such as defying the party whip, which can become the basis for his disqualification from the Rajya Sabha. That Yadav held a parallel convention in Patna on August 19, could be construed as an "anti-party activity", the party has argued, but the law seems vague on that. All eyes are now on whether Yadav will attend the "Opposition Unity" public rally called by Rashtriya Janata Dal chief Lalu Prasad in Patna on August 27.

High stakes for by-poll seats

Four key Assembly by-polls are slated for Wednesday — Nandyal in Andhra Pradesh, Bawana in Delhi and two seats in Goa. Nandyal constituency in Kurnool district has become a high-stakes battle between the ruling Telugu Desam Party (TDP) led by N Chandrababu Naidu and the YSR Congress Party (YSRCP). A win for the YSRCP would boost its chances to upstage the TDP in the Assembly polls slated to be held along with the Lok Sabha polls in 2019. The TDP has an alliance with the Bharatiya Janata Party (BJP); the YSRCP has also shown that it can work with the BJP, and had voted for the BJP-led National Democratic Alliance's candidates for the President and Vice-President of India. This has made other Opposition parties, including the Congress, wary of supporting Y S Jaganmohan Reddy's YSRCP. The by-poll in Bawana in Delhi has also become a matter of prestige for the three main players, the ruling Aam Aadmi Party (AAP), the BJP and the Congress. A loss for the AAP would mean an erosion of its support base.

Sobriety after ecstatic reaction

Odisha Chief Minister Naveen Patnaik was recognised as the "best administrator" in the country by a New Delhi news magazine recently. Thousands of party workers turned up at the airport to greet him when he returned to Bhubaneswar after receiving the award over the weekend. An entire stretch of road, from the airport to the chief minister's residence, Naveen Niwas, was lined with huge cut-outs of Patnaik; there was much slogan-shouting hailing him as a hero. While party men had planned to burst crackers and organise roadshows also, the show of strength was scaled down after the accident of the Utkal Kalinga Express.

The art of exiting successfully

Ambitious business leaders may feel persuaded that they have no competent successor. This is their leadership failure, writes **R G Vilakudi**

There is considerable literature on how to identify talent and groom for succession. Another event should occur simultaneously for succession — a successful departure by the predecessor. Both have to work in unison or else the succession wobbles. Former Unilever chairman Mike Angus had once said, "The success of my judgement of a CEO candidate is visible only when the chosen CEO's successor is functioning well."

Reginald Jones took the top job at GE in 1972. During his much acclaimed tenure of nine years, GE outperformed the US gross domestic product (GDP) by over 25 per cent. Jack Welch had been identified and groomed to take over, and he did so in 1981. *The Wall Street Journal* commented that "a legend has been replaced with a live wire". Jones receded totally from GE, and renewed himself as a director of Merck, General Signal and such companies; he joined the board of overseers of Wharton School. On his part, Welch dismantled the GE structure built by Jones to prepare GE for the demands of the new marketplace. Jeff Immelt succeeded Welch and the cycle continued.

Unfortunately, successful and ambitious business leaders feel persuaded that they have no competent successor. Even if they don't feel so, sycophants persuade them. Management academics point out that this is the result of that ambitious leader's failure. To quote two academics, James Champy and Nitin Nohria, "To feel threatened by one's successor is a futile but remarkably common reaction to inevitable departure"(*The Arc of Ambition*, 2000).

Diverse stories abound to illustrate the importance of a successful departure by the existing leader.

Prakash Lal Tandon was the first Indian chairman of Hindustan Lever. He had joined the company in 1939 as a management trainee. He retired slightly ahead of the company retirement age at 59 in 1968. He built a new life as chairman, first of the State Trading Corporation, and then of the Punjab National Bank. He acquired a great reputation for re-firing rather than re-tiring. When he departed from HLL House after his board farewell dinner, the chauffeur opened the door of his 1957 Dodge as usual. "No, no, please, I have retired and will drive home in my Fiat car. Thanks," according to an article ("Short of a Punjabi century, a glorious life, well lived" by R Gopalakrishnan, *Business Standard*, September 22, 2004) written about Tandon after his death.

In 1996, Louis Begley authored a novel titled *About Schmidt*. The book was made into an Academy Award-winning film in 2002, starring Jack Nicholson. The story was about Warren Schmidt's life after retirement from a managerial position in a life insurance company. Schmidt finds it difficult to adjust to his new life. He visits his young successor periodically to offer advice and help, but his overtures are politely declined. Seeking meaning in his new life, he sponsors a Tanzanian child after seeing a television advertisement about deprived kids. In due course his wife passes away. His daughter wishes to marry a person whom Schmidt disapproves of, but he fails to convince her about his concerns. Schmidt wonders how he will be remembered because he will soon be dead. Critics acclaimed the movie as "one of the finest during the year".

ILLUSTRATION: AJAYA MOHANTY

There is an astounding story from a war-preoccupied America. On December 27, 1944, Montgomery Ward chairman Sewell Avery was physically carried out of his office by US Army National Guard troops in pursuance of President Roosevelt's orders. The well-known retailing and manufacturing company had supplied the Allied troops with tractors, auto parts and workmen's clothing. However, the chairman disagreed with a labour agreement negotiated by the Roosevelt government. He was brazen in his defiance of the agreement, which the government considered essential during the national emergency. After the war, Avery rejoined the company, but relied on strategies that had worked for him earlier. Gradually, the company was overshadowed by Sears, Roebuck. In 1955, the Montgomery Ward board ousted Avery from the company. Avery should have better judged his departure.

Another story is about Britain's entanglement with the Middle East war. British military historian Barney White-Spunner, wonders why history reveals "the same old British pattern of being unable to leave" (*Partition*, White-Spunner, 2017) as evidenced by a delayed withdrawal from India during India's Independence movement as well as from Basra during the Middle Eastern war of the 1990s. He writes with a touch of disappointment about the fabled British India administration, "... in 1932, the Indian peasant had the same income and standard of living as when the Mughal Emperor Akbar died in 1605, just after the East India Company was formed in 1599". If only Britain knew when to depart, gracefully!

Even the *Mahabharata* story of King Yayati is illustrative. He was a fine and successful king, who worked hard for success. Due to certain events, Yayati was cursed by a holy man to premature old age, but with a reprieve from the curse if he could persuade one of his sons (future successor) to swap age with him. The youngest son agreed. King Yayati enjoyed the fruits of youth all over again. Later, he realised, "Not all the food, wealth and women of the world can appease the lust of a man of uncontrolled senses."

BUSINESS LIFE

Why Silicon Valley isn't special

Tech's facade that it is an industry of upstarts is crumbling

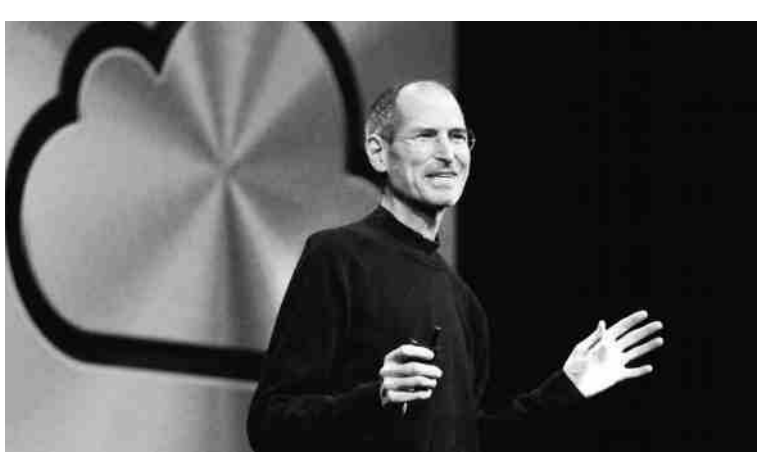
CONOR SEN

Silicon Valley has a perception problem. Steve Jobs once said, speaking about the irreverent culture he helped create, that "it's better to be a pirate than join the navy". This ethos served the community well when its firms existed at "pirate scale". But now Silicon Valley's most successful companies have become some of the largest in the world. This culture must accept that it has become the navy, with its remaining pirates facing a choice — enlist, or walk the plank.

Perhaps no company is struggling with this reality more than Google. Founded in 1998, the company famously adopted the motto "Don't be evil" around the year 2000. Ever since, whenever the company has run into controversy, such as its censorship disputes with China, or its recent decision to fire the author of a controversial 10-page memo, critics have lashed out at the company over its betrayal of its founding values.

But it's not fair to hold Google, or its parent company Alphabet, to the same principles it adopted when it was a relatively inconsequential technology start-up. In 2000, when it adopted "Don't be evil", Google had revenue of just over $19 million. In 2017, it will have revenue of over $100 billion. That's higher than the gross domestic product of a dozen states. Google dropped the "Don't be evil" motto in 2015.

Google is by no means alone in being a large technology company struggling to balance historical "pirate" cultures with growing responsibilities as powerful



'Better to be a pirate than join the navy,' Apple founder Steve Jobs had said. But times have changed

PHOTO: REUTERS

corporations. Facebook has gotten in trouble for allowing "fake news" on its platform, influencing the 2016 election. Twitter has struggled with harassment and hate groups. And Uber has clashed with regulators, its drivers, and the impact of its internal culture on women.

Silicon Valley has a lot of self-interested reasons for preferring to maintain a facade that its culture is special, and that its industry is more innovative, virtuous and productive than every other industry. It serves as a great recruiting tool as the region competes for talent with other industries and areas. It allows insiders to maintain outsize control of their companies. And it is a way to prevent regulators from coming in and regulating Silicon Valley to the extent that it might otherwise seek to do.

But it's time to drop the pretence that Silicon Valley deserves special treatment. Facebook and Google are content and advertising companies, digital evolutions of print and television companies that came before them. Amazon's core e-commerce business is just a digital Walmart. Apple's iPhone product cycle, with its annual incremental improvements, has parallels to the personal computer industry in the 1990s or even the Detroit "Big Three" automakers in the 1960s. They deserve the same scrutiny from regulatory and labour watchdogs that their old-economy peers get.

They shouldn't have multiple classes of shares that disempower investors of voting rights. Tesla and Amazon both show that investors are willing to look past a lack of near-term profitability if they believe in a company's vision.

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LETTERS

Fuzzy matter

With reference to Debashis Basu's article, "Home loans loot: Whose side is RBI on" (August 21), I would like to add that it is not just that banks are not reducing their marginal cost of funds-based lending rate (MCLR) or passing on the benefit for loans. I experienced a strange case of one of the foreign banks (HSBC) increasing the MCLR immediately after the first three months, and that too by 25 basis points.

This is a quarterly reset based on MCLR, but in the last quarter, I cannot understand if the cost of funds for the bank or in the general economy has gone up. To my mind it is stable or a declining bias. Even then, immediately after the first three months (the loan was sanctioned in May), the bank is increasing the MCLR. I think they are probably changing the spread for home loans with MCLR for new customers, otherwise, they would lose the market share.

To my questions, I haven't got any answers. I don't know if there is an option to complain to the Reserve Bank of India (RBI) about these practices. Even if I complain, will the RBI be bothered about the fact that banks are not just refusing to reduce interest rates, but are also conveniently increasing the rates too?

Somy Thomas via email

Capital is key

The editorial, "No free lunch" (August 22) is relevant. It is not wise to expect government-owned banks to function and deliver better results without adequate capital. Crucial sectors of the economy, which have borrowed sizeable amounts from these banks, have fared miserably in liquidating their dues. As a consequence of the ineffectiveness of economic policies, crucial sectors have recorded a dismal performance.

This itself, and the deliberate diversion of bank credit by unscrupulous borrowers, have contributed to the current mountain of bad loans. Although rapid

resolution of bad loans is crucial, the progress in doing so by banks is sluggish. Present measures and support systems need to function in sync and swiftly.

Without need-based infusion of capital, government-owned banks wouldn't be able to lend and credit expansion would be negligible. Restricted lending of banks on account of prompt corrective actions invoked by the banking regulator is hampering the growth of big-ticket credit expansion. The tendency of banks to refrain from taking lending decisions needs to be discouraged. Even though recapitalisation of banks is at the cost of the exchequer, the government, being a major stakeholder, has to do that to ensure the required capital adequacy of banks.

The role of political leaders in contributing to the bad loans situation should not be undermined. Political interference negatively impacts credit decisions of bankers. They should take independent commercial decisions.

V S K Pillai Changanacherry

Realising Modi's 'vision'

With reference to Sanjeeb Mukherjee's report, "CEOs raise questions over multiplicity of regulators" (August 22), among living world leaders, Prime Minister Narendra Modi has understood the value of listening and "making others listen" to governance. He gives his audience enough opportunity to interact, respond and deliberate on policies and issues concerning the everyday life of citizens as much as the nation's concerns about economic growth and defence preparedness.

Mann Ki Baat and quick responses from the Prime Minister's Office to any queries from citizens reassures them that airing of grievances is not a one-way traffic.

Seminars and interactions like those being held under the auspices of the NITI Aayog serve more purposes than their declared objectives. Political leadership, the media and analysts need to cover the impact of such initiatives. This is necessary to make the Modi vision of cooperative federalism a reality.

M G Warrier Mumbai

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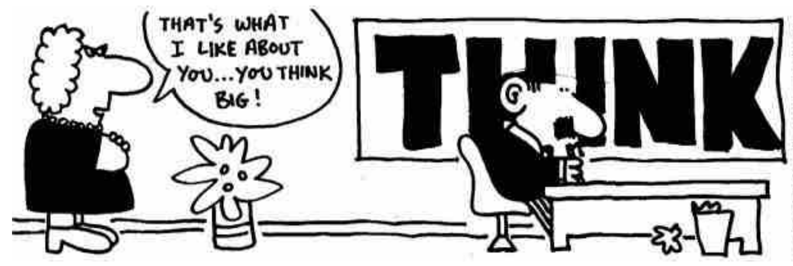
HAMBONE

BY MIKE FLANAGAN



Business Standard
Volume XXII Number 8
MUMBAI | WEDNESDAY, 23 AUGUST 2017

Strong rupee, weak exporters

Effects on job-generating sectors should worry govt

After several consecutive years of depreciation against the US dollar, the rupee has strengthened solidly over the course of this calendar year. It has gained about 6 per cent against the dollar in just six months. One major contributor to this trend is a surge in foreign capital inflows, particularly into the domestic debt market. Foreign holdings of rupee-denominated debt have increased by about $22 billion this year. But Indian exports have been hit hard by the appreciation of the rupee. As a four-part series of reports in this paper has shown, major export-oriented sectors are struggling to deal with the reduced margins produced by a business model in which costs are in rupees and revenues largely in dollars.

Perhaps most worrying from the point of view of employment and jobs is the effect on labour-intensive sectors such as textiles and leather. The textile and apparels sector exports about $50 billion worth of goods, of which $17 billion comes from finished clothes. The sector works on particularly narrow margins, of about 2 to 4 per cent. The average export rate for an individual garment is less than $3, and more than half of export revenue is denominated in dollars. The consequence is that, to stay profitable, companies are being forced to increase prices, sometimes by as much as 4 per cent, though that is still less than is needed to stay at the same level of profits. But this means that Indian exports will lose market share to those from countries like Bangladesh, where the currency has been depreciating against the dollar; companies there can afford to make their exports cheaper and more competitive in dollar terms. A similar pattern is visible in other sectors such as leather, pharmaceuticals and information technology, though the larger technology firms can at least access hedging strategies that moderate their currency risk.

The effect of the rupee's strength on exports is a reminder that prices matter. Export pessimists tend to argue that the currency's value has little effect on the ability to export, which is determined by other structural factors. Exporters' current experience is just another reminder of the weaknesses of this view of the economy. The question thus arises: What is to be done about it? On the one hand, India can decide to do nothing — focus on developing the domestic market and let exports sort themselves out. But this risks further destabilising employment-generating sectors such as textiles and apparel, which are already suffering from disruptions caused by demonetisation and the introduction of the goods and services tax. The problem cannot just be ignored. Can the government choke off foreign inflows and thus stabilise the currency? Foreign holdings are already bumping up against domestic regulatory caps in spite of a slowdown in commercial bank lending to companies that has caused them to turn to the debt market. The authorities should consider the effect on the currency before easing caps on foreign purchases of domestic commercial debt. The central bank has room to step up its purchases of dollars as well. And finally, the most far-sighted and sustainable way to increase exports is to reduce domestic costs to exporters. The government must work harder on increasing the ease of doing business in India.

Divorcing triple *talaq*

Govt must step in to follow Supreme Court's lead

In a historic decision, a five-judge bench of the Supreme Court has struck down the practice of "*talaq-e-biddat*" (commonly referred to as triple *talaq*) — an egregious practice that many Muslim men in India employ to divorce their wives instantaneously and without their consent, merely by uttering the word *talaq* thrice. This arbitrary practice was being opposed by women's rights activists, who saw it in the context of poor gender equity in Indian society. An IndiaSpend data analysis of Census 2011 shows that for every divorced Muslim man in India, there are four divorced Muslim women. In any case, legal luminaries have said even the Quran does not consider triple *talaq* as valid. The court's ruling was restricted to the constitutional validity of triple *talaq*, and it did not go into the other form of triple *talaq* (or *talaq-ul sunnat*), under which the husband utters the first *talaq* and can only repeat it in the next lunar cycle. It is only when this period expires that the divorce is considered irrevocable and final.

Despite the near unanimity against triple *talaq* – from the petitioners to the All India Muslim Personal Law Board as well as the Union government – the decision of the apex court was not unanimous. Three judges, Justices Kurian Joseph, Rohinton Fali Nariman and Uday Umesh Lalit, held that the practice was bad in law. Quoting from the Quran, Justice Joseph argued that it was bad in law because it was bad in theology. The Quran, he argued, did not allow for a severance that denied an attempt at reconciliation. Justices Nariman and Lalit, too, took exception to the fact that this kind of divorce was "instant and irrevocable", obviating any possibility of a reconciliation, and as such argued that it violated Article 14 of the Constitution that promises all individuals equality before law. The two dissenting judges, Justices J S Khehar and S A Nazeer, however, saw it as an integral part of Muslim personal law and as such found it beyond the remit of the court. They asked the Union government to frame appropriate legislation to weed out this practice as several egalitarian countries with sizeable Muslim populations, including Islamic states, had done.

The Union government had in May submitted before the court that it wanted to bring in a new law to regulate marriage and divorce among Muslims if the practice of triple *talaq* was declared unconstitutional by the court. Tuesday's verdict leaves the government with a historic opportunity to walk the talk and champion the cause of gender rights in a domain that was hitherto considered beyond reproach due to political reasons. The Rajiv Gandhi government's overruling of the Shah Bano verdict was a case in point. If it manages to pull it off, the present government will do a historic job that would equal the Congress government's reform of Hindu personal law and the previous National Democratic Alliance government's reform of Christian personal law.

ILLUSTRATION BY AJAY MOHANTY

Monumental failures of RBI

India's central bank has failed in regulating the banking system

"RBI has done a commendable job in managing the monetary policy, but as a regulator of the banking system, it has failed the Indian economy." This is what I said publicly to Raghuram Rajan, then Governor of the Reserve Bank of India (RBI), after he delivered a lecture in May 2016. Referring to my paper, "Sub-Prime Infrastructure: Crony Capitalism in Public Sector Banks", I highlighted a potential loss of ₹6 lakh crore facing the banks. Dr Rajan acknowledged the paper and listed the measures taken by RBI to deal with non-performing assets (NPAs), which I thought were belated as well as inadequate, as time has since proven.

GAJENDRA HALDEA

Undoubtedly, the senior management of banks was primarily responsible for these mammoth losses. The Central Government, as owner of these banks, was also a part of the problem. To backstop such failures of the management and owners of banks, RBI was meant to be the last line of defence, in its capacity as the independent statutory regulator, but it simply capitulated. Though it has been claiming success in managing external financial crises in the past, RBI failed to detect in time, leave apart contain, this internal crisis of gigantic proportions.

The fact is that if one single institution is to be held responsible for the sordid state of India's banking sector, it can be none other than RBI in its statutory capacity as the regulator of the banking system. It was RBI's job to lay down effective norms and guidelines, as also to detect serious problems and take timely action against erring banks. In the absence of a vigilant regulator, banks went wayward and lost heavily. They have since moved away from investment lending, which in turn has stunted the growth of incomes and employment.

The government-owned banks will cost the Indian taxpayer no less than ₹6 lakh crore, or about $100 billion. Yet, no one in the government or RBI has been held responsible. Indeed, India is encumbered by an indulgent manner of governance!

The problem did not develop overnight. Way back in 2010, I circulated a discussion paper titled "Sub-prime Highways" to the ministries concerned and some financial institutions, in the naïve belief that after the debacle caused in 2008 by sub-prime housing in the US, the authorities would check the enormous gold-plating highlighted in that paper. Most recipients chose to ignore the paper while some even took offence at what I said. Besides reiterating these concerns at several fora, I wrote yet another paper in 2013 and sent it to the then RBI governor, who replied with a note that did not disagree with my facts, but did not mention any corrective action by RBI.

Consider the loans of several lakh crores of rupees that were given for power and highway projects. Such loans are typically regarded as "limited recourse lending" because banks do not have recourse to any collateral security and rely primarily on anticipated project revenues. In the developed world, such lending is preceded by rigorous scrutiny so as to minimise the risk of default. But Indian banks as well as the RBI failed to adopt the prudent practices associated with such limited recourse lending. So a highway project having an approved capital cost of ₹1,000 crore (to be sustained by a given level of toll revenues) was revised by the concessionaire to, say, ₹1,700 crore by fudging costs as well as revenues. Bloated loans were approved by bank boards that include an RBI official. Even the regulatory inspections of RBI failed to flag this large-scale malfeasance that was certain to result in bad debts.

Take next the case of power projects. Quite aside from the issue of inflated capital costs, the banks did not ensure the existence of a sustainable fuel supply agreement without which a power project could be stillborn. Strangely, several power purchase agreements (PPAs) between power producers and electricity distribution companies (Discoms) wrongly assigned fuel price risks to the private producer, contrary to the practice followed in India and elsewhere. Prudence demanded that projects with such unstable fuel supply arrangements be deemed unbankable, but the banks turned a Nelson's eye to this fundamental flaw that has led, predictably, to bad debts.

The taxpayer will pay over ₹3 lakh crore in the form of government bailouts or other indirect support to meet the losses of banks on account of such irresponsible lending to projects. An equal amount would also be borne by taxpayers to cover the bank loans to Discoms across the country. Virtually all Discoms in India have been making losses year after year. First, they have been buying expensive power on account of inadequate transparency and competition. Second, there is massive theft of electricity. Third, the resultant losses cannot be recovered from consumers for political and economic reasons. However, banks have been continuously lending to these near-bankrupt Discoms in order to fund their ballooning losses. Such lending, with the full knowledge of RBI, must be regarded as irresponsible and contrary to the elementary principles of banking. Interestingly, only government-owned banks were involved in such lending.

Then came the euphemistic scheme called Ujwal DISCOM Assurance Yojana, or UDAY (sunrise!) that transferred the unrecoverable loans of discoms to the respective state governments who will use taxpayers' money for repayment over the next decade. The Central Government has thus protected its banks at the expense of taxpayers, thanks to RBI allowing such loans in the first place.

There was little clarity on the treatment of loans to infrastructure projects as secured lending. It took a detailed proposal from the erstwhile Planning Commission to persuade RBI to revise its "Prudential norms on Advances to Infrastructure Sector", in March 2013, by which time much damage had already been done. Even now, the regulatory framework continues to be inadequate. Clearly, RBI needs to build knowledge and capacity in banking regulation. It has to ensure that the systems and processes followed in banks are secure and efficient. It also needs to exercise vigilant oversight. If not, the taxpayer bears the cost of its failure.

RBI's mindset is best described by the Latin saying "*catus amat pisces, sed non vult tingere plantas*". A cat loves fish, but is unwilling to wet its feet. RBI loves to lord it over the banking system, but does not want to get into the muddy waters of improving and enforcing banking regulation. RBI's abdication coupled with a general lack of institutional capacity has imposed an enormous cost on the economy. RBI needs to descend from its academic ivory tower to the mundane but critically important business of effective governance.

The writer was principal advisor, infrastructure, in the erstwhile Planning Commission

Export growth must to create jobs

There is euphoria in India about a growth rate of over 7 per cent. There are a lot of suggestions for creating jobs. But there is total silence on revival of the lost export momentum. Export growth is necessary for sustaining high growth and to create jobs in labour-intensive activities of the SMEs. This has been true for India and all high-growth economies of Southeast Asia and China. No country can grow fast without integrating with the global economy, and achieving external competitiveness.

JAYANTA ROY

It is mind-boggling to find our prime minister putting exports on the back burner after success in trade and investment in Gujarat. It is pathetic that there is no trade expert in Ministry of Commerce and Industry, making the ministry totally a misfit in this fast evolving global trade landscape. India is now seen as a marginal trade player with rising protectionism. India should not take comfort from the perceived anti-globalisation drive in a few advanced countries. China and Southeast Asian countries are still continuing to benefit from globalisation.

India needs to urgently focus on regaining the lost export momentum by focusing on trade and logistics facilitation reforms to reduce the massive trade transaction costs; improving the business environment to create a level playing field for SMEs; diversification of services to other professional services, especially in Big Data; innovative regional and bilateral trade agreements to increase market access, and to introduce institutional reforms in trade policy areas. These are extensively discussed in my earlier columns in this paper. I will focus only on SMEs and aspects of institutional reforms in this column.

SMEs are likely to play a big role in promoting exports and creating jobs. But Indian SMEs suffer from not having a level playing field in the business environment. India's dismal rankings in the World Bank's Ease of Doing Business index affect SMEs more than the large enterprises. For SMEs we need to move away from giving incentives to creating an enabling business environment. SMEs create jobs — 43 per cent of jobs created in emerging economies are from SMEs. These are at the heart of linking to global value chains (GVCs), as they have been for Southeast Asian countries and China. SMEs could attract all efficiency-seeking foreign direct investment (FDI) from multinational corporations (MNCs), making India a hub for GVCs.

But Indian SMEs lack the capacity as well as support services to adjust strategically to changing global landscape. From limited access to information and technology, to an enlarged current skills mismatch, Indian SMEs lag behind their worldwide compadres.

Workforce of Indian SMEs lacks the necessary skills to operate in a high-tech GVC environment. Additionally, they have difficulty in penetrating global markets or be part of the GVC due to their inability to meet international product quality standards, demanded by an increasingly sophisticated international buyer. Enterprises need to periodically train their workers in new design and packaging that satisfy fast-changing consumer trends.

Unlike the large enterprises, several SMEs operate outside the main cities and suffer from lack of business environment and access to trade services. SMEs are also poorly represented in apex chambers of commerce and industry in India, which are dominated by large enterprises, who receive preferential access to trade services. Moreover, public institutions provide most of the trade services available to SMEs, while private sector providers are generally absent. This lack of private sector participation in the supply of trade services means that the power of competition cannot be leveraged to induce market innovations to drive down cost of trade services to benefit exporting SMEs.

Institutional reforms in trade policy are urgently required to make SMEs effective in promoting exports directly, or being a part of the GVCs. We need to scrap the Ministry of MSME since micro enterprises dependent on doles have no role in export promotion, and SMEs require no incentives. Similarly, there is no role for Ministry of Heavy Industries, which reflects the antiquated "commanding heights of the economy "thinking of our socialist past. We should also do away with Ministry of Commerce, which champions protectionism and giving out doles to exporters through its annual EXIM policy. There is no case for giving sops to industry to encourage exports. Adherence to 21st century trade reforms is sufficient for this purpose.

An enlarged Department of Industrial Policy and Promotion could replace the Ministries of Commerce and Industry, Heavy Industry, and MSME, and promote development of industry, especially SMEs. It can also serve as a secretariat of "Make in India", and help create an enabling business environment with much improved rankings in World Bank's Ease of Doing Business and World Economic Forum's Global Competitiveness Index.

India also urgently needs to create a trade policy institution that is able to operate efficiently in the new global environment. In order to separate the strategic decision-making process related to trade and industrial policy from day-to-day operational issues, a new, independent trade policy council, like the US Trade Representative in the US, needs to be developed, which reports directly to the PM. Its role could include strategic decisions on multilateral, bilateral, and regional trade policy; policy related to FDI; policies related to trade facilitation; strategic policymaking on improving India's competitiveness; policies to improve India's logistical capacity and connectivity; and policies to make India ready for the structural changes in global production focusing on skilling and technological acquisition.

This most damaging neglect of exports by the government must end soon.

The writer is a well-known trade economist who was economic advisor in the Ministry of Commerce during 1989-1993

Hillary's last stand

BOOK REVIEW

KANIKA DATTA

Donald Trump's seven months in the White House reminds us almost daily of the quirks of the US electoral system that brought him to power. But notice this: Though many Americans – including some of his supporters, ironically – are ruing Mr Trump's accession to the White House, few seem to be missing his defeated opponent Hillary Clinton, who won the popular mandate by a handy margin of 2.8 million votes.

Instead, the left-leaning commentariat and Democrat supporters have mostly expressed a wistful yearning for her former boss and President Barack Obama. Increasingly, too, they've been courting Bernie Sanders, Ms Clinton's defeated opponent in the Democratic primaries, and former vice president Al Gore, who also won the popular vote but lost in the Electoral College to George W Bush in that fateful 2000 election.

Shattered, an inside look at Ms Clinton's shock defeat, could just as well have been titled *Hubris*. Hindsight, as the cliché goes, is 20/20 but the niggling doubts about Ms Clinton's candidature never abated all through one of the nastiest presidential campaigns in recent memory.

A year ago, Ms Clinton was expected to walk over the egregious Republican real estate millionaire as America's first woman president. Yet, despite the turmoil in the White House, it is fair to say that more people regret Mr Trump's victory today than Ms Clinton's defeat. That's an important distinction, and it explains why she, with her experience as Senator and Mr Obama's first-term secretary of state, lost to someone as appalling as Donald Trump.

A traditionally polarising figure across the Democratic base to start with, her campaign was burdened by doubts that Americans harbour about machine politicians from the get go. High-profile investigations into her use of a private email server for confidential State Department business and her close ties with Wall Street and the powerful Clinton Foundation were sticky issues that Ms Clinton needed to address early and upfront. Her failure to recognise these threats and the absence of a distinctive policy platform – especially one that constructively addressed the core concerns of a vocal minority – scarcely strengthened her cause.

Her biggest triumph in winning the nomination as the Democratic party's first woman presidential candidate was leavened by the fact that she was, against all the odds, almost neck and neck with her Republican opponent in the opinion polls in the run up to polling day. If her platform had credibility for being politically correct (and vaguely Obama-eque), it wasn't significantly more convincing than Mr Trump's crudely dystopian, xenophobic and sexist crusade. That was the problem: For all her advantages and political nous, Ms Clinton's appeal lay in *not* being Mr Trump.

Authors Jonathan Allen and Amie Parnes capture the problem neatly on page 154. As the battle with Mr Sanders intensified, her team struggled to come up with a credible campaign slogan. "Breaking Barriers" was a working title but hardly a compelling one. The difficulty was, as the authors point out, Ms Clinton "still wasn't articulating a vision that could turn her from a candidate inexorably linked with the past into an avatar of the future. Tactically, she was doing what needed to be done to win delegates, the all-important if unsexy measure of success in presidential nominating contests. She was all science, no art."

Mr Sanders, on the other hand, was all art, no science, as was Mr Trump. Ironically, Mr Sanders' flawed extreme-left ideology was no less seductive to the white, non-college educated (and mostly unemployed) voter that was flocking to Mr Trump's untenable promises — raising one of those tantalising "What If" questions about the 45th presidency had he won the Democratic nomination. Mr Sanders also preyed on Ms Clinton's ethical weaknesses, planting "doubts in the minds of even the staunchest Democrats" and opening the door for Mr Trump to coin the "Crooked Hillary" label that his base adopted with such relish. FBI chief James Comey's revelations – the ones he later claimed made him so "nauseous" – administered the *coup de grace* to a campaign that was rarely stable.

Mr Allen and Ms Parnes capture all this, pointing to excessive reliance on data analytics by her campaign manager Robby Mook that kept her out of touch with the pulse of many segments of voters. His granular number-crunching encouraged her to focus on minorities – which the Trump campaign was alienating – at the expense of her loyal white voter base, and to ignore battleground states such as Michigan, which was among the states in the "Blue Wall" that Mr Trump flipped on the way to his stunning victory. The authors describe the tensions between John Podesta, her "baby boomer chairman and millennial-style manager" as a result of differences over such basic campaign strategy.

Shattered is a conscientious piece of journalism that recaps with all the bells and whistles of insider info the details of Ms Clinton's doomed campaign. The book does not match the quality of John Hellemann and Mark Halpern's masterly *Race of a Lifetime* on Barack Obama's extraordinary campaign but this is the closest we'll get to dispassionate analysis before Ms Clinton's own account, due soon, is published.

SHATTERED
Inside Hillary Clinton's Doomed Campaign
Jonathan Allen and Amie Parnes
Penguin Random House
799 pages; ₹464