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Insights into Editorial: A half-hearted attempt to liberalize e-commerce

01 April 2016

Summary:
The decision to allow 100% FDI in e-commerce entities running online marketplaces is a belated yet welcome step by the government. It clears the air a great deal on the norms governing a rapidly expanding part of the economy, and makes de jure what has hitherto been de facto.

Why policy in this regard was necessary?
Billions of dollars have already been committed as investment in the sector, and online shopping is now an established retail habit. The growth potential of the segment has drawn in venture capital and private equity investors in droves, and e-commerce players had exploited the policy ambiguities and loopholes to obtain attractive valuations for their enterprises.

There were also allegations from brick-and-mortar stores that Indian e-commerce companies were flouting existing policy norms to gain an unfair advantage, given that the government does not allow FDI in multi-brand retail companies.

About the latest guidelines:
The latest guidelines make it clear that as long as a business entity acts purely as a marketplace, facilitating online transactions between a seller and a buyer, 100% overseas ownership is allowed in the venture.

- Safeguards have also been specified from the marketplace operator’s perspective, so that the responsibility for both delivery and quality of the product and related warranties will lie with the seller.
- Besides, e-commerce firms can provide support services to sellers, including warehousing, logistics, call centres and payment collection.
- Also, an e-commerce firm will not be permitted to sell more than 25% of total sales from one vendor or its group companies.

How would these guidelines affect foreign-owned e-commerce marketplaces?
- The imposition of a 25% cap on the value that sales from a single seller and group companies can contribute to overall turnover at the marketplace means some of the largest e-commerce players will have to redraw their business strategies.
The unequivocal assertion that any ownership of inventory by the entity running the marketplace will render its business into the inventory-based model, where FDI is barred, also makes it clear that these foreign-owned e-commerce enterprises can no longer sell wares sporting their own brand names online.

And the most worrisome norm is the vaguely worded one prohibiting ventures from “directly or indirectly” influencing the sale price of goods. This is construed by most observers as a deterrent for discounts.

**Criticisms:**

Three stipulations in the guidelines are seen as retrogressive and far removed from the government’s stated intent of improving the ease of doing business-

- The first is that a marketplace player cannot allow one vendor or its group companies to account for more than 25% of sales through its platform. The restriction seems to be an outcome of the flawed thinking that FDI in direct vendors in e-commerce should not be allowed and the artificial separation between vendors and marketplace players should be maintained through such limits placed on their sales.

- The second stipulation says the marketplace player “cannot directly or indirectly influence the sale price of goods and services and shall maintain a level playing field”. This move restricts consumer’s choice.

- The guidelines also say sellers will be solely responsible for warranties and guarantees. This may provide some legal protection to marketplace platforms but given that several have sought to build their own brand values by bolstering manufacturer guarantees – Flipkart has just launched an expensive TV commercial to this effect – the guidelines do not help consumers.

**How would these guidelines affect consumers?**

For the consumer, strict enforcement of the guidelines could make it difficult to access value-for-money deals. E-commerce, including m-commerce spurred by India’s smartphone surge, have been a significant disruptor in the way domestic consumers shop. If consumers lose interest, the Centre’s guidelines could well disrupt this disruption and end up staunching the very flow of foreign capital it aims to attract.

**Conclusion:**
The traders’ associations are dubbing the new move as allowing foreign firms backdoor entry into the offline, multi-brand retail sector itself, at the cost of domestic firms. However, in the long run, the policy might resolve some of these issues. The government too should be open to course correction, if necessary, given the evolving and ever-changing nature of e-commerce.

**Insights into Editorial: Medical Council needs urgent therapy**

02 April 2016

**Article Link**

Referring to the report of a parliamentary standing committee, the British Medical Journal (BMJ) in its latest issue has called for a ‘radical prescription’ to reform the Medical Council of India (MCI) in order to eliminate corruption and lack of ethics in healthcare.

- The report of the Parliamentary Standing Committee (PSC) on the need to reform the Medical Council of India (MCI) has come as a glimmer of hope. The committee has broadly agreed to all the recommendations of the many reports that have been submitted over the decades and that had, until now, fallen on deaf ears.
- The scathing indictment of Medical Council of India (MCI) which regulates medical education and professional practice, by Parliament’s Standing Committee on Health, was long overdue.

**Important findings by the committee:**

- India has far fewer doctors than the WHO recommended minimum doctor population ratio of 1:1000.
- Six states with 31% of the population account for 58% of MBBS seats, while eight states with 46% of Indians have just 21% MBBS seats.
- Quality of medical education is at its lowest ebb and the current system is not producing the right type of medical professionals.

**Background:**

The MCI was established in 1934 under the Indian Medical Council Act, 1933, as an elected body for maintaining the medical register and providing ethical oversight, with no specific role in medical education.
The Amendment of 1956, however, mandated the MCI “to maintain uniform standards of medical education, both under graduate and postgraduate; recommend for recognition/de-recognition of medical qualifications of medical institutions of India or foreign countries; accord permanent registration/provisional registration of doctors with recognised medical qualifications; and ensure reciprocity with foreign countries in the matter of mutual recognition of medical qualifications.”

The second amendment came in 1993, at a time when there was a new-found enthusiasm for private colleges. Under this amendment, the role of the MCI was reduced to an advisory body with the three critical functions of sanctioning medical colleges, approving the student intake, and approving any expansion of the intake capacity requiring prior approval of the Ministry of Health and Family Welfare.

Why reform the MCI?

- Like a license-raj permit controller, MCI has for long focused too much on licensing of medical colleges and stipulating impractical conditions, while ignoring its other mandate of maintaining ethical conduct in the profession.
- It has failed to stop the sale of medical seats in private colleges for capitation fees going up to Rs.50 lakh.
- Over the years, it has emerged as a single, all-powerful agency heavily influenced by corporate hospitals to provide accreditation to institutions and assess their quality, ignoring blatant conflicts of interest.

Reforms needed:

- Comprehensive reform of the MCI should begin with the separation of functions: approving standards and accreditation requirements for medical education, fixing norms to assess the competence of medical graduates and laying down ethical practice guidelines.
- As suggested by the government-constituted committee of experts led by Ranjit Roy Chaudhary, a National Medical Commission to oversee education and policy should be constituted.
- Separate boards for undergraduate and postgraduate training, assessment of institutions and medical ethics should be created.
Inducting non-medical professionals of integrity and community health experts to regulatory bodies would help advance public interest.

The larger goal of a revamp should be to produce medical professionals, especially postgraduates, in such numbers that would improve the doctor to population ratio and ensure their availability across the country.

The possibility of having an exit test for medical graduates at the end of their course and before they start practising, as a measure of standardisation across States, should also be considered.

The government should also enforce a uniform national entry and exit examination.

Given the disparities in the country, there is also a need to guard against elitism.

As suggested by the standing committee, replacing the existing MCI with an architecture consisting of four independent boards to deal with curriculum development, teacher training, and standard setting for undergraduate and postgraduate education can also be considered.

Bill to revamp MCI:

On grounds of corruption, the MCI faced the ignominy of being set aside by the Supreme Court in 2002 and again in 2010 by an ordinance issued by the government.

Seizing the opportunity of the temporary suspension of the elected MCI, the Ministry of Health drafted a Bill to establish a National Commission for Human Resources for Health (NCHRH).

This Bill sought to revamp the MCI to consist of nominated bodies to carry out the functions of human resource planning, curriculum development and quality assurance, with the elected body limited to register doctors and govern their practice in accordance with ethical standards.

It was laid on the table of the Rajya Sabha in 2011. The PSC returned the Bill with some observations to the Ministry in October 2013.

In 2014, another committee under the chairmanship of Dr Ranjit Roy Chaudhury was appointed. This committee submitted its report in February 2015. The latest report of the Parliamentary Standing Committee, which was submitted to the Rajya Sabha recently, is in near unanimity with this report.

Conclusion:
Health matters to everybody and no matter how much money government spends on this sector, much of it will be wasted if we have too few doctors, huge regional imbalances in their distribution and serious question marks on the quality of their medical education. Clearly, a thorough clean-up in the manner medical education and health-care institutions are regulated is overdue; no compromise should be made on transparency, public interest and the highest ethical standards in doing this.

**Insights into Editorial: The elderly as a resource, not a burden**

04 April 2016

**Article Link**

Since independence, India has been striving hard to improve lives of its citizens and has largely been successful in this. Increase in life expectancy at birth is the best indicator of this.

- In 1950-55, life expectancy at birth in India was 36.6 years, whereas the average in the world was 46.8 years.
- By 2010-15, life expectancy in India had almost caught up with the global average: 67.5 years in India, compared with 70.5 years globally.
- This improvement in life expectancy is a result of reduction in poverty and improvement in healthcare and general social conditions.

**What’s the main concern?**

Increase in life expectancy, though desirable, has posed new challenges to the modern world. The problem of ageing populations has become a matter of great concern for many countries today. Provisions for pensions and healthcare are straining budgets, leaving very little space for creating new employment opportunities for younger people.

Home to over 100 million elderly people and with numbers further expected to increase threefold in the next three decades India has many challenges to be addressed.

**Challenges faced by the elderly:**

**Elder abuse:**

They are common across social classes and cities, although there are differences between cities. The elderly are highly vulnerable to abuse, where a person is willfully or inadvertently harmed,
usually by someone who is part of the family or otherwise close to the victim. Being relatively weak, elderly are vulnerable to physical abuse. Their resources, including finances ones are also often misused. In addition, the elderly may suffer from emotional and mental abuse for various reasons and in different ways.

**Economic dependency:**
This is identified by many as the major reason for abuse. The problem of economic insecurity is faced by the elderly when they are unable to sustain themselves financially. Many older persons either lack the opportunity and/or the capacity to be as productive as they were. Increasing competition from younger people, individual, family and societal mind sets, chronic malnutrition and slowing physical and mental faculties, limited access to resources and lack of awareness of their rights and entitlements play significant roles in reducing the ability of the elderly to remain financially productive, and thereby, independent.

**Failing Health:**
It has been said that “we start dying the day we are born”. The aging process is synonymous with failing health. While death in young people in countries such as India is mainly due to infectious diseases, older people are mostly vulnerable to non-communicable diseases. Failing health due to advancing age is complicated by non-availability to good quality, age-sensitive, health care for a large proportion of older persons in the country. In addition, poor accessibility and reach, lack of information and knowledge and/or high costs of disease management make reasonable elder care beyond the reach of older persons, especially those who are poor and disadvantaged.

**Emotional dependence:**
In today’s globalized world, people are always on the move in search of jobs. Younger people often move to cities leaving behind their elderly parents. This makes them isolated. Isolation, or a deep sense of loneliness, is a common complaint of many elderly is the feeling of being isolated. While there are a few who impose it on themselves, isolation is most often imposed purposefully or inadvertently by the families and/or communities where the elderly live. Isolation is a terrible feeling that, if not addressed, leads to tragic deterioration of the quality of life.

**Neglect:**
The elderly, especially those who are weak and/or dependent, require physical, mental and emotional care and support. When this is not provided, they suffer from neglect, a problem that occurs when a person is left uncared for and that is often linked with isolation. Changing lifestyles and values, demanding jobs, distractions such as television, a shift to nuclear family structures and redefined priorities have led to increased neglect of the elderly by families and communities. This is worsened as the elderly are less likely to demand attention than those of other age groups.

**Fear:**
Many older persons live in fear. Whether rational or irrational, this is a relevant problem face by the elderly that needs to be carefully and effectively addressed.

**Loss of Control:**
This problem of older persons has many facets. While self-realization and the reality of the situation is acceptable to some, there are others for whom life becomes insecure when they begin to lose control of their resources – physical strength, body systems, finances (income), social or designated status and decision making powers.

**What needs to be done?**

- To address the issue of failing health, it is of prime importance that good quality health care be made available and accessible to the elderly in an age-sensitive manner. Health services should address preventive measures keeping in mind the diseases that affect – or are likely to affect – the communities in a particular geographical region. In addition, effective care and support is required for those elderly suffering from various diseases through primary, secondary and tertiary health care systems.

- The cost of health has to be addressed so that no person is denied necessary health care for financial reasons. Rehabilitation, community or home based disability support and end-of-life care should also be provided where needed, in a holistic manner, to effectively address the issue to failing health among the elderly.

- Economic security is as relevant for the elderly as it is for those of any other age group. Those who are unable to generate an adequate income should be facilitated to do so. As far as possible, elderly who are capable, should be encouraged, and if necessary, supported to be engaged in some economically productive manner. Others who are incapable of supporting
themselves should be provided with partial or full social welfare grants that at least provide for their basic needs. Families and communities may be encouraged to support the elderly living with them through counseling and local self-governance.

- It is important that the elderly feel included in the goings-on around them, both in the family as well as in society. Those involved in elder care, especially NGOs in the field, can play a significant role in facilitating this through counseling of the individual, of families, sensitization of community leaders and group awareness or group counseling sessions. Activities centered on older persons that involve their time and skills help to inculcate a feeling of inclusion. Some of these could also be directly useful for the families and the communities.

- The best way to address neglect of the elderly is to counsel families, sensitise community leaders and address the issue at all levels in different forums, including the print and audio-visual media. Schools and work places offer opportunities where younger generations can be addressed in groups. Government and non-government agencies need to take this issue up seriously at all these levels. In extreme situations, legal action and rehabilitation may be required to reduce or prevent the serious consequences of the problem.

- The best form of protection from abuse is to prevent it. This should be carried out through awareness generation in families and in the communities. In most cases, abuse is carried out as a result of some frustration and the felt need to inflict pain and misery on others. It is also done to emphasize authority. Information and education of groups of people from younger generations is necessary to help prevent abuse. The elderly should also be made aware of their rights in this regard. Where necessary, legal action needs be taken against those who willfully abuse elders, combined with counseling of such persons so as to rehabilitate them. Elderly who are abused also require to be counseled, and if necessary rehabilitated to ensure that they are able to recover with minimum negative impact.

- Elderly who suffer from fear need to be reassured. Those for whom the fear is considered to be irrational need to be counseled and, if necessary, may be treated as per their needs. In the case of those with real or rational fear, the cause and its preventive measures needs to be identified followed by appropriate action where and when possible.
• Early intervention, through education and awareness generation, is needed to prevent a negative feeling to inevitable loss of control. It is also important for society – and individuals – to learn to respect people for what they are instead of who they are and how much they are worth. When the feeling is severe, individuals and their families may be counseled to deal with this. Improving the health of the elderly through various levels of health care can also help to improve control. Finally, motivating the elderly to use their skills and training them to be productive will help gain respect and appreciation.

Elderly as a resource:
The elderly should be seen as a blessing, not a burden. The elderly are becoming the fastest growing, but underutilized resource available to humanity. Rather than putting them aside, physically (and mentally), to be cared for separately, they should be integrated into the lives of communities where they can make a substantial contribution to improving social conditions. The benefits of turning the ‘problem’ of the elderly into a ‘solution’ for other social problems is being demonstrated in several countries.

Vietnam’s example:
In Vietnam, Old People’s Associations (OPAs) are improving the lives of the elderly in many parts of the country. In a country of 90 million people, as many as 8.5 million are members of OPAs in their village and town communities. The associations are democratically run by the elderly in the communities. They set their own agendas, choose what community causes to apply themselves to, which elderly persons need special assistance and assign responsibilities among themselves. They represent the needs of the community and the elderly to government agencies, who also see them as a vital support for the government’s outreach programmes into communities.

Conclusion:
The elderly are the fastest growing, underutilized resource that humanity has to address many other problems. Re-integration of the elderly into communities may save humanity from mindlessly changing into a technology-driven ‘Industry 4.0’ which futurists are projecting: an economy of robots producing things for each other. Investing a little to engage the elderly in communities can improve the health and well-being of the elderly. It can also improve the health and well-being of communities.
Insights into Editorial: Panama Papers explained
05 April 2016

 Governments across the world have begun investigating possible financial wrongdoing by the rich and powerful after a recent leak of four decades of documents from a Panamanian law firm that specialized in setting up offshore companies.

What are “Panama Papers”?
The “Panama Papers” reveal financial arrangements of politicians and public figures. The Papers are an unprecedented leak of 11.5m files from the database of the world’s fourth biggest offshore law firm, Mossack Fonseca. The records were shared by the International Consortium of Investigative Journalists (ICIJ).

What’s there in that?
The documents show the myriad ways in which the rich can exploit secretive offshore tax regimes. Twelve national leaders are among 143 politicians, their families and close associates from around the world known to have been using offshore tax havens.

Significance of these findings:
There’s a difference between tax evasion — illegally refusing to pay taxes you owe, and then taking advantage of secret accounts to try to hide the money and get away with it — and tax avoidance, which is hiring clever people to help you find and exploit legal loopholes to minimize your tax bill.

- Panama is a country with no corporate income tax. People set up their companies here to avoid tax. Tax avoidance is an inevitable feature of any tax system, but the reason this particular form of avoidance grows and grows without bounds is that powerful politicians in powerful countries have chosen to let it happen.

- As the global economy has become more and more deeply integrated, powerful countries have created economic “rules of the road” that foreign countries and multinational corporations must follow in order to gain lucrative market access.
• Establishing some kind of minimum global standard of taxation of corporate and investment income hasn’t been done, because it hasn’t been a political priority.

• The leak of the Panama Papers is significant in part because of the specific information the documents contain, but more broadly because they draw attention to what “everyone knows” and may put public pressure on the powers that be to do something about it.

• Also, while holding money in offshore companies is not illegal, evidence of wealth hidden for tax evasion, money laundering, sanctions busting, drug deals or other crimes is worrisome.

What are offshore accounts?
Offshore bank accounts are located outside a client’s country of resident, usually in “tax haven” territories chosen because of financial and legal advantages.

• They can be used to squirrel money away from the oversight of national banking systems, evading regulatory oversight or tax obligations.
Companies or individuals often use shell companies – set up purely a vehicle for financial transactions and initially incorporated without significant assets or operations – to disguise ownership or other information about the funds involved.

Panama, the Channel Islands and Bermuda are among more than a dozen small, low-tax locations that specialise in handling business services and investments of non-resident companies.

Are they legal?
Yes. Companies or trusts can be set up in offshore locations for legitimate uses such as business finance, mergers and acquisitions and estate or tax planning, according to the global money laundering watchdog, the Financial Action Task Force.

But as well as being used to avoid tax, the secrecy they lend also makes them attractive to criminals and terrorist groups wishing to conceal the sources of their funds.

What’s in it for India to worry?
The papers show that some Indians have set up offshore entities through the Panama law firm. Some of them floated offshore entities at a time when laws did not allow them to do so; some have taken a technically convenient view that companies acquired is not the same as companies incorporated; some have bunched their annual quota of remittances to subscribe to shares in an offshore entity acquired at an earlier date. Still, some others have received income earned abroad and deposited it in the entity to avoid tax. Some have opened a bank account to keep payoffs in government contracts, or held “proceeds of crime” or property bought with money made illegally in Trusts/ Foundations.

But, why set up entities in Panama?
It is for the following reasons-

- Secrecy of information relating to the ultimate beneficiary owner.
- Zero tax on income generated.
- In Panama, individuals can ask for bearer shares, where the owner’s name is not mentioned anywhere.
- It costs little or nothing to set up an entity here. The Registered Agent charges a few hundred dollars to incorporate an entity.
• It doesn’t take much time to incorporate one either. Companies are available off-the-shelf and can be registered in a couple of days.

Why Indian regulators are interested in this?

Non-disclosure of an overseas asset will be of interest to authorities and regulators in India. Floating these companies and depending on the reason for which they are put to use, could also violate, individually or jointly, the Foreign Exchange Management Act, the Prevention of Money Laundering Act, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, the Prevention of Corruption Act and the Income-Tax Act.

Also, the Income Tax department will have to probe if there has been ‘round tripping’ of funds i.e. routing of funds invested in offshore entities back to India, and where required, refer the cases to the Enforcement Directorate. It will also have to see if the offshore entities have declared all their incomes and assets to the Income Tax department.

What’s the relevance of The Panama Papers to the black money debate?

Offshore entities can be and have been used by individuals to remit funds abroad. Globally, they carry a reputation of being vehicles set up by individuals and corporations to evade or avoid tax. Companies call this tax planning, the tax man sees it as tax avoidance. With coordinated moves by G-20 countries to introduce stringent anti-money laundering measures, as part of a global crackdown on tax avoidance, there is rising international scrutiny over such jurisdictions and giant company incorporators which facilitate setting up of offshore entities.

About Panama:

Panama is a country in Central America situated between North and South America. It is bordered by Costa Rica to the west, Colombia to the southeast, the Caribbean to the north and the Pacific Ocean to the south. The capital and largest city is Panama City, whose metropolitan area is home to nearly half of the country’s 3.9 million people.

• Panama was inhabited by several indigenous tribes prior to settlement by the Spanish in the 16th century. Panama broke away from Spain in 1821 and joined a union of Nueva Granada, Ecuador, and Venezuela named the Republic of Gran Colombia. When Gran Colombia dissolved in 1831, Panama and Nueva Granada remained joined, eventually becoming the Republic of Colombia.
With the backing of the United States, Panama seceded from Colombia in 1903, allowing the Panama Canal to be built by the U.S. Army Corps of Engineers between 1904 and 1914. In 1977, an agreement was signed for the total transfer of the Canal from the United States to Panama by the end of the 20th century, which culminated on 31 December 1999.

Panama has the second largest economy in Central America and is also the fastest growing economy and largest per capita consumer in Central America. In 2013, Panama ranked 5th among Latin American countries in terms of the Human Development Index, and 59th in the world.

Since 2010, Panama remains the second most competitive economy in Latin America, according to the World Economic Forum’s Global Competitiveness Index. Covering around 40 percent of its land area, Panama’s jungles are home to an abundance of tropical plants and animals – some of them to be found nowhere else on the planet.

**Insights into Editorial: Towards restorative criminal justice**

**06 April 2016**

**Article Link**

Criminal Law of India is a replica of colonial times. It is hostile to the poor and the weaker sections of society. The law still serves and protects the needs of the haves and ignores the have-nots. Such biasness has resulted in rich people escaping law and the jail is more often full of the unprivileged class of society.

- The way criminal justice is designed and administered today hardly serves any of the purposes for which it is set up: towards securing life and property.

The Criminal Justice System in India has many loop holes:

- It **does not deter criminals** because of the delay and uncertainties involved in its processes and ridiculously ineffective punishments it imposes on those few who get convicted.

- It **provides wide discretion to the police and the prosecution**, rendering the system vulnerable to corruption and manipulation and endangering basic rights of innocent citizens.

- It **ignores the real victim**, often compelling him/her to find extralegal methods of getting justice.
- It also **puts heavy economic costs on the state** for its maintenance without commensurate benefits in return.

- Also, more than 30 **million criminal cases are still pending** in the system (the annual capacity of which is only half that number), and another 10 million or more cases are being added every year.

Hence, to arrest the drift and to prevent total disaster, the committee on criminal justice reforms recommended the following reforms:

1. **Have a fresh comprehensive relook at the law, substantive and procedural**, based on changes in society and economy as well as priorities in governance. The guiding principle in the reform process should be decriminalisation wherever possible and diversion, reserving the criminal justice system mainly to deal with real hard crimes.

For this, the Penal Code can be divided into four different codes —

- A **“Social Offences Code”** consisting of matters which are essentially of a civil nature and can be settled or compounded through administrative processes without police intervention and prison terms.

- A **“Correctional Offences Code”** containing offences punishable up to three years’ imprisonment where parole, probation and conditional sentences can be imposed in lieu of prison terms and can be handled under summary/summons procedure where plea bargaining can be liberally invoked without the stigma of conviction.

- An **“Economic Offences Code”** where property offences which affect the financial stability of the country are dealt with by a combination of criminal and administrative strategies including plea bargaining (both on charge as well as on punishment) with a view to making crimes economically non-viable.

- An **“Indian Penal Code”** which will have only major crimes which warrant 10 years’ imprisonment or more or death and deserve a full-fledged warrant trial with all safeguards of a criminal trial.

2. **Reorganize the police and prosecution systems** making them more specialised, efficient and accountable. For this, institutional reform of police processes, including investigation
of crimes, professionalisation and rationalisation of court systems with induction of technology are required.

3. Bring in a bigger and responsible role to victims of crime in the whole proceedings by changing the system to a victim-centric one. Toward this end, the system must confer certain rights on victims to enable them to participate in the proceedings, including the right to be impleaded and to engage an advocate in serious offences, the right to track the progress of the proceedings, the right to be heard on critical issues and to assist the court in the pursuit of truth.

4. Victims should also have the right to seek and receive compensation for injuries suffered including appropriate interim relief irrespective of the fate of the proceedings. Victims may also submit a victim impact statement to the courts setting out the effect of the crime on their lives.

5. Government can also make use of restorative justice system. Restorative justice is more akin to indigenous systems of quick, simple systems of resolution of wrongs which enjoy community support, victim satisfaction and offender acknowledgement of obligations. Restorative justice takes on board all three parties — the offender, the victim and the community — in a harmonious resolution of the injury, maximising the sense of justice and restoring peace and harmony in the community. It is not a substitute to the formal criminal justice system, but a good backup to reduce its workload and to increase the sense of justice in the system as a whole.

6. The number of Forensic Science Institutions with modern technologies such as DNA fingerprinting technology should be enhanced. The system of plea-bargaining (as recommended by the Law Commission of India in its Report) should be introduced as part of the process of decriminalization.

Conclusion:
Crime and violence constitute a major impediment for development and social integration for a plural society like India. The adversarial model of criminal justice, with punishing the offender as its only aim, has proved costly and counterproductive. While keeping the adversarial system for certain serious and complex offences, India needs to experiment with more democratic models
aimed at reconciliation and restoration of relationships. Also needed is a change of mindset, willingness to bring victims to the centre stage of criminal proceedings and to acknowledge that restoring relationships and correcting the harm are important elements of the criminal justice system.

**Insights into Editorial: Raghuram Rajan’s pivot to liquidity management**

07 April 2016

**Article Link**

Economists have welcomed the slew of liquidity management measures announced by RBI in its latest monetary policy, saying it will result in quicker transmission of policy rates to lending rates.

**Why new liquidity management measures were required?**

1. Bank lending rates have not fallen to the same extent as policy rates have.
2. There was also a growing clamour for easier liquidity in the money market to help monetary policy transmission.

**Background:**

The existing framework on liquidity was put in place in May 2011. Since then, the policy stance was to keep liquidity in deficit mode with -1% of NDTL being associated with the usual level of comfort. While this framework served well during the ensuing phase of monetary tightening, it created hindrance for efficient transmission when the easing cycle commenced from January 2015 onwards.

**Important structural changes announced:**

- The first change is to keep liquidity in neutral rather than deficit mode, as was the wont of the central bank till now. The change from deficit to neutral mode means that the RBI will have to aggressively buy dollars as well as government securities to release money into the money market. The size of its balance sheet seems set to increase.
- Second, the so-called interest rate corridor between the repo rate (or the rate at which banks borrow from the RBI) and the reverse repo rate (or, the rate at which banks park their excess money with the RBI) has shrunk from 1% to 0.5%. Banks will now borrow from RBI at 6.5%
and keep excess money with the central bank at 6%. Central banks use such policy corridors to keep overnight call money rates within a desired band.

Implications:

- The most obvious result is a reduction in the volatility of short-term interest rates.
- Lower volatility in the interbank money market could have an important effect on bank behaviour. Banks tend to hoard liquidity when interest rates are jumping around. An anchored call money rate will ensure that banks are more comfortable trading with each other for overnight money rather than depending on the central bank for emergency funds.
- What this also means is that short-term interest rates will not be hostage to the liquidity forecasting errors of commercial banks, and even perhaps the unexpected movements in the cash balances that the government maintains.
- The new changes will further help the Indian central bank improve its liquidity marksmanship.

Conclusion:
The success of the new liquidity policy will depend not just on its theoretical structure but also how it is translated into practice. The elimination of the liquidity deficit in the money market may make it difficult for the RBI to defend the repo rate as its policy rate. A sudden gush of capital inflows could send the domestic money market into surplus mode, and thus make the reverse repo the effective policy rate. Such an inadvertent switch can confuse the markets as well as reduce the effectiveness of monetary policy.

**Insights into Editorial: No jobs in sight**
08 April 2016

**Article Link**

With recent demands for affirmative action or job reservations for Scheduled Caste and Scheduled Tribe candidates in the private sector, debates surrounding quota have once again come to the fore.

**What has been suggested?**

**Reservation in private sector** has been suggested. Because providing quota in private jobs will help cool down anger among SC and STs, thereby stemming the rise of Maoist militancy among them.
How it helps?
The lands of vulnerable communities are being snatched away and with nothing left, the youth take up the wrong path including militancy. But, Maoist militancy is not just a security challenge, but results from deeply embedded socio-economic causes. And a major reason for mounting discontent among young people is because they have no jobs and future to look forward to. Hence, reservation in private jobs is a good solution.

Why young people take up arms?
The reasons for young people taking up arms in some impoverished regions are wide-ranging. They include-

- Profound agrarian crisis, caused by abysmally low public investments in dry-land agriculture and farmer income protection.
- Failures of land reforms.
- Promotion of unsustainable, high-cost, risky agricultural technologies.
- The ecological degradation of the countryside.
- Decline and dispossession from forests.
- Contraction of rural credit.

Need for quota in private sector:
The hopes of young people are shifting to the private sector. Also, at a time when the few jobs that are being created are in the private sector, and there is wide evidence of the bias shown by this sector against employing youth from socially discriminated categories, there is a strong case for job reservations.

Is it not possible to create enough jobs in public sector?
There is a colossal, unprecedented and ever-mounting crisis of employment for the young in India today. Every month, a million new persons are joining India’s workforce and there are hardly any jobs for them in either the public or private sector.

- The total number of government staff, including Central and state governments, PSUs and local bodies, is less than 1.4% of the population, against the global average of over 3%.
• Besides, this number has been going down over the years, falling from 19.13 million in 2000-01 to 17.60 million in 2011-12. Hence, it is not possible to create enough jobs in the public sector.

Why young people are turning away from agriculture?
Growing millions of young people find no future in agriculture. The Socio-Economic Caste Census showed that more than 55% of rural households possess no land, and are forced to survive exclusively by distress manual labour.
• Marginal and small farmers are not much better off. Most of them are reduced to footloose migrants, travelling, working and surviving under conditions of great hardship away from their homes.

What’s needed now?
• Massive public investments in agriculture and rural job creation would help create enormous local markets that could spur jobs and demands.
• Huge expansions in the broken school, higher and technical education, and health and child care services would not just generate jobs, but also render youth entering work more productive and equipped with marketable skills.

Conclusion:
Young people today desperately long to escape the drudgery and hunger that entrapped their parents. Hence, there is a need to change course drastically without which we will continue to profoundly fail our young, with both tragic and explosive outcomes. However, independent of whether or not it would help allay the attraction of dispossessed young Dalit and tribal people to militant ideologies, the case for affirmative action in the private sector for SCs and STs must be considered on its own merit.

Insights into Editorial: Sort out the tax maze
09 April 2016

Article Link
Recent Panama leaks have exposed various loopholes in India’s tax regime. It is widely being assumed that tax havens are used only for illegal activities. However, tax havens are more likely to be used not just for illegal activity but even for legitimate businesses.
People prefer tax haven for the sake of avoiding taxes. But there are very thin lines between the legal and the illegal. The difference between tax evasion and tax avoidance is one such line.

Tax evasion involves not paying taxes on your income and is illegal. Tax avoidance, on the other hand, is about managing your taxes across different tax jurisdictions to take advantage of differences in tax rates, such as corporate tax rates, in tax treatment of different kinds of income, such as capital gains, and in tax treaties among countries.

Tax havens such as Panama, the British Virgin Islands and the Bahamas try to attract business by offering low tax rates and easy compliance.

Problems with Indian tax regime:
In India, tax rates are higher, the system is complicated and capital controls restrict foreign financial transactions.

- Various tax laws have made compliance more costly in India. India is ranked 157 in the ease of paying taxes.
- Further, the effective tax on profit is higher: The corporate tax rate and the dividend distribution tax put together make the tax rate on profits nearly 50%.
- The capital gains tax makes financial transactions even more unattractive. This regime is made more tortuous by an onerous set of capital controls.

Tax avoidance as cheating:
Some countries, including OECD countries, consider even tax avoidance as illegal.

A number of OECD initiatives have been taken to reduce tax avoidance:

- An agreement on Base Erosion and Profit Shifting (Beps) aims to prevent companies from choosing low-tax jurisdictions to book profits in.
- The Automatic Exchange of Information (AEOI) framework will facilitate information flows among signatories.
- The Foreign Account Tax Compliance Act (Fatca) targets non-compliance by US taxpayers and compliant countries have to provide customer information to the US government.

However, there are some cases in which the actions are clearly illegal-
First, when the **underlying activity is criminal**, say, drug or arms trade. These activities are covered under the Prevention of Money Laundering Act. As a member of the Financial Action Task Force, India works with other member countries to prevent the use of the proceeds of crime.

The second is when there are **cases of tax evasion**: A person does not declare to the tax authorities in her home country her income, which is paid into a bank account of her company in Panama, and no taxes are paid. Here, a distinction between tax evasion and avoidance is relevant. If taxes have been paid in the tax haven at its lower tax rate, then there may be no illegality. When India introduces the General Anti-Avoidance Rule (GAAR), some of these activities may become illegal.

The third case is if there is a **violation of capital controls**. This is an India-specific issue. Under the Liberalised Remittance Scheme (LRS), every Indian resident is allowed to invest $2,50,000 abroad every year. In 2004, the limit was one-tenth of this. Money remitted abroad is from income on which tax has already been paid. If the amount invested abroad exceeds the amount allowed by the RBI, it is a violation of the law.

Fourth, the illegality may be the **non-declaration of assets held abroad**. A provision in the Finance Bill introduced in 2015 made it criminal not to declare foreign assets in annual tax returns. If the assets held in tax havens have been declared, then it is not illegal to hold them.

**Why be concerned about these issues?**

There is a widespread perception that offshore companies are conduits for money laundering, illegal transactions, tax evasion or parking unexplained wealth. Hence, it is necessary to keep an eye on such activities and prevent them.

**What’s needed?**

- First, rationalisation of capital controls should be a top priority. Many government reports have laid out the path forward.
- Second, India must move to a simple tax regime with lower compliance costs. The blueprint is ready in the Direct Taxes Code.

**Conclusion:**
The new government at the Centre has the opportunity to simplify our tax laws that reduce the scope for disputes between taxpayers and revenue authorities. The objective should be to encourage voluntary compliance and severely penalise tax evasion. This, along with clarity on introduction of a new Direct Taxes Code and a roadmap for the implementation of a nationwide Goods and Services Tax, will go some way in creating a non-adversarial tax climate conducive to growth and investment. In the long run, this is the only sustainable path to revenue generation.

**Insights into Editorial: Their separate ways**

12 April 2016

[Article Link](#)

A Committee of Parliament which recently examined the vexed issue of frequent polls in the country has come up with what could be the most practical way to end the vicious cycle of elections, which not only takes a heavy toll of governance, but also destabilises duly-elected governments and imposes a heavy burden on the exchequer. The parliamentary standing committee on law and personnel strongly has recommended holding of simultaneous Lok Sabha and assembly elections all over the country. While the idea is noble, it’s difficult to implement. Interestingly, even PM has proposed the same.

**Background:**

After the Constitution came into being in 1950, elections to the Lok Sabha and all state assemblies were held simultaneously in 1952, 1957, 1962 and 1967 and all the newly elected legislative bodies were constituted between March and April in each of these years.

- In the first three elections, it was virtually one-party rule with the Congress Party holding sway over the voters almost everywhere. However in 1967, the electorate dislodged the Congress in a few states and voted in unstable coalitions. A couple of these governments collapsed ahead of time in the late 1960s, thus marginally disrupting the arrangement of simultaneous elections to the Lok Sabha and all the state assemblies.

- However, the real damage was done in 1970, when early dissolution of the Fourth Lok Sabha took place. Since then, the arrangement of simultaneous elections has come to an end and over
a period of time, the country has got into a vicious cycle of elections which has begun to hurt governance in a big way.

Problems with frequent elections:
Frequent elections bring to a standstill normal functioning of the government and life of the citizens and bring a heavy recurring cost.

- With frequent elections, normal work comes to a standstill to a considerable extent. Typically, elections to the Lok Sabha are spread over two and a half months. As soon as the Election Commission announces the poll dates, the model code of conduct (MCC) comes into operation. This means that the government cannot announce any new schemes, make any new appointments, transfers or postings without EC approval. Ministers get busy in the election campaign, the district administration machinery gets totally focused on elections.

- Cost is another major issue. The costs of election have gone up enormously. It has two components — the cost of management to the EC/ government and the cost to candidates and political parties. Though there are no exact estimates, one guesstimate puts it at Rs 4,500 crore. The bigger problem is the havoc played by the money power of political parties and contestants. Though the law prescribes a ceiling on the expenditure of candidates, the fact is that it is violated with impunity.

- Another consequence of frequent elections is the aggravation of vices like communalism, casteism, corruption (vote-buying and fund-raising) and crony capitalism. If the country is perpetually in election mode, there is no respite from these evils.

Frequent elections have some benefits too:

- One, politicians, who tend to forget voters after the elections for five years have to return to them. This enhances accountability, keeps them on their toes.

- Two, elections give a boost to the economy at the grassroots level, creating work opportunities for lakhs of people.

- Three, there are some environmental benefits also that flow out of the rigorous enforcement of public discipline like non-defacement of private and public property, noise and air pollution, ban on plastics, etc.
Four, local and national issues do not get mixed up to distort priorities. In voters’ minds, local issues overtake wider state and national issues.

Besides, a staggered electoral cycle also acts as a check against demagoguery, fascism and oligarchy, in that order.

It also ensures that the mood of the nation at a particular moment does not hand over political power across a three-tiered democratic structure to one dispensation or individual. It gives people a chance to distinguish between the national, state and local interests, rather than being swept away in a “wave”, often manufactured by corporate media and the economic muscle of commercial carpetbaggers.

Does this plan square with the Indian federal construct?

Federalism is one of the basic features of the Constitution. Article 83(2) of the Constitution requires that the Lok Sabha be in existence for five years from the date of its first meeting, unless dissolved earlier, and, thereafter, a fresh election would have to be conducted. Similarly, Article 172 of the Constitution requires that the state legislatures continue for five years, unless dissolved earlier.

However, the design for simultaneous elections seems to be in utter ignorance of the phrase, “unless dissolved earlier”, found in the text of these two articles as they stand today. Moreover, federalism as a concept rests on the principle of uniting separate states into a union without sacrificing the fundamental political integrity of the states.

Although our Constitution gives wider power to the Union over the states, the states are supreme within the spheres allotted to them. The federal state is a political compact that weaves different regions, religions, languages and impulses into a nation-state.

Alternative method:

An alternative and practicable method is holding elections in two phases. Elections of some assemblies can be held at mid-term of Lok Sabha and remaining with the end of tenure of Lok Sabha. For this, the terms of some legislative assemblies may need to be extended while some of them may need to be curtailed.

In order to achieve this, the tenure of the existing state assemblies will have to be curtailed or extended by some months. In any case, the Election Commission is empowered by the
Representation of the People Act, 1951 to call an election six months prior to the end of the normal term of the Lok Sabha or any state assembly.

- This is the first concrete idea that has emerged to reduce the frequency of elections and save the people and the administration from election fatigue. All political parties need to seriously ponder over this if they wish to ensure that India’s democratic process does not become a hindrance to development and governance.

**Conclusion:**
Simultaneous polls—Lok Sabha, states and local bodies—could be beneficial for both governance and the business model of politics. It will address the issue of delayed decisions that hurt the economy. Fewer polls will bring down the funding cost of frequent polls for parties. Additionally, simultaneous polls will enable parties to create capacity, vertically integrate interests. However, greater consensus is needed to proceed further on this.

**Insights into Editorial: Clearing the smoke on LPG reform**

12 April 2016

**Article Link**

The Cabinet Committee on Economic Affairs, in March 2016, approved a scheme to give free cooking gas connections to poor women. The scheme is known as “Pradhan Mantri Ujjwala Yojana”.

**About the scheme:**
Under the Pradhan Mantri Ujjwala Yojana, Rs.8,000 crore has been earmarked for providing 50 million LPG (liquefied petroleum gas) connections to poor households.

- Each beneficiary will get financial support of Rs.1,600 for securing an LPG connection.
- Eligible households will be identified in consultation with state governments and Union territories.
- The scheme will be implemented over the next three years.
- The scheme is being implemented by the Ministry of Petroleum and Natural Gas.

**Significance of this scheme:**
This is not a new idea. Subsidised LPG connections to BPL households have been provided under various schemes even earlier. However, the scale of this programme is what sets it apart.

- Until 2013, 75 lakh predominantly rural, subsidised BPL connections were disbursed under various schemes.
- 55 lakh subsidised BPL connections are claimed to have been provided in the last year under the “Give Back” scheme linked to the “Give It Up” campaign.
- In comparison, the PMUY aims to provide subsidised connections to five crore households in three years.

What makes LPG adoption necessary?

- About 75 crore Indians, especially women and girls, are exposed to severe household air pollution (HAP) from the use of solid fuels such as biomass, dung cakes and coal for cooking.
- A report from the Ministry of Health & Family Welfare places HAP as the second leading risk factor contributing to India’s disease burden.
- According to the World Health Organization, solid fuel use is responsible for about 13% of all mortality and morbidity in India (measured as Disability-Adjusted Life Years), and causes about 40% of all pulmonary disorders, nearly 30% of cataract incidences, and over 20% each of ischemic heart disease, lung cancer and lower respiratory infection.

However, there are a few more issues which need to be addressed:

1. Cooking fuel should be available at an affordable cost:

Each BPL household would have to spend up to Rs.5,000 each year on LPG even at current subsidised prices — in addition to a one-time cost of Rs.1,800 for the connection — which may be unaffordable to many.

- The PMUY has proposed payment in instalments for stoves and cylinders to address this challenge, which is welcome. In addition, it may consider increasing LPG subsidies for the first few cylinders bought in a year by BPL households.

2. Distribution system needs to be strengthened:

The distribution system needs to be strengthened to be able to meet the expected increase in demand, particularly in rural areas, as non-availability of fuel could push people back towards using solid fuels.
Ensuring reliable, sustained, last-mile supply would require multiple steps. It requires a large extension of distribution networks, especially in rural areas, since each rural distribution agency typically caters to fewer customers than urban agencies.

Implementation of direct benefit transfer schemes must be made more robust. Effective monitoring and grievance redressal systems are equally important to ensure that problems in the scheme are highlighted and addressed early.

The scheme should be accompanied by a focussed public relations campaign to build awareness and create a demand pull, not only for clean cooking but also for good service.

Ensuring reliable supply is also likely to require strengthening the refining, bottling and pipeline infrastructure.

3. Widen the net:
The PMUY targets only BPL households. But, there is a need to widen the net for two reasons: one, because of known inclusion and exclusion errors in BPL lists, and two, because BPL may be a narrow definition of deprivation and many non-BPL households may also not be able to afford LPG connections.

The wider net could just be all rural households or all households except those meeting well-defined exclusion criteria such as ownership of certain categories of assets.

Conclusion:
The PMUY is a bold and much-needed initiative, but it should be recognised that this is just a first step. The real test of the PMUY and its successor programmes will be in how they translate the provision of connections to sustained use of LPG or other clean fuels such as electricity or biogas. Truly smokeless kitchens can be realized only if the government follows up with measures that go beyond connections to actual usage of LPG. This may require concerted efforts cutting across Ministries beyond petroleum and natural gas and including those of health, rural development and women and child welfare.
Insights into Editorial: The growing tribe of think tanks in India

13 April 2016

Article Link

An annual compilation done by the Think Tanks and Civil Society Program (TTCSP) of the University of Pennsylvania pegged the number of think tanks in India at 192 and 280 in its 2014 and 2015 versions, respectively.

- With this India has leapfrogged Germany to become the country with the fourth highest number of think tanks behind the UK, China and the US.

Concerns:
While the numbers are growing, the think tanks in India are becoming less influential. Hence, the growing numbers notwithstanding, the quality of output and level of influence in policymaking have been underwhelming.

- In the TTCSP rankings of think tanks, 2015 only one Indian think tank has found place in the top 100 and five in the top 150.

Reasons for the poor performance of think tanks:

- Government’s determination, particularly within its powerful bureaucracy, to jealously hold the policy reins.
- Lack of funding from sources other than government is another major problem. The government-funded think tanks are not seen as objective enough and the rest do not find enough resources to invest in quality people and peripatetic projects.
- Skewed geographical spread is also an area of concern. Capital cities tend to attract think tanks for entirely known reasons.

What needs to be done?

- Diversify the sources of funding. This has been achieved to a certain extent with the arrival of foreign private foundations such as Ford Foundation and the Bill and Melinda Gates Foundation. Indian corporate groups have also made a late appearance. However, a lot more needs to be done to make funds available for different kinds of projects and collaborative activities.
- Allow top foreign think tanks to open their centres in India.
- Limit government involvement and make these think tanks autonomous.
As the states now account for more than half the total government expenditure in India, the need for a greater number of think tanks—and of a better quality—in states cannot be overstated. Hence, states have to be taken on board while deciding on these issues.

Conclusion:
The reforms should not just be left to the state governments. All stakeholders including policy entrepreneurs, private investors, foundations and business groups should set their eyes on these reforms and help these think tanks perform effectively.

Insights into Editorial: Rebooting India’s agricultural policy

14 April 2016

Article Link

The agricultural sector in India has entered a new low since 1988, when India faced severe drought. Presently, India is facing its worst moment in the last three decades. The severity of the situation is evident from the stories of migration and severe water crisis in Maharashtra and elsewhere.

Why the government is to be blamed?
- It is because the response from the government to these expected shocks has been delayed and inadequate in most cases. In some cases, the delay in response has certainly aggravated the crisis. This has been reflected in government’s responses to the collapse of commodity prices and to the drought this year.
- Despite having prior information about the impending drought, the government was not prepared. Required relief efforts were not undertaken on a scale larger than a normal drought.
- Also, most states have not been given their share of the drought relief fund that was promised by the central government.
- Besides, the actual increase in this year’s budget for the agricultural sector was a modest 27% against a claim of 127% by the finance minister in the 2016 budget.

Policy concerns:
The real problem, however, with the policy of this government on agriculture is not just the financial allocation, which remains inadequate given the enormity of the situation, but also the lack
of a coherent policy for achieving the objective of doubling farm income. There has not been a clear road map to revive agriculture.

Need for a new policy:
The old policy lacks a clear understanding of the problems facing today’s Indian agriculture. The reason some of the old prescriptions are less relevant in the current context lies in the changing nature of agricultural production, which has seen a rising share of horticulture, floriculture and livestock.

- Although grown in an area smaller than food grains, horticulture production is now higher than the total output of the food-grain sector. It now accounts for almost one-third of total agricultural gross domestic product (GDP). So is the case of livestock and dairy, which have seen rapid growth in recent years.

- These sectors are more vulnerable to weather shocks and hence they require a different kind of support, including marketing and processing support. These are also more vulnerable to price fluctuations, as has been witnessed recently, than traditional crops such as food grains.

Way ahead:
What is required is to insulate these sectors not only from the risk and vulnerability which arise from production-related factors such as weather but also from risks in the price and output market.

- Most of the farmers (more than 80%) engaged in production of these crops are small and marginal farmers with little support from traditional agricultural policies such as insurance, marketing infrastructure, support prices and subsidies. Hence, our agricultural policies should be geared towards supporting and protecting these farmers.

- Years of neglect of natural resource management have put enormous stress on the land and water resources of the agricultural sector. In this context, traditional approaches of input intensification are now yielding limited returns—in some cases, negative returns. The focus of the agricultural strategy has to move towards developing new technologies, agricultural practices and crop varieties which are not only less resource-intensive but also environment-friendly.

- A sustainable agricultural policy requires efforts to not only support and protect farmers from the vagaries of the monsoon and market forces but also to create an enabling institutional
framework. The roles of agricultural universities, extension services and cooperative institutions have to be redefined.

- In the short run, efforts to augment the income of farmers suffering from the drought are needed. This not only requires supporting and strengthening livelihood programmes and safety nets such as the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) but also implementing the much-delayed National Food Security Act.

**Conclusion:**
The current crisis in agriculture has forced the government to respond to the challenges facing the agricultural sector. The government should not only respond to the immediate challenges facing the farmer and the agricultural sector but also reboot the agricultural policy to create an ecosystem for the future of Indian agriculture. The ambition of doubling the farmer’s income in the next six years may be difficult to achieve but is not impossible.

**Insights into Editorial: eNAM-National Agriculture Market: All you need to know**

15 April 2016

Prime Minister Narendra Modi recently launched an online national agricultural products market platform that will integrate 585 wholesale markets across India.

- The launching of e-platform for marketing of agriculture products is being done with the aim to provide more options to farmers to sell their produce.
- This initiative is part of implementation of the roadmap for doubling income of the farmers by 2022.

What is National Agriculture Market (NAM)?

NAM is an online platform with a physical market or mandi at the backend. NAM is not a parallel marketing structure but rather an instrument to create a national network of physical mandis which can be accessed online.

- It seeks to leverage the physical infrastructure of mandis through an online trading portal, enabling buyers situated even outside the state to participate in trading at the local level.

NAM is said to have the following advantages:
For the farmers, NAM promises more options for sale. It would increase his access to markets through warehouse based sales and thus obviate the need to transport his produce to the mandi.

For the local trader in the mandi / market, NAM offers the opportunity to access a larger national market for secondary trading.

Bulk buyers, processors, exporters etc. benefit from being able to participate directly in trading at the local mandi / market level through the NAM platform, thereby reducing their intermediation costs.

The gradual integration of all the major mandis in the States into NAM will ensure common procedures for issue of licences, levy of fee and movement of produce. In a period of 5-7 years Union Cabinet expects significant benefits through higher returns to farmers, lower transaction costs to buyers and stable prices and availability to consumers.

The NAM will also facilitate the emergence of value chains in major agricultural commodities across the country and help to promote scientific storage and movement of agri goods.

Are existing APMCs or mandis capable of handling NAM?

Experts say that infrastructure available for NAM at local markets varies from state to state. The NAM platform is being supported by agriculture ministry, which is bearing maintenance costs for each mandi.

The integration cost for local mandis and customisation of software, training, etc, will also be paid for by the ministry as a one-time grant of around Rs30 lakh at the time of accepting the mandi in the national network.

However, the running costs of the software at the local level, staff costs for quality check, etc, will be met with the transaction fee to be generated through the sale of produce.

The key reason behind this support is to avoid any upfront investment by the mandi when it integrates into NAM, and enable it to support the running cost through additional generation of revenue.

Such a platform was necessary to address the following challenges:

- Fragmentation of state into multiple market areas.
- Poor quality of infrastructure and low use of technology.
In the traditional mandi system, farmers generally procured very less price for their crops as they had to pass through various intermediaries at the physical marketplace. This not only adds costs but also handling costs.

In addition, the farmer has to face obstacles in form of multiple tax levies and licenses and weak logistics and infrastructure in India.

**How will NAM operate in the current form?**

The 21 mandis where NAM is being formally launched would offer trading in commodities such as chana, castor seed, paddy, wheat, maize, onion, mustard and tamarind. But fruits and vegetables, where there often are prices fluctuations, are yet to be included in the NAM platform.

**What needs to be done from here?**

- Experts say that as long as fruits and vegetables are kept outside the purview of NAM, the volatility in prices would continue, thus depriving farmers from getting better prices.
- Barriers hampering interstate transfer of agricultural commodities also have to be removed. High taxes and levies imposed by states such as Punjab, Haryana and Andhra Pradesh on agricultural commodities trade have to be brought down; this would boost interstate trade and farmers’ income.
- With very few big buyers likely to be interested in buying the small lots that farmers will have to offer, aggregators will be needed and the trick will lie in ensuring it is not the same aggregators who control the mandis that get to dominate NAM.
- Care will have to be taken, similarly, to ensure markets do not get cornered by speculators or cartels that drive prices up or down.
- Considerable effort will also be needed for the clearance mechanism to work.

**Conclusion:**

Eventually, the success of NAM will depend upon whether farmers get a higher price for their produce or not and whether this reduces price volatility— in which case, introducing a system of market-makers needs to be tried at some point in time; bringing in large retail chains will help but with the central government opposing FDI in retail, this looks tough, though it is possible the new FDI window for pure food retail may attract big food retailers. And since most state governments
have a history of blocking supplies when local prices go up, it will be critical to ensure the states on the platform don’t resort to their old tricks in times of supply shortage.

Insights into Editorial: Name Of The Bill
16 April 2016
Article Link

Government’s recent move to introduce Aadhaar Bill as Money Bill had come under sharp criticism and was sharply objected by many, including few legal experts. This was seen as move to bypass the upper house. In this context, it would be instructive to see why some bills are labelled as money bills and require only the Lower House to pass them.

First of all, why do we need a second house?
The purpose of the second House is to be a revising chamber. Any legislation must be passed by each House by a simple majority. This provides a check on hasty decisions.

Why have exceptions for money bill?
Following the procedure in the British parliament, our Constitution makes an exception for money bills.

- The British parliament, over the centuries, built up checks against the monarch’s power. It required all government expenditure to be sanctioned by parliament. It also forbade new taxes unless parliament provided for them by law.

- Parliament could stop any expenditure plans of the government and bring it to a standstill. In such a case, the government cannot function and would be expected to resign.

- Given that the government requires the confidence of the Lower House, the corollary is that only the Lower House should have decision-making powers on such bills. In other words, money bills are an exception to the rule that bills need to be passed by each House.

Limits on the usage of money bill:
Our Constitution specifies six conditions for any bill to be a money bill, and states that the bill should have only these features, or any item incidental to it. The six conditions are related to:

1. The imposition, abolition, remission, alteration or regulation of any tax.
2. Regulation of borrowing or the giving of any guarantee by the government of India, or undertaking financial obligation by the government.

3. The custody of the Consolidated Fund of India (CFI) or the Contingency Fund of India, the payment of moneys into or withdrawal from them.

4. The appropriation of moneys out of the CFI.

5. Declaring any expenditure as a charged expenditure on the CFI.

6. The receipt of money on account of the CFI or the public account of India or the ambit of accounts of the Union or of a state.

Also, Erskine May’s Parliamentary Practice says the following:

“A bill which contains any of the enumerated matters and nothing besides is indisputably a ‘money bill’. If it contains any other matters, then, unless these are ‘subordinate matters incidental to’ any of the matters so contained in the bill, the bill is not a money bill. Further, if the main object of a bill is to create a new charge on the Consolidated Fund or on money provided by Parliament, the bill will not be certified if it is apparent that the primary purpose of the new charge is not purely financial.”

In this context, does the Aadhaar bill fit the money bill criteria?

The bill provides for a mechanism to identify a person using biometrics, and states that this could be used for providing subsidies or government services. However, it also allows the Aadhaar system to be used for other purposes. Therefore, it seems to contain matters other than those that are incidental to expenditure from the Consolidated Fund. That is, it does not seem to fit the requirement of “only” the matters listed.

Who has the authority to certify a bill as a money bill?

In the Indian context, speaker has the authority to certify a bill as a money bill. The speaker makes this decision on his/her own unlike the House of Commons where two senior members must be consulted before the speaker gives the certificate.

Can the speaker’s decision be challenged?

The Constitution says the decision of the speaker shall be final. However, there are several instances in which Parliament’s decisions have been subjected to judicial review. These include decisions made by speakers under the anti-defection law.
Also, in a recent judgment, a Constitution bench of the Supreme Court decided that the privilege of legislatures was subject to judicial review.

Conclusion:
Though the bill has been passed, this issue needs debate as it sets a precedent. The question is whether aadhaar bill can be certified as a money bill, which will enable Lok Sabha to go ahead without the concurrence of the Rajya Sabha. Perhaps it may help if the Lok Sabha creates a consultative mechanism before the speaker certifies a bill as a money bill.

**Insights into Editorial: Companies Bill affects independence of directors**

16 April 2016

[Article Link](#)

The Bill seeking to make further amendments to the Companies Act has been referred to the Parliamentary Standing Committee, which is expected to prepare its report within three months.

After taking into consideration suggestions made by a high level panel on further possible changes to the law, the government had come up with the Bill as part of larger efforts to address difficulties faced by stakeholders and improve the ease of doing business in the country.

**Background:**
This would be the second time that Prime Minister Narendra Modi-led government would be amending the Companies Act, 2013 which was passed during the previous UPA regime.

**Important changes:**
The Companies (Amendment) Bill, 2016 seeks to simplify private placement process, remove restrictions on layers of subsidiaries and investment companies, amend CSR (Corporate Social Responsibility) provisions to bring greater clarity and exempt certain class of foreign entities from the compliance regime under this law.

- The proposed changes are broadly aimed at addressing difficulties in implementation owing to stringency of compliance requirements.

**Criticisms:**
It is argued that the Companies (Amendment) Bill, 2016, unlike the existing law, allows for some pecuniary interest in companies for independent directors.
The proposed law allows such directors on their own to have transactions with companies where they are independent directors up to 10% of such independent director’s total income. Thus, the law legitimises self-dealing merchants as independent directors.

**Concerns:**

- The above limit of 10% for transactions in the hands of independent directors can be altered by executive action through prescribing an altered limit. Vested interests can achieve a higher limit by influencing the executive. This would certainly further weaken independence on corporate boards.
- The proposed change in law allows a relative of an independent director to be indebted to the company or its promoters and their satellites within a limit as may be prescribed by the Central Government. But, when a relative of an independent director is indebted to the company, the independence of such a director would be highly suspect. Especially when a relative of an independent director is indebted to promoters of a company, independence of such a director becomes a definite casualty.
- Under the existing law, an independent director’s relative should not have been a senior employee of the company in the last three years. The proposed change in law seems to takes away this restriction and definitely strikes at the root of independence of directors.

**Way ahead:**

While many of the other proposals in the Companies Bill, 2016 are correctional or clarificatory in nature and are quite welcome, the amendments proposed in respect of independent directors are hard to justify. A law which undermines independence of directors, even if justified for pragmatic reasons, should not be espoused.

**Conclusion:**

The law has been rightly referred to the Parliamentary Standing Committee before it is considered by the Parliament. Now, an informed discussion and debate regarding the proposed changes in law relating to independent directors should be seen as a national priority.
Insights into Editorial: Defence preparedness: the way forward

19 April 2016

Article Link

India spends a significant amount of resources on its national defence. Hence, efficiency in utilisation of resources is not only an economic imperative but vital for defence preparedness. Also, a successful foreign policy is predicated to a large measure on a country’s defence posturing. A robust defence posturing in turn is not possible without motivated men complemented by requisite arms and equipment.

- In the last decade or so, India’s defence preparedness suffered not only on account of lack of material wherewithal but subversion of the military leadership from external and internal vested interests. However, things changed with the new government at the centre.

Recent developments:

- The government accepted many of the suggestions of the Dhirendra Singh Committee set up to make recommendations to revamp the Defence Procurement Procedure (DPP). The introduction of a new category of Buy Indian (or IDDM, Indigenous Design Development and Manufacture), the graded acceptance of better quality through the introduction of an “enhanced” performance parameter clause, and the sudden energisation of private players in defence manufacturing are some cause for cheer.

- Many of the rules that hitherto put the private industry at a disadvantage vis-à-vis the Defence Public Sector Undertakings (DPSU) have been modified or removed. Thus, nomination of a DPSU for absorbing transfer of technology has been done away with and the tax exemptions withdrawn, which effectively makes pricing more competitive.

- There is also visible incentivisation of Micro, Small and Medium Enterprises (MSME) in many spheres. Their energetic response to the government’s initiatives is seen in their setting up of a Defence Innovators and Industry Association to interact with Government decision-makers to ensure a policy that encourages design and development of defence equipment with IP [Intellectual Property] ownership in Indian companies. This bodes well for the future since MSMEs, which are the Tier-II and -III suppliers, are the crucibles of innovation and the true determinants of indigenisation.

- There has also been a surge in the number of defence licences being issued by the MoD.
What else needs to be done?

1. Creation of a Procurement Executive (PE) outside the government:
As per the recommendation made by the Dhirendra Singh committee, Steps should be initiated without further ado to set up a specialised structure outside the formal structure of the Ministry of Defence. PE should be made autonomous.

2. Choose strategic partners from the private sector:
Select private sector companies as strategic partners in six technology areas: aircraft/helicopters, warships/submarines, armoured vehicles, missiles, command & control systems, and critical materials. This is good but this idea would require diligent implementation. Government’s role should be limited in this and private players who have the capability and capacity to deliver should be selected. The overall selection process has to be transparent.

3. Empower the private sector:
The private sector should be empowered by letting them lead in large ‘Make in India’ projects, with support from the DRDO. Here, weightage must be given to quality by following the L1T1 concept (selecting better technology, not necessarily at the lowest price) in the techno-commercial bid evaluation. This would also result in true R&D generation.

4. Set up a dedicated professional procurement team:
It is necessary to set up a dedicated professional procurement team with relevant experience.

5. Make procurement election proof:
The procurement process should be election-proof as national security cannot be held hostage to ineffective functioning of personnel who constitute the MoD and the political system. The state of preparedness of the defence forces has to be an activity in continuum, with or without bipartisan support.

Conclusion:
Procurement for defence can be as cruel as it gets, as there is no place for sentiment, just the brute successes in R&D and finished products. The energies generated following DefExpo and the new DPP-2016, if converted to actual, professional R&D, would be true indicators of the government
being on the right track in enabling defence indigenisation and regaining its strategic autonomy. India, with its huge talent pool of engineers, scientists and competitive manpower, should harness this resource lucratively to make it a R&D hub and emerge as a largest exporter rather than being the largest importer of defence equipment in the world.

**Insights into Editorial: Trading charges**

20 April 2016

[Article Link]

In February, 2016, U.S. President Barack Obama signed the *Trade Facilitation and Trade Enforcement Act of 2015.*

- The focus of the law is to enhance enforcement of IPR over the U.S.’s trading partners. It introduces important measures relating to intellectual property rights (IPR) issues.
- This law is expected to impact India’s ability to develop an IP policy suited to its own developmental needs.

**Present scenario:**

The Special 301 list, brought out by the United States Trade Representative (USTR), has consistently featured India, most often as a *Priority Watch List (PWL)* country, since its institution in 1989.

- This has caused some disquiet within India, which has been disappointed that its proactive steps to improve domestic IP protection and engage with the U.S. have been unsuccessful in placating the U.S.

**Why be concerned about this?**

- Countries featured on Special 301 list are those that the USTR believes have either national laws or regulations that detrimentally affect U.S. trade or the rights of IP holders.
- If a trading partner is on this list, the U.S. believes that the country is providing inadequate IPR protection, enforcement, or market access for persons relying on intellectual property.
Also, any country classified as PWL is subject to USTR scrutiny in the form of investigations and possible sanctions under the procedures set out under the Trade Act, 1974.

How the new law further aggravates the existing problem?

Trade Facilitation Act will increase the level of pressure to comply with the USTR’s requirement for countries like India that feature on the PWL for more than a year.

- The Act specifically requires the USTR to develop action plans with benchmarks for PWL countries. The USTR has traditionally developed action plans in consultation with the country in question. However, under Trade Facilitation Act, the USTR is not required to consult with the listed country.
- Also, Benchmarks refers to legislative or other institutional action that a sovereign country like India will need to establish to facilitate U.S. trade. And instituting benchmarked changes remains the only way to remove a country from the Special 301 list no matter how harsh they are. Since the role of USTR is focussed on U.S. trade, it is not obliged to take developmental or public health needs of the trading partner into account when developing action plans or listing benchmarks.
- A country that refuses to comply with the benchmarks within a year can face appropriate action, resulting in further unilateral investigations followed by punitive trade sanctions. Such trade sanctions can include denial of preferential duty for exports, which developing countries rely on to export goods to the U.S.
- The Act creates a new position within the office of the USTR titled ‘Chief Innovation and Intellectual Property Negotiator’ (IP negotiator). The IP negotiator is required to “take appropriate actions to address acts, policies, and practices of foreign governments that have a significant adverse impact on the value of U.S. innovation.”
- Also, with a view to facilitating unilateral actions, the Act creates a Trade Enforcement Trust Fund for legal actions against foreign countries to ensure “fair and equitable market access for U.S. persons.”

Is it not possible to seek any help from the WTO?
Under World Trade Organisation jurisprudence, legality of unilateral actions over sovereign countries remains questionable. Hence, the U.S. may stay away from imposing unilateral sanctions, but tries to bring about change in a country’s domestic IP law through mechanisms like the Special 301 list.

Thus, under U.S. laws, compliance with WTO obligations is immaterial. A country that is compliant with WTO rules can be the subject of investigations if the USTR believes that U.S. trade is detrimentally affected by that country’s IP laws. Thus, India’s traditional defence that it is in compliance with WTO obligations has limited reach.

**Conclusion:**

India should be concerned about the heightened pressure that is bound to follow with the passage of the Trade Facilitation Act, especially on issues where its compliance with its TRIPS obligations is not disputed. As India continues to strategically engage with the U.S., it is time to develop a coalition of like-minded countries to monitor demands for legislative actions that result in WTO-plus standards.

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**Insights into Editorial: Why India needs vibrant small enterprises**

21 April 2016

[Article link](#)

According to experts, small enterprises are the best bet right now to create the millions of jobs that India needs to create every year if it is to maintain social stability. However, the life of a small entrepreneur is a tough one in India.

**Why?**

- He faces the worst of the inspector raj that makes India such a tough place to do business.
- He has to battle credit constraints that hurt his ability to grow his business.
- Whatever bank finance he can access comes at far higher interest costs than what large enterprises can negotiate.
- He works with very long receivables cycles that make a mess of working capital management.
- He has little access to trained labour, technical progress and management support.

**Other problems faced by small enterprises:**
Other common problems faced by small enterprises in the country are related to availability of technology, infrastructure and managerial competence, and limitations posed by labour laws, taxation policy, market uncertainty and imperfect competition.

What are small enterprises?
Small enterprises include both private limited companies that report their annual accounts to the Ministry of Corporate Affairs as well as the larger pool of unincorporated enterprises.

Significance of small enterprises:
New data released by the Reserve Bank of India recently provides a good glimpse into how small enterprises are the champions of the Indian growth story right now.

- Small enterprises account for less than a tenth of GDP but nearly 45% of industrial output and 40% of exports.
- They employ an estimated 60 million people because small enterprises generally have lower capital intensity.
- Output by these enterprises has been growing faster than the underlying nominal gross domestic product. This is in contrast to the more sluggish growth in the 5,788 listed companies whose financial performance dominates public discourse.

So far, what has been done to encourage small enterprises in the country?
India had tried to encourage small companies after the 1970s with the help of two barriers of protection.

- First, the ridiculously high levels of import tariffs for the entire economy.
- Second, reserving the production of certain goods for small companies.

However, these two policies created inefficient small firms that were neither capable of scaling up nor facing global competition after the 1991 reforms.

What needs to be done now?
The challenge now is to create a policy environment that will encourage the growth of more small companies that can hold their own in a competitive market.

- The problems faced by MSMEs need to be considered in a disaggregated manner for successful policy implementation as they produce very diverse products, use different inputs and operate in distinct environments.
In general, there is need for tax provisions and laws that are not only labour-friendly but also entrepreneur-friendly.

More importantly, there is need for skill formation and continuous upgrade both for labour and entrepreneurs.

While the government has to strengthen the existing skilling efforts for labour, there is an urgent need for managerial skill development for entrepreneurs running MSMEs — an area that is considerably neglected.

Further, the government could consider dedicated television and radio programmes, similar to agriculture, to help educate entrepreneurs running small businesses.

Conclusion:
Issues related to credit, like adequacy, timely availability, cost and mortgages continue to be a concern for these small enterprises. Many of these enterprises are dependent on self-finance. Profit margins are extremely thin due to stiff competition and the small size of firms. The government drive for financial inclusion could benefit such entities. The government could consider dedicating specialised financial schemes for addressing difficulties in assessing and providing credit for small enterprises, as also providing line of credit to firms which are under financial stress. However, it remains to be seen whether new institutions such as MUDRA Bank can open the credit markets for small enterprises.

**Insights into Editorial: FDI in e-commerce: Who are we protecting?**

22 April 2016

Article Link

Every time there is talk of fully opening up the retail sector in India to foreign companies, concerns are raised about how this will hurt the family-owned, mom-and-pop stores and the brick-and-mortar retailers. The argument most often heard is that they will be **unable to compete against the investments of the big foreign companies.**

These concerns have once again come to the fore by government’s latest move to allow 100% FDI in marketplace e-commerce companies.

How the latest move protects offline retailers?
To protect the offline retailers, in its latest policy the government has **barred marketplaces from offering discounts on their own.** These can only be offered by the vendors selling on the **platforms.** This is also aimed at ending “**predatory pricing**” by online companies, and provide a level playing field.

**Why offline retailers wanted such measures?**

The competition between online and offline retailers has intensified over the past couple of years. New online entrants have tried to make a mark and capture a large market share in a relatively short time span, by offering discounts—sometimes really huge ones—especially during the festival periods. Hence, offline retailers have been crying foul.

**Issues associated with this decision:**

1. **Consumers:**
   
The biggest winners of the discount-driven business model adopted by online marketplaces over the past couple of years have been Indian consumers. The latest move would have a direct impact on the end consumer. Also, in a free and open market, policymakers should not be telling businesses what they can, or cannot, charge for a product—especially if it is not an essential lifesaving commodity.

2. **Businesses:**
   
   Offering discounts is a **business decision** and these decisions are not usually taken under any force. Often, there is a **strategic rationale behind such offers** and there is no reason to assume that it will go on forever. In fact, we have already been seeing the emergence of a level-playing field based on self-assessments of the e-commerce industry on the feasibility of such discounting.

3. **Measurability:**
   
   Also, it is not clear how online sellers are influencing prices. Besides, if one way is closed, online marketplaces and suppliers will find an alternative way to be able to offer sweet deals to consumers. Hence, it is highly unlikely that barring them from offering discounts will help solve the issue.

**Why, at present, online sales would have little impact on offline retailers?**

At present, only 34% of the Indian population has access to Internet. Among these, only about 39 million people make online purchases. That is a very small number.

**How would the government’s move change the market dynamics?**
According to A.T. Kearney’s research, two-thirds of e-commerce buyers in India are bargain hunters. And now with no discounts offered these buyers go away as well. The market dynamics will change drastically. The latest move may, unintentionally, end up raising the barriers to entry of capital into the sector.

Also, a large part of the capital that has flowed into the online marketplace sector has come from outside India. Venture capitalists and private equity firms have been pumping money into India despite the sector facing many hurdles and not making any money, at least not yet. The hope is that the market will bloom in the coming years, and the companies will eventually see a healthy return on their investments. The recent move, however, has affected their hopes.

What’s the way ahead?
The stage is set for offline retailers to adopt technology-enabled retailing methods. It is because the advent of technology is changing the way consumers shop. If these stores do not adapt quickly, they will be left behind. While a majority of them are willing to use technology, many of them are unable to do so due to a variety of reasons—high initial capital cost, lack of technical know-how, unorganized warehousing and inventory management, lack of manpower, etc.

For such entities online marketplaces provide the best opportunity to jump on to the technology bandwagon and profit from it. It is because of the following reasons:

- Firstly, the entry barriers—capital and human resources—are lower than they would be if these businesses were to set up an online presence individually.
- Secondly, they will be able to extend their reach and customer base.
- Thirdly, they will become more competitive both from a products and price perspective.
- Finally, it will help improve their inventory management—slowly, but surely.

Conclusion:
The government should make sure that policies governing the retail sector are designed to facilitate the future and not regulate the past. Therefore, the time is also ripe for the government to develop a policy with a road map for the future rather than regularizing the past.
Insights into Editorial: Driving Home The Bill

23 April 2016

Article Link

Few recent accidents, in various parts of the country in the last few days, have once again brought into focus the need to enhance road safety.

Why be concerned about this?

- In India, over 1,40,000 people die and more than 5,00,000 suffer serious injuries every year in road crashes.
- Between 2012-14, there were 60,000 cases of accidents caused by underage drivers. However, the legal provision to deal with this is weak.
- Under the existing Motor Vehicles Act, 1988, the fine for allowing an “unauthorised person” (the provision does not mention a minor) to drive a vehicle is Rs 1,000 or three months of imprisonment or both.

What’s the solution?

The solution lies with the government. It has to make arrangements to get passed the Road Transport and Safety Bill 2014 as soon as possible.

Road Transport and Safety Bill:

It is a Bill which aims to provide a framework for safer, faster, cost effective and inclusive movement of passengers and freight in the country thus enabling the mission of ‘Make in India’.

Highlights of the Bill:

- It aims to save 2 lakhs lives in first 5 years due to reduction in road traffic accident deaths.
- It also aims to improve GDP by 4% on account of increased efficiency and safety of road transport sector.
- 10 lac Jobs will be created with increase in investment in the sector.

Important provisions in the bill:

- The new Bill makes significant departures from the 1988 Motor Vehicle Act as it includes safety in construction, design, maintenance and use of motor vehicles and roads as a major component.
The Bill provides for more **stringent penalties to offenders**. A graded penalty point system would now act as a deterrent and improve traffic condition whereas electronic detection and centralized information of offences would facilitate to identify repeat-offenders.

**New proposed Agencies and systems:**

- The Bill proposes to introduce an independent agency called the **National Road Safety Authority of India**, which will be an independent, legally empowered and accountable expert lead agency. It shall be accountable to the Parliament and Central Government.
- The new Bill provides for the establishment of **State Safety Authorities** which shall act in accordance with the directions issued by the National Authority.
- The Bill seeks to establish a **unified driver licensing system** in India which will be transparent. Such a system shall facilitate any time anywhere licence application mechanism in the country and mitigate duplication of licences from various regional transport offices.
- According to the Provisions of the Bill there will be a **unified vehicle registration system** to enable electronic and online submission of applications for registration at any registering authority leading to real time interchange of data relating to such an activity.
- On the safety issues, the Bill envisages for enforcement of modern safety technologies.
- It also contains the provision for creation of a **motor vehicle accident fund** for immediate relief to the accident victim. It gives special emphasis on safety of school children and security of women.
- The Bill also includes the setting up of a **Highway Traffic Regulation and Protection Force** (HTRPF).

**Why are some against this Bill?**

- Some people are not happy with the proposed provision in bill. They say the proposed fines are too high.
- According to provisions of the Bill, the Motor Vehicle Act 1988 will be scrapped and State RTOs will close. Instead, a Central authority will be created and private entities will issue and renew licences. This move is not being welcomed.
- The provisions in the Bill are also said to be against the principles of jurisprudence.
• Some state governments allege that the bill encroaches upon the financial, legislative and administrative powers of state governments.

Conclusion:
Countries that have had the most success in reducing the number of road crash deaths have achieved this by improving legislation, enforcement, and making roads and vehicles safer. India is not on the list of improving countries. Instead, 10 per cent of the global deaths in road crashes happen here. This is a result of the obsolete Motor Vehicles Act, which fails to protect the most vulnerable users of the road, determine who is allowed to drive, or assign accountability for faulty road design and engineering. The government must now take the bold step by removing some contentious clauses and focusing on road safety alone.

**Insights into Editorial: From Plate to Plough — The big thirst**

25 April 2016

Article Link

Maharashtra is facing one of the biggest water crisis in recent decades. In Latur, where the traditional sources of water have run dry, Section 144 has had to be imposed to prevent into a water riot. Trains carrying water are now being despatched to Latur. Even, the high court intervened in the case of IPL matches and asked these to be shifted out of the state to save about 60 lakh litres of water.

Back-to-back drought has exposed the vulnerable water situation not just in Latur but in more than 250 districts (out of 678) in India.

**Reasons behind the crisis:**

• Maharashtra has only 18% of its cropped area under irrigation cover compared to an all-India average of 47% and states like Punjab with 97%. Maharashtra is also hugely under-investing in developing its irrigation cover, just Rs 7,000 crore compared to Rs 25,000 crore in Telangana.

• Sugarcane cultivation is also to be blamed. Sugarcane occupies about 4% of gross cropped area in Maharashtra’s agriculture but takes away almost two-thirds of the state’s irrigation water. Such a huge inequity doesn’t exist in any other state.
• Also, water and power for agriculture in the state are highly subsidized and it artificially creates excess demand, triggering a scramble for these scarce resources.

What needs to be done?

The first thing needed is removing the elitist biases in public policymaking and resource allocation.

• But, just pouring more money will not have the desired results. Maharashtra needs a white paper scrutinising its irrigation expenditures and irrigation potential, created and utilised, in comparison with similar states to find out why huge investments in the past haven’t yielded results.

• The government has already decided that in the next five years, no new sugar factories can come up in Marathwada. It’s a welcome step, but care should also be taken to monitor the existing 20 sugar factories.

• Also, when water is scarce, the only way to manage its demand is either by raising its price progressively with use, or by rationing quantity.

• The government should also consider making drip irrigation almost compulsory for sugarcane. Drip will save almost 40-50% water.

Conclusion:

It’s not the first time, and certainly won’t be the last, that trains had to ferry drinking water in water-stressed areas. Their frequency and coverage may increase, unless some major corrective actions are taken. This crisis should be seen as an opportunity for change that can benefit the masses. The deepening crisis has also inspired a section of opinion-makers to intensify their demands for a nationwide river-linking project — touted to be a long-term solution. But, without assessing the environmental impact and human displacement such a mammoth initiative will trigger, any attempt at linking rivers can result in an even bigger catastrophe. For Maharashtra government, the situation is so dire that it will have to find an immediate solution to prevent a law-and-order problem spiralling out of control.
Insights into Editorial: Sensitise States, don’t intimidate them

26 April 2016

Article Link

The finance ministry is preparing a model Centre-State Investment Agreement (CSIA), for effective implementation of the Bilateral Investment Treaty it is set to sign with other countries. The draft will shortly be presented to the Cabinet for approval.

What are BITs?

BITs protect investments made by an investor of one country into another by regulating the host nation’s treatment of the investment. BIT replaces the Bilateral Investment Promotion and Protection Agreements (BIPPA) that India had signed with 83 countries since 1994.

Background:

In his budget speech, Union Finance Minister Arun Jaitley had proposed the CSIA, to be signed between the central and state governments. This will ensure fulfilment of the obligations of state governments under BITs. States which opt to sign these will be seen as more attractive destinations by foreign investors.

Main features of CSIA:

Some of the features include an enterprise-based definition of investment, non-discriminatory treatment, protection against expropriation, an Investor State Dispute Settlement (ISDS) provision requiring investors to exhaust local remedies before commencing international arbitration, and limiting the power of tribunals to awarding of monetary compensation.

The Centre will also not make it mandatory for states to sign these agreements but if any don’t, counter-parties (other nations) will be informed.

Issues associated with CSIA:

1. Obligations under international law.

According to some experts the Centre-State Investment Agreement (CSIA) does not make any sense from the perspective of international law. It is because whether a central government enters into any such agreement with states or not, the actions of state governments will continue to bind the Indian state. Irrespective of a foreign company running into trouble with any state, the liability will be on the Centre.
Also, the Centre’s proposal to warn their counter parties about non-compliant States before they make their investment in the State does not carry much legal significance.

2. Cooperative federalism.

There are also practical considerations in this proposal. India is a quasi-federal structure with a multiparty system. The Centre and State governments are often politically non-aligned. In this context, a proposal by the Centre to enter into investment agreements with States as an optional arrangement may further sour fragile Centre-State relations for two reasons. First, the State governments will not like the shifting of the blame for violation of a BIT from New Delhi to State capitals. Second, the State governments will also not like the Centre informing India’s BIT partner country that a particular State government has not signed the agreement and thus, by implication, is not a safe destination for foreign investment.

Conclusion:

One of the objectives of the proposal could be to sensitise State governments about India’s BIT obligations given the fact that many regulations of State governments directly impact foreign investors. However, this objective would be better served by institutionalising the involvement of State governments in the process of treaty-making. A forum such as the NITI Aayog, which has all the Chief Ministers as members of the governing council, could be used to create a Centre-State consultative process on treaty-making. Also, this sensitisation should not be restricted to BITs but also extend to other international agreements like the World Trade Organisation treaty, numerous Free Trade Agreements, and Double Taxation Avoidance Agreements. Cooperative federalism requires that Centre and States work together, which in turn would ensure better implementation of international treaties.
Insights into Editorial: Make the Link

27 April 2016

Article Link

Summary:
Water has now become a political issue for want of proper development and management of the resource. While millions suffer from droughts and floods, waters in the country’s many rivers flow unutilised, and are discharged into the sea every year.

- In the wake of this crisis, few experts have asked the government to expedite the Indian River Linking (IRL) project that was proposed three decades ago.

About the project:
The interlinking project aims to link India’s rivers by a network of reservoirs and canals that will allow for their water capacities to be shared and redistributed. According to some, this is an engineered panacea that will reduce persistent floods in some parts and water shortages in other parts besides facilitating the generation of hydroelectricity for an increasingly power hungry country.
Components of IRL project:

Since the 1980s, the interlinking project has been managed by India’s National Water Development Agency (NWDA) under the Ministry of Water Resources. It has been split into three parts:

1. A northern Himalayan rivers interlink component.
2. A southern peninsular component.
3. An intra-State rivers linking component.

The NWDA has studied and prepared reports on 14 projects for the Himalayan region, 16 projects for the peninsular India component and 36 intra-State river interlinking projects. However, various governments have shelved the idea for a number of reasons.

Why this is a good idea?
India receives most of its rain during monsoon season from June to September, most of it falls in northern and eastern part of India, the amount of rainfall in southern and western part are comparatively low. It will be these places which will have shortage of water. Interlinking of rivers will help these areas to have water throughout the year.

- The main occupation of rural India is agriculture and if monsoon fails in a year, then agricultural activities come to a standstill and this will aggravate rural poverty. Interlinking of rivers will be a practical solution for this problem, because the water can be stored or water can be transferred from water surplus area to deficit.

- The Ganga Basin, Brahmaputra basin sees floods almost every year. In order to avoid this, the water from these areas has to be diverted to other areas where there is scarcity of water. This can be achieved by linking the rivers. There is a two way advantage with this – floods will be controlled and scarcity of water will be reduced.

- Interlinking of rivers will also have commercial importance on a longer run. This can be used as inland waterways and which helps in faster movement of goods from one place to other.

- Interlinking creates a new occupation for people living in and around these canals and it can be the main areas of fishing in India.

However, some people are opposing this project due to the following reasons:

- Interlinking of rivers will cause huge amount of distortion in the existing environment. In order to create canals and reservoirs, there will be mass deforestation. This will have impact on rains and in turn affect the whole cycle of life.

- Usually rivers change their course and direction in about 100 years and if this happens after interlinking, then the project will not be feasible for a longer run.

- Due to interlinking of rivers, there will be decrease in the amount of fresh water entering seas and this will cause a serious threat to the marine life system and will be a major ecological disaster.

- Due to the creation of Canals and Reservoirs, huge amount of area which is occupied by the people will be submerged leading to displacement of people and government will have to spend more to rehabilitate these people.
The amount required for these projects is so huge that government will have to take loans from the foreign sources which would increase the burden on the government and country will fall in a debt trap.

Opposition from states:
Despite many expert committees recommending the project and a taskforce preparing a timeframe for its execution, not a single link has been constructed so far due to opposition from water-endowed states. Since water has become an emotive issue, none of the water-rich states would like to accept that they have surplus water to spare.

What’s the solution?
By offering to compensate the economic cost of the water surplused, these states could be persuaded to share the surplus. This would pave the way for early implementation of the project.

Conclusion:
The IRL project is a great challenge and an opportunity to address the water issues arising out of climate change. The long-term solution to water scarcity lies in making the IRL project work by building a network of dams and canals across the length and breadth of the country. However, interlinking has to take place after a detailed study so that does not cause any problem to the environment or aquatic life.
Insights into Editorial: Diffusing the judicial burden

28 April 2016

Article Link

Summary:
The Supreme Court of India, as the highest court of the land, has a sacrosanct function to ensure that the country is governed adhering to the principles of the rule of law. It has evolved remarkably well, steering the country through thick and thin. It also has had a tremendous contribution to the jurisprudential landscape, not just in the country but also internationally. The time has come, however, to revisit the court’s function and align it with the needs of today.

- In this regard, the Supreme Court had requested the Central government to consider the possibility of establishing a National Court of Appeal which has elicited mixed reactions from the legal community.

What is a National Court of Appeal?
The National Court Appeal with regional benches in Chennai, Mumbai and Kolkata is meant to act as final court of justice in dealing with appeals from the decisions of the High Courts and tribunals within their region in civil, criminal, labour and revenue matters. In such a scenario, a much-relieved Supreme Court of India situated in Delhi would only hear matters of constitutional law and public law.

However, the Centre has rejected this idea. It cites three grounds for rejecting the idea —

1. The Supreme Court always sits in Delhi as per the Constitution.
2. The Chief Justices of India in the past have “consistently opposed” the idea of an NCA or regional benches to the Supreme Court.
3. An NCA would “completely change the constitution of the Supreme Court”.

Why this is a good idea?

- A National Court of Appeals makes sense, with the Supreme Court being burdened with cases of all kinds. The Supreme Court was meant to be a Constitutional Court. However, the sheer weight of its case backlog leaves the court with little time for its primal functions.
- Geographical proximity to the court is definitely an aspect of access to justice. The fact that the Supreme Court sits only in New Delhi limits accessibility to litigants from south India. High Courts meant for facilitating easy access to justice are losing their sheen in many ways.
If a court of appeal is established, the majority of appeals from high courts can be addressed in these courts.

A court of appeal can work as an excellent mechanism to sieve cases. If there are areas of law that are particularly unsettled and need clarification, the court of appeal can club them together and send these forward to the Supreme Court. Not only can a number of individual cases be disposed of but areas of law can also be settled and a clear precedent set.

If the Supreme Court only deals with crucial cases, the process will become streamlined and will save a lot of time and expense, for both litigants and the courts.

It would relieve the Supreme Court of the weight of hearing regular civil and criminal appeals, allowing the court to concentrate on determining only fundamental questions of constitutional importance.

Why this is not a good idea?

- Splitting the Supreme Court will be a very regrettable step. The Supreme Court has to be at one place and there can’t be circuit benches like high courts.
- Dilution of the Supreme Court and its aura as an apex court may not be in line with the concept of the Supreme Court envisioned by the architects of the Constitution.
- The issue of proximity is relevant only up to high courts and can’t be extended to the Supreme Court. There are enough high court benches to address that issue.
- This suggestion would require an amendment in Article 130 of the Constitution which is impermissible as this would change the constitution of the Supreme Court completely.
- Also, NCA will mean more expense and hardship to litigant.

What else can be done?

Efforts should be to strengthen subordinate judiciary (high courts) so that proper justice can be dispensed with.

- The Supreme Court should discourage the usage of the High Court as a mere stepping-stone towards the end of judicial hierarchy. The glory and resplendence of High Courts should be reclaimed.
All High Courts must entertain writs, including in the burgeoning service matters, only before Single Benches in the first instance and then to a Division Bench in the form of a Letter Patents Appeal so as to provide at least a two-tier accessible hierarchy of approach.

The challenges to orders of tribunals, irrespective of the former status of their adjudicating Members or Chairpersons, must only be allowed to be entertained by Division Benches of High Courts and not directly to the Supreme Court since the highest Court cannot be rendered the first appellate Court from statutory tribunals and neither can justice be made unaffordable for our citizens.

Conclusion:
A National Court of Appeal is being advocated as an intermediate forum between the Supreme Court and the various high courts of India. But a better solution to ease the higher judiciary’s burden may lie in strengthening that of the lower. Before adverting to a new layer, the conception of which may be difficult to achieve, we need to strategise and reconfigure our existing judicial hierarchy to the rising challenges before us. The only way to do it is to revitalise our High Courts and restore them to their pinnacle.

**Insights into Editorial: A cop-out called prohibition**

29 April 2016

**Article Link**

**Summary:**
Following the footsteps of Gujarat, the Bihar state government recently banned the sale and consumption of alcohol in the state. This was also one of its key electoral promises. The same has been promised by some parties in Tamil Nadu and Kerala. With this, it appears that prohibition of alcohol is back on the political agenda. It should, however, be noted here that this policy is currently not practised in any country outside the Islamic world.

**Facts at Glance:**

- Alcohol is a subject in the State list under the seventh schedule of the Indian Constitution.
Article 47 of the Directive Principle in the Constitution of India states that “The state shall undertake rules to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

Intention behind the prohibition:
Those, who are in favor of ban, argue that alcohol consumption leads to household impoverishment, domestic violence and premature mortality. Children and women are suffering more than anyone else due to increasing liquor consumption.

Why this is a good idea?
- Prohibition of alcohol limits and/or prevents alcohol addiction. This particular addiction can easily ruin people’s lives, including their jobs, their friends, their families, and obviously themselves too.
- Alcohol, especially in large quantities, can damage people’s kidneys and livers, and can eventually lead to death.
- Some religions (such as Islam, Mormonism, and some Pentecostal Christians) expressly forbids the consumption of alcohol.
- Some argue that there is a direct correlation between alcohol consumption and an increase in crime. Violent crimes, assault, and disorderly conduct are most common with persons who are intoxicated.
- Prohibition reduces the causalities and damages through drunk driving.
- Alcohol can be a very expensive habit.

Why this is a bad decision?
- Firstly, there are serious doubts about the governments’ political will and administrative ability to prevent total sale and consumption of liquor.
- Ban may also lead to smuggling of illicit liquor and production of spurious liquor.
- It also spawns massive corruption. Prohibition may not automatically result in wise and healthy spending patterns.
- Blanket bans could adversely affect tourism, hospitality and other businesses, besides being an unfair intrusion into personal choices of a large section of people who can afford liquor and consume moderately.
Alcohol addiction is considered a victimless crime, since it primarily affects the alcoholics. While it does affect the people around alcoholics, it does not directly affect them. People can always keep their distance from or leave alcoholics, if they choose.

Criminal organizations will mostly profit from prohibition and, in return, will promote other illegal activities.

In most cultures and religions, social drinking is an acceptable practice.

Also, people should have the freedom of choice to decide to drink alcohol or not, as long as that freedom does not infringe on the freedoms of other people. Therefore, a law prohibiting alcohol would remove the freedom of choice.

How much loss will the state incur?
The sale of alcohol contributes to the economy of the state through the tax directly and through the tourism, indirectly. The State Excise in India is mainly imposed on the sale of liquor, which is commonly known as Liquor tax. The states like Karnataka, Andhra Pradesh and Punjab earn a large portion of their revenue from the State Excise. Because of the ban in consumption of alcohol in dry states, they are regarded as a poor contributor.

What else can the government do to discourage people from drinking alcohol?

- Enforce a minimum price for alcohol.
- Raise the legal drinking age.
- Stop distribution of new licenses.
- Ban marketing of alcohol.

Conclusion:
It is evident that the problem is complex and there can be no easy solutions, especially one that fits all. Alcohol addiction and its ill-effects may affect the poor more, but the middle and upper-middle classes cannot claim to be immune to its debilitating consequences either. Addiction should be addressed at two levels: temperance campaigns to promote moderate consumption and opening of de-addiction centres to help those suffering from addiction. Just a blanket ban will not work.
Insights into Editorial: Liberate the legislator

30 April 2016

Summary:
Recent disqualification of 9 rebel MLAs in Uttarakhand under anti-defection law has once again brought back discussions surrounding the law to the fore.

What is Anti-defection law?
The anti-defection law was passed by parliament in 1985 strengthened in 2002. The 52nd amendment to the Constitution added the Tenth Schedule which laid down the process by which legislators may be disqualified on grounds of defection.

- A member of parliament or state legislature was deemed to have defected if he either voluntarily resigned from his party or disobeyed the directives of the party leadership on a vote. That is, they may not vote on any issue in contravention to the party’s whip.
- Independent members would be disqualified if they joined a political party. Nominated members who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.

The law also made a few exceptions:

- Any person elected as speaker or chairman could resign from his party, and rejoin the party if he demitted that post.
- A party could be merged into another if at least two-thirds (Initially one-third) of its party legislators voted for the merger.

However, the law has had some unintended consequences too:

- The law succeeded in checking the regular phenomenon of unstable governments and horse-trading due to floor crossing by legislators. However, it played a huge role in encouraging the centralisation of India’s political parties.
- Legislators in India now cannot take a stand against party leaders or defy the party whip, and use their conscience to vote on a Bill in the House due to fear of losing their seat under the provisions of the Anti-Defection law.
This has also the effect of disincentivising lawmakers from seriously thinking, researching or even rifling for best practices to incorporate into legislation that is before the House for consideration and focus their energies on procedural matters.

Also, a legislator cannot question the sweet deals or alliances between top party leaders. Does the law impinge on the right of free speech of the legislators?

This issue was addressed by the five-judge Constitution Bench of the Supreme Court in 1992 (Kihoto Hollohan vs Zachilhu and others). The court said that “the anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct above certain theoretical assumptions.” It held that the law does not violate any rights or freedoms, or the basic structure of parliamentary democracy.

What changes can be brought in?

- The disqualification of a member of a House should be only on the grounds that if he votes or abstains from voting in the House with regard to a Confidence Motion, No-confidence Motion, Adjournment Motion, Money Bill or financial matters contrary to the direction issued in this behalf by the party to which he belongs to and in no other case.

- Whips can be issued only for those legislative items that threaten the stability of government.

- As recommended by the Goswami Committee, the government should consider giving the power to decide on disqualification under the Act to the President or the Governor, who shall act on the advice of the Election Commission.

- The rationale that a representative is elected on the basis of the party’s programme can be extended to pre-poll alliances. The Law Commission proposed this change with the condition that partners of such alliances inform the Election Commission before the elections.

Conclusion:
The evil of political defections has been a matter of political concern. If it is not combated it is likely to undermine the very foundations of our democracy and the principles that sustain it. However, after 30 years of the enactment of the Tenth Schedule, it needs certain adaptations and further strengthening so as to be of greater relevance to our democratic process today.