

# Heart of the matter

We must publicise the full information on organ allocations to secure public trust in the donation process



MOHAMED RELA

Over the last few days a storm has been raised following publication of an article in *The Hindu* (June 12, 2018) based on a leaked WhatsApp message from the head of the National Organ and Tissue Transplant Organisation (NOTTO) claiming that foreign patients who are waiting for a donor heart transplant are being prioritised over Indian patients by private hospitals in Chennai. This article has angered many. Unfortunately, amidst the din, the basic concepts of organ donation, allocation and transplantation have been completely lost.

## Tamil Nadu's advantage

A forward thinking bureaucracy, committed non-governmental organisations and a willing political dispensation took up promotion of cadaver organ donation as a must-have in Tamil Nadu around 10 years ago. This was primarily in response to a widely publicised and unrelated kidney donation racket unearthed in the late 1990s. The initial kick-start and continuing efforts have made Tamil Nadu the undisputed leader in organ donation in India. Thousands of lives have been saved through organ donation.

Many southern States have successfully emulated Tamil Nadu's road map and have developed organ donation programmes on their own. The uptake of the concept of organ donation, however, has been disappointing in north India. This has led to a steady stream of patients from north In-

dia to travel to the south for a cadaver donor organ as their chance of getting a timely transplant in their own State is close to zero. While the organ donation rate in Tamil Nadu is over 10 times greater than most of the northern States, there is a lot of work to be done to achieve the West's donation rates.

Every country goes through an evolution process in terms of organ donation, and this is different for each organ. Kidney transplantation has been practised in India for over 25 years. There is public confidence in the procedure, and it is not surprising that there is a massive waiting list for cadaver kidney transplants. On the other hand, liver transplant as a treatment option for liver failure remained an esoteric idea in India until 10-15 years ago. The results of liver transplantation in India were poor in the early stages. That has changed in the last 10 years. With increasing success, an increasing number of patients who need a liver transplant are getting waitlisted. So there is no real possibility of a foreigner getting a cadaver liver or kidney in India, as there will always be a patient to whom a donor liver or kidney, irrespective of its characteristics can be matched. Among 2,100 liver transplants performed by our group in south India over the last nine years, not a single foreign patient has been transplanted with a cadaveric liver.

## Heart transplants

Cardiac and lung transplantation have been the last to develop in India. Until five years ago, results of heart and lung transplantation were dismal in India. Many doctors would have been reticent to put their patients forward for transplantation even if they would have benefitted from the treat-



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ment. However, over the last two-three years, results have improved significantly with the influx of talented and trained surgeons. But the number of patients being assessed and listed are still fewer in comparison to those listed for livers or kidneys. Waiting lists for heart transplantation are still small, and in such a situation while a donor liver or kidney can be immediately matched to a suitable Indian patient, this is not always possible for a heart or lungs.

This is where the claim for utilising the organ for a foreign patient comes in as otherwise the organ would be wasted. Even though occasional abuse of the system may be a possibility, it is important to point out that even with the current practice of allocating an organ to a foreigner when there is no suitable Indian patient, one-third of all hearts and lungs are still not being used due to "lack of a suitable recipient". As public and physician confidence in the success of heart and lung transplantation improves in India, the waiting list of Indian patients will increase and it will be possible to match every organ to a suitable Indian patient. Once that stage is reached, there will not be even a remote possibility of a foreigner getting an organ.

An additional issue with heart and lung transplantation is the strict criteria for size and quality

and the very tight timeframes within which these organs should be transplanted. While a kidney can be preserved for 12-18 hours and a liver for 8-12 hours, hearts and lungs should be transplanted within six hours, otherwise outcomes are likely to be poor. So while sharing of livers and kidneys across the country is possible, it is very difficult as far as hearts and lungs are concerned, considering the size of our country. In the absence of a viable and accessible air ambulance service to transport organs, feasibility will depend on the timing of the donation and the flight schedules of commercial airlines. Remember, most organ donation procedures happen in the night as logistics permit. So, at least for hearts and lungs, exceptions notwithstanding, sharing is feasible only by adjacent States.

## Fine-tuning the process

What can be done to improve the situation? The government can decide that no foreigners can receive a cadaver donor organ in India even if it means that an organ is wasted due to lack of a suitable Indian recipient. But this may be an extreme step as local governments and corporate hospitals are still very interested in medical tourism. Another option is to develop a system of zonalisation across the country (like in the U.S.) so that more efficient sharing of organs across States is feasible, possibly with the development of a publicly-funded air ambulance service. This will significantly benefit transplant programmes in government hospitals.

Organ donation is based on public trust that due process is being followed. Currently, the donation process and organ allocation in Tamil Nadu is fully monitored by Transplant Authority of Tamil Nadu (TRANSTAN). Every organ that

is transplanted, even to a foreign patient, is only done after approval from TRANSTAN. The authority of course depends on the clinical judgment and decisions of the transplant team as to the best use of each organ. The process should be made more transparent and accessible to the public. If donation and the allocation of each organ can be tracked, that will be a strong deterrent to mischief. Most importantly, the outcome of every transplant should be monitored. TRANSTAN should make it mandatory that the transplanting centre should report the outcome of the organ and the patient with updates at one week, one month and one year after transplantation.

Organ donation is a highly emotive topic. When a family agrees for organ donation, they are making a decision to be generous to some unknown person in the midst of a great personal crisis. For this to succeed, they should have utmost trust in the process of organ donation and allocation. Even in highly developed countries, donation rates drop temporarily when news of suspicious practices surfaces. In India, this is even more important as controversies such as these can break a developing programme and bring us back to square one. A reduction in donation rate will affect patients waiting for organs as each donor can save up to seven lives. The issue must be thoroughly investigated before newspapers and television proclaim a "scandal". It does no good to the system and can cause immeasurable harm to sick patients desperately waiting for the call that "they have an organ".

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# Parched or polluted

Urgent reforms are needed to deal with the acute water stress in most of India

India's water crisis is clear and present, with implications for the health of the entire population. According to the Composite Water Management Index developed by Niti Aayog, 70% of the water resources are identified as polluted. This is based primarily on data supplied by States for calculating the index. If the water accessible to millions is contaminated, the problem is infinitely worse than that of availability. The system of ratings for States is based on their performance in augmenting water resources and watersheds, investing in infrastructure, providing rural and urban drinking water, and encouraging efficient agricultural use. It presumes that this 'hall of fame' approach will foster "competitive and cooperative federalism". What emerges from the early assessment is that States such as Gujarat, Madhya Pradesh, Andhra Pradesh, Karnataka, Maharashtra, Punjab and Telangana have initiated reforms for judicious water use, while populous ones such as Uttar Pradesh and Bihar have failed to respond to the challenge. Tamil Nadu, which has a middling score, does well on augmentation of water sources, but is abysmally poor in ensuring sustainable use for farming. The trends that the data reflect of high to extreme stress faced by 600 million people call for speedy reforms.

Two areas that need urgent measures are augmentation of watersheds that can store more good water, for use in agriculture and to serve habitations, and strict pollution control enforcement. In this context, the Committee on Restructuring the Central Water Commission and the Central Ground Water Board, chaired by Mihir Shah, has called for a user-centric approach to water management, especially in agriculture. It advocates decentralisation of irrigation commands, offering higher financial flows to well-performing States through a National Irrigation Management Fund. Clearly, awarding an index rank should help advance such schemes, making States feel the need to be competitive. Yet, such approaches may not resolve seemingly intractable inter-State river disputes. As the Cauvery issue has demonstrated, State governments would rather seek judicial intervention than be accused of bartering away the rights to a precious resource under a shared, cooperative framework. Groundwater extraction patterns need to be better understood through robust data collection; less than 5% of about 12 million wells are now under study. Steady urbanisation calls for a new management paradigm, augmenting sources of clean drinking water supply and treatment technologies that will encourage reuse. Pollution can be curbed by levying suitable costs. These forward-looking changes would need revamped national and State institutions, and updated laws. A legal mandate will work better than just competition and cooperation; it would make governments accountable.

# WATER FOR THOUGHT

A new Niti Aayog report should occasion reflection and reform of systems of water governance in the country

**I**N RECENT YEARS, there has been a growing awareness in policy circles of the over-exploitation of the country's water resources. The Atlas of India's Aquifer Systems, released by the Central Ground Water Board (CGWB) in 2012, highlighted the falling levels of groundwater in the country. Four years later, the Mihir Shah Committee argued that there is little "understanding of river systems or their interconnections with the health of catchment areas or groundwater". Now, a Niti Aayog report, Composite Water Management Index, released last week, flags factoids which show how grim the situation is: Seventy per cent of the water resources in the country is polluted, 75 per cent households do not have drinking water and more than 600 million people in the country face high to extreme water distress.

The report should occasion debate on a major policy omission in independent India. Since 1947, more than 4,000 major and medium-sized dams have been constructed in the country, about 250 billion cubic metres of groundwater is extracted annually, but very little attention has been paid to the health of aquifer systems. Since 1971, the CGWB has mounted an aggressive search for groundwater without always recognising the limits posed by the country's geology: Hard rock aquifers constitute nearly 65 per cent of India's overall aquifer surface area. These aquifers have poor permeability that constrains their recharge by rainfall. In other words, the water in these aquifers is likely to dry out with continuous exploitation. Falling water tables render these underground storage systems vulnerable to pollutants. Last week, a Duke University study revealed uranium contamination in aquifers in 16 Indian states.

The Mihir Shah Committee had pointed out that "focus [of water policy in independent India] had been on augmenting supplies with little attention being paid to the demand-side management of water". This policy direction played a major role in meeting the imperatives of food security, but as the Shah Committee pointed out, there has been little emphasis on institutional innovations in the water sector. That is why returns to public investments in the country's water infrastructure have been poor. The Shah Committee had talked of a paradigm shift in the country's water governance: From a predominantly engineer-centred approach of the CWGB to one involving hydrologists, geologists, agronomists, and ecologists. Two years after the committee submitted its report, there has been little action on its recommendations. The report needs to be pulled out of the shelves, especially after the grim figures thrown up by Niti Aayog's survey.



# Assessing the BoP position

New RBI data on India’s Balance of Payments (BoP) for 2017-18 show current account deficit (CAD) at \$48.72 bn, the highest since the record \$88.16 bn of 2012-13. With CAD expected to widen to \$75 bn during this fiscal, how vulnerable is the overall BoP position today?

**HARISH DAMODARAN**  
NEW DELHI, JUNE 18

**Let’s start with foreign exchange reserves. Are they sufficient now?**

India’s forex reserves, at \$424.55 billion as on March 2018, are actually the eighth largest in the world (smaller chart right). Also, they can finance 10.9 months of imports, compared to 7.8 months in March 2014 (just before the Narendra Modi government came to power), 7 months in March 2013 (when there was a mini-BoP crisis, with the current account deficit hitting a peak), and 2.5 months in March 1991 (which forced the country to seek International Monetary Fund assistance). Any allusion to a “crisis” from that standpoint is highly misplaced; the RBI’s current forex war chest is clearly sufficient, both to meet immediate import needs and to stave off a run on the rupee of the kind that was seen during May-August 2013.

**So, when economists speak of India’s BoP vulnerabilities, what exactly are they trying to say?**

Countries generally accumulate reserves by exporting more than what they import. IMF data on the current account balances of the top 10 forex reserves holders reveal all of them — barring India and Brazil — to have been running surpluses year after year.

India has always had deficits on its merchandise trade account, with the value of its imports of goods far in excess of that of exports. At the same time, the country has traditionally enjoyed a surplus on its ‘invisibles’ account. Invisibles basically cover receipts from export of software services, inward remittances by migrant workers, and tourism and — on the other side — payments towards interest, dividend and royalty on foreign loans, investments and technology/brands, besides on banking, insurance and shipping services. But with the invisibles surpluses not exceeding trade deficits — except during the three years from 2001-02 to 2003-04 (bigger chart) — it has resulted in the country consistently registering CADs.

**HOW INDIA HAS BUILT ITS FOREX RESERVE CHEST (IN \$ MILLION)**

	Trade Account Balance (1)	Invisibles Account Balance (2)	Current Account Balance (1+2)	Net Capital Inflows (3)	Annual Reserve Accretion (1+2+3)	Foreign Exchange Reserves End-March
2001-02	-11574	14974	3400	8357	11757	54106
2002-03	-10690	17035	6345	10640	16985	76100
2003-04	-13718	27801	14083	17338	31421	112959
2004-05	-33702	31232	-2470	28629	26159	141514
2005-06	-51904	42002	-9902	24954	15052	151622
2006-07	-61782	52217	-9565	46171	36606	199179
2007-08	-91468	75730	-15738	107902	92164	309723
2008-09	-119520	91604	-27916	7835	-20081	251985
2009-10	-118203	80022	-38181	51622	13441	279057
2010-11	-127322	79269	-48053	61103	13050	304818
2011-12	-189759	111604	-78155	65324	-12831	294398
2012-13	-195656	107493	-88163	91989	3826	292046
2013-14	-147609	115313	-32296	47804	15508	304223
2014-15	-144940	118081	-26859	88265	61406	341638
2015-16	-130079	107928	-22151	40055	17904	360176
2016-17	-112442	97147	-15295	36846	21551	369955
2017-18	-160036	111319	-48717	92292	43575	424545

**How then has India been managing all these years with CADs, and even accumulating reserves?**

A country gets foreign exchange not only from exporting goods and services, but also from capital flows, whether by way of foreign investment, commercial borrowings or external assistance. The bigger chart shows that for most years, net capital flows into India have been more than CADs. The surplus capital flows have, then, gone into building reserves. The most extreme instance was in 2007-08, when net foreign capital inflows, at \$107.90 billion, vastly exceeded the CAD of \$15.74 billion, leading to reserve accretion of \$92.16 billion during a single year. However, there have also been years, such as 2008-09 and 2011-12, which saw reserves depletion due to net capital inflows not being adequate to fund even the CAD.

**Is this model sustainable? How long can India continue to import more than it exports, and expect foreign capital to fully bridge the gap?**

India and Brazil represent unique cases of economies that have built reserves largely on the strength of their capital rather than current account of the BoP. India is even more unique because its currency, unlike the Brazilian real, is relatively stable, and not under frequent speculative attacks. In theory, a country can keep attracting capital flows to fund CADs so long as its growth prospects are seen to be good, and the investment environment is equally welcoming. It would help, though, if such foreign investment also goes towards augmenting the economy’s manufacturing and services export capacities, as opposed to simply producing or even importing for the domestic market. In the long run, that can help narrow the CAD to more sustainable levels.

**What is the outlook vis-à-vis the CAD and capital flows in this fiscal?**

The CAD fell sharply from \$88.16 billion in 2012-13 to \$15.30 billion in 2016-17, mainly because of India’s oil import bill nearly halving from \$164.04 billion to \$86.87 billion. However, in 2017-18, the CAD rose to \$48.72 billion, courtesy resurgent global crude prices, and is expected to cross \$75 billion this fiscal.

There are signs of capital flows slowing down as well. Foreign portfolio investors have, since April 1, made \$7.9 billion worth of net sales in Indian equity and debt markets. This is part of a larger sell-off pattern across emerging market economies, in response to rising interest rates in the US, and the European Central Bank’s plans to end its monetary stimulus programme by the end of 2018.

The Swiss investment bank Credit Suisse has forecast net capital flows to India for 2018-19 at \$55 billion, which will be lower than the projected CAD of \$75 billion. In the event, forex reserves may decline for the first time since 2011-12. The RBI’s data already show the total official reserves as on June 8 at \$413.11 billion, a dip of \$ 11.43 billion over the level of end-March 2018.

**OFFICIAL RESERVE ASSETS (IN \$ BN)**

China	3221.574*
Japan	1256.018*
Switzerland	812.854*
Saudi Arabia	506.564*
Taiwan	462.355*
Russia	459.884*
Hong Kong	434.497*
India	424.545**
South Korea	398.422*
Brazil	382.549@

*India figure Mar, Brazil May, all others Apr 2018; source: IMF, Taiwan Central Bank*

# Managing relations with US, Russia and China

ANITA INDER SINGH

Prime Minister Narendra Modi's account of India's international relations at the Shangri-la dialogue in Singapore and the SCO summit in Qingdao underlined the country's good ties with the US, Russia and most Asian countries. But "good ties" may require strenuous efforts to balance India's interests between the US, Russia and China. All have different aims and interests in Asia.

India is in a "global strategic partnership" with the US, which sees Russia and China as its main security threats. But New Delhi will defy Donald Trump's imposition of unilateral sanctions against Iran and Russia and buy Russia's S-400 and other weapons. Compliance with American sanctions on Iran would adversely affect India's trade-expanding development of Chabahar port and the building of the International North-South Transport Corridor, which it has initiated with both Iran and Russia. Defiance of Washington is therefore the right policy — as long as New Delhi remembers that Russia's world interests do not coincide with those of India or the US.

Unsurprisingly, then, the "Indo-Pacific" is an area of controversy between India, Russia and China. Friendly with both Washington and Moscow, India sees itself as a central player in the Trump administration's "Indo-Pacific", which now has a new "Indo-Pacific Command" to maintain security there. Significantly though, Mr Modi, in his speech in Singapore, highlighted India's ambiguity by saying that Asean was at the centre of the Indo-Pacific. Meanwhile, a case could be made that as America's main challenger, China is the central player in the Indian and Pacific Oceans.

Whatever its exact definition, the "Indo-Pacific" signifies America's determination to counter China's growing power in Asia. India will soon join the US, Australia and Japan in a naval exercise by the Quad across the Pacific. Yet India has assured Russia and China that neither the Indo-Pacific, nor the Quad, which it views as a multilateral dialogue, is directed against any country.

To Russia, the "Indo-Pacific" is of scant interest for an obvious reason. Mr Trump's Indo-Pacific does not include Russia, because Washington rightly does not view Moscow as a threat in the area. Compared to China and the US, Russia plays a weak hand in the Indo-Pacific although it supplies arms to India, Vietnam and China.

India and Russia also hold different views on territorial contests. In 2014 India joined the US in expressing concern on maritime freedom and security in the South China Sea (SCS). Russia is neutral on the Sino-Indian border dispute. Like Russia, India is not a party to disputes with China and some of its neighbours in the SCS. Russia criticised a 2016 ruling by the

Permanent Court of Arbitration at The Hague rejecting China's claim over much of the SCS. Less than two months after the ruling, its warships joined Chinese naval forces in a bilateral drill in the SCS.

With Russia, India sees itself in a special privileged partnership reflecting their wish to craft a multipolar world. Meeting at Sochi in May, Vladimir Putin and Mr Modi resolved to take Russia-India ties to "newer heights". In contrast, over the last few years China and Russia have lauded their "comprehensive strategic partnership" as increasing "global strategic stability" and have hailed their "best time in history". True, Russia's historical-political, and China's economic clout over Central Asia have created a competitive spirit between them. But both challenge America's primacy in Asia. So Russia shares more interests with China than with any other Asian country.

Meanwhile, as the world's largest arms importer, India gets most of its weapons from Russia and the US. But its reliance on two world rivals arouses the suspicions of both. Last winter, Russia publicly alleged that India had allowed the US military to inspect a Russian submarine. Evidently, Russia does not regard India as a reliable friend. India denied the charge. Russia certainly has an interest in retaining India as one of its top arms customers. It wants a deal on

the S-400 in 2018, while India does not want to set a time-frame for one. In contrast, Russia first offered the S-400 to China in 2015 and started delivery in March this year.

Energy ties are also expanding. Last year, state-owned Rosneft became the largest single foreign direct investor in India when it acquired 49 per cent of Essar Oil. India has invested heavily in Russian oil in Siberia and recently started buying

Russian liquefied natural gas. Like India, China has made major investments in Russia's energy projects and is an important market for Russian fuel. A Russia-China gas pipeline which will deliver natural gas to China by 2019 is "83 per cent complete." Moreover, Russia is China's top crude oil supplier.

Overall, Sino-Russian economic ties are strong. Since the imposition of "post-Ukraine" sanctions on Russia in 2014, China's share of Russia's foreign trade has grown and it is now the largest single-country investor in Russia. India accounts for 1.3 per cent of Russia's imports and 1.8 per cent of its exports, China for 11 per cent and 22 per cent respectively. Sixteen per cent of India's exports go the US, 0.72 per cent to Russia; 5.8 per cent of its imports come from the US, 1.9 per cent from Russia.

India's political and economic interests in Asia have placed it on a slippery international path. It must tread carefully to maximise its options with the US, Russia and China. That will be an outstanding diplomatic feat.

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**India's political and economic interests in Asia have placed it on a slippery international path. It must tread carefully to maximise its options with the US, Russia and China**



# Falling behind on Digital Silk Road

India has the chance to foster connectivity and strategic cooperation across Asia. Here, too, China seems to be racing ahead



**RAJA MANDALA**

**BY C RAJA MOHAN**

INDIA'S CONTINUING political challenges with China's Belt and Road Initiative have been matched by Delhi's enduring difficulties in advancing its own connectivity initiatives. Consider, for example, Prime Minister Narendra Modi's two recent high-level engagements — in Qingdao, China earlier this month and his engagements with the Southeast Asian leaders in late May.

At the Qingdao summit of the Shanghai Cooperation Organisation, where India was participating for the first time as a full member, Delhi had to dissociate itself from the consensus in favour of President Xi Jinping's Belt and Road Initiative (BRI). In Jakarta, the PM unveiled his ambitions to strengthen maritime connectivity with Indonesia, including the development of port infrastructure in the Sumatra Island. But there is no denying the gap between Delhi's promise and performance on connectivity.

Meanwhile, China's BRI will inch closer towards India this week when Nepal Prime Minister Khadga Prasad Sharma Oli travels to China. Like most other neighbours of India, Nepal has already endorsed President Xi's Initiative. But like Pakistan, Sri Lanka and the Maldives, Nepal is getting ready to sign onto major BRI projects. Many of these projects would be grouped under the so-called Trans-Himalayan Connectivity Initiative. This is likely to include oil storage terminals, rail and road links, hydel projects and electricity transmission lines.

Although the question of costs relating to China's projects has been raised in many parts of the world, including most recently in Malaysia, it is unlikely to dampen the enthusiasm for the BRI among India's neighbours. For them, the issues relating to these projects are as much economic as they are political.

For Pakistan, the participation in China's BRI is very much part of its ever-deepening strategic partnership that was forged decades ago to balance India. For other neighbours, the BRI offers, shall we say, "strategic autonomy" from India.

If Delhi had taken for granted the deep geographic interdependence with its neighbours and did little to modernise it for the 21st century, our neighbours had no choice but to swallow it. Now they have an alternative, expensive though it might be, in the form of Chinese connectivity initiatives. They are embracing BRI without any hesitation.

The idea of seeking strategic autonomy from very large neighbours is not unique to South Asia. Many of China's immediate neighbours in East Asia do much the same — they seek insurance through diversifying partnerships with many countries, including India. But unlike China, India has not been able to deliver on the promises it has made to its East Asian partners.

If India has found it hard to develop institutional capabilities to implement infrastructure projects across and beyond its

borders, it has some possibilities in the arena of digital connectivity. They were demonstrated during PM's visit to Singapore where he signed a number of agreements to connect the financial markets of the two countries. These included the launch of India's RuPay card, the BHIM QR code and SBI's cross-border remittance app. Last year, India had launched the South Asia Satellite as part of its neighbourhood first policy.

But here again, China is racing ahead. Beijing has launched a number of ambitious initiatives, now being banded together as the "Digital Silk Road". China's Digital Silk Road agenda is about strengthening internet infrastructure, deepening space cooperation, lowering barriers to e-commerce, developing common technology standards, promoting cyber security, and improving the efficiency of policing systems among the BRI countries. China wants to deploy its nationally developed platforms based on artificial intelligence, big data, cloud storage and quantum computing to pursue these goals.

China and Nepal, for example, have operationalised an optic fibre link between the two countries earlier this year. The link would eventually reduce Nepal's dependence on India for internet connectivity. Last year, China's Huawei signed an agreement to construct the Pakistan East Africa Cable Express (PEACE) that would connect Pakistan to Kenya via Djibouti. Huawei may extend this cable to Egypt in the north and South Africa. When completed, the cable is likely to have a total length of 13,000 km.

China's digital initiative also includes deepening space cooperation. Besides its long-standing space cooperation with Pakistan, China is discussing plans to launch a national satellite for Nepal. Last year, Sri Lanka joined China's Beidou navigation system. China wants to leverage its earth observation satellite capabilities to deepen cooperation in a number of areas ranging from environmental monitoring to disaster management. Oli's visit to Beijing is expected to see the signing of a bilateral agreement on setting up disaster management centres in Nepal that will be linked to China's national remote sensing system.

India has long had significant and growing national capabilities in the digital and space domains. But Delhi has fallen terribly short in integrating these with larger national economic and security strategies. Delhi's bureaucratic bias towards over-regulation, restrictions on the domestic private sector, constraints on innovation and suspicion of external collaboration have limited India's possibilities on digital development and diplomacy.

At the turn of the century, India paid little attention to China's internal, cross-border and international infrastructure projects that eventually came under the rubric of BRI. As a result, Delhi is struggling to cope with the strategic consequences for the Subcontinent and the Indian Ocean. Unless Delhi quickly sheds its digital defensiveness, that pattern might well repeat itself with China's newest version of the Silk Road.

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# Acres of contention

The judiciary doesn't seem to fully appreciate the economic consequences of its judgments



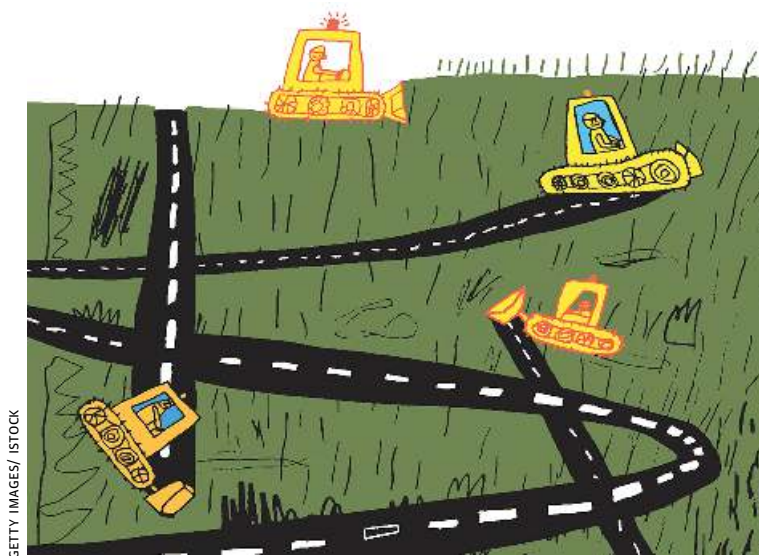
RAM SINGH

The number of legal disputes involving property, contract, labour, tax and corporate laws is bound to increase with an expanding economy. How they are adjudicated by courts not only has direct consequences for the disputants, but also shapes the behaviour of individuals and entities involved in production, commerce and banking. Judicial findings also influence decision-making of government agencies, which are major actors in a developing economy. Yet, the Indian judiciary doesn't seem to fully appreciate the economic consequences of its judgments.

## Case studies

A case in point is a May 31, 2018 order of the Allahabad High Court – *Independent Power Producers Association of India v. Union of India and Ors*. The court has ruled that bankruptcy proceedings cannot be started against a power company unless the company is a wilful loan defaulter. It did not factor in the issue of viability of the project. As such, the 'wilfulness' condition is hard to prove. Nonetheless, the ruling is one of the less problematic ones.

Consider another judgment, this time from the Supreme Court (SC) in *Rameshwar and Ors v. State of Haryana and Ors* (2018). Here, the dispute involved 688 acres of land for which the then Haryana government had issued an acquisition notification in 2007. As soon as the notification was issued, developers started approaching owners to buy their land. Since the official compensation was going to be meagre, many owners sold their land at throwaway prices. Later, the government decided to drop the acquisition plan. By then, hundreds of acres had been purchased by builders through such deals. In flagrant disregard for the rules, the State authorities not only approved the land deals but further obliged the builders with regulatory approvals. Unsurprisingly, the SC held the State's decision a fraud, acted out through an unholy nexus bet-



ween the officials and the builders.

As the owners sold their land under duress and on unconscionable terms, the land should have been restored to them by declaring the deals infructuous. However, the SC handed over the land to the State government.

In *Uddar Gagan Properties Ltd v. Sant Singh & Ors* (2016), at dispute were 280 acres of land under acquisition in 2005. The land was illegally transferred to developers through dubious deals approved by the then Haryana government. Here too, the SC handed over the land to the official agency that was an active partner in the fraud. Farmers were forced to accept paltry compensations.

Through such judgments, the judiciary has failed not only to protect the legitimate rights of owners, but also to provide economic justice enshrined in Article 38 of the Constitution. Moreover, the court has transferred land, a precious economic resource, from those who own, need and use it to governments who do not need it by their own accord. Transfers have been forced for a cause known neither to the beneficiary governments nor to the judiciary. It is due to the perverse incentives created by such judgments that government agencies abuse laws and are sitting on a massive stock of unused land, which would have been put to more productive use by its owners.

Several infrastructure projects are being held up due to judicial interventions in the bidding process.

Courts should realise that the quality of infrastructure assets and the technical capability of contractors to deliver them are serious issues. The mere difference in prices demanded by the bidder may or may not be a decisive factor. On the contrary, the court's intervention can delay the project, escalating its cost far more than any possible gains from ruling in favour of the lowest price bidder.

Courts' interpretation of concession contracts also seem to be unmindful of consequences for future user-fee based projects. In the Delhi-Noida-Direct flyway case (2016), the Allahabad High Court struck down an explicit contract term dealing with the calculation of costs and profit for the private partner. The court held it to be "arbitrary and opposed to public policy", and the profit to the company as "super-normal". In this case, the problem is not the contract terms but their manipulation. With the help of experts it is possible to assess construction and maintenance costs for road projects. Rather than setting aside an explicit contract term, the court should have ordered a transparent implementation mechanism. Moreover, the government authority should be held accountable for dereliction of duty in not raising and settling the issue with the help of experts.

Sure, courts should interpret a contract and cut into its terms if found unconscionable. However, this should be done sparingly and after meeting high standards, especially for contracts awarded through

competitive bidding. Otherwise, judicial interventions can undermine the sense of security that comes from signing contracts, thereby discouraging investment.

## A public good

The adjudication process can serve as a public good. By clarifying the law it can reduce legal uncertainty. This in turn reduces legal disputes and costs associated with investments and other economic decisions. Consequently, economic activities get promoted. Casual and unpredictable adjudication has the opposite effect.

Fortunately some judges seem to have taken note. *Shivashakti Sugars Limited v. Shree Renuka Sugar Limited and Ors* (2017) is a landmark judgment delivered by justices A.K. Sikri and A.M. Sapre. It not only admitted the role of economic reasoning in adjudication, but pushed for the inter-discipline between law and economics to serve the developmental needs of the country. In situations where alternative views are possible or wherever discretion is available, the two judges have argued for the view which subserves the country's economic interest. They have exhorted the courts to avoid outcomes which can have adverse effects on employment, growth of infrastructure, the economy or the revenue of the State.

An economic analysis of the law and disputes is welcome but courts should not go overboard. First, treating economic growth and the revenue of the state as public purposes is walking on a slippery slope. Second, even for genuinely public purposes, economic efficiency cannot justify the trampling of legal or economic rights at stake. Adjudication of such cases requires a cost-benefit analysis of a different kind. Infringement of individual rights can be considered only if it is absolutely necessary. The situation should be such that public purpose cannot be achieved without putting limitations on individual rights. Moreover, the degree of infringement should be minimum to realise the purpose. It should not cut too deep. Finally, infringement should follow the proportionality principle – the social benefit must be commensurate with the seriousness of the infringement.

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# Power crisis

The standoff in Delhi has placed everyone in a bad light

One crisis, many causes. The immediate provocation for Chief Minister Arvind Kejriwal sitting on a dharna at the residence of the Lt. Governor might have been a run-in with the bureaucracy, but the crisis is rooted in the understanding (or misunderstanding) of the constitutional limits of the powers of the elected government in the National Capital Territory of Delhi. The Aam Aadmi Party government has a history of confrontation with the Centre on the question of who is the administrative head of a region that is less than a State and more than a Union Territory. Since the party came to power in 2015, the demand for Delhi to be given the status of a full-fledged State, allowing it among other things powers over the police, has become strident. Differences extend to the LG's discretionary powers to appoint the Chief Secretary, with the AAP nursing a grouse that the bureaucratic cadre came directly under the Centre. Matters came to a head when Chief Secretary Anshu Prakash was assaulted during a late-night meeting in Mr. Kejriwal's presence. Since then, officials have been in a non-cooperative mode, only attending statutory meetings, skipping what they term are "routine" meetings and not taking phone calls from Ministers. Mr. Kejriwal and his Cabinet colleagues decided on the dharna in protest, but instead of forcing a solution, they may have precipitated a crisis. Members of the BJP responded with a dharna at the Chief Minister's residence, completing the political spectacle.

In adopting the politics of protest as part of its quest to expand the powers of the elected government, the AAP is putting governance at risk. Instead of mounting a legal challenge to the Centre's efforts to further curtail the limited powers of the Delhi government, Mr. Kejriwal chose to respond politically. While he might like to be seen as a constitutional functionary whose hands are tied by an overbearing Centre, he is coming across as someone who is keener on a bigger fight on a bigger stage than as one eager to fulfil his constitutional mandate. The dharnas might end, but the underlying causes of the present crisis will not disappear without the Centre and the Delhi government agreeing on the terms of engagement through the office of the Lt. Governor. The BJP cannot mock Mr. Kejriwal out of politics; the Centre will have to deal with him, and work jointly with the AAP government for the welfare of Delhi's citizens – something it has failed to do. The way to fight the AAP cannot be by placing handcuffs on the Delhi government. As for the AAP, it should learn to make the best of the system before demanding more autonomy. To push the constitutional limits to acquire more meaningful powers is fine, but it cannot be at the cost of failing to do whatever is possible within the current framework.



# Statehood would solve many of Delhi's problems

The clash between civil servants and the LG's office requires us to judge the situation and think of a way out

YOGENDRA  
YADAV



**T**he political circus going on in Delhi has all the elements of a democratic nightmare: constitutional functionaries engineering a deadlock in the midst of an environmental emergency and water shortage; more than one centre of power, each more keen to play opposition than to govern; and unbridled political showmanship with complete disregard for people and their well being. Faced with this, it is tempting to look away or to take sides. But a concern for Delhi's future requires us to judge the situation and think of a way out.

First things first. Delhi deserves full statehood. The Central government should have special powers over the NDMC area that houses Lutyens' Delhi and the diplomatic area as well as the Delhi Cantonment area. But there is simply no justification for the rest of Delhi not being governed by a popularly-elected government, just like any other state. The hypocrisy of the Congress and the BJP on the issue of full statehood is responsible for creating a diarchy in Delhi that is currently being exploited to the full.

Second, there cannot be two opinions about the role of the Lieutenant Governor (LG) of Delhi in dealing with the Aam Aadmi Party (AAP) government. Far from playing the role of a quiet friend (and a guide and guardian, in the case of the National Capital Territory) of the elected government, the LG's office has indulged in delays, disruption and sabotage of the work of elected government and a witch hunt of its functionaries.

Third, it is quite clear that the ongoing protest by the Indian Administrative Service officers could not have gone on the way it has without a nod and a wink from the Central government.

Yet these three facts do not give us the full picture. The fourth fact is that the cur-

rent protest by the AAP is designed to cover up an assault on the top civil servant in the presence of the chief minister himself. Although the formal hearing is yet to begin, it is a classic case of the guilty playing the victim.

Fifth, and worse, the current deadlock is being used to distract from a governance failure at multiple levels. The state government that came to power riding an unprecedented wave of popular hope has turned out to be utterly inept at governance, with no knowledge of the grammar of governance or even the constitutional provisions. No wonder, with the sole exception of an improvement in government school infrastructure, this government has little to show by way of any tangible outcome, even where there was no interference by the LG. The BJP is using this crisis to cover up shockingly poor municipal governance.

Sixth, the AAP government has no desire to resolve the tangle; instead it wants the deadlock to continue and use it as an election shield. The party that came to challenge the disease of body politic is by now not only afflicted by the same disease, and wants to use this crisis to gain entry into an anti-BJP alliance.

Here is what needs to be done immediately to resolve the crisis. One, the CM should offer an honest apology to the chief secretary and other civil servants for what his colleagues have done. With so many apologies under his belt, that should not have been a problem.

Since he hasn't, in view of larger public interest, the IAS officers should accept his latest appeal, which is an implicit apology, and a withdrawal of his earlier demand for punishment to officers.

Two, like all other state governments, the elected government should get to choose the officers it wishes to work with. The existing constitutional provisions for the NCT government do not come in the way of this right. Three, the central and the state government should request the constitutional bench of the Supreme Court to deliver its verdict, now pending for six months. That should clarify the division of powers for the state and the central government at least for the remaining tenure of the AAP government. And finally, Parliament should begin a discussion on granting a near-full statehood for the National Capital Territory of Delhi by forming a joint committee to disentangle the messy administrative divisions.

These steps may not guarantee good governance, but these would leave the ruling parties of Delhi with no excuses when they face elections.

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The views expressed are personal*

**THE CM SHOULD OFFER AN APOLOGY TO THE CHIEF SECRETARY FOR WHAT HIS COLLEAGUES HAVE DONE. THE ELECTED GOVERNMENT SHOULD GET TO CHOOSE THE OFFICERS IT WISHES TO WORK WITH.**

# GET TO WORK, PLEASE

If Delhi's bureaucrats look partisan, they have themselves to blame. They can fix that

SINCE MONDAY LAST, the arresting spectacle of the sit-in protest in a Raj Nivas waiting room by Delhi Chief Minister Arvind Kejriwal and three of his senior-most ministers, two of whom had to be shifted to hospital, has framed multiple crises. In no particular order: The terrible breakdown of a working relationship between the elected government and Lieutenant Governor. The long-festering debate on Delhi's statehood, waiting to be joined more fully on a calmer day. The dysfunctional antagonism between political opponents, AAP and BJP, which has infected institutions of the state and, more unforgivably, the Centre. The vaudeville show that is so often the AAP's politics, starring dharnas, on sofas and elsewhere. The bruising, in letter and spirit, of the BJP's slogan and promise of "cooperative federalism", which Chief Ministers Mamata Banerjee, Pinarayi Vijayan, HD Kumaraswamy and Chandrababu Naidu have done well to draw the Prime Minister's attention to, and which he and the Centre would do well not to dismiss as mere pre-2019 theatre. And caught in the BJP vs AAP crossfire, the bureaucracy, on strike, by another name. That last crisis merits closer attention, more outrage.

In fact, it is even incorrect to characterise Delhi's officialdom as hapless, caught in-the-middle, and to accept the officers' claim to victimhood. In an unprecedented press conference, they sought to draw a distinction between "statutory" meetings that they attend and the "routine" meetings that they don't. They skip only those meetings, they said, in which they felt their "safety" and "self-respect" were at risk. The reference was obviously to the alleged assault of the Chief Secretary by AAP members at a midnight meeting in February at the Chief Minister's residence. It is quite clear, however, that Delhi bureaucrats' non-cooperation with an elected government has to do with more than just that criminal case, in which, notably, due process is on, and both Chief Minister Kejriwal and his deputy, Manish Sisodia, have been questioned. On show in Delhi is a bureaucracy that seems to have plunged into the fray, and is seen to be taking political sides — a grave abdication of its role and responsibility to be the faceless steel frame. In these times of polarised politics, if the unfortunate impression is gaining ground that Delhi's bureaucracy has shed its political neutrality, it must take full responsibility. It won't do to whinge or pass the blame to the political actors or the mess they have created.

Delhi's bureaucracy has much at stake. Its institutional integrity is on the block, and so is its good work as part of the state machinery, also in the tenure of the Kejriwal government. After all, the government's remarkable strides in health and education could not have been possible without its officers. Delhi's bureaucrats need to get back to work, to recommit themselves to due process and to abide by it, regardless of any political turbulence.

# The deadlock in Delhi

AAP's last turn of the dice

THE week-long hunger strike in the Delhi Lt Governor's office by the state CM Kejriwal and his Cabinet colleagues has triggered several political moves even as it holds the promise of at least one happy outcome. First, the positive: the officers took the unusual path of going to the press to deny they had struck work but were pressing for adequate security and due dignity. The CM, in turn, offered them the olive branch by calling them family and promising them safety. The roots of their entanglement is deep and long but the extant trigger was the alleged late-night roughing-up of Delhi Chief Secretary Anshu Prakash by AAP ministers at Kejriwal's residence.

Now, as the two sides attempt to broker a truce, Delhiites can hope for solutions to the graver problems of water scarcity, congestion and pollution. And both sides need each other if the Delhi CM wishes to carry forward the reforms in the public delivery of education, health-care and electricity. But it is also evident that the AAP government is sinking deeper in the swamp of a turf tussle with the LG. The Delhi High Court's censuring of Kejriwal for his choice of venue for the protest is a setback to his familiar high-voltage game of ducks and drakes. The Delhi CM's grouse about an unhelpful bureaucracy and two LGs who, he perceives, march to South Block's tunes can, in the long run, hardly be met by agitational endeavours.

The Centre needs to be mindful of the fact that Kejriwal is no longer a solitary tiller after he framed the issue in terms of a domineering Centre trying to alter the country's federalist polity. The four regional CMs, who have carved out a distinct identity on this very political spin, have eagerly joined forces to preserve their options in creating a national alternative in the next general election. But in the end, that will give no joy to Kejriwal for their end game is to enhance only their relevance. AAP will have to replace its urge for street activism with creativity and vision to pull itself out of this quagmire.