

POLICY

W A T C H

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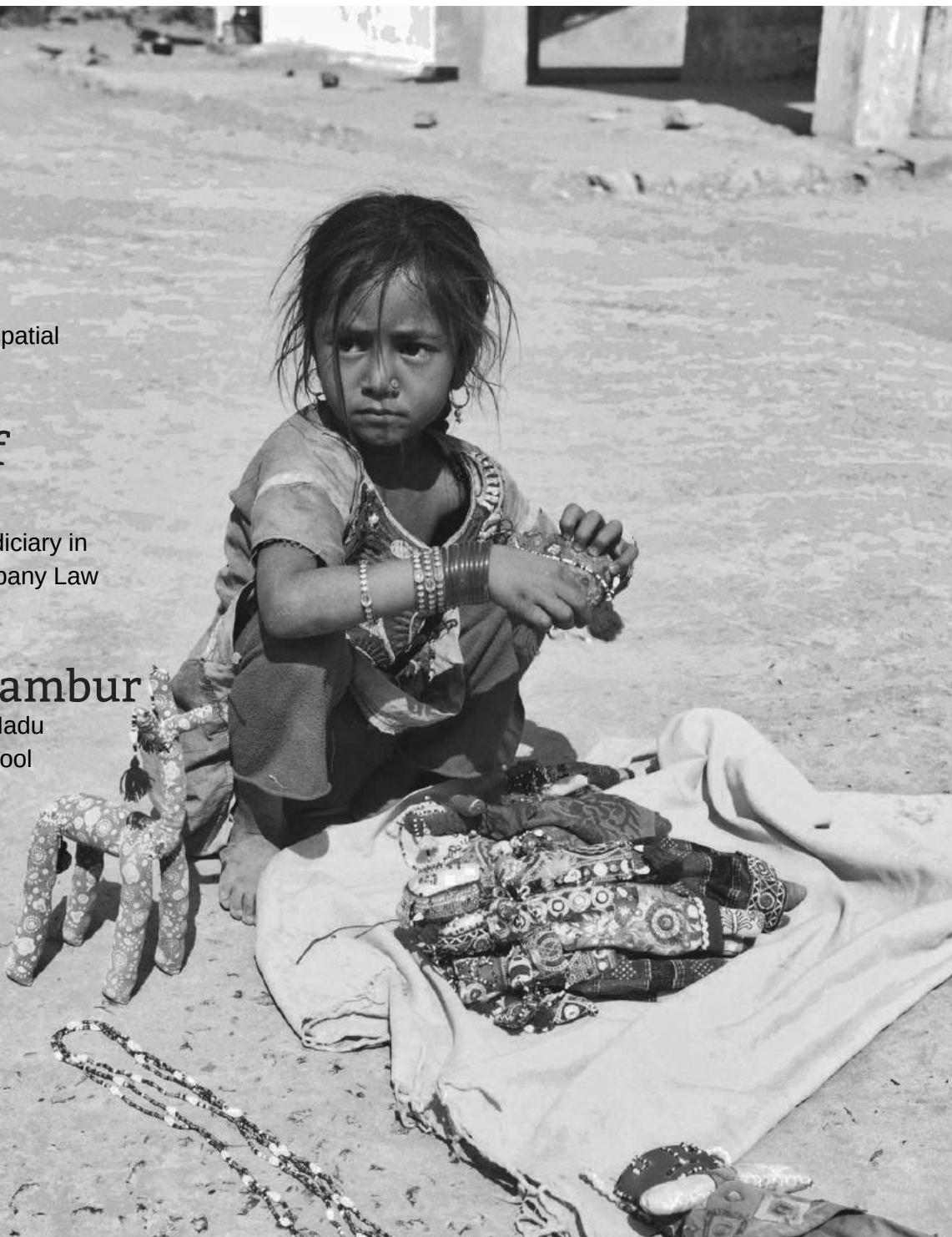
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**Governance &
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This issue of Policy Watch is brought to you from the Governance and Development theme at RGICS. The importance of governance for tackling challenges of human development cannot be stressed enough. Within global developmental paradigm, the 73rd and & 74th Constitutional Amendment Acts, 1992 empowered people, in principle, to contribute to their own development by adding another tier of government closer to them. The implementation thereof, in letter and in spirit, however, is a work in progress. At RGICS, we believe that the duality created by administrative classification of rural and urban is a bottleneck in efforts to do away with disparities in development levels. A crucial role, within governance, is played by the institutions within the country. Reforms pertaining to civil service, policing, judicial system in India have been on the reforms agenda.

A new framework being developed at RGICS to invigorate synergy in developmental efforts of the rural-urban continuum, called Samarth Zillas, is presented in this issue as a concept note. Samarth Zillas framework offers integration of novel techniques in policy making, design and implementation for holistic spatial development.

Extreme delays in the Indian judiciary have been a matter of concern for a very long time now. An abridged version of a forthcoming paper that examines judicial performance in Indian courts and tribunals, taking National Company Law Tribunal as an example, is included in current issue. The paper is a step forward in quantifying the effect of various factors in causing judicial delay. While many people have noted the need for more judges and better infrastructure, the paper suggests that addressing judicial delay also requires a cultural change in the Indian judiciary.

Another article in this edition is an analysis of the recent All India Rural Financial Inclusion Survey. It points out that rural India continues to diversify away from agriculture – in fact, the majority of rural Indian households are not agricultural households any more! The article also sheds light on the importance of sound land markets, tenancy laws, and institutional mechanisms for access to financial services.

Also included are preliminary lessons from a recent visit to a village panchayat in Tamil Nadu, where people's zeal to improve their lot is finding expression in Gram Sabha meetings. The organic movement of village community shows the way to realisation of ideals of grassroots democracy. Empowered by tools like Panchayati Raj Institutions Accounting Software (PRIASoft) and Right to Information Act, people are making government officials reminisce their functions.

The Finance Commission is a constitutionally mandated institution with the task of defining the financial relationship between the centre and the states. The fifteenth Finance Commission, tasked with giving fiscal recommendations for the period 2020-2025, has been appointed. However, many concerns have been raised about its terms of reference. Our last piece is a nuanced look at the controversy. This piece is especially salient in the light of accusations that the current central government is assaulting the autonomy of vital institutions.

Hope you enjoy this issue!

Samarth Zillas

A regional approach to holistic spatial development

Vijay Mahajan and Yuvraj Kalia

Introduction - Why do we need an alternative framework?

According to Robin King, Sujaya Rathi, and H. S Sudhira: "Urbanization in India today is synonymous with booming unplanned and unsustainable megacities. To mitigate the impact of this urban explosion and plan for the future, it is imperative to balance the demands of high growth on one hand and ensure sustainable growth on the other. In essence, economic, social, and environmental planning has to be linked to spatial/regional planning, to come up with a comprehensive strategy on a regional scale that provides form for sustainable emergent systems. Such a task is complex, given the scale, variation in environmental and natural conditions, lack of knowledge of the needs on the ground, and linguistic and social

differences within and across communities in India.

There has been a concentration of population in the Indian megacities, while the population in medium and small towns has declined. This form of urbanization in India has led to a diminishment of the quality of life in the Indian cities. Major contributors to this wave of concentrated urbanization are population growth and urban poverty induced by rural/small town migration to the mega cities. The rural poverty induced urbanization has resulted in the shift of rural poverty to urban poverty, with the emergence of slums in all the major cities in India, where the urban poor live in dismal conditions, lacking basic amenities such as water, sanitation, safe shelter,



and health facilities (King, Rathi and Sudhira 2011).

While rural development has received considerable attention in policy post-independence, considerable migration from rural areas to urban centres continues. Existing urban areas have seen rapid population growth owing to migration, which has put resources under pressure. It indicates that rural development efforts have been largely ineffective in isolation. The Samarth Zilla framework situates itself to add much needed synergy in developmental efforts, which is absent within isolated current institutional structure in rural and urban areas.

While the concept of district level planning and development is not new, having its roots in Second Five Year Plan in the form of District Development Administration, and having taken various forms and shapes thereafter, such as

The enactment of the 73rd and 74th Amendments to the Constitution has not lead to synergistic development of districts in a holistic manner.

community development, block development, rural growth centres and such; the idea could never realise its potential suffering from lack of institutional support and centralising tendencies of state governments.

Even the enactment of the 73rd and 74th Amendments to the Constitution did not lead to synergistic development of districts in a holistic

manner. This is because of inadequate support to and use of the institutional structures created after these amendments, particularly the District Planning Committee (DPC) in every district to prepare integrated development plans for the district.

Introduction to the Samarth Zilla Framework

The Samarth Zilla framework aims to take learnings from earlier regional planning frameworks that were popular for almost three decades after independence, apply new techniques and approaches of formulation and implementation to activate holistic development of a district. This framework aims to address spatially lop-sided development of Indian states, wherein, few cities in each state have developed and urbanised rapidly. These cities attract large number of migrants from rural areas of under-developed states that fail to provide viable livelihood options. Similar phenomenon is noticed at state level within large states as well.

The Samarth Zillas framework, proposed here, uses a regional approach to development which recognises the continuum of rural and urban areas. Samarth Zilla translates as ‘Capable District’, that is district which is capable of supporting the basic needs of its population for food, clothing, and shelter by ensuring meaningful livelihoods; and ascertaining that levels of health and education improve progressively through provision of uniform level of services throughout. The prevailing duality of rural-urban development programming between rural and urban has not served people in either rural or urban areas of India in achieving development levels comparable to their counterparts in Eastern or South-East Asian countries, which were at similar levels after independence.



The Samarth Zillas framework makes a district as the unit of development instead of a town or a village, which enables access to wide array of resources (natural, human, social, physical and financial) available within a district. This framework, by virtue of its regional approach, carries an opportunity to apply systems thinking perspective to developmental efforts as against isolated interventions conceptualised to address issues in a limited (spatially and in scope) manner. Within a Samarth Zilla, while cities provide a space for enhanced livelihood options for workers from surrounding rural areas and act as growth engines of the district; small towns and rural areas act as a resource and production base for meeting rural as well as urban demand.

The major objectives of this framework are to replace long-term migration with day travel to nearest urban centres by making them capable of providing decent livelihood options through

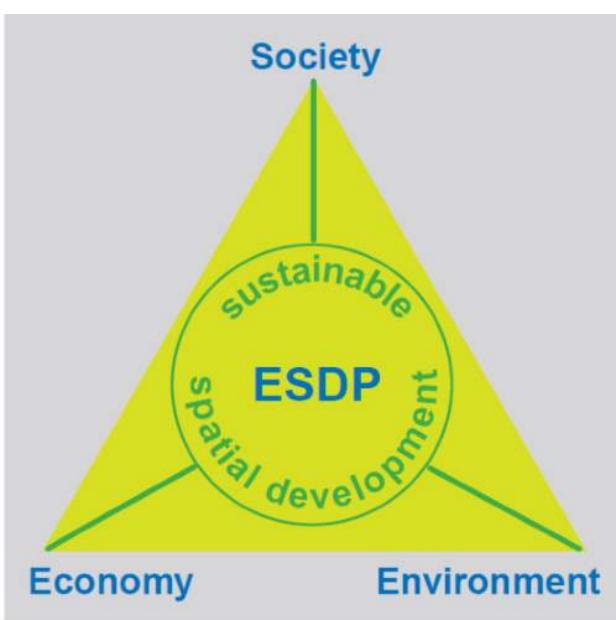
non-farm activities; judicious use of natural resources available within a district; providing uniform standard of amenities and services throughout a district aiding in uniform human development.

Article 243ZD of the Constitution gives a firm starting point and provides for creation of a District Planning Committee (DPC) in every district with representation of rural as well as urban areas. DPCs carry a mandate to prepare development plans for the district including spatial planning, environmental conservation, etc. and submit the same to respective state governments. Beyond that, the framework aims to leverage expertise of local research and educational institutions to identify opportunities in creating local employment.

Some Conceptual Precursors

There are several conceptual precursors to the Samarth Zillas approach. Europe was a leader in rethinking more balanced spatial development. As early as 1994, the Ministers responsible for spatial planning agreed on three policy guidelines for the spatial development of the European Union. (i) development of a balanced and polycentric urban system and a new urban-rural relationship; (ii) securing parity of access to infrastructure and knowledge; and (iii) sustainable development, prudent management and protection of nature and cultural heritage. This led to the adoption of a European Spatial Development Perspective, in 1999. This was based on the EU aim of achieving a balanced and sustainable development, in particular by strengthening economic and social cohesion. This is reflected in the triangle of objectives linking the three following fundamental goals of European policy: (i) economic and social cohesion; (ii) conservation of natural resources and cultural heritage; and (iii) more balanced competitiveness of [each region].

Triangle of Objectives: a Balanced and Sustainable Spatial Development



Source: European Spatial Development Perspective, 1999

In Britain, attention to more balanced spatial development came with the Tony Blair government in 1997 but in its first term, the focus was on strengthening the local city governments and this was not found to be very effective. In the second term, the Blair Government advocated New Localism "characterised by a cautious devolution of power to the local level in an attempt to better implement national goals. It emphasises the devolution of managerial over political power - the aim is generally to allow local managers to meet national priorities more effectively, rather than to allow local politicians to derogate from national goals.

New localism differed from the implicit 'old localism' in two important senses. First, it accepted the role of central government in driving change at the local level, something that the localists of the 1980s strongly resisted. Second, it did not centre on the role of the local authority, but took a wider view of the locality that included communities and other public service organisations such as health and police services. The local government minister of UK from 2005, David Miliband developed this approach further, suggesting the continuing development of a new localist agenda in Labour's third term (which began in 2005).

Key new localist policies included:

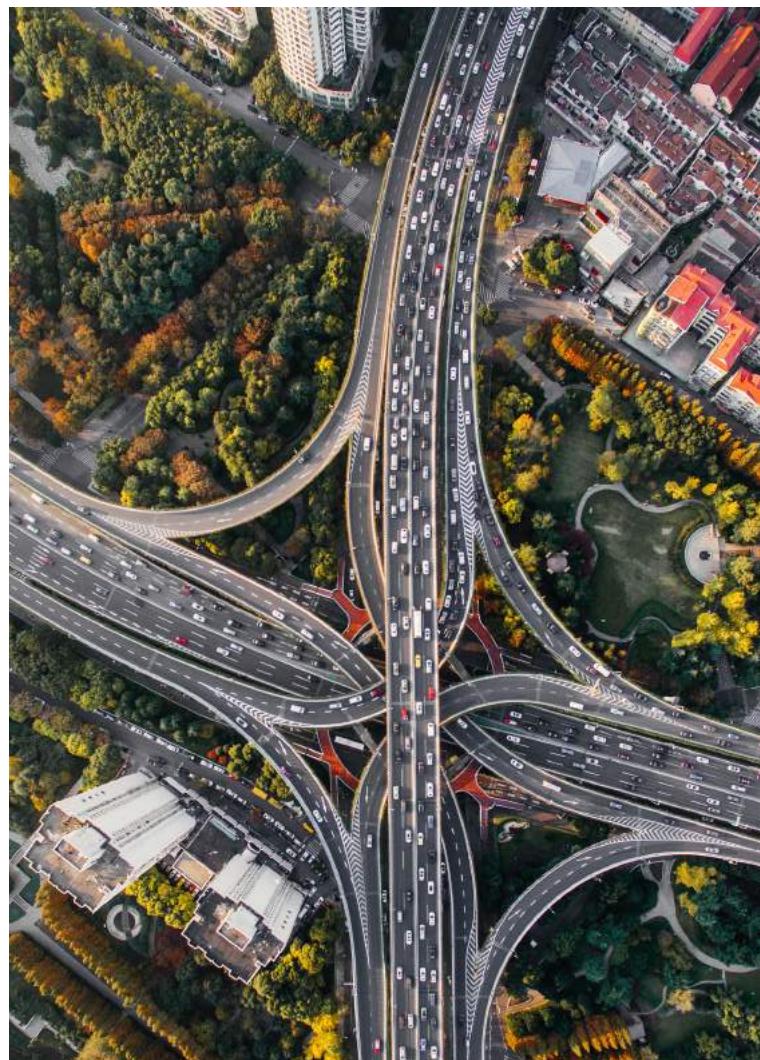
- Foundation hospitals - the granting of more autonomy to NHS hospital trusts that score the highest marks in their inspections, including freedom to borrow money on the markets and adjust staff pay levels. The foundation trusts had to create an elected board including representatives from the local community to oversee their work.

- Freedoms for local government - Labour granted a number of new freedoms to councils, including the right to freely borrow capital on the financial markets and a general reduction in the number of plans that must be submitted for central government approval. Further freedoms were promised to those councils that scored the top 'excellent' grade in the key Comprehensive Performance Assessment inspection process. These include freedom from council tax capping and a three-year holiday from inspection. The local government community has complained that these freedoms are not always granted in practice.
- Neighbourhoods - Labour showed a growing interest in creating new forms of more direct neighbourhood governance in the hope of improving the responsiveness of public services and engaging local people in both local democracy and the delivery of their own services through service level contracts and co-production.
- Education reform - it might also be argued that the government's policy of transferring power to school head-teachers from local education authorities represented a new localist approach to devolving beyond the council to local communities.”

The idea of New Localism travelled across the Atlantic to the United States in the first decade of the 21st century and acquired a distinct flavour - combining the entrepreneurial spirit, capitalist urges for economic growth, technological innovation and philanthropic action with local government action, often led by City Mayors of moribund urban areas.

Reviewing this work in their 2017 book, *The New Localism*, urban experts Bruce Katz and Jeremy Nowak reveal where the real power to create change lies and how it can be used to address

our most serious social, economic, and environmental challenges. Power is shifting in the world: downward from national governments and states to cities and metropolitan communities; horizontally from the public sector to networks of public, private and civic actors; and globally along circuits of capital, trade, and innovation. This new locus of power—this new localism—is emerging by necessity to solve the grand challenges characteristic of modern societies: economic competitiveness, social inclusion and opportunity; a renewed public life; the challenge of diversity; and the imperative of environmental sustainability. Where rising populism on the right and the left exploits the grievances of those left behind in the global economy, new localism has developed as a mechanism to address them head on.



New localism is not a replacement for the vital roles federal governments play; it is the ideal complement to an effective federal government, and, currently, an urgently needed remedy for national dysfunction. Katz and Nowak tell the stories of the cities that are on the vanguard of problem solving. Out of these stories emerge new norms of growth, governance, and finance and a path toward a more prosperous, sustainable, and inclusive society. Katz and Nowak imagine a world in which urban institutions finance the future through smart investments in innovation, infrastructure and children and urban intermediaries take solutions created in one city and adapt and tailor them to other cities with speed and precision. Katz and Nowak assert The New Localism, “Power now belongs to the problem solvers.” (Katz and Novak 2017)

By 2014, integrated urbanisation and rural development had become an official World Bank policy priority, as articulated by the Bank’s Vice-President Sri Mulyani Indrawati:

“Getting urbanisation and rural development right is essentially about sharing prosperity. It is about ensuring that the benefits of development and growth reach all citizens – whether they move to the mega cities, smaller towns, or live in a rural setting... Urbanisation can be such an engine of growth—if handled well – but it needs attention and sound policies. Indeed, few countries become high income without high levels of urbanisation. Urbanisation is a recent phenomenon: in 1800, barely 3 percent of the world’s population lived in cities, and by 1900, it was less than 15 percent. Today, more than half of the world’s population lives in cities and by 2030, it is estimated that two-thirds of the world’s population will be urbanised. Nearly all of the increase in urban population is now happening in developing countries where more than

5 million people, or about the population of Suzhou, migrate to urban areas every month.

Urbanisation is generally associated with higher income and productivity. In fact, it can be an important driver of productivity increases and growth. Urban areas offer positive agglomeration effects including larger, more efficient labor markets, lower transaction costs, and easier knowledge spillovers. They also provide easier access to markets, and links with the global economy. Indeed, almost no country has reached income levels of more than \$10,000 before reaching about 60 percent urbanisation. Urbanisation is inextricably linked to economic transformation; although more urbanisation does not always mean more economic growth.

In the absence of sound public policy, the positive effects of urbanisation may be easily outweighed by costs — pollution, traffic congestion, and higher costs of living.

In the absence of sound public policy, the positive effects of urbanisation may be easily outweighed by costs — pollution, traffic congestion, and higher costs of living. Further, in many countries around the world, urbanisation did not bring the promised productivity increases and rising standards of living. Instead it was accompanied by slums, urban unemployment and squalor. Indeed, more than one billion people call slums their home today. Even if managed well, urbanisation and economic transformation raise the issue of equality and integrated development. History suggests that countries that rapidly urbanise

see their rural-urban income gap rise at first, and decline only after a considerable part of the population has shifted to urban centres.

Clearly, integrated urban-rural development is a challenge around the world. Incomes are higher in urban areas, while rural areas see more extreme poverty. Indeed, three quarters of the poor live in rural areas. This disparity is similar for other Millennium Development Goals. For example, improving basic sanitation is one of the goals that proves difficult to achieve globally. But 80 percent of urban residents versus 50 percent of rural residents had access to a toilet in 2010. Growing disparities amidst development is a policy issue for many governments in the developing world.

So how can governments manage more inclusive development in the course of urbanisation?

- First, by providing cities the tools and resources that allow for this to happen is crucial, including good city planning, and sound land policies while using fiscal and financial tools for cities to expand. The downsides of concentration—congestion, pollution, and possibly slums and urban squalor, will need to be managed to assure continued economic benefits. Equally important is to recognise the social tensions that come with rapid urbanisation: Migrant families living apart, children being raised by grandparents, elderly left behind in rural areas, tensions in urban areas where new arrivals crowd public services and compete with established residents. Managing these tensions is an integral part of managing urbanisation, and is needed to ensure continued support for it.

- Second, connecting people with rapidly growing regions. Governments would need to focus on delivering those services in rural and urban areas that improve human capital, like health and education. Those services equip people with skills and keep them healthy wherever they are and wherever they go. It will prepare them better for the jobs they seek when migrating to an urban area or improve their productivity in the rural economy. At the same time, not all people will migrate, and some never will. So public services that are important for poverty alleviation—such as water and sanitation—should still be promoted. But they require a fiscal system that provides sufficient means. Innovative delivery mechanism, including public private partnerships have emerged in rural areas that can deliver for example water without the need for bulky network investments and consequently at reduced costs.
- Third, connecting places through better infrastructure, which brings lagging and leading places closer together in economic terms. If well connected by transport and linked to the electricity grid, smaller cities can attract industries for which the more advanced cities have become too expensive. Industries that can be efficient without the benefits of agglomeration that a large city offers can provide the economic basis for smaller, connected cities.

Take, for example Sriperumbudur, a town of 17,000 people near Chennai, India. Basic infrastructure, proximity to a port, and basic education and health services were enough for Hyundai to put an auto factory there in 1999. By 2006 it had produced a million cars. The small city was large enough for Hyundai to realise the scale for cars to be produced competitively. The added benefit of connecting smaller cities is that migrants need not move to large cities to

find jobs; instead they can find work in smaller cities closer their hometown.” (The Wolrd Bank 2014)

In India, the demand for a more balanced growth among rural and urban areas has led to competition among the respective advocates for greater resource allocation, without focussing on synergistic and collaborative growth. New paradigms, however are emerging. The Planning Commission established an expert group and produced a manual for integrated district planning in 2006. It carried an elaborate review of various efforts for district level planning since the 1950s in India and attempted to lay down a new process. It stated:

“The Constitution, in Article 243ZD provides for the ‘consolidation’ of plans prepared by the Panchayats at all levels and municipalities in the district into the draft development plan of the district by the District Planning Committee. However, so far the practice of rural and urban planning has been focused on different objectives and tuned to different purposes. While Panchayat level planning generally follows a socio-economic and sectoral approach, urban master plans focus on spatial planning aspects such as land use and zoning, largely ignoring sectoral or social planning.

Each of these approaches is insufficient to fully capture the true meaning of planning. Rural plans, by focusing purely on socio-economic development with an emphasis on sectoral planning, lose the advantage of the spatial planning approach. Therefore, location of facilities is overlooked, thus resulting in inefficient use of resources. Similarly, in urban areas, driven by the sheer density of population and the complexity of providing public services, the focus on spatial planning pushes aside any sectoral or socio-economic planning.

Consolidation goes beyond compilation and implies value-addition through integration of local plans. Given the rapid urban expansion throughout the country, planning of space is critical, particularly when there is a significant urban presence in the district, with strong pulls on infrastructure and resources. With large scale migration of rural poor into urban areas seeking better livelihood opportunities and quality of life, there is a need to adopt a sectoral approach to urban planning that is sensitive to the needs of this migratory population. The erosion of boundaries between urban, peri-urban and rural areas results in greater dependencies between urban and rural local governments on common resources, meeting the challenges of providing livelihood opportunities and



infrastructure and mitigation of environmental impacts. Lastly, the constitutional imperative of preparation of district plans cannot be achieved unless rural and urban local governments work together.

An integrated district planning exercise would link plans of local governments and other planning units and would provide a platform for mutual consultation and negotiations between them. It would also provide the framework for integrating the sectoral and spatial aspects of urban and rural plans.” (Planning Commission 2008)

Outside the government too, there are several powerful voices which argue in favour of holistic approach to a district sized area. In her 2016 book *Anubandh*, noted Gandhian and the founder of the Self Employed Women’s Association (SEWA), Ela Bhatt, makes an appeal to build holistic and mutually beneficial communities to cater to the basic needs of daily life: food (including water), clothing, education, health, housing, education and banking. “Bhatt presents the idea of creating local communities within a 100-mile radius to cater to livelihoods and sustainable living. In a way, this originates from Gandhi’s belief of self-sustaining communities. According to her, if mutually beneficial communities are organised and built to take care of local needs, many issues related to poverty, exploitation and environmental degradation can be solved to a large extent. “It was the lack of local resources to meet the primary needs of life... that rendered rural communities vulnerable to poverty, exploitation and migration. If we could meet local needs with locally generated resources, we could benefit the local economy, the local ecology, and the local community,” says the book. (The Hindu 2016)

How to Measure the Samarth-ness of a Zilla?

The framework will be multi-pronged, with a focus on economic, human, natural, physical and social dimensions. To guide the implementation and measure progress of output of the framework, an index called Samarth Zilla Index (SJI), is being worked out, which captures abovementioned dimensions through measurable components or parameters. A few of the tentative components are described below, and summarized in Table 1:

Migration out of the district (MG): While certain levels of migration are unavoidable and sometimes may even be healthy, large number of people moving out of an area is perhaps the most concrete symptom of state of affairs not being conducive for human development. Therefore, MG becomes an important component of defining a Samarth Zilla.

Human Development (HD): Progressing forward from abovementioned gross indicator, level of human development as indicated by United Nations’ Human Development Index that incorporates levels of health, education and life expectancy, becomes important for our purpose. Levels of migration do not capture the entire picture effectively. For example, high out-migration to foreign countries from certain areas such as Doaba region of Punjab might mislead on levels of human development in the region. And similarly, low out-migration from, lets say, districts with high population of indigenous people might fail to represent a nuanced picture.



Multidimensional Poverty (MP): Levels of poverty anywhere essentially describe whether an individual has the capability of investing her own development. Since Samarth Zillas has people at the core, measure of poverty becomes vital in defining it. For this purpose, we intend to use United Nations' Multidimensional Poverty Index as an indicator of poverty in a district. While there exist other criteria for measuring poverty such as the World Bank's 'extreme' poverty, Government of India's poverty line, etc. which are primarily monetary measures, Multidimensional Poverty Index, being a deprivation based index reflects human capability, or lack thereof, more holistically.

Share of non-farm activities in employment within the district (NF): With Terms of Trade oriented against agriculture and limited capacity of agriculture to provide meaningful livelihood to large population due to various structural factors, a Samarth Zilla is envisioned having a healthy balance of share of farm and non-farm activities in employment. It is an implicit assumption that diversified division of labour across sectors is better oriented to sustain

continual growth and development. Hence, NF is another crucial component that goes into defining a Samarth Zilla.

Road connectivity within the district (RC): Physical connectivity is essential to enhance and maintain access to crucial amenities and structures of governance and development. Within a district, roadways are the primary mode of transport, which provide linkages for movement of people and goods. Hence, road connectivity (RC) which would be represented by road density (KM of all-weather road length per KM squared of area) has also been included the Samarth Zilla Index.

Ground water availability (GW): Environmental factors and natural resources are, more often than not, neglected in understanding of human development. While climate change and sustainability do receive a lip service at various fora, a Samarth Zilla is cognizant of the value that natural resources hold for a regional ecosystem to thrive. Since, our unit of analysis is a district, obtaining credible district level data of natural resources becomes a challenge. For now, availability of ground water, which is a major source of water for majority of Indian population, has been included in definition of Samarth Zilla.

Zilla Parishad and DPC Capacity (ZP): This is an attempt to measure the institutional capability that exists in a district for undertaking integrated district planning and is reflected in the financial budget of the ZP and the DPC as well as in the level of staffing available.

Number of Self Help Groups in a district (SG): Samarth Zilla places utmost importance to human connections and recognises communities' ability to find solutions to local challenges. In other words, social capital; which is refers to connections, trust and reciprocity

among individuals and within communities, and the resources that it generates; is perhaps among the most important factors of making a district Samarth. To capture this in Samarth Zilla index, number of self help groups in a district provide a convenient, although limited, way. SG represents social capital at an elemental level. At the same time, it additionally captures the participation of women in affairs of the area.

Financial Inclusion Index (FI): Some of the key hindrances, identified in studies pertaining to rural development are lack of availability of institutional credit and other financial services to the people who need it. Financial Inclusion Index of CRISIL captures four dimensions of penetration of branches, credit, deposit and insurance and assesses the degree of financial

inclusion at national, state and district level. Samarth Zilla envisages to include this measure within the Index.

The components of Samarth Zilla Index or SIZI are indicative of Samarth-ness of a district. The abovementioned components are tentative and depending on availability of reliable district level data, may be removed or altered. New components may be added if they add more representativeness and credibility to Samarth-ness of a district. For the purpose of constructing the index, the final components shall be tested for collinearity; normalised and aggregated using Euclidean distance method in n-dimensional space. The Samarth-ness of a district, and changes therein, can then be assessed using SIZI.

Table 1: Dimensions and tentative parameters to be used in measuring Samarth-ness of a district

| Dimension | Parameter | Significance | Interpretation |
|---------------|--|---|-----------------------|
| Economic | Migration out of the district | High migration point to higher push factors | The lower the better |
| | Financial Inclusion Index | Indicates level of financial inclusion | The higher the better |
| | Share of Non-farm activities in employment | Represents diversified livelihood options | The higher the better |
| Human | Human Development Index | Indicates aggregate levels of primary development indicators –Health, Education and life expectancy | The higher the better |
| | Multidimensional Poverty Index | Indicates levels of deprivation that impede human development | The lower the better |
| Institutional | Zila Parishad Capacity | Indicates the financial and human capability for IDP | The higher the better |
| Social | Self help groups | Indicate levels of social capital generated in the district | The higher the better |
| Physical | Road density | Indicates physical linkages that facilitate growth and development | The higher the better |
| Natural | Ground water availability | Represents the state of natural resources in the area | The higher the better |

Framework Development Plan

The Samarth Zilla framework is being planned to be developed in three phases with distinct and measurable deliverables that facilitate continuous monitoring and evaluation. The tentative phase constituents are described below.

Phase I: The initial phase would entail identifying, vetting and finalising most appropriate parameters for construction of Samarth Zilla Index (SJI). Reliable district level data across all parameters would be aggregated and fed into SJI. The districts all over India would be ranked based on their SJI scores. States would be classified into six regions viz. Northern, North-Eastern, Eastern, Central, Western, and Southern. From within each region one state would be selected based on operational facilities and network available to RGICS. Within each state, two districts would be chosen for Phase II, based on their SJI score; tentatively one each from top and bottom 20 percent of the set.

This phase would be carried out in a Policy Observatory format, with field investigation teams would be dispatched to the districts selected at the end of Phase I. The objective is to understand and compare the political economy, institutional processes, organisational linkages among both the districts within a state. The expected output from this exercise is identification of key factors that act as catalysts and obstacles that enable a district to be Samarth or hinder the same, respectively. A temporal comparative analysis is also envisaged based on availability of quantitative time series data of selected parameters and collection of primary qualitative data, to further strengthen identified catalysts and obstacles.

Phase II: This is the Policy Analysis and Solution Development Phase, where we identify the key problems, analyse why these are so and what can be done about it, and assess each set of solutions for economic and financial costs as well as socio-political feasibility of implementation. The ones which make the cut will be presented as a number of alternative policy prescriptions. These will be put out in the form of Policy Reports as well as shorter documents/presentations which will be used to engage policy makers and stakeholders in discussion about the best way forward.

Phase III: The final phase of the framework is proposed to test the finally selected policy prescriptions in a real-life situation, provided a state or district government is willing to do so. This was what we call a Policy Laboratory, wherein the expertise of researchers and policymakers is leveraged with the understanding of the local officials, political and civil society leaders, to co-design and co-implement solutions which are problem focused and people centred. The outcomes will be carefully evaluated on an ongoing basis. Adequate attention would be given to operationalising communities of practice at the district level, preferably using available avenues under laws of the state that enable integration across development functions. This will enable sharing of knowledge, skills, tools and techniques to develop and deliver solutions that work in other districts as well.

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Performance of Company Law Tribunals in India

Prasanth Regy



1 Introduction

The Indian judicial system is unable to deliver timely justice. Many courts are not able to make much progress in reducing their immense backlog, or even to keep pace with inflow of new cases (Law Commission 2014).

India scores very poorly (ranking 163 out of 190 countries) on the World Bank's Doing Business ranking for "Enforcing Contracts", which measures the time and cost for resolving a commercial dispute (World Bank 2019). Poor efficiency in the judiciary imposes a huge cost on the people due to time and money wasted during prolonged judicial delays. But there is also a significant opportunity cost. Security of property rights and enforcement of contracts are both essential for the smooth functioning of the economy, and if they are not well enforced, may projects/firms/other economic relations that would otherwise have been feasible, will not be undertaken. Both these have a direct effect on the well-being of citizens: a slower

judiciary means fewer jobs, slower growth, and lower productivity.

In a forthcoming paper (Nayak and Regy 2019), my co-author and I offer a framework to analyze judicial performance, and in particular judicial delays. In the present article, I would like to offer a summary of our findings and their implications. In the paper, we use the National Company Law Tribunal (NCLT) as an example.

The NCLT is a quasi-judicial body constituted with effect from June 1, 2016, under the Companies Act, 2013. It was meant to be a specialized agency to deal rapidly with matters relating to rehabilitation, revival and winding-up of companies. The NCLT adjudicates upon matters under the erstwhile Companies Act, 1956, the extant Companies Act, 2013, and the Insolvency and Bankruptcy Code, 2016 (IBC). It is not bound by the procedure laid down in the Civil Procedure Code (CPC), and can determine its own procedure.

2 Judicial Performance Measurement

There is one school of thought that claims that most of the important matters regarding the performance of courts are not measurable. However, legal and economic scholars have been measuring judicial performance using a number of indicators for a long time. Many judicial systems also have standards that attempt to measure their performance among dimensions such as accountability, transparency, independence, efficiency, accessibility, and predictability.

For instance, the European Union (EU) focuses on three parameters of an effective justice system: efficiency, quality and independence (European Commission 2018). The European Commission prepares Justice Scoreboards annually, comparing the performance of all 28 EU member nations along a number of indicators that measure these parameters. The objective is to assist the Member States in their efforts to create a more investment, business and citizen-friendly environment.

In the United States, a commission to identify court performance standards was established in 1987 (Casey 1998). The commission proposed the Trial Court Performance Standards (TCPS), consisting of 22 standards under five broad areas: access to justice; expedition and timeliness; equality, fairness and integrity; independence and accountability; and public trust and confidence. Under these standards, 68 measures were selected. However, the adoption of these standards was limited, both because of their large number, and lack of clarity regarding their definition. Later, a simplified set of ten carefully defined measures (Cour-Tools) was proposed, which have been broadly adopted (Schauffler 2007).

Given the pervasive delays in the judiciary in India, administrative efficiency has been a

particular focus of the academic and policy literature here. Judicial efficiency is not easy to measure, particularly because the judiciary produces multiple outputs using multiple inputs. In the case of NCLT, only inflow and pendency seem to be reported in public (MCA 2018).

3 A Framework for NCLT Performance Measurement

In order to evolve a set of performance measurement criteria for India (to begin with, the NCLT), it might be best to start with a small set of indicators that are well thought out, rather than an unmanageably large number of indicators. It is also important that there is broad agreement within the judiciary itself about the importance of performance measures, their definition, and the uses that they are put to. We suggest that the judicial performance of NCLT can be measured through these indicators: Duration, Delays, Pendency, Outflow rate, and Cost.

3.1 Duration

The duration of a trial is the time taken between the initial filing of the petition and its disposal. It can be useful to further sub-divide the duration into two: administrative and judicial.

3.2 Delay

Delays are generally measured in two distinct ways. One way is to compare the duration of the case to a norm. If the case takes longer than the norm, it is said to be delayed, and the excess time taken is the delay. A drawback of this approach is that it cannot distinguish between cases that genuinely require more time, and cases that are delayed unnecessarily.

The second approach is to distinguish between those parts of the case which were judicially productive, and those which were not, and measure them both. This approach,

demonstrated in Regy and Roy (2017), allows us to accurately calculate a lower bound on the judicial delay. This will reveal the frequent causes of delay, and help us devise ways to remove them. Given that judicial delays are so high in India, we should attempt to track the delays through both these methods.

3.3 Pendency

Pendency is the stock of cases that have been filed, but not disposed. Most Indian courts already report it.

3.4 Outflow rate

Pendency, by itself, is not helpful without the context given by the inflow or the outflow. In order to track the current performance of a court, we suggest that the outflow rate should also be reported. This is defined as the ratio of the outflow over a time period to the average pendency during that period. The interpretation of the outflow rate is simple: it is the fraction of the workload that is disposed in a certain time.

3.5 Costs

The estimation of the cost must include the court fees, the fees charged by the lawyers, and the indirect costs incurred by the parties.

If court proceedings take a long time, the opportunity cost can be significant. For instance, the Economic Survey 2017-18 reported that 52 different infrastructure projects, amounting to a total of about Rs 52,000 crore, were stayed by various court injunctions, for an average period of 4.3 years (MoF 2018, p. 136). Similarly, the World Bank's Doing Business report claims that the recovery rate in India is very low, just 26.5% (World Bank 2019). This is part of the cost to the Indian economy due to judicial delay. For comparison, the number in Organization for Economic Co-operation and Development (OECD) countries is 70.5%.

3.6 Model

In the paper, we propose a mathematical model for the duration of a petition. The model predicts that the time taken for the disposal of a case depends on the number of pending cases. In other words, there is an externality: each case that is filed delays all other cases. It also suggests that the total time taken for the pleadings of a petition, is exponential in the number of hearings. A decrease in the number of hearings could potentially have a very large impact. We tested these predictions against the empirical data.

4 Evaluating the Performance of the NCLT

How does the NCLT stack up against the indicators proposed above? Most of the NCLT benches do quite poorly on many of the indicators.

We use a dataset that was shared by the Ministry of Corporate Affairs (MCA). This dataset contained extensive details about 8076 petitions filed under IBC at the NCLT till end of June 2018. It also contained summary information about the overall workload of the NCLT, including the non-IBC petitions. After cleaning, we had information about 6668 petitions.

The calculation of the average duration, delay, and cost of petitions is complicated by the fact that over half the petitions we have data on, are under process. If we consider only those petitions which have been disposed of, then the results may be misleading. The other observations were censored at the end of the observation period. To get an accurate picture, it is necessary to incorporate them also into our analysis. In order to do this, we used survival analysis, which is a field of statistics that studies the time till an event.

4.1 IBC petitions

IBC petitions seeking the admission of a firm into the Corporate Insolvency Resolution Process (CIRP) may be disposed of by the judge in two ways: admission or rejection. Another possibility is that filers may withdraw the petition. Table 1 summarizes the petitions in the dataset. In it, FC means the petition was filed by a financial creditor; OC means the petition was filed by an operational creditor, and CD means that the debtor itself approached the tribunal. “Transfer” indicates that a petition previously filed in a High Court has been now transferred to the Tribunal. Lastly, “Voluntary” means that the petition was filed by a firm to liquidate itself. It is notable that over half the petitions are still pending.

4.2 Pendency

In Figure 1, we plot the trend of petitions filed at the NCLT. It can be seen that NCLT has developed a large backlog: about 12,500 petitions as of June 2018. Note that this is the pendency for all petitions, not just those related to IBC.

If NCLT had been able to keep pace with the inflow, the pendency numbers would have been flat. However, Figure 1 shows that the overall pendency figures are increasing at the rate of about 600 petitions every month. Far from being able to make a dent in the backlog, NCLT is not able to keep up with the inflow.

4.3 Outflow Rate

As discussed earlier in Section 3.4, the pendency figure alone is meaningless without further context. The outflow rate is presented in Figure 2. It indicates that the outflow rate is around 10% every month. If there were no new petitions, it will take about 10 months for NCLT to finish off the pending workload.

4.4 Duration

Figure 3 shows two survival curves, the first stratified by the petition filer, and the second stratified by the bench. The first plot indicates that the petitions filed by a Corporate Debtor (CD) are more likely to have been disposed at any given time than petitions by an Financial Creditor (FC) or an Operational Creditor (OC). The second plot, which shows only a few benches for clarity, seems to indicate that petitions at the Mumbai bench take the longest.

Our mathematical model suggested that the duration of a petition is likely to depend on, among other things, the number of petitions pending at the time it was admitted, the net inflow rate of petitions. It could also potentially depend on the bench handling the petition. There might be systematic differences in petition disposal practices between the benches, resulting in different distributions of the disposal times. For instance, one bench might favor many short hearings, another might favor a few long ones, and a third bench might prefer many long ones.

Table 1: Status of IBC petitions at NCLT.

| Filer | Inflow | Admitted | Withdrawn | Dismissed | Pending |
|-----------|--------|----------|-----------|-----------|---------|
| CD | 232 | 102 | 6 | 45 | 79 |
| FC | 1240 | 228 | 54 | 249 | 709 |
| OC | 4349 | 247 | 389 | 1250 | 2463 |
| Transfer | 839 | 18 | 26 | 677 | 118 |
| Voluntary | 8 | 0 | 0 | 3 | 5 |
| All | 6668 | 595 | 475 | 2224 | 3374 |

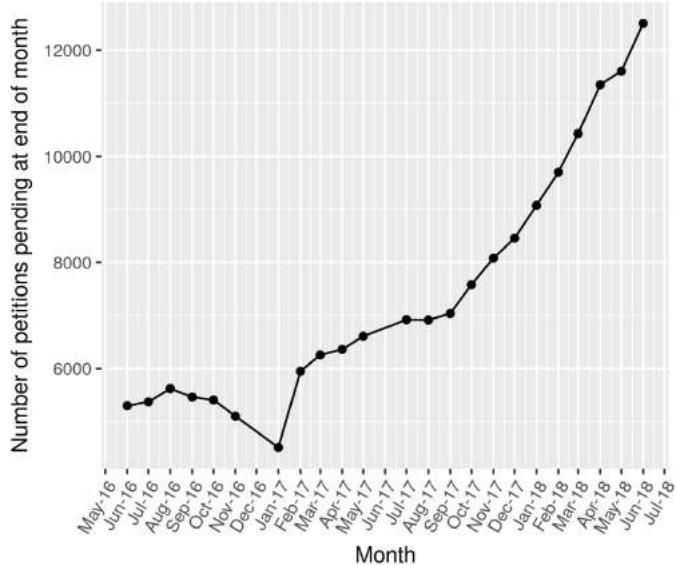


Figure 1: Pendency of all petitions at NCLT

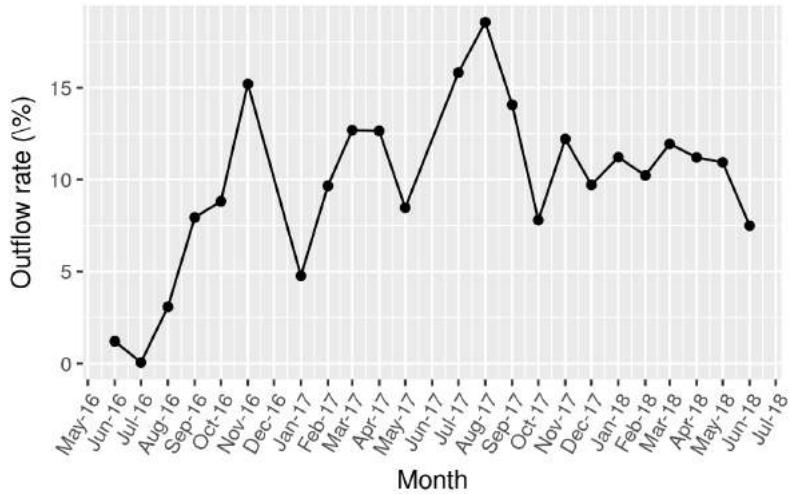


Figure 2: Outflow rate at NCLT

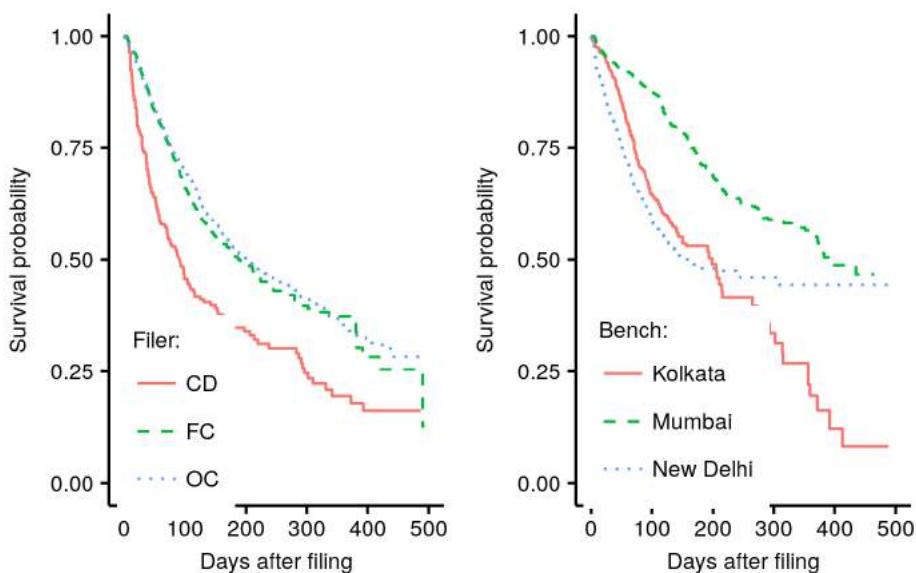


Figure 3: Survival Curves

Our analysis revealed that the filer, the inflow rate, the bench, and the pendency at the bench, are all highly significant in determining the duration. It also helps in quantifying the impact of these factors. For instance, an increase in the net inflow of petitions of one petition per day is predicted to increase duration by 7%. This provides strong empirical support to our mathematical model.

Using this model, we were also able estimate the duration that a particular petition will take. In Table 2, we provide the predicted expected values for the time taken for the disposal of petitions filed by a CDs. The values of pendency and inflow rate correspond to a situation where the petition is filed at the 11 different benches towards the end of June, 2018. It can be seen that there is a wide variation in the average time for disposal, with Gauhati bench the fastest and Mumbai the slowest. It may be noted that in each of the benches, the predicted mean time is greater than the statutorily-allowed 14 days.

4.5 Delay

When a petition for admission of a CD into the insolvency process is filed at NCLT, the IBC asks NCLT to admit or reject the petition within 14 days. If we assume that administrative processing of the petition can take up to seven days, then the petition ought to be disposed within 21 days of filing. In Table 3, we estimate the fraction of petitions that are disposed within this time, given the June 2018 loads at the benches. Gauhati bench is estimated to perform the best, but even it is able to dispose of only half its new petitions within 21 days.

Table 3: Fraction of IBC petitions disposed within 21 days.

| Bench | Fraction of cases disposed (%) |
|------------|--------------------------------|
| Ahmedabad | 13 |
| Allahabad | 16 |
| Bengaluru | 13 |
| Chandigarh | 12 |
| Chennai | 10 |
| Gauhati | 44 |
| Hyderabad | 3 |
| Kolkata | 7 |
| Mumbai | 2 |
| New Delhi | 15 |
| Principal | 15 |

Table 2: Estimated time to dispose petitions filed by CDs — comparison of benches under current loads (as on June 2018)

| Bench | Pendency | Daily Net Inflow Rate | Time to dispose (days) |
|------------|----------|-----------------------|------------------------|
| Ahmedabad | 587 | 1.9 | 95 |
| Allahabad | 230 | 0.9 | 58 |
| Bengaluru | 589 | -0.0 | 83 |
| Chandigarh | 294 | 1.0 | 65 |
| Chennai | 1140 | 1.5 | 126 |
| Gauhati | 40 | 0.3 | 24 |
| Hyderabad | 652 | 0.6 | 91 |
| Kolkata | 1094 | 2.5 | 133 |
| Mumbai | 5492 | 14.6 | 660 |
| New Delhi | 1619 | 2.9 | 164 |
| Principal | 579 | 1.1 | 90 |

4.6 Cost

The cost of the judicial process should also include the cost of the delay in the court. This cost can be calculated as the time value of money for the amount at stake in the petition, for the period of the delay. We have attempted to calculate this figure for IBC petitions here. The cost due to delays comes to over Rs 5400 crore. This amount, large as it is, is a very conservative lower bound on the actual cost to the economy due to the delays in NCLT. Others have estimated the cost to be as high as Rs 25,000 crore (Iyengar 2018).

5 Discussion

It is clear that the NCLT suffers from severe problems of delay, pendency, and cost. In this Section, we try to diagnose the root causes of these delays. We propose some steps to solve these problems.

5.1 Diagnosis

5.1.1 Delay due to extra steps

It is often found that judges allow adjournments for reasons such as facilitating a settlement. This converts the tribunal proceedings to a negotiating tactic. These requests for adjournment should have been rejected, recognizing that the parties do not have the right to discuss their settlement on the tribunal's time. Such requests are wasteful not just of the time of the tribunal, but also of the thousands of other petitions pending before the NCLT.

Allowing IBC petitions to be used as a negotiation tactic in a settlement discussion can have more dangerous consequences as well. A bankrupt debtor might be able to arrive at settlements with each creditor separately, and thus conceal the true situation of the business from them. A CIRP, on the other hand,

forces the CD to reveal complete information about the business to all the creditors.

5.1.2 Delay due to failed hearings

In Regy and Roy (2017), the authors define a failed hearing as a hearing which meets these conditions:

1. The hearing resulted in an adjournment without transacting judicial business;
2. The adjournment was avoidable; and
3. The adjournment was not penalized.

These hearings cause delay by consuming the time of the judiciary (and, consequently, all the other petitioners and respondents waiting for judicial time) in an unproductive manner. Both extra hearings and failed hearings increase the workload of the tribunal and increase the time other petitioners have to wait for the disposal of their petitions.

5.1.3 Systems and processes

Judicial time is precious and should be reserved for making judicial decisions. Using judicial time for administrative purposes, or to oversee procedural steps, should be avoided as far as possible. Properly designed systems and processes can help with this. For instance, some procedural matters could be handled at the level of the registry.

We also found that if the load was equalized across the benches, some benches would take twice as much as others to dispose of similar petitions. This high variation in the performance of similar tasks might have to do with different local processes. The reasons for the variation should be investigated further. If some benches are able to dispose of petitions faster without compromising on quality, other benches could learn from their process improvements.

5.1.4 Capacity constraints

There has been a long-standing assertion that one of the main reasons for judicial delays in India is the lack of sufficient judges (Law Commission 1958; Law Commission 2014; Department of Justice 2016). This view seems to be favored within the judiciary itself (Misra 2018).

It is definitely possible that capacity constraints are a significant contributor to delay, though, in the absence of better data, it is not possible to come to a clear conclusion about the degree to which capacity constraints are responsible.

It should be noted that capacity constraints may not exist only at the judicial level, but at the administrative level as well. High-quality support staff, and technological automation can help reduce the burden on the judicial members.

5.2 Solving the problem

5.2.1 Adjournments

Judicial liberality in granting adjournments hurts the delivery of justice to all other waiting parties, and creates perverse incentives for the parties and their lawyers. Reducing wasteful hearings can make a very significant dent in judicial delay. The number of hearings has an outsize impact on the total time taken for the disposal of a petition, and consequently on judicial delay. This intervention has no budgetary implications, but it requires a mindset change in the judiciary. It might well be the most effective reform that can reduce delays.

5.2.2 Planning

A key method to prevent the build-up of a backlog is to estimate the future workload and to ensure that adequate judicial manpower, administrative manpower, and support

infrastructure are put in place to deal with that workload. This is done in many countries using what is called Judicial Impact Assessment (JIA) — using court data to predict the resources required by the judiciary to handle future case-load. However, JIA requires accurate and detailed data, which is currently not available for many courts in India. Nevertheless, a JIA was attempted by Damle and Regy (2017), who predicted early on that the NCLT was too poorly equipped to handle the case-load it would face.

5.2.3 Rethinking processes

The registry can play a very important role in improving the performance of the tribunal. For instance, it can help ensure that petitions are put up with a minimal set of prescribed documents, so that the tribunal's time is not wasted chasing after paperwork.

5.3 Culture

It is widely recognized that repeated adjournments are causing injustice and delay, but there is a deep-rooted resistance to changing this "adjournment culture". The authors have come across several cases (not just in NCLT, but in other courts/tribunals as well) where lawyers request adjournments repeatedly, claiming that they need ever-more time to produce basic documents. Sometimes lawyers are absent when their petition is scheduled to be heard, with the excuse that they were stuck in traffic, or that they were otherwise busy (Regy and Roy 2017). Such behavior would be unacceptable in most other professions, but apparently it is acceptable in the Indian judiciary — the judges grant the adjournments without penalty.

Perhaps part of the reason for this culture is that when young lawyers enter the profession, they are socialized into accepting adjournments and delays as normal, and they carry this attitude with them as they go on to become judges.

Another reason could be that there might be perverse incentives for some lawyers who benefit from delays. In any case, the adjournment culture survives in spite of appeals and directives by the higher courts. It has also turned out to be resistant to statutory efforts for change.

Changing the culture of an organization or a profession is difficult. It requires a shared vision, horizontal communication, reinforcement, and new systems and processes that support the

new vision, rather than top-down directives. Skillsets from outside the judiciary — such as economists, business process management consultants and change management consultants — might also need to be brought in.

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Financial Inclusion – Some Progress, A Long Way to Go

Prasanth Regy, Vijay Mahajan and Jagmeet Singh



NABARD has recently released the results of the All India Rural Financial Inclusion Survey. The survey, which was for 2016-17, covered 40,327 rural households. The survey defined agricultural households as those where at least one member was self-employed in agriculture in the past year, and which derived at least Rs 5000 from agricultural produce. It found that the average annual income of an agricultural household was Rs 1,07,172 vs Rs 87,228 for non-agricultural households. An analysis of the findings throws up several insights about rural India.

Rural India is No Longer Predominantly Agricultural

Only about 48% of all rural households are agricultural --- a majority of rural Indian households are NOT agricultural households.

But that is not all. Even among agricultural households, just 43% of their income was from agriculture. Overall, only 23% of rural income is agricultural. In other words, agriculture (crop cultivation plus livestock rearing) does not yield even a quarter of overall rural income. Further, agricultural households are aggressively diversifying – about 88% of them had two or more sources of income. Clearly, farmers are not just farmers any more.

Among the other sources of income, the most important was wage labour, including public works, which accounted for more than a third of the income of agricultural households. It provides an important source of supplementary income to farmers, especially when cultivation on their own account can be risky and unremunerative.

The data shows that the income of agricultural households possessing less than 0.4 hectares (one acre) is lower than both those who have more land, and those who have no land (see Figure 1). These households might well be better off if they were to either sell off their land, or if they were to buy or lease in more land. This illustrates the importance of well-functioning land markets. It also highlights the need to liberalise tenancy laws, so as to enable the recording of leasing for the purposes of inputs, credit, insurance and marketing support.

Access to Financial Services Remains Weak

While 88% rural households reported having a bank account, with average savings of Rs 18,007 per annum per saver household, but the overall situation regarding financial savings is grim. Only half of all rural households saved in the last year. Even in the top 10% of households by consumption, only about 61% were able to save. Further, of the saver households, only half saved in a formal institution. This is in agreement with other reports that many of the savings accounts opened over the past few years under the Jan Dhan Yojana are dormant.

The survey also enquired about the “indebtedness” of rural households. The survey found that 47% of all rural households were “indebted” and of this 70% had borrowed from formal sources. Thus, formal institutions account for only about a third of all households being reached. Any household which had an outstanding loan at the time of the survey is dubbed “indebted”. The borrowing households had borrowed about Rs 92,000 on an average from all sources, 70% from formal and 30% from informal.

The survey also offers evidence about the coverage of the central government’s agricultural insurance scheme meant to provide crop insurance against natural calamities, pest attacks, and diseases. Even though the scheme offers high subsidies, the survey found that only 6.9% of the households that had an agricultural loan had crop insurance, in the agricultural year 2015-16. More recent figures indicate that 5.72 crore (over 50%) farmers were covered in the year 2016-17 under the Pradhan Mantri Fasal Bima Yojana.

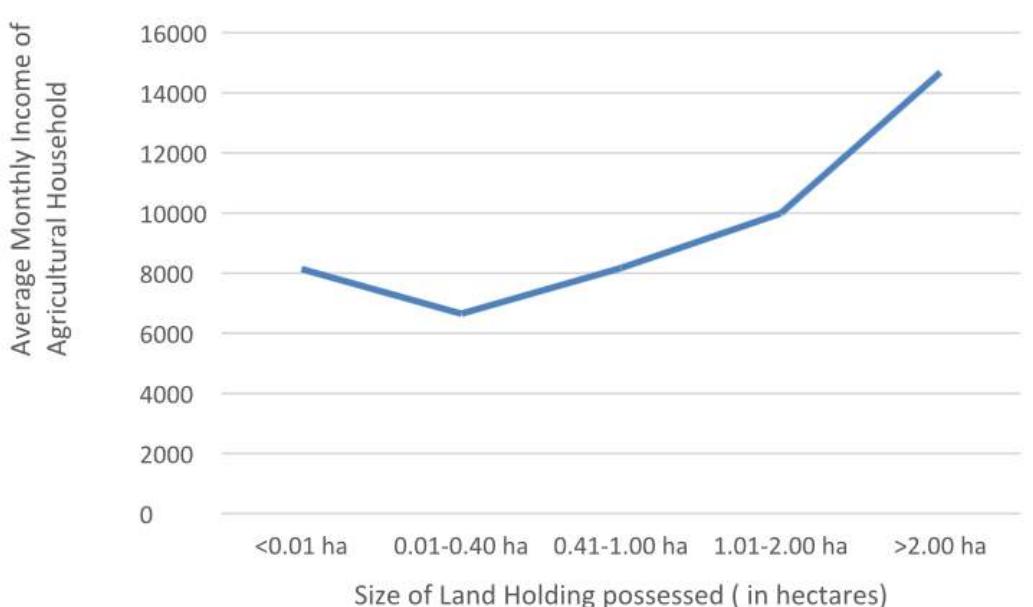


Figure 1: Average monthly income of agricultural households by size of land possessed (Rs)

Need for Better and Annual Surveys

While this survey provides valuable insights, it could be even more useful if it was better designed. To begin with, the survey designers should ensure comparability with other major surveys covering the same sector. This survey differs from the well-established NSSO surveys slightly in its definitions of basic concepts such as “rural” and “agricultural household”. If these definitions had been the same, the figures produced by this survey could be more easily compared with the figures produced by NSSO.

Secondly, the survey should be useful from a policy perspective. For instance, knowing whether a rural household is “indebted” or not is not very useful. By this logic, anyone who has taken a housing loan is indebted, even though they own an asset usually in excess of the value of the loan. The term “indebtedness” conveys a negative image, notwithstanding the fact that state policy in India has been aimed at increasing formal indebtedness. The authors feel the correct phrase should be "accessed credit". The term “indebted” should be used for those households whose liabilities exceed

their assets or whose debt servicing obligations exceed, say, 30% of their income.

For some households, credit helps increase their net earnings. Other households might find themselves in a debt trap, compelled to borrow more to repay previous loans. The survey would be much more useful in the design and evaluation of policy if it could dig deeper and attempt to distinguish between these two kinds of households, rather than group them all under the rubric “indebtedness”

Thirdly, the survey might be better if it were shorter. Most of the readers of this article would not be very forthcoming if a stranger started asking intimate questions about their financial situation. Any residual willingness to help will quickly evaporate when faced with an interminably long questionnaire. These factors can lead to a systematic bias, which could be reduced if the survey were made shorter, and the questions spread across more households.

Exercising Democracy: Lessons from Kambur

Yuvraj Kalia

Kambur, a small village panchayat in Madurai district of Tamil Nadu has risen against all odds to fill the gaps in the implementation of the 73rd Constitutional Amendment Act in letter and in spirit. Driven by a group of local youngsters and forced by distress in livelihoods, people of this Gram Panchayat are beginning to organise themselves into something like a movement. A video documentary and a detailed case study from our recent visit to the village panchayat are scheduled to be released soon. Few highlights are presented here.

India went for globalisation and decentralisation one after the other in early 1990s, unlocking both global and local forces within the country. It may be argued that global forces have been more successful than the local. Recent experience from Kambur village panchayat, however, challenges such arguments with vigour of a dynamic local community. Their answer is Gram Sabha.

Kambur village panchayat is located in Melur block of Madurai district of Tamil Nadu. It comprises of 7 small habitations or villages. Agriculture is the major occupation of residents. Thanks to rocky terrain of the area, there is a quarry within panchayat territory. The quarry once thriving and a major source of income for the residents for a very long time is not operational from some time. This has adversely impacted livelihood opportunities in the area. The panchayat area is scarce in water resources with ground water being major source of potable water. This has affected agricultural output and incomes.

As per the residents, two habitations have faced acute shortage of water in recent past. A considerable number of youngsters have

migrated to gulf countries and also to other districts of the state and neighbouring states for want of meaningful livelihoods. Following the demise of a tall state-level political figure in 2016, and ensuing political turbulence, the elections of PRIs have not been held by the state government. Currently, the functions of the Kambur panchayat are executed by the Panchayat Secretary on directions of the Block Development Officer (BDO) of Melur block.

Three major areas of concerns are usually referred to in literature pertaining rural governance studies in India. These are concerns regarding inclusiveness; accountability; and effectiveness of decentralised institutions (United Nations Development Programme 2001).

Inclusiveness

Addressing the concern as to making panchayat processes inclusive, people from Kambur have deployed strictly issue based dialogue as a method to include traditionally marginalised groups such as women, Dalits and OBCs, and economically weaker sections or poor. These dialogues, starting from among neighbours aggregate into a final list of issues that are



Women articulating their views in a neighbourhood issue dialogue on water availability

decided to be raised in Gram Sabha meetings.

It was observed that women, emboldened by the experience of self-help groups, often lead these dialogues. On top of that, people have managed to keep political parties and political agendas at bay. Another vital tool ensuring an inclusive process is the use of technology by villagers. All the activities pertaining to Gram Sabha are circulated among the population using WhatsApp, Facebook and other platforms. The visit of RGICS team too was broadcasted through live videos on social media, keeping NRIs from the panchayat area, who support the movement financially, abreast of the developments.

Accountability

Accountability, or lack of it, has been another major challenge in making Gram Panchayats an agent of rapid human development. The unawareness of rural masses manifests through

low turnouts at Gram Sabha meetings as observed by various Ministry of Panchayati Raj (MoPR) reports. It is through Gram Sabha that panchayat officials are supposed to be held accountable for their actions or inaction (United Nations Development Programme 2001).

In Kambur, residents have used MoPR's PRIASoft (Panchayati Raj Institutions Accounting Software) and the Right to Information (RTI) Act to audit the expenditures undertaken by the panchayat officials and mobilise people to attend Gram Sabha meetings. Based on the information obtained through these platforms, people have posed pointed questions to panchayat officials in recent Gram Sabha meetings. Such activity has alerted officials at the block level, and made district collector of Madurai to promise to examine allegations of misuse of panchayat funds raised by residents of Kambur.

Effectiveness

Panchayats all over the country have failed to achieve an image of effective vehicles of social transformation, and rightly so. PRIs have been used as a mechanism of delivering the schemes and programs planned and formulated at higher levels of government as opposed to institutions of self-governance (United Nations

Development Programme 2001). As such, the effectiveness of PRIs in improving lives of the people is in question. While it is too early to comment on the effectiveness of processes and institutions activated by people's movement in Kambur, it can be safely stated here that it is springing.

The participation in Gram Sabha meetings of Kambur panchayat has been steadily on the rise from middle of 2017. Since then, no Gram Sabha meeting has gone by without passage of at least one resolution, which articulate felt needs of the community. As opposed to seemingly national

trend of meagre attendance in Gram Sabha meetings, meetings of Kambur panchayats echo far with questions from women and men gathered without consideration to caste or class. As we were told, this was not the case almost a couple of years ago. If not anything else, this is a good indicator that panchayat processes are becoming dynamic.

This phenomenon of Kambur panchayat rising from dormancy and increasingly getting known for its dynamism is flowing from same 73rd CAA applicable all over India, and same Tamil Nadu Panchayats Act in force in the state of Tamil Nadu. As for the youngsters spearheading this change, it is just a beginning. A range of actors from within and outside the panchayat area involved in pulling off a textbook use of Gram Sabha. Hence, the case of Kambur village panchayat holds promise of more lessons for other panchayats. To find out, keep updated with rgics.org for detailed case study and a

Preparatory meeting in progress for finalising issues to be raised in next Gram Sabha meeting.



and a video documentary to be published soon.

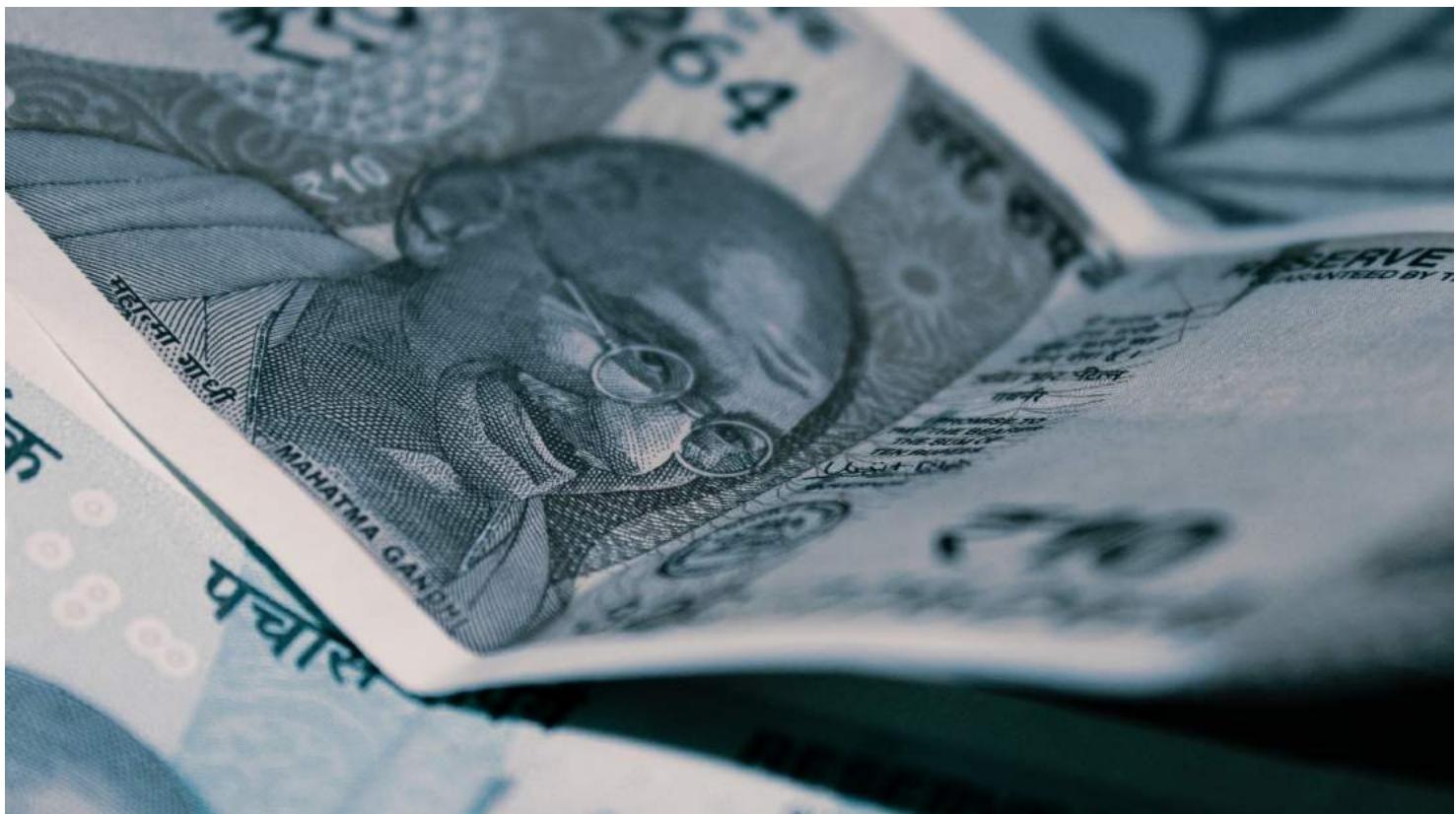


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Contentious Terms of Reference of Fifteenth Finance Commission

Subhrali Kachari



The Constitution of India mandates the formation of Finance Commission every five years, to give recommendation on principles of devolution of tax revenue between the Centre and the States, the principles which should govern the grants in aid of revenues and any matter referred by the President. Apart from the duties mentioned in the Constitution, Finance Commission is given further guidelines by the central government which specifies the matters to be taken into regard while making the recommendations. Until the Sixth Commission, the guidelines were related to grants-in-aid which are done from the Consolidated Fund of India. However, from the Seventh Commission, the Terms of Reference (ToR) have been extended to the devolution of the tax proceeds.

The Fourteenth Finance Commission was the last one to submit its recommendation for the financial years from 2015-2020. The Fifteenth Finance Commission, which is to give recommendations for five economic years commencing from 1st April 2020 was formed in November 2017. The commission is headed by former bureaucrat Nand Kishore Singh, with full-time members Shaktikanta Das, Ashok Lahiri and Anoop Singh. The recommendations to be given by the Fifteenth Finance Commission are particularly important as a few crucial changes (considered to be game changers of fiscal federalism) have been introduced lately.

The introduction of the Goods and Services Tax regime has been the biggest change. Another change is the dissolution of the Planning Commission which has cut down a parallel way of resource transfer, as its replacement, the Niti Aayog, does not have any allocation power. As the division of plan and non plan expenditure is removed, the Commission will have to look at the resource allocation in totality rather than in fragments. The slow down in the growth of economy for the last few years also increases the importance of the recommendation of the commission (Reddy, 2018).

However, the ToR of the Fifteenth Finance Commission has been criticized extensively for being unconstitutional and contentious. The four southern states, Kerala, Tamil Nadu, Andhra Pradesh and Karnataka had held a conclave to show their disagreement with the ToR and signed a memorandum for amendments.

The criticism of the ToR have been broadly under three heads, (i) the bias of the ToR towards the Centre (ii) unfairness towards some States and (iii) the ineffectual incentives mentioned in the ToR.

Bias towards the Centre

The prime criticism which has come forth is that the ToR intend to increase the resource share of the Centre and decrease the fiscal space of the states. This criticism is based on one of the ToR which refers to examination of the need for revenue deficit grants for the states. The Revenue deficit grants have been often criticized by economists as it does not encourage the States to exploit its resources upto the highest potential. The Fiscal Regulation and Budget Management Act, 2002 also directs the Government to eliminate revenue deficit in phases.

However, the sudden removal of the revenue deficit grants is problematic as the Centre and States have not been able to eliminate the revenue deficit as stated under FRBM (Bhaskar, 2018). A few states like Tamil Nadu have also tried to postpone the zero deficit targets, by amending the FRBM Act after passing it. The number of states receiving the revenue deficit grants has come down from 15 in the Eleventh Commission to 11 in the Fourteenth Finance Commission but some states like West Bengal have been facing revenue deficits constantly for the last few years. As no alternate way to address the revenue deficit has been formulated yet, the removal of revenue deficit grants seems to be unfeasible.

Criticisms had also flared up as one of the ToR asks the commission to regard the impact of the increased devolution of tax proceeds to the States on the fiscal situation of Union Government. The Fourteenth Finance Commission had increased the share of the States from 32% to 42%. Though the tax share has increased, the aggregate transfer of revenue has remained approximately same. In the financial years of 2011-12 and 2012-13 the aggregate transfer of gross revenue receipts to the States was 53.7% and 49% respectively (Reddy, 2018).

However, after the increase in devolution, the aggregate transfer was 48% of the gross revenue receipts in the first year of fourteenth Commission, (Reddy, 2018). The task of assessing the previous Commission's recommendation as been termed as unprecedented by many, while V Bhaskar further doubts its necessity as every commission makes an ab-initio assessment to give recommendations and cannot take previous Commission's recommendation as reference point.

Unfairness towards some States

A few states like Tamil Nadu, Kerala, and Karnataka have shown their disagreement with the use of the population data of the 2011 census, in contrary to the use of 1971 data as done by the previous commissions. The reason behind is that the use of 2011 data is likely to affect the States which have been able to control population growth after 1971. The 2011 census data was introduced by Fourteenth Finance Commission with a weightage of 10%, after reducing the weightage of 1971 from 25% to 17.5%. That arrangement had cost many States a substantial share of revenue. As an example, Tamil Nadu had lost an amount of 6000 crore, which is 19 % of the fund allocated by the 13th finance commission.

If the Fifteenth Finance Commission uses the data of 2011 solely, Tamil Nadu might lose 70% of the funds of what it would be allocated under the 13th commission (Bhaskar, 2018). Apart from the developed southern states, the other lesser developed states which have made considerable progress in reducing their population growth are Assam, Goa, Himachal Pradesh, Odisha, Punjab and West Bengal.

On the other hand, the use of 2011 data has been welcomed by economists like Rathin Roy and G R Reddy. They term the 1971 data as irrelevant and suggest that instead of use of 1971 data, the states should ask for compensation for the loss owing to relative change in population due to successfully implemented population control measures. The compensation to these states can be made in the form of award for controlling the population growth.

Another significant opinion on this ToR, given by Pinaki Chakraborty says that it is too soon to assume that the southern States will receive less funds as the Commission has full authority to

determine the relative weightage of the parameters, and the Commission has full liberty to bring up a new mechanism to ensure fairness in the devolution.

The anxiety of the States has been further increased by an incentive proposed for the states making effort and progress towards the replacement rate of population growth. According to the United Nations the replacement level fertility rate is reached when the total fertility rate (TFR) is below 2.1%. The States in India which needs considerable efforts to reach this fertility replacement rate are Bihar, Uttar Pradesh and Rajasthan. Other states like Assam and Jharkhand have almost reached that replacement rate.

As highlighted by V. Bhaskar, this incentive will end up benefitting the states which will also be benefitted by the use of 2011 census. This incentive is also not accompanied by any award for the states which have already reached the replacement rate which makes it appear biased.

Incentives mentioned in ToR

One of the incentives proposed, is for the States that have made considerable progress in expanding and deepening the GST tax net. The notable point is that the states which require incentives are the ones which have suffered revenue loss and have not deepened the GST tax net. Under the Goods and Services Tax (Compensation to States) Act, 2017 the states will be compensated for the revenue loss by the Union Government. But extra incentive might be needed by those states for expanding the tax net. Hence the incentive is being targeted towards the wrong States, whereas the need of it is seen in the rest.

One of the ToR suggesting incentives and deterrents to control populist measures has been found problematic as the term 'populist'

measure once, but later integrated under both Central and State plans (Bhaskar, 2018). In Bhim Singh vs Union of India and others 2010, Supreme Court stated that a law or scheme can be put down on its unconstitutionality but not on the basis of its viability. Hence deterring programmes on their ‘populism’ would be against the Supreme Court mandate (Bhaskar, 2018).

One of the ToR directs the commission to check the impact of National Development Programme of New India 2022 on Union Government finance and to provide incentive to states for promoting the flagship schemes of Government of India. Most of the broad based and inter sectoral programmes like New India 2022 are operational through the State

Governments, which implies that the financial impact of the programme should be studied at levels of both the State and Central government.

Conclusion

The debates on ToR of the Fifteenth Finance Commission revolve around equity based devolution, federal entitlements and constitutional propriety. The concerns raised by the states need to be addressed to preserve the spirit of cooperative federalism. It is also the responsibility of the Commission to ensure inclusive and sustainable growth and development, which might require preferential treatment of some states.

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