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Unending slowdown

Momentum must be restored before low inflation and energy prices reverse direction

India's economy continues to decelerate with the government's estimate for first-quarter gross domestic product pegging growth at a 13-quarter low of 5.7% in April-June. The reasons for the protracted slowdown – a slide of five straight quarters from 9.1% in March 2016 – are many and varied. But there is little doubt that the demonetisation exercise combined with the uncertainty around the July 1 adoption of the new indirect tax regime served to significantly dampen economic activity. While the GST-related "inventory deaccumulation" that Chief Statistician T.C.A. Anant referred to may well be reversed in the current quarter as companies across sectors gain comfort with the new tax regime, it is still doubtful whether demand for industrial output is going to attain any meaningful strength. The Reserve Bank of India last month said that its industrial outlook survey had "revealed a waning of optimism in Q2 about demand conditions across parameters and especially on capacity utilisation, profit margins and employment." A look at the sector-specific trends shows that manufacturing expansion in gross value added (GVA) terms has slackened to a near stall at 1.2%. This, from 5.3% in Q4 of the last fiscal and 10.7% a year earlier, is a far from heartening sign. With capacity utilisation expected to weaken this quarter, according to the RBI, and with surveys suggesting that consumer sentiment has deteriorated steadily in August, the auguries for a demand rebound are far from promising.

While expressing concern about the slower-than-expected expansion, the Finance Minister has acknowledged that the challenge before the government now is to work out both policy and investment measures to boost momentum. One option would be to suspend the fiscal road map for a limited period in order to pump prime the economy through increased capital spending by the government. The risks of fiscal loosening are of course manifold, especially at a juncture when several State governments have either announced or are contemplating large-scale farm loan waivers, which would push up interest rates and crowd out fresh lending. Still, there is a thin sliver of a silver lining in the GDP data. The services sector continues to remain buoyant. Quarterly GVA across this broad swathe that encompasses trade, hotels, transport, communication and broadcasting accelerated to 11.1%, from 6.5% in the fourth quarter, faster than the 8.9% posted in the corresponding period last year. The civil aviation sector saw passenger traffic soaring by 15.6%, and construction activity, a provider of jobs, also ticked up by 2%. The Finance Minister has his task cut out: to find ways to restore momentum before the tailwinds of low inflation and affordable energy prices start reversing direction.

A blind eye

Myanmar's refusal to address the Rohingya issue diminishes its democratic transition

The continuing failure of the Myanmar government to act decisively and urgently to protect civilians from the raging crossfire between the security forces and insurgents is shocking. The recent clashes in the western State of Rakhine have claimed over 70 lives and forced thousands of Rohingya to flee across the border into Bangladesh, in a rapidly deteriorating humanitarian crisis. Most of the victims are women and children, according to the UN's International Organisation for Migration, which has called for additional aid to cope with Dhaka's refugee situation. The latest flare-up began last Friday when militants suspected to be from the Arakan Rohingya Salvation Army attacked military and police outposts. That should have served as a caution against an excessive counter-insurgency operation, a real possibility given the history of systematic persecution of the Muslim minorities in Rakhine. The military crackdown that followed has been widely condemned as disproportionate and the government accused of being an onlooker. The UN High Commissioner for Human Rights has even rebuked Aung San Suu Kyi's office for what he described as irresponsible statements that could disrupt aid and relief activity. Ms. Suu Kyi is not just the foreign minister; as a Nobel peace prize winner she has also failed to exert any moral pressure to secure humane treatment and humanitarian assistance for the systematically persecuted Rohingya. She has rightly come under criticism for her continued silence over the army brutalities.

In fact, the UN agency's report in February, based on a study of the military crackdown, had described the slaughter of thousands and displacement of even larger numbers as crimes against humanity. But the reactions of the radical Buddhist nationalists, who have traditionally resisted recognition of the Rohingya as citizens of Myanmar, have been predictable. They have demanded even tougher action from the government in the wake of the terror unleashed over the past week, and rubbished the findings of the officially appointed Advisory Commission on Rakhine State, headed by former UN Secretary General Kofi Annan. The Myanmar government has an obligation to act on the recommendations of the Commission, on the guarantee of citizenship rights to the Rohingya, freedom of movement and enforcement of the rule of law. It is inconceivable that the country's yearning for peace and normal life could be fulfilled in the absence of these minimum prerequisites. The ruling National League for Democracy, which takes legitimate pride in its heroic defiance of the military junta, has a largely unfinished agenda on democratic transition. Enormous powers are vested in the military. The further consolidation of the hard-won freedoms from dictatorship will remain an arduous task so long as a large minority of the population is systematically excluded from the political process.

To clear the path ahead

Abolition of instant triple talaq is the beginning of the process of reforms in Muslim personal law

A. FAIZUR RAHMAN

Without a doubt, the August 22 Constitution Bench judgment on instant talaq (*talaq-e-bid'a*) was a historic one. For the first time in Indian history *talaq-e-bid'a* was specifically debated and set aside by the Supreme Court. In the 2002 *Shamim Ara* case a two-judge bench of the Apex Court had delegitimised this medieval practice only when it was not properly pronounced and preceded by attempts at reconciliation. But the latest ruling completely and unconditionally invalidates *talaq-e-bid'a* and renders it bad in law. The Koranic procedure of talaq is the only way by which a Muslim husband will be able to divorce his wife from now on. It is time then to recap the judgment to chart out the next steps.

The majority judgment

The path that was taken to arrive at this landmark decision was tortuous, but intellectually invigorating. Justices R.F. Nariman and U.U. Lalit started off by correctly concluding that *talaq-e-bid'a* cannot be excluded from the definition of "talaq" mentioned in Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937. Additionally, they declared that as the Shariat Act was a law made by the legislature before the Constitution came in force, it would fall within the expression "laws in force" in Article 13(3)(b), and would be hit by Article 13(1) if found to be inconsistent with Part III of the Constitution, to the extent of the inconsistency.

Surprisingly, the two judges chose not to examine if the *Narasu Appa Mali* ruling was a good law. This judgment had held that personal laws cannot be tested against the provisions of Part III of the Constitution. Nonetheless, having brought the 1937 Act under the ambit of Article 13, the judges analysed several engrossing Supreme Court pronouncements to show how capricious, excessive and disproportional laws are "manifestly arbitrary" and the very antithesis of equality.

But the biggest achievement of Justices Nariman and Lalit is their harmonisation of constitutional equality with Koranic egalitarianism. This was done by endorsing the Koranic law of talaq mentioned in *Shamim Ara* and declaring *talaq-e-bid'a* to be "manifestly arbitrary" and violative of Article 14 because it allows a Muslim man to break the marriage "capriciously and whimsically" without attempting to save it through reconciliation. On these grounds, Section 2 of the 1937 Act was struck down as being void to the extent that it recognises and enforces instant talaq.

Interestingly, Justice Kurian Joseph, even while fully agreeing with the doctrine of manifest arbitrariness on the pure question of law, disagreed with Justices Nariman and Lalit that the 1937 Act regulates instant talaq and hence can be brought under Article 14. In his view, *talaq-e-bid'a* can be set aside without testing any part of the 1937 Act against Part III of the Constitution. As the whole purpose of the Shariat Act was to declare *Shariah* as the "rule of decision", any practice that goes against the *Shariah* cannot be legally protected. *Talaq-e-bid'a* falls outside the *Shariah* because it goes against its primary source, the Koran. Therefore, what is bad in theology is bad in law as well.

Those who criticised the authors of the majority judgment for grounding the crux of their ruling in the Koran ignore the fact that personal laws of all communities in India enjoy constitutional protection. And as these laws are sourced from religious scriptures in most cases the Apex Court cannot but uphold the right of individuals and groups to profess, practise and propagate everything that forms an essential part of their religious scripture, subject to the provisions of Article 25(1). It may be pointed out here that the Koranic procedure of talaq that was implicitly upheld in this judgment does not in any way violate our constitutional values.

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The minority opinion

In their 272-page ruling former Chief Justice J.S. Khehar and Justice S. Abdul Nazeer, in contradiction to the majority judgment, declared *talaq-e-bid'a* to be an essential part of the Hanafi faith and gave it protection under Article 25(1). However, this view does not stand up to scrutiny as it is based on the flawed integral premise that a religious custom which has been in vogue for several centuries automatically becomes integral to the denomination that practises it. Such a stance is not consistent with the teachings of the Koran.

Had Justices Khehar and Nazeer given weight to the overwhelming evidence in the Koran and authentic hadeeses against instant talaq they could have avoided the problematic invocation of Article 142 to direct the state to enact an "appropriate legislation" on *talaq-e-bid'a*. One fails to understand how after having declared instant triple divorce a fundamental right under Part III of the Constitution the judges could direct the state to bring a law against it. Article 13(2) clearly states that the "State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." Even Justice Kurian had expressed "serious doubts" if the exercise of a fundamental right can be injuncted under Article 142.

The minority view also failed to appreciate the fact that hadeeses quoted by the AIMPLB were comparatively less authentic than those cited in High Court judgments relied upon by the petitioners which were from the six most authentic Sunni hadees books (*Sihah Sitta*). The AIMPLB cited just one report from Sihah Sitta (Hadees No. 5259 from Sahih Bukhari) in which instant talaq is mentioned. But this hadees does not show any Prophetic support for *talaq-e-bid'a*. It clearly states that the man who pronounced "triple talaq" did so "without the Prophet's command."

Implications of verdict

As pointed out above, the biggest goal attainment for Muslim women is the realisation that *talaq-e-bid'a* in any of his manifestations will not dissolve the marriage. This renders redundant not just halala but the incorporation of a platitudinous advisory against instant talaq in the *nikahnama*. There is also scope now to amend the 1937 Act, even without designating it as statutory law, to exclude *talaq-e-bid'a* from the definition of the word "talaq" mentioned in Section 2, and make the Koranic procedure of talaq gender-neutral. Indeed all provisions of the *Shariah* mentioned in the 1937 Act can be similarly redefined to bring them in conformity with the humanitarian teachings of the Koran and the Prophet.

This judgment will also encourage legally and theologically informed Muslim intellectuals to establish mediation centres across India under the Alternative Dispute Resolution (ADR) mechanism to help Muslim couples amicably resolve their marital disputes. To echo the feelings of many, this is not the end but the beginning of the process of reforms in the Muslim personal law. The biggest challenge, however, would be to inform the Muslim masses that the abolition of *talaq-e-bid'a* is not against the *Shariah* but has, on the contrary, brought it closer to the original principles of Islam.

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Calibrating a new standard

With data showing Indians rarely overstay student visas, Britain is under pressure to relax curbs

VIDYA RAM

In recent years a person questioning the British government's stance on international students was given one of two typical responses. One track focused on reminding her that the drop in numbers in some groups (including Indian students) was largely the result of the crackdown on fake colleges that admitted students under the pretense of study merely to enable them to come to Britain. The second argument focussed on highlighting the supposedly sizeable number of overstaying students. During a heated debate, a senior British official recently suggested that India had little reason to be aggrieved over Britain's visa regime for students (nor any right to expect change) given the large numbers of Indians who overstayed their visas.

"We welcome students coming to study but the fact is, too many of them are not returning home as soon as their visa runs out... I don't care what the university lobbyists say: the rules must be enforced. Students, yes; overstayers, no. And the universities must make this happen," Prime Minister Theresa May insisted two years ago, while still Home Secretary. She was justifying why students needed to be included in Britain's immigration statistics and therefore one of the groups whose numbers Britain would be aiming to bring down as part of government targets to reduce net migration from the hundreds of thousands to the tens of thousands.

Four-month window

While Britain does not have a limit on the number of international students able to come and study in the country, it has toughened the regime in other ways, most notably by limiting the ability of students to work in Britain after their degree. Students have a maximum of four months after their degree to find a job, which has proved a major disincentive for many. Their wish to do so cannot be seen as anything other than reasonable, given the premium accorded to work experience in Britain, and the substantial financial investment put into studying in the country.

Yet the suggestion that students are keen to abuse the system has been implicit in much of the rhetoric on the issue. Last October, in a speech pledging to toughen the regime, current Home Secretary Amber Rudd said she would be looking at the possibility of a two-tier system with tougher rules for those on "lower quality courses". "This isn't about pulling up the drawbridge. It's about making sure students that come here, come to study," she said at the time.

The raison d'etre for this tough stance came crashing down last week, as it emerged that the number of international students overstaying their visa illegally was a fraction of what the government had been suggesting. Home Office data relying on a new system of exit checks at Britain's borders that began in 2015 found that a mere 4,600 had done so last year, in contrast to the roughly 100,000 suggested by the International Passenger Survey (IPS) conducted at border crossings that the government had been relying on to date. A separate study by the official statistician, the Office for National Statistics (ONS), considered things by nationality too, finding that Indian students were among the nationals most likely to leave before their visa expired, with many others staying on because they had managed to extend their visa for work or other reasons.

GETTY IMAGES

While the release of the figures created a media storm, it came as little surprise to those who have been campaigning for international students, who have long been wary of the IPS and the way simple survey figures were being used to justify and draw up tough immigration policies. Many had been pushing for the exit check data to be published, and for the system of exit checks to be developed further to enable Britain to have a far more rigorous system for analysing its migration figures. Last October, the government dismissed a report in *The Times* that it was sitting on data that showed fewer than 1% of foreign students overstaying their visas, while in July the statistics regulator warned the government and the ONS that the IPS data the government had been relying on had to be seen as "experimental".

However, the government has remained adamant about its commitment to the tough regime for students, passing up an opportunity just before Parliament broke up before the June general election to take students out of the net migration figures, after members of the House of Lords introduced an amendment to legislation on higher education. The government's unwavering stance on this issue has contrasted with its penchant for U-turns, and is seen as a sign of the Prime Minister's own obsession with a tough immigration regime. She has faced strong pressure for change from even within her party and cabinet.

Even before the latest revelations, the stubbornness appeared irrational to a certain degree at least, given Britain's post-Brexit ambitions to forge trade deals across the world. India has indicated in the past that taking students off the immigration figures would be seen as a significant concession and gesture of goodwill at a time that Britain has been tightening immigration in other areas.

The Brexit angle

Whether the figures will prompt change remains to be seen. The government's response so far has been to commission a report into the economic and social impact of international students on Britain. This may be all very well, except for the fact that organisations such as Universities UK have already conducted thorough research highlighting the huge economic contribution foreign students make to local economies across the country (£25 billion a year in total), spurring the creation of jobs.

However, even beyond the specific case of international students, the data raise questions about the very basis of the direction of British policy. As the outcome of last year's Brexit referendum made only too clear, concerns about levels of immigration have had a profound impact on the direction of British political life. With some of the immigration data that have fuelled that debate now in question, a period of national introspection is undoubtedly in order.

LETTERS TO THE EDITOR

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Slump in growth

India is witnessing a sharp decline in economic growth ("GDP growth boards slow train at 5.7%", Sept. 1). It is clear that demonetisation has damaged the growth trajectory by pulling down the growth rate. Its impact will play out negatively at least for the next two quarters. With smaller businesses still grappling with the GST framework, there are concerns over what the expected revenue will be from the new indirect taxation policy. Although the government claims that there will be windfall gains from demonetisation and GST in the long run, the immediate need is to grease the wheels of growth. But there seem to be few instruments available before the government to do this. The monetary policy will be the most effective one. It remains to be seen how the government will persuade the RBI to give up its conservative nature regarding interest rate cuts.

BIBHUTI DAS,
New Delhi

Post-demonetisation

It is premature to pronounce that demonetisation was a disastrous move based on a single piece of evidence – that 99% of demonetised notes have returned to the banking system ("Shifting goal posts", Sept. 1). Figures often hide more than they reveal. How much of the money deposited in the banks constitutes black money? It is disingenuous to assume that all this money can be accounted for by the depositors. It is likely that hoarders felt it was worth risking a tax probe and tried to salvage at least a part of their ill-gotten wealth rather than keep the banned notes which would have amounted to nothing but useless paper. Even if 10% of the money is proved to be unaccounted for, it will be a staggering amount.

It was not the withdrawal of high-value notes, but the absence of an adequate supply of alternative currency notes that caused so much disruption apart from choking the supply chains of the cash-dependent unorganised sector. The question we need to pose to the government should be this: was the RBI informed about demonetisation in advance so as to enable it to print and stock a sufficient number of alternative currency notes? Or did the RBI fail miserably in its currency management despite being in the loop?

V.N. MUKUNDARAJAN,
Thiruvananthapuram

The economic survey and the RBI's annual report clearly indicate that demonetisation was a disaster. The objective of reducing counterfeit currency seems unachieved. Neither has the government tackled corruption nor terror funding. The government takes credit for promoting a cashless economy, but was that the main objective? If it was, then the lives of more than a hundred people and the loss of thousands of jobs was a huge price to pay. The move seems to have been a clever strategy before the Assembly elections in five States, in which it succeeded.

SIDDHARTH DWIVEDI,
Lucknow

The much-trumpeted demonetisation move was a well-intentioned one, but has proven to be a damp squib. It falls short of reaching its intended objectives. It is unfathomable how the lion's share of black money miraculously found its way back into the system, the very thing that this scheme aimed to forestall. That the BJP still proclaims this scheme as being successful in spite of this is ludicrous, to say the least. One wonders whether the most corrupt were tipped off before this policy came into effect to preserve their ill-gotten gains. This "masterstroke" was supposed to be a body blow to the corrupt, but seems to have been nothing more than a flea bite for them.

N. VENKATA SAI PRAVEEN,
Punggol, Singapore

Blue Whale game

Recently, I was travelling by train when I noticed that a grandmother, in order to keep a crying baby quiet, gave him a mobile phone ("Blue Whale a disaster, says teen's suicide note", Sept. 1). This is a serious hazard. Mobile phones affect our brain seriously. With so many young children being hooked to them, we don't know what information they access or what games they play. Some steps must be taken to ban such games.

V.T. SUNDARAMURTHY,
Chennai

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