

CONTENTS

ECONOMIC DEVELOPMENT

Global financial crisis: the way ahead 3-6

ENVIRONMENT

Cold, necessary cuts 8-10

Climate: India acts, it's time US did too 11-12

Copenhagen "must fail," says a pioneer 13-16

HUMAN RIGHT

The growing threats to human rights 18-23

INTERNATIONAL TRADE

China leaders meet to chart course for
2010: state media 25-26

Conclude doable Doha 27-28

JUDICIARY

The syndrome of judicial arrears 30-34

ECONOMIC DEVELOPMENT

Global financial crisis: the way ahead

Y. V. Reddy

The financial markets and large institutions are functioning without disruption today. In fact, there are some signs of euphoria in financial

markets despite the fact that huge public funding of financial sector in the western world with bloated balance sheets of central banks persist. Further, the declining trends in output and employment have been arrested, and growth restored in some countries, but the adverse impact on economic activity and employment is still evident in many countries. The recent developments in Dubai are a reminder of the possibility of unexpected dangers.

Huge uncertainties remain in regard to the journey towards normalcy and the exit from the unconventional measures and stimulus.

Managing the crisis has been critical and largely successful, thus front-loading the benefits, but the costs are back-loaded and the distribution of burden among the different sections of people in future contentious. Unless rigorous growth is restored in ample measure, the burden on the taxpayer or the stress on public services including healthcare and the pressure on prices may be noteworthy.

The crisis is global; actions are national; benefits could be universal; but burdens in future on their account have to be incurred at national level. Exit is essential as the risks to growth abate and inflation risks emerge and intensify. The timing of exit is critical since premature

exit may derail recovery and growth while a delayed exit may feed inflation and threaten growth over the medium term. Each country will have to consider the tools for it to exit.

More important, communication of policies and intent becomes challenging if the interests of financial market participants and the intent of policy diverge. Such a divergence was not observed, particularly at the time of crisis, though not all economies.

There are, broadly speaking, two approaches to new normalcy. One advocates rethink; rethink of the fundamental, ideological and theoretical foundations of a market economy. In practical terms, this is reflected in an informal chat with a Chinese official, who said that they used to see the US as their teacher but now they realise that the teacher keeps making mistakes and, hence, they have decided to quit the class. There are some who express doubt about the validity of conventional wisdom after assessing the economic performance of the US and China. For example, China has shown that high growth in real sector for a prolonged period was possible consistent with stability without any significant development of a modern free market-based financial sector. It is also not clear how China is able to ward off inflationary pressures if the currency has systematically remained devalued for a prolonged period.

Initiatives have been taken to develop new economic thinking (INET), which has an advisory board that includes two winners of Nobel prize in economics. It is, therefore, argued that the current Great Recession, comparable to Great Depression, may result in such a fundamental rethink of theory, practice and institutions.

The alternate view is that the markets do benefit the society and economy significantly, but some of the excesses or aberrations that took place leading to the crisis need to be rebalanced, within the broader but existing framework.

At this stage, it is reasonable to assume that the destination of exit strategies currently under consideration would be towards a new normalcy based on yet-ill-defined rebalancing. However, the rebalancing will be in favour of state; the presumption will continue to be in favour of relative efficiency of markets; but with a clear understanding that it is a presumption that could be rebutted when appropriate, with state acquiring the policy space to intervene at its discretion.

There is recognition that there has been excessive financialisation of the economy with a cognisable disconnect between development in real sector — i.e., goods and services finally consumed — and that in financial sector. At the same time, finance plays a critical role in mobilising resources and allocating them efficiently. Finance contributes to the well being of people through a variety of ways. The real issue is determining the appropriate level of financial sector development as well as sophistication and regulation that promotes genuine innovation and curbs excess speculation.

In any case, there is a consensus on the excessive leverage in the financial sector, warranting corrections. Some curbs on the growth of financial sector relative to real sector thus seem to be part of rebalancing that should occur. This may take several forms that are already under consideration, viz. higher capital cushions; curbs on managerial remuneration; changes in incentive framework; taxes on financial transactions; measures for investor and consumer protection including for certification of safety of financial products; restrictions on over-the-counter trade; expanding the scope and intensity of regulation etc.

There is a virtual consensus that the regime of regulation of financial sector in major developed countries needs a thorough overhaul. The

crisis has strengthened the view that globalisation of finance has significant risks unlike globalisation of trade which had been, on the whole, beneficial. The rebalancing could happen by globalising regulation or recalibrating globalisation of financial sector or a combination of both.

There are efforts to develop globally-acceptable standards of regulation, at a technical level in Board for Financial Stability. The renewed interest in capital controls, Tobin Tax and strengthening of regulation by host countries may be indicative of the reality of recalibrating globalisation of finance.

The focus on tax havens is a recognition of the fact that harmonisation of financial regulation at a global level may not address the issues of tax arbitrage.

More generally, the advocacy of counter-cyclical regulation also affects the balance between policy-space available at national level and compulsions of global finance. The national authorities have to decide on the weight to be given to national level economic cycles and global cycles, unless it is assumed that they will always converge. Further, counter-cyclical policies, to be effective, require harmonisation of policies of financial regulation, monetary and fiscal authorities.

The rebalancing exercise in regulation of financial sector may have to address the broader issues of policy-space for national authorities and governance of arrangements that oversee globalisation of finance.

(Edited excerpts from the former RBI governor's S Ranganathan Memorial Lecture, 2009, delivered on Nov 30)

ENVIRONMENT

Cold, necessary cuts

RK Pachauri

Two days before Copenhagen, governments are staking their positions on the boundaries of the agreement that they would accept coming out of that meeting. The focus today is entirely on what governments may have to do to deal with the problem of growing emissions of greenhouse gases (GHGs), which is leading to human-induced climate change and creating impacts that would prove extremely harmful for several societies across the world. However, based on current indications, Copenhagen would hopefully move the world towards an effective agreement, but may still not result in legally binding and precisely defined commitments. Governments are likely to continue negotiating the details of an agreement that all countries hopefully would sign on to, possibly before 2010 is out. However, particularly in democratic societies, the only means by which action can be taken by governments, business and civil society would require the public being convinced that reducing GHG emissions is in their individual and collective interest.

In this context the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report (AR4) clearly pointed out that lifestyle changes and behaviour patterns can contribute to climate change mitigation across all sectors. The question is often asked whether these lifestyle changes would prove to be a setback to society, which has reached unprecedented levels of comfort with large choices of goods and services defining a pattern of growing consumption. The response lies in the reality that much of the consumption the world is addicted to is questionable, in terms of the benefits it provides to human beings. Scientist Paul Ehrlich labelled

countries in the world as developing, developed and mal-developed. In his interpretation, mal-developed countries are those that have been consuming more and more and imposing higher and higher negative impacts or externalities on natural resources and the global commons. These societies would have to redefine their values and preferences to alter their consumption and avoid harmful impacts on various ecosystems. One set of products being consumed at an increasing rate worldwide is animal protein. This trend is becoming universal. Even in developing countries where rapid increases in income have taken place in recent decades, meat consumption has gone up substantially. The result is not only a major setback to global efforts towards achieving food security but it also adds to the mounting emissions of GHGs.

There are some facts about the entire meat cycle that have remained unknown. For instance, the livestock sector is by far the single largest anthropogenic user of land. Livestock production accounts for 70 per cent of all agricultural land and 30 per cent of the world's surface land area. A total of 70 per cent of previous forested land in the Amazon is occupied by cattle pastures, and crops for animal feed cover a large part of the remaining land. Today's meat cycle, and the rearing of animals for meat is essentially in the nature of a factory-type production system. Animals are fed on foodgrains that otherwise could have been used directly for human consumption.

The meat cycle also accounts for large consumption of water. For instance, 1 kg of maize requires 900 litres of water, but the production of beef takes 15,500 litres. Livestock is also responsible for 64 per cent of ammonia emissions that contribute to acid rain. The extent of foodgrain diverted for production of meat amounts to one-third of the world's cereal harvest and over 90 per cent of soya production. Overall, it takes around 10 kg of animal feed to produce 1 kg of beef and 2.1-3 kg of grain to produce 1 kg of poultry meat. In very simple terms, a farmer can feed up to 30 persons throughout

a year from one hectare with vegetables, fruits and cereals. If the same area is used for the production of eggs, milk or meat, the number of persons that can be fed varies from five to ten.

Over a year ago, I addressed a large audience of over 700 people in the city of Ghent in Belgium, exhorting them to reduce meat consumption for mitigating GHG emissions. I was delighted to see that the result was a movement which led to the city designating one day a week as a meat-free day. Yesterday, on December 3, Paul McCartney and I addressed the European Parliament on the same subject and made a plea that all of Europe should introduce one meatless day a week to make a difference. One important co-benefit of reduced meat consumption, of course, is the improvement of health that would accrue from a vegetarian diet. In fact, the World Cancer Research Fund advises people to “eat mainly foods of plant origin”.

While a global agreement is essential, the effectiveness of any agreement reached in Copenhagen will remain weak unless human society as a whole takes action to change its own values and lifestyles. Perhaps a good start for society would be to cut down consumption of meat that would bring about a substantial reduction in GHG emissions. One or two meatless days a week can be the quickest, most effective action to reduce GHG emissions and improve human health.

RK Pachauri is Chairman, Intergovernmental Panel on Climate Change (IPCC) and Director-General, The Energy & Resources Institute (TERI)

The views expressed by the author are personal

Climate: India acts, it's time US did too

Leave alone give the lead as the world's most influential country, the United States has been a laggard in addressing the question of climate change — a defining issue of our times — which touches on the livelihood, indeed the very existence, of millions around the world, especially in its poorer regions. Had America been supportive of the 1997 Kyoto Protocol, which views the heating of the earth's surface in a given theoretical framework that assigns differing roles to industrialised and developing countries, and prescribes for the two sets of countries differential action trajectories to mitigate the global emission of carbon dioxide, the world would have breathed easy as climatic dislocations and disjunctions caused by the ever-rising volume of greenhouse gases pose a direct threat to human life. Instead, America did the opposite and began to question the science that posited climate change. US President Barack Obama's arrival on the scene at least changed that. And yet, in the week before the landmark Copenhagen climate summit, the US stance has not altered in any significant manner, although the atmospherics are a lot better. Indeed, the broad impression is that the US position is a catching disease which might have infected some Europeans too. The net result is that the basics of the Kyoto Protocol are at risk of being overturned or seriously modified by leading Western powers. It is fair to say that never has the schism been sharper between the industrialised nations and the rest of the world on a crucial matter that concerns us all. In the event, the positions adopted by India and China — two rapidly industrialising developing countries — in Copenhagen are likely to have a shaping influence on the course of the climate negotiations in future, although the two are not in an identical position.

On Thursday, minister of state for environment Jairam Ramesh assured Parliament that India will play a positive role in Copenhagen, as behoves a "deal-maker" and solution-finder. But, in line with the Kyoto understanding, it will not accept binding emission cuts. That is the obligation of industrialised countries, from which they are seeking to resile. The minister also announced a cut in emission intensity — the metric that signifies the cut in emission in relation to a unit increase in GDP — of 20 to 25 per cent by 2020 over the level obtaining in 2005 without any external assistance for transiting to green technologies. Recently China had announced its proposal for a 40 per cent reduction in the same category. Mr Ramesh has also publicly said the cut that China envisages to effect by 2020 was reached by India in 2005. The environment minister has held out the assurance that if Kyoto is not jettisoned at Copenhagen, and the industrialised countries offer some assistance, India would be prepared to make deeper cuts in its emission intensity.

The voluntary and unilateral actions of developing countries would have a positive bearing on arresting the rise of greenhouse gases, especially since China has now emerged as the world's leading polluter in absolute (as distinct from per capita) terms. Nevertheless, long-term impetus to deliberating climate change and mitigation strategies will be elusive if the US does not pitch in with a meaningful contribution in Copenhagen. Mr Obama, who is due to attend the summit, has offered a provisional cut of 17 per cent in US carbon emissions over the 2005 level. This is way short of 40 per cent over 1990 levels by 2020 envisaged in international climate deliberations so far. The life conditions of many will be impacted positively if the leading nations can produce an equitable outcome in Copenhagen, or at least the promise of one.

HINDU 4.12.09 ENVIRONMENT

Copenhagen “must fail,” says a pioneer

Suzanne Goldenberg

James Hansen, world’s leading climate change expert, says summit talks are so flawed that a deal would be a disaster.

The scientist who convinced the world to take notice of the looming danger of global warming says it would be better for the planet and for future generations if next week’s Copenhagen climate change summit ended in collapse.

In an interview with the *Guardian*, James Hansen, the world’s pre-eminent climate scientist, said any agreement likely to emerge from the negotiations would be so deeply flawed that it would be better to start again from scratch.

“I would rather it not happen if people accept that as being the right track because it’s a disaster track,” said Dr. Hansen, who heads the Nasa Goddard Institute for Space Studies in New York.

“The whole approach is so fundamentally wrong that it is better to reassess the situation. If it is going to be the Kyoto-type thing then [people] will spend years trying to determine exactly what that means.” He was speaking as progress towards a deal in Copenhagen received a boost with India revealing a target to curb its carbon emissions. All four of the major emitters — the U.S., China, EU and India — have now tabled offers on emissions, although the equally vexed issue of funding for developing nations to deal with global warming remains deadlocked.

Dr. Hansen, in repeated appearances before Congress beginning in 1989, has done more than any other scientist to educate politicians about the causes of global warming and to prod them into action to avoid its most catastrophic consequences. But he is vehemently opposed to the carbon market schemes — in which permits to pollute are bought and sold — which are seen by the EU and other governments as the most efficient way to cut emissions and move to a new clean energy economy.

Dr. Hansen is also fiercely critical of U.S. President Barack Obama — and even Al Gore, who won a Nobel peace prize for his efforts to get the world to act on climate change — saying politicians have failed to meet what he regards as the moral challenge of our age.

In Dr. Hansen's view, dealing with climate change allows no room for the compromises that rule the world of elected politics. "This is analagous to the issue of slavery faced by Abraham Lincoln or the issue of Nazism faced by Winston Churchill," he said.

"On those kind of issues you cannot compromise. You can't say let's reduce slavery, let's find a compromise and reduce it 50 per cent or reduce it 40 per cent."

He added: "We don't have a leader who is able to grasp it and say what is really needed. Instead we are trying to continue business as usual."

The understated Iowan's journey from climate scientist to activist accelerated in the last years of the Bush administration. Dr. Hansen, a reluctant public speaker, says he was forced into the public realm by the increasingly clear looming spectre of droughts, floods, famines and drowned cities indicated by the science.

That enormous body of scientific evidence has been put under a microscope by climate sceptics after last month's release online of

hacked emails sent by respected researchers at the climate research unit of the University of East Anglia. Dr. Hansen admitted the controversy could shake public's trust, and called for an investigation. "All that stuff they are arguing about the data doesn't really change the analysis at all, but it does leave a very bad impression," he said.

The row reached the U.S. Congress, with Republicans accusing the researchers of engaging in "scientific fascism" and pressing the Obama administration's top science adviser, John Holdren, to condemn the email. Mr. Holdren, a climate scientist who wrote one of the emails in the UEA trove, said he was prepared to denounce any misuse of data by the scientists — if one is proved.

Dr. Hansen has emerged as a leading campaigner against the coal industry, which produces more greenhouse gas emissions than any other fuel source.

He has become a fixture at campus demonstrations and last summer was arrested at a protest against mountaintop mining in West Virginia, where he called the Obama government's policies "half-assed".

He has irked some environmentalists by espousing a direct carbon tax on fuel use. Some see that as a distraction from rallying support in Congress for cap-and-trade legislation that is on the table.

He is scathing of that approach. "This is analagous to the indulgences that the Catholic church sold in the middle ages. The bishops collected lots of money and the sinners got redemption. Both parties liked that arrangement despite its absurdity. That is exactly what's happening," he said. "We've got the developed countries who want to continue more or less business as usual and then these developing countries who want money and that is what they can get through offsets [sold through the carbon markets]."

For all Dr. Hansen's pessimism, he insists there is still hope. "It may be that we have already committed to a future sea level rise of a metre or even more but that doesn't mean that you give up.

"Because if you give up you could be talking about tens of metres. So I find it screwy that people say you passed a tipping point so it's too late. In that case what are you thinking: that we are going to abandon the planet? You want to minimise the damage." — © *Guardian Newspapers Limited, 2009*

HUMAN RIGHT

The growing threats to human rights

Ramesh Thakur

In most cases, the gravest threats to the human rights of citizens emanate from states.

The Universal Declaration of Human Rights, signed on December 10, 1948, transformed an aspiration into legally binding standards and spawned a raft of institutions to scrutinise government conformity and condemn noncompliance. It remains the central organising principle of global human rights and a source of power and authority on behalf of victims.

A human right, owed to every person simply as a human being, is inherently universal. Human rights are held only by human beings, but equally by all; they do not flow from office, rank, or relationship. Universalising the human rights norm was one of the great achievements of the twentieth century. Numerous U.N. conventions, declarations and protocols produced this progressive result. They are our “firewalls against barbarism” (Michael Ignatieff).

Human rights establish boundaries between individuals, society and the state. The assertion of a human right is a claim on protection from threats from people, groups or public authorities. Human rights are endangered in conditions of anarchy when there is no functioning law enforcement and judicial machinery to defend them. In most cases, however, the gravest threats to the human rights of

citizens emanate from states.

Over the past decade state-based threats to human rights have taken several forms. Many civil liberties have been curtailed in recent years through law or by administrative decisions and infringements on freedoms that would have been challenged in the pre-9/11 environment. Western governments have sometimes abandoned nationals overseas if their detention or abuse is carried out in the name of anti-terrorism. Their troops in Afghanistan may have colluded in handing over suspects to local interrogators skilled at breaking more than toothpicks. Their law enforcement officers have transferred the burden of risk of death and injury to innocent people, for example through lax protocols governing the use of tasers.

Border agents everywhere seem to be drifting into a make-my-day machismo as their default mode of dealing with the travelling public. Banning the gadfly British MP George Galloway from visiting Canada in March 2009 was especially egregious and counterproductive in giving him dollops of extra oxygen for free publicity. The banning of minarets by the good citizens of Switzerland is illiberal democracy at its worst, fanned by the flames of group hysteria against the backdrop of post-9/11 Islamophobia. The ceremony of innocence will be truly drowned if the western centre of civilisation cannot hold.

The problem was aggravated with the former chief champion of human rights becoming a leading delinquent. U.S. abuses in Guantánamo and Iraq significantly weakened the world's ability to protect human rights. When a dominant country like the U.S. openly defies the law, others mimic its policy and its leverage over them is reduced: Washington cannot call on others to uphold principles it itself violates.

In a landmark case involving the CIA's extraordinary rendition

programme as part of the war on terror, on November 24, an Italian judge convicted 23 Americans of kidnapping an Egyptian cleric on a Milan street in 2003. They were tried in absentia and may never see jail time. But they are in effect fugitives in the 25 EU countries and subject to arrest and extradition to Italy. The case thus is another nail in the coffin of impunity and sends a warning shot across Washington's bow that if the U.S. fails to hold its officials accountable for breaking foreign laws, other countries will.

Once, torture was acknowledged to be so abhorrent that no one publicly approved the practice. The post-9/11 climate of fear encouraged debate on whether torture is justified if it prevents mass terrorist attacks. A posture of moral relativism can be profoundly racist, proclaiming in effect that "the other" is not worthy of the dignity that belongs inalienably to one. Those of us who live in zones of safety, activating "the moral imagination to feel the pain of others" (Ignatieff) as our own, have a duty of care to those living in zones of danger.

A second set of threats is posed by the creation of human rights machinery that has become a monster mocking the meat it feeds on. Human rights seek to protect individuals from oppression by political, social and religious authorities. The responsibility for enacting laws and constructing the bureaucratic, police, and judicial machinery to monitor and enforce human rights lies with the state. Social and religious groups can capture the political agenda and subvert the process to "protect" group human rights by penalizing individuals who dissent and depart from community sanctioned views and behaviour.

Criminalising hate speech is a case in point, especially when offence is established not by the intent of the doer but the hurt sensibilities of a complainant. University campuses, which should be among the frontline defenders of free speech — a defence that has no meaning

if it does not include the freedom to offend — have been among the first to succumb to political correctness or lobby group pressure. Yale University Press sunk to a new depth in low farce recently in publishing a book on the Danish cartoons controversy but pre-emptively censoring itself and not reprinting the cartoons.

In some jurisdictions, in hearings before quasi-judicial bodies like human rights commissions (with members appointed by governments), complainants suffer no financial or other penalty even if their case is found to be frivolous and wholly without merit. Defendants can have their lives ruined financially, professionally and socially. Eventual vindication is inadequate solace or compensation. Thus has machinery meant to defend human rights become politically motivated attack organs, using taxpayers' money to chip away at their freedoms. They are paradigms of a bureaucratic solution: well-intentioned, labour intensive and expensive. The value of an end — promoting human rights — is used to set in motion a self-defeating means to achieve it.

The final source of state-based threats to human rights is from intergovernmental organizations. International norm shifts in human rights include outlawing genocide, delegitimising institutionalised racial discrimination (especially apartheid), moving from sovereign impunity to international criminal accountability, improving the status of women, and developing the concepts of dignity and the protection of minorities and vulnerable groups.

Here too there has been a distressing reversal, for example a Canadian citizen being put on a secret U.N. blacklist with no judicial oversight on the basis of unknown and therefore unchallengeable evidence — some of which can turn out to be flimsy. Abousfian Abdelrazik spent almost six years in detention in Sudan and may have been tortured before being returned to Canada in 2009. No national or U.N. official has been held to account.

Somewhere along the line, the U.N. human rights machinery got captured and subverted by its enemies. Its actual performance was scandalous and a travesty of the noble vision and ideals animating the global movement. The protection of internationally recognised human rights will remain fraught in the years to come. The U.N.'s main collective body on human rights affairs is made up of states. Claims by citizen against governments are unavoidably political. States are less eager to create enforceable police and judicial machinery than to endorse human rights in the abstract, and less open to effective U.N. enforcement of rights than to weak supervision of policies.

Even liberal democratic states often sacrifice human rights on the altar of national security and commercial profit. Western governments have not been notably anxious to use the U.N. machinery to criticise China or Saudi Arabia. Changing the nomenclature of the Commission on Human Rights to the Human Rights Council will not change the reality of double standards based on national interest calculations.

States can band together at the U.N. to proscribe injuries to religious sensibilities, for example by publishing cartoons that some spokesmen of some religion find offensive. In March 2009, the U.N. Human Rights Council passed a Pakistan-sponsored and Organisation of Islamic Conference supported resolution calling on all countries to pass laws banning criticism of religion. The resolution was dressed up in the language of human rights (freedom of religion).

This is why, even as advocates seek desirable advances in the global governance of human rights, they must constantly hold fast to the critical kernel of truth that human rights is about protecting individual beliefs and actions from group-sanctioned morality at local, national and global levels of governance.

(Ramesh Thakur is director of the Balsillie School of International Affairs, Distinguished Fellow at the Centre for International Governance Innovation, and Professor of Political Science at the University of Waterloo.)

INTERNATIONAL TRADE

China leaders meet to chart course for 2010: state media

Agence France-Presse

China's top leaders met in Beijing over the weekend for the Central Economic Work Conference that will determine how to strengthen the Asian giant's economic recovery in 2010, state media reported.

The closed door meetings began on Saturday and China's leaders were expected to discuss how they plan to continue their economic stimulus policies and moderately easy monetary policy next year, the China News Agency reported.

The reports did not give details of the agenda for the meeting or specify when it would conclude. The conference went on for three days last year.

The annual Central Economic Work Conference is the most important economic policy making event of the year, usually involving key figures such as President Hu Jintao and Premier Wen Jiabao.

The conference was expected to focus on how long to continue the fiscal and monetary policies and the economic stimulus package that aims to help China achieve full economic recovery, the state-run China Daily said.

China unveiled an unprecedented four-trillion-yuan (586 billion dollars) stimulus package a year ago at the height of the global crisis.

The leadership agreed last month that next year they would "implement, enrich and improve" the package.

China's economy could grow by more than 10 percent in the fourth quarter spurred by massive investment and rising consumption, Yu Bin, a top economist at the cabinet's State Council Developmental Research Centre said last month.

The World Bank upgraded its 2009 growth forecast for China last month to 8.4 percent on the back of huge public spending but said stronger domestic demand was needed to ensure a sustainable recovery.

China grew by 8.9 percent in the third quarter -- the fastest pace in a year -- after expanding by 7.9 percent in the second quarter and 6.1 percent in the first three months, the slowest pace in more than a decade.

Conclude doable Doha

ET Bureau

It is now increasingly apparent that concluding the long-running Doha Round multilateral trade negotiations without further delay, with the tariff

and subsidy reforms already agreed to, would mean substantial gains globally. Note, for instance, that at the recent Geneva ministerial of the World Trade Organization, commerce minister Anand Sharma reiterated that on industrial goods, India considered the issue of bringing down tariffs and improving market access more or less settled.

There may still be some country-specific issues of flexibility that need to be negotiated for industrial goods, labelled non-agricultural market access (Nama). But given that Nama accounts for over 90% of world merchandise trade, we need to conclude Doha and pocket the gains substantially agreed to. The move would lower tariffs, ban industrial country subsidy for farm exports and purposefully reduce distorting domestic support: by 70% in the EU and 60% in the US. Further, average tariffs on farm produce that exporters face would reduce to 12% (from 14.5%) and those for Nama to less than 2.5% (from about 3%). There would be other gains as well.

The way ahead is to conclude the Doha Round on the basis of the consensus already built, and to leave the contested issues involving sectoral exemptions, etc, for future negotiations and narrow the

differences in a time-bound manner. There would be clear environmental benefits as well, in having such a twin-track approach. The move would, say, lower tariffs on capital equipment that can help mitigate global warming; subsidy reform in the North would also discourage over-fishing, over-grazing and other untoward practices.

Besides, as negotiations on trade facilitation are well advanced, follow through and formal agreement would slash red tape, reduce procedural delays and, generally speaking, expand trade opportunities. Additionally, the least-developed countries would gain greater market access that is 'duty free and quota free', and their ability to take advantage of new opportunities will be enhanced by the aid-for-trade initiative. Completing Doha would create 'space' for multilateral cooperation too.

JUDICIARY

HINDU 2.12.09 JUDICIARY

The syndrome of judicial arrears

V.R. Krishna Iyer

Having more competent judges, not more number of judges, is the solution to the persisting problem.

Man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy necessary.

— *Reinhold Niebuhr*

When justice is denied by any society, including a socialist, secular and democratic one as in India, expectations darken into depression. Then that depression turns into dread, dread transforms itself into despair and despair evolves into explosive terrorism. State violence as an instrument to suppress terrorism is futile: after a time the bitterness and revengefulness that is generated will seek to overthrow those very forces that control state power — call it fascism, naxalism, Maoism or whatever. This dangerous deterioration of democracy into bedlam terrorism is hastened when access to justice ceases to be a reality and the only alternative is violence. When the rule of the robes proves a mirage, the rule of robbery gets support and sanction.

The way to eliminate this ghastly syndrome is not more state force but making the system of justice, justices and justicing truly accessible to the have-nots by means of radical judicial reform that is decentralised and democratic. If this does not become possible,

the suffering people may leave the courts and take to the streets. This social strategy and humanism are what we need if noxious, nocent violence is to surrender to truth, justice, equity and egalite, the majestic values of the Mahatma. Rowlatt or Chowri Chowra or Naokhali, or Gandhian courage — which do we need? Here is the critical issue. Is our justice system jejune, and have the robes been robbed of their reality?

How shall we transform our judicative process? The Executive has force at its command and the Legislature is incompetent to make meaningful laws but has the backing of the masses who voted for its members. The judiciary has the bench to sit on and the authority of the Constitution to back it. If its verdict is ignored, it has no means to enforce its rulings. Sans justice, judges are powerless power.

What is wrong with our courts that they have lost their credibility and prestige? Corruption has crept in. Forensic morals have been jettisoned and no longer form their inviolable virtue. More than all else, delay of dockets and Himalayan arrears frustrate the hope of justice from the forensic process. While the system is accessible and open to the rich and those from the creamy layer, the under-privileged have no money and are priced out of the institution. The Bar, an indispensable factor in the adversarial system, is too expensive for the lowly and the forlorn. The fees and the formalities make the law too dear for the have-nots. The hierarchy adds to the cost, the delay and the uncertainty of the final verdict.

Appeals upon appeals make justice through litigation inordinately dilatory and costly, and the law becomes the last means for the aggrieved to get relief. One appeal is necessary, two is too much, but we have four or five decks to spiral up. The litigant has only one life but litigation has several lives to see its end. Judgments typically take years to pronounce and some judges do not pronounce any judgment at all. They would seem to be unaccountable since there is

no Performance Commission in operation.

Another great deficiency is that a collegium that is untrained in the task, selects judges in secret and bizarre fashion. There could be room for nepotism, communalism and favouritism in the absence of guidelines. The selection process excludes the Executive. Nowhere in the world do we have judges alone selecting other judges. The collegium is a disaster: the P.D. Dinakaran episode is an example. A new code by a constitutional chapter has become an imperative. Appointment is a desideratum.

What we now have as weaknesses of the system is Parkinson's Law and Peter Principle. The first creates vacancies after mediocre judges cause arrears to mount. The second elevates officers to the highest level of their incompetence. Even if you have 10 times the present number of judges, so long as there is no accountability, the arrears will multiply, the judicial budget will escalate and the disgrace of the judiciary will grow. A revolution is necessary and a sense of scientific spirit and reason is needed if the judicature is not to become a caricature, or a torture of the right to justice.

If our Founding Fathers are not to be betrayed, we need at once a judicial-constitutional code including a scissoring of the hierarchical syndrome. Or be prepared for a revolution. The unknown collegium, judges expanding their own breed, creating arrears more than anywhere else in the world, and other pathologies promoting a self-operated system...

Is India so bereft of statesmanship that it cannot create a swadeshi-swaraj judicature? A spiritual-natural synthesis carrying out Bharat jurisprudence and justice system must be the operation of the next Parliament.

Did not Jawaharlal Nehru assert that the Supreme Court is no third chamber of the House? Did not Franklin D. Roosevelt tell the

American Supreme Court that if it did not serve the nation's interest he will pack the court? Let us not therefore allow the Indian courts to refrain from the tryst with destiny or go back on the grand Preamble of the Constitution. We, the People of India, shall not allow the judges to produce a pathological syndrome of seppuku.

I am critical of the great institution of justice of which I was a member during the best part of my life. But as Oliver Wendell Holmes, the great American judge, said while criticising his judicial system, it would be less than fair if I do not constructively and correctively criticise the system of which I was a part if I see some dark drawbacks therein. My purpose is only to improve the system, never to denigrate it.

The Berlin Wall has fallen. Leningrad and Stalingrad is no more on the map of the Soviet Union. Nelson Mandela and Mahatma Gandhi, prisoners under the empire, have become Fathers of the Nations. Why not the Indian judiciary, patterned after the British, change and become truly swadeshi and Indian?

Judges have a heavy responsibility in the matter of chronic docket arrears. Nowhere in the world except in India does litigation last up to half a century in some instances. The art of fast disposal of cases would seem to have become alien to the judges, who do not know the strategy of having a brief hearing and delivering the judgment in a few days. A leisurely, jocose and even bellicose style, a high-and-mighty bearing, and slow and endless arguments are hampering the competent performance of the judges. American judges allow half an hour and no more. Look at the discipline that this writer showed in the stay proceedings of the Indira Gandhi case. Originality, imagination and talent have become scarce commodities. These are mostly covered up by demands for 10 times more of incompetent judges and none to expose them for fear of being hauled up for contempt.

The Chief Justice of the Supreme Court has been repeatedly urging that we must have thousands more as members of the judiciary as the solution to the problem of arrears. But that will only be a remedy which could aggravate the malady. This is a mediocre recipe that could prove counter-productive.

This view is supported by two great Indian jurists. M.C. Setalvad commented in his autobiography *My Life* (1970) on the statement of Dr. K.N. Katju, when he was Home Minister, that the "greater the number of judges in court, the lesser the rate of disposal for each judge. Though one may regard this as an overstatement, it is undoubtedly true that a larger judicial personnel frequently makes the courts cumbrous and slow moving." He added: "What is needed is the appointment of really able persons who can rapidly and satisfactorily deal with the accumulation of work."

Likewise, M.C. Chagla observed in *Roses in December*: "To my mind the solution is simple. See that the men you appoint are proper ones. Find judges with an alert and active mind. What is more important, pay the judges better, give them a better pension, and enforce better conditions of service. The usual solution put forward is to increase the number of judges. But if the men selected are not really competent, Parkinsons' Law will come into play. The more the judges, the greater will be the load of work."

It is time we had an effective executive which will call the bluff when judges invent alibi to explain away their incompetence and absence of integrity. An investigation into the entire higher judiciary may well weaken our faith in the integrity and incorruptibility of their lordships.

