Essays From *Ideas and Institutions*

Governance and Public Administration

Suyash Rai, Anirudh Burman
Governance and Public Administration

Suyash Rai, Anirudh Burman
Contents

Introduction
Suyash Rai

ESSAY 1
A Theory of Justice for Public Administration
Suyash Rai

ESSAY 2
A Contrarian View on Secrecy in Government
Suyash Rai

ESSAY 3
State Capability in India
Anirudh Burman

ESSAY 4
Measuring Performance in Government:
The Example of National Time Release Study
Suyash Rai

ESSAY 5
Does Decriminalization Lead to Jan Vishwas?
Anirudh Burman

ESSAY 6
Amending an Act of Parliament Through a Press Release
Suyash Rai
Introduction

Suyash Rai

The rise of the administrative and regulatory state is perhaps the most consequential secular trend democracies across the globe have witnessed in recent times. Considerable powers have been delegated to executive authorities with varying levels of independence. This trend is necessitated by the complex nature of modern governance that does not lend itself to the formulation of complete laws. With parliamentary legislations as broad frameworks for their functioning, administrative departments and agencies are given the freedom to take action as they see fit. This often raises questions of accountability and ethics that must be continuously answered. The answers will depend on the context. From performance measurement to reforms in the agricultural sector, this collection of essays from the newsletter Ideas and Institutions, explores diverse aspects of governance and public administration.

The administrative state is staffed by civil servants, most of whom belong to the permanent civil service. It is known that in practice, civil servants often take decisions at their own discretion, since every decision cannot possibly be made in consultation with the political leadership. This raises a key question: What framework of professional ethics should civil servants look to for guidance when acting independently? The first essay in this compendium is a review of a book that addresses this. The Machinery of Government: Public Administration and the Liberal State by philosopher Joseph Heath offers a comprehensive framework for thinking of ethics for civil servants. It defines and limits the extent to which they may act independently.

In a democracy, power lies in the hands of the people, but the people are also governed by the governments they elect and the administrations they empower. Secrecy emerges as a complicated issue in this regard. On one hand, democrats may find it intolerable for secrets to be kept from the people. On the other, the state may have to maintain certain levels of secrecy in public interest. The second essay presents a review of Brian Kogelmann’s book...
Secret Government: The Pathologies of Publicity. The author presents a utilitarian argument and posits that there are good reasons for secrecy in matters of government.

The third essay reviews State Capability in India by T. V. Somanathan and Gulzar Natarajan. It focuses on the nuanced exploration of state capacity within the Indian context and emphasizes the importance of state capacity in economic development, particularly in emerging economies. The book also explores the Indian state’s role beyond a mere guardian of law and democratic accountability. By distinguishing between “capability” and “capacity,” the authors provide a comprehensive analysis of the state’s ability to design, implement, and deliver policies. In doing so, they address the impacts of socioeconomic diversity, bureaucratic hurdles, and the need for a paradigm shift towards a more facilitative, outcome-oriented approach.

The measurement of performance is a key aspect of accountability in public administration. This can, however, be a difficult task to carry out and has the tendency to create distortions. The nature of modern governance offers a reason as to why this is. Vaguely defined objectives are often pursued using multiple instruments, in situations where the chain of authority is not as clear as may appear in the organogram. A simplification of this measurement could limit broader effectiveness, as could over complication. The fourth essay discusses the development of the National Time Release Study by the customs authority and suggests that some of the practices followed in the development of the study are worth emulating elsewhere.

Over the years, many laws that used to only have financial penalties have been amended to criminalize some of the violations. Arguably, there has been excessive criminalization in the laws governing economic activity. The fifth essay discusses the union government’s efforts to address this problem through the Jan Vishwas Bill, 2022. The legislation aimed to decriminalize offences in forty-two central laws to foster “trust-based governance” and reduce the compliance burden. This move is part of a broader initiative to improve the ease of doing business by imposing financial penalties as opposed to imprisonment. The essay explores the potential benefits of decriminalization, such as reducing the chilling effect on businesses and addressing the arcane nature of many criminal provisions. However, it also deliberates on whether or not laws that were decriminalized were an impediment to economic growth and the role of enforcement in the lived experience of these laws.

Keeping the leviathan of the administrative state in check requires careful and precise use of different instruments of lawmaking. For instance, a parliamentary act should only be amended by a parliamentary legislation. The sixth essay in this collection discusses a recent move by the union government to “amend” a parliamentary law using a press release. The Finance Act, 2023, introduced significant amendments to the Income Tax Act, 1961, and affected the Tax Collected at Source (TCS) under the Liberalised Remittance Scheme (LRS) of the Reserve Bank of India. Subsequently, government actions, including a press release and a circular, delayed and modified these changes. The essay raises questions about the legislative process and procedural haste, highlighting challenges in policymaking and the
influence of public opinion on legislative amendments.

India’s transition to renewable energy, particularly in the electricity sector, is impeded by inefficiencies and a lack of effective pricing mechanisms. The seventh essay talks about dynamic pricing models such as Time-of-Use tariffs and Real-Time Pricing. Mechanisms like these can motivate consumers to shift their electricity usage patterns, especially important for integrating solar power with its need for expensive storage solutions.

The eighth essay discusses Douglas W. Diamond and Philip H. Dybvig’s recent Nobel Prize for their seminal work on banking crises. It focuses on the inherent risks of bank runs and the stabilizing potential of deposit insurance, and reflects on the meaning of their work in the context of India’s banking system. The essay considers their famous 1983 paper, which highlights the risks of the mismatch between banks’ liquid liabilities and illiquid assets. Their paper, titled “Bank Runs, Deposit Insurance, and Liquidity,” argues that deposit insurance can mitigate these runs by assuring depositors of their funds’ safety, thus preventing the unjustified collapse of otherwise healthy banks. The essay highlights how, in India’s banking system, deposit insurance is somewhat supplanted by the implicit government guarantee extended to state-owned banks. This typically results in moral hazard, resource misallocation, and gives rise to regulatory challenges. It is crucial to maintain a nuanced balance between government intervention and market mechanisms for the stability of the banking sector.

The final essay in this compendium deliberates on the reforms in agricultural marketing in India. Despite the repeal of the central farm laws following widespread protests in 2021, state governments have continued to reform their agricultural marketing laws, incorporating many aspects of the repealed central legislation. These reforms aim to dismantle monopolies in agricultural marketing and introduce greater competition, a movement supported by evidence of states liberalizing agriculture marketing laws. The reforms have also paved a way for alternative trading avenues and embraced online trading platforms. The essay shows that prior to the central government’s attempted intervention, states like Madhya Pradesh, Karnataka, and others had initiated reforms. These efforts reflect a broader trend towards agricultural modernization, and the resilience of the reform agenda in a multi-level governance structure.
The executive is by far the largest branch of the government. For most citizens, the executive branch amounts to the entire government because they interact with it much more than they do with the legislators and the judiciary. However, the attention that the executive branch has received from philosophers has not matched its salience. Since the rise of the welfare state, the space for discretionary administrative action has expanded dramatically, in ways that in many areas, reducing discretion might have negative effects on performance. While administrative law has emerged as one response to this phenomenon, it is not enough. Professional ethics probably matter more, as the culture of the civil service constrains and shapes the behavior of everyone from street-level bureaucrats to senior officials. However, since defining the public interest has traditionally been seen as the prerogative of elected officials, any discussion on ethical commitment of civil servants is faced with a challenge: How is the commitment to political neutrality of the civil servants to be reconciled with the fact that they exercise administrative discretion involving normative judgments? A recent book by Canadian philosopher Joseph Heath, *The Machinery of Government: Public Administration and the Liberal State*, makes an important contribution to this question.

Over the last two decades, Heath has produced several insightful works that take a “reconstructive” approach, in Jurgen Habermas’s sense of the term, to ethics—they try to understand and state the “norms and ideals that are implicit and play a structuring role in our practices” rather than offering prescriptions from outside the practices. So, in a book on business ethics, Heath linked the ethical demands that can be made from a business to the failures in the markets in which the business is operating. The book offers imperatives like—compete only on price and quality; avoid erecting entry barriers; do not seek protectionist measures; minimize negative externalities; treat price levels as exogenously
determined; and so on. When compared with the more prescriptive approaches on business ethics, Heath’s approach may appear limiting, but it has the important advantage of linking ethical expectations to a proper understanding of the role of markets and how they work to enhance efficiency.

Heath brings a similar approach to this book on the administrative practices in the executive branch, starting with a careful statement of what the civil servants do in liberal democratic societies and going on to reconstructing an ethical framework from these practices.

Heath first explains the importance of professional ethics in public administration. He considers three models of accountability for the civil servants—hierarchical, popular, and vocational. In the hierarchical model, accountability “flows up the chain of command and ultimately ends with the elected official who presides over a particular branch of government”. The popular model takes the reverse line and makes the civil service directly accountable to the public. The vocational model requires that civil servants be held accountable to an independent set of professional norms, which express, in some form, “the universal interest of the state.” Heath argues that the vocational model of public administration ethics is a response to the limitations of the other two models, which stem from the information impactedness of the civil servants’ work and the complex web of accountability relations they find themselves in, making it difficult for many of them to be supervised from above or below.

Heath argues that since civil servants anyway exercise considerable discretion, there is a need to consider if they can develop a self-standing conception of “good policy” without relying solely upon guidance from politicians. He describes the ideal arrangement as one in which “an experienced cadre of public officials, enjoying the substantial security of tenure, advances an independent conception of the public interest, but in a way that avoids taking positions on issues that are the legitimate objects of political contestation and disagreement, and is thus appropriately deferential to the will of elected officials.”

Placing the discussion in the context of legitimacy of the state, Heath presents a tripartite model of legitimacy, with each of the three branches making its own contribution to the overall legitimacy, animated by its own central principles. The legislative branch contributes democratic legitimacy with the central principle being the will of the majority. The executive branch contributes output legitimacy (i.e., effective solutions to collective action problems) with efficiency as the central principle. The judiciary contributes constitutional legitimacy with the rights of the citizen as the central principle. He writes, “Good policy emerges out of the productive tension that arises between all three branches.”

Since Heath suggests that civil servants need to have “a strong, independent conception of where their professional obligations lie,” an obvious question is: What should be decided by political contestations among parties and leaders, and what can be taken by the civil servants to underpin an independent conception of “good policy?” The key to the solution, Heath argues, lies in the principle of liberal neutrality, which generates a set of more specific normative commitments that, while not always politically neutral, have a strong claim to
priority over the democratic principle.

Heath then provides a history of how liberal principles emerged, what their distinctive characteristics are, and how they evolved over time. He shows that liberalism has played a constitutive role in the emergence of the institutional arrangements that make up the state in liberal democratic societies. In these societies, liberalism is not just one political philosophy among others, as liberal principles are already embedded in the state institutions. So, civil servants being guided by liberal principles in their discretionary judgments is not likely to create problems in the way that following some other set of principles would. This analysis culminates in the characterization of modern liberalism as involving a commitment to the three basic principles of efficiency, equality, and liberty.

Building on the crucial work of John Rawls, Heath shows how modern liberalism has sought to achieve greater stability through a radical abstraction that has given us these modern liberal principles. In liberal democratic societies, they “cohere with the deep normative structure of the institutional arrangements that we by and large approve of, and usually take for granted.” So, they can serve as the normative basis for a conception of the public interest that the executive can advance without interfering with the prerogatives of the legislature. However, this liberalism construed institutionally is different from the specific conceptions of liberal justice. The latter propose specific principles or procedures for ordering or weighting these liberal principles (such as Rawls’ “difference principle”). As a result, they are in the realm of political ideology and should be clarified through the democratic process. Heath suggests that civil servants, while being committed to the basic principles, remain agnostic on the question of how they should be ordered.

Heath notes that despite disagreements over political ideology, liberal democratic societies have tended to drift toward assigning greater weight to efficiency than to liberty or equality, as seen in the development of the welfare state. He then shows how these three principles, especially the commitment to efficiency, guided the rise of the welfare state in the twentieth century. He advocates for the public economics model (welfare state arising out of the necessity to address market failures) over the egalitarian model (welfare state serving a redistributive purpose) and the communitarian model (welfare state taking provision of certain goods and services outside the realm of the markets for normative reasons). He further argues that it is primarily a focus on solving collective action problems in pursuit of Pareto efficiency that has enabled the rise of the welfare state. In offering this argument, Heath also makes important clarifications about the meaning of efficiency and how it should be seen as a moral principle, because Pareto efficiency is about choosing alternatives that make at least one person better off without making anyone worse off.

The last few chapters articulate certain normative commitments that have arisen within the executive branch in the modern welfare state. Heath discusses the administrative use of cost-benefit analysis (CBA) to show how it arises from the pursuit of efficiency, against a background commitment to equality and liberal neutrality. Heath shows that CBA arises out of a set of normative ideals that have developed endogenously within the civil service. He
also argues that CBA does not reflect a commitment to full-blown utilitarianism and instead stems from far more minimal principles that transcend democratic contestation. He argues that the reason that a market-simulating procedure like CBA is an appropriate basis for decision-making is precisely because the welfare state has been trying to achieve the outcome that markets would have achieved had private contracting not been limited by various contingencies of the world.

As an interpretation of the idea of equal citizenship, Heath discusses “rule of law” values in the executive branch. He explains how equality is a far more controversial principle than efficiency because “its central role is to mediate distributive conflicts that have a win-lose structure”. So, political neutrality limits the extent to which the civil service can pursue notions of equality. But the expansion of administrative discretion has created the necessity for the civil service to develop a conception of equality to govern its relations with citizens, especially at the frontline. Heath suggests that the idea of the rule of law incorporates the most substantial notion of equality compatible with non-partisanship.

As an expression of the commitment to individual liberty, Heath discusses the anti-paternalism constraint in decision-making. He advocates for a general culture of deference to individual autonomy, but at the same time, he calls for addressing a broader dynamic within liberal societies that tends to increase the opportunities for self-destructive behavior among individuals (for example, usage of harmful drugs). Heath suggests criteria that can allow us to sort the “good” from the “bad” in these discussions.

A point of departure for Heath is that liberal democracies are not regimes of unrestricted popular sovereignty. So, the civil servants also have a duty to promote basic or minimal liberal principles. This would mean that the civil servants may sometimes serve as a counter-majoritarian check, and more often, they would work as a moderating influence on decision-making.

The depth and breadth of the treatment that Heath has given to this topic is commendable. By underlining the primacy of the efficiency principle and giving concrete examples of its applications, he makes the book directly useful for civil servants. Similarly, the discussion on the “rule of law culture” in civil service to promote a minimal version of the equality principle will also resonate. However, the discussion on liberty and paternalism is less clear and needs further work, especially in terms of providing decision criteria.

The book is meant to address questions of civil service ethics in the context of stable liberal democracies with a consensus on the basic liberal principles. In other words, this is civil service ethics for the “end of history.” The ethical challenges of civil servants in more challenging contexts such as transitional regimes, geographies where the state’s monopoly over violence has not been fully established, and states of exception, also need to be considered through the lens of professional ethics, lest all actions be explained away by stating, to paraphrase Cromwell, “Necessity knows no ethics.”
Further, while Heath mentions the necessity for political contestations to settle the specific ordering of principles, it is important to consider how civil servants should respond when a major reordering disrupts the existing order in a manner that makes it difficult to distinguish reordering the basic principles from excessively undermining some of them. In times of major political realignment, such distinctions can be very difficult to make. The book provokes many such thoughts. Heath’s contribution provides a useful framework to launch further inquiries into the ethics of civil service.
“Sunlight is the best disinfectant,” wrote Justice D. Y. Chandrachud in his concurring judgment supporting livestreaming of court proceedings. A recent book, ‘Secret Government: The Pathologies of Publicity by Brian Kogelmann’, presents a philosophical critique of this popular cliché of democratic life. While conceding that there are good arguments for publicity in government, Kogelmann argues that there are also good reasons for secrecy. Since publicity is usually a means to some ends, trade-offs must be considered.

The book begins with a review of what certain philosophers have written about publicity. Kogelmann shows how Plato’s position changed from the Republic’s gennaion pseudos or noble lie (acceptable only if told by a virtuous leader) to the emphasis on truthfulness in his later work, the Laws. This reflects, as Kogelmann argues, following Bernard Williams, Plato’s shift towards “an exalted understanding of the capacities of citizens but a more pessimistic view of rulers.”

Kogelmann argues, citing Jeremy Waldron, that Hobbes’ support for publicizing justifications for laws and explaining the foundations of the government prefigured later liberal positions. Since Hobbes cited the difficulties of hiding the truth from the public, his position seems merely pragmatic, but it captures the political force of the Enlightenment, which according to Waldron, “consists in the fact that it is too much of a risk to try telling lies to people who can reason about something they have reason to regard as important.” In contrast, Kogelmann shows that Immanuel Kant, a key predecessor of modern liberalism, had “unclear and underwhelming” views on transparency.
Kogelmann then turns to three utilitarian philosophers: Jeremy Bentham, John Stuart Mill, and Henry Sidgwick. Bentham argued for both publicity and secrecy. When people vote in their own interests, as he sees as the case of citizens voting in elections, secrecy should shield them from external influence. And when people serve the public interest—as the representatives in a legislature supposedly do—their actions should be made public. In John Stuart Mill's view, publicity can help representative government function well, but only if an attentive citizenry bears the costs of monitoring. Mill argued for ‘publicizing’ voting by citizens in elections, because he believed citizens should cast their vote just like legislators, keeping the public good in mind.

Henry Sidgwick disrupts this “Whig history” of increasing advocacy for transparency, turning it towards a form of noble falsehood. He saw how simple common-sense moral rules, such as prohibitions on lying, stealing, killing, contribute to overall happiness. He also thought that exceptions to these rules that should be made by all under specific circumstances for greater overall happiness can be stated publicly as more complex rules. However, if the exceptions for greater good are to be made only by some, so that if they were to be made by all, overall happiness would decrease, he argued that such morality should be secret. In Sidgwick's famous words endorsing deception for the larger good, “on utilitarian principles, it may be right to do and privately recommend, under certain circumstances, what it would not be right to advocate openly.” Further, to maintain common sense morality in the public, utilitarians must hide the philosophical theories that encourage this secret morality “a utilitarian may reasonably desire, on utilitarian principles, that some of his conclusions should be rejected by mankind generally.”

The book then gets into institutional design choices. Kogelmann argues that in voting by legislators, political equality is better served by secrecy. Publicity enables unequal political influence by allowing the rich and powerful to buy off the politicians and by allowing special interest groups to engage in monitoring that ordinary citizens are not capable of performing. In a chapter on deliberations in legislatures, Kogelmann lists the benefits of secrecy. He believes it allows deliberators to change their minds, encourages bipartisanship, and permits exploratory debate. He also considers the benefits of public deliberations—their results appear legitimate, they discourage self-interested bargaining, and allow citizens to learn by observing. He suggests finding a balance by having institutions select a deliberative body that ensures diverse representation and allowing members to publish statements explaining or criticizing the body's decision.

The rest of the book considers arguments on the political philosophy of publicity in a just society, as envisaged by John Rawls and the liberal-democratic tradition he inspired. Kogelmann argues that their concept of publicity is often vague and one-sided in considering only benefits and not the costs of publicity. He tries clearing these confusions by identifying four distinct conceptions of publicity in the liberal-democratic tradition.

First, officials should not hide the intentions and reasons underpinning their policy choices. Bernard Williams, who also offered a spirited critique of Sidgwick's secret morality, was a proponent of this conception of publicity.
Second, justice should not only be done, but should manifestly and undoubtedly be seen to be done. This conception is often applied to social justice issues.

Third, not only must everyone in society accept the same theory of justice, but everyone must know that everyone else accepts this theory. So, citizens’ beliefs about morality and justice should be transparent to one another.

Fourth, persons in the society the philosopher theorizes about must have access to everything the philosopher theorizes about. So, “everyone living in Rawls’ perfectly just society must have access to *A Theory of Justice* and related works.”

Kogelmann examines the arguments in the defence of each of these conceptions. While he agrees with some of them, he finds most of the arguments wanting.

Despite the seeming “repugnance” of some its conclusions the book is worth reading to form a nuanced, all-things-considered view on this issue. I do have a few quibbles though.

First, the chapters on institutional design are mostly focused on the legislative branch. But, in democracies, the most interesting debates about transparency and secret morality are in the executive branch. As Pierre Rosanvallon has shown, decisions in democracies are now mostly taken by an empowered executive and “independent” authorities, which are, perhaps unavoidably, either opaque or publicize in a manner that few can understand.

Unsurprisingly, the counter-revolution against this opacifying trend often takes the form of leaders claiming to be completely transparent.

Second, in the review of philosophers’ ideas, perhaps the book would have benefited by including thinkers on state decisions such as Max Weber and Carl Schmitt. Decisionism presents a persistent challenge to liberal arguments for publicity.

Third, the book could have considered how consequences of publicity are intermediated by other institutional choices. For instance, isn’t the concern over the powerful buying off individual politicians mitigated if defying the party whip leads to severe punishment like disqualification?
In the discourse on economic development, the notion of state capacity stands as a critical element, especially in emerging economies like India. This perspective is rooted in institutionalist theories of economic growth, as propounded by Douglas North and others. Francis Fukuyama, in a broader context, has highlighted an often-neglected aspect in the literature on state capacity: the state’s role as a “power deploying institution,” rather than just a guardian of the rule of law and democratic accountability.

The Indian scholarship has commendably studied this aspect of the state. Scholars have explored the nature of the state as a power-wielding entity with diverse objectives. For instance, Devesh Kapur questions why the Indian state exhibits varied performance across different areas. Lant Pritchett has described India as a “flailing state” in his study of state capabilities. Meanwhile, Milan Vaishnav and others have identified critical issues like personnel management that affect state efficiency. The Indian state itself has acknowledged these challenges, with the Second Administrative Reforms Commission producing extensive reports on various aspects of governance reform.

In their book, State Capability in India (2022), T. V. Somanathan and Gulzar Natarajan—both senior bureaucrats—offer a unique perspective on these issues, looking at them inside out. The authors delve into the nature of the Indian state and its capacity-related challenges, distinguishing between “capability” and “capacity” to emphasize qualitative aspects of governance.

The book comprehensively analyzes the Indian state’s ability to design, execute, and deliver policies, underscoring challenges in bureaucratic design, policy implementation, and
the influence of political and administrative decisions. It is a detailed, voluminous work, chockablock with axioms, examples, and insights. While the book covers a gamut of issues ranging from personnel management within the civil services and paralysis in decision-making to ideas for procurement design, in this review, I cover four themes in the book that in my opinion speak most directly to the existing literature on Indian state capacity.

**Policymaking Versus Execution**

Central to the framework adopted in the book is the distinction between policymaking and implementation or execution. The authors argue that a capable state not only executes actions but also ensures that the right policies are chosen and effectively implemented within political constraints.

The book argues that while India has a robust intellectual and bureaucratic framework for policy development, marked by comprehensive planning and detailed strategies, the execution stage often falls short. This discrepancy is attributed to multiple factors including bureaucratic red tape, a lack of coordination among various governmental agencies, and the challenge of translating policy directives into actionable steps on the ground. The book also touches upon the impact of socioeconomic diversity in India, making policy implementation a challenging task due to varying needs across different states and communities.

The authors argue that for effective policy implementation, a paradigm shift is needed in the bureaucratic approach, moving from a purely regulatory mindset to one that is facilitative and outcome-oriented.

Addressing the critical implementation deficit in India, the book delves into the nuances of execution challenges, moving beyond stereotypes like politicization and corruption. It highlights the impact of these challenges on outcomes such as education, health, and infrastructure, underlining the need for a holistic approach to policy implementation that considers political acceptability, administrative feasibility, and technical robustness.

The book illustrates the multi-faceted nature of execution challenges in India, using examples like irrigation projects to show how misaligned incentives and operational complexities lead to gaps between planned outcomes and actual impact. It advocates for a redefinition of contract terms to focus on outcomes rather than just construction, emphasizing the need for engagement among contractors, officials, and beneficiaries.

The book suggests that successful implementation requires aligning goals across different levels, equipping agents with necessary resources, measuring performance credibly, and having the power to reward or penalize based on performance. It also notes the disempowerment felt by frontline managers due to overburdening, under-resourcing, and limited influence on program design.
Design and Effectiveness of the Indian Civil Services

Another important aspect of the book is its assessment of the effectiveness of the Indian civil services. In order to do this, it employs four criteria, also used by K. P. Krishnan and T. V. Somanathan (2017), including preserving India’s constitutional order, impartial rule of law implementation, faithful policy translation and implementation, and promoting economic development. The analysis reveals successes in upholding constitutional values but challenges in law enforcement and economic development facilitation.

The book critically examines the design of the Indian civil services, rooted in the British colonial administrative system, which was primarily designed for control rather than development. It points out that while the structure served the purpose of maintaining law and order, it is less equipped to handle the complex demands of a modern, developing economy.

In this context, the book discusses the argument that lateral entry into the civil services is necessary to enable it to cope better with a modern economy. The concept of lateral entry into the Indian bureaucracy is often presented as a reformative measure to infuse new talent and specialized knowledge into the civil service. The authors examine the potential benefits of lateral entry, such as bringing in domain expertise, fostering innovation, and breaking the monotony of traditional bureaucratic practices. However, the book highlights the challenges associated with lateral entry, including concerns about the integration of external professionals into the existing bureaucratic culture, potential conflicts with career bureaucrats, and the risk of politicization. It underscores the need for a well-thought-out framework to ensure that lateral entry enhances, rather than disrupts, the functioning of the civil service.

Size of the State

There’s a common belief that the Indian government, at both the state and central levels, is excessively large and inefficient. The authors argue that this perception is partly due to the dramatic increase in the number of ministries and departments over the years. The role of the government has expanded significantly, moving beyond basic regulatory functions to developmental and economic responsibilities. This expansion has not been matched with an increase in resources or professional expertise, leading to strained capacities, particularly in higher administrative tiers.

Government sector employment has declined, with a significant portion of government jobs being temporary or outsourced to the private sector. The total sanctioned strength of the central government has remained largely unchanged over the years, even as the economy grew. The limited personnel face numerous resource constraints. For example, field inspectors lack mobility logistics and often don’t receive timely reimbursement for travel allowances. Basic office requirements like stationery are also in short supply.
The authors make the case that despite the proliferation of administrative units, the structure of the district-level bureaucracy has remained the same for decades. This stagnation occurs alongside a dramatic increase in government responsibilities and the scale of resources managed at the district level. While some parts of the government, such as the Ordnance Factory Board and Indian Railways, might be overstaffed, the book argues that the general belief of an overall bloated and inefficient government is questionable.

**Analysis of Decision-Making Paralysis**

One chapter in the book is dedicated to analyzing the paralysis in decision-making within the Indian bureaucracy. This is attributed to risk-averse attitudes, fear of scrutiny, and a lack of decision-making autonomy at various administrative levels. At the same time, the authors highlight the role of other institutions within and without the Indian state that have partly contributed to decision-making paralysis. The book offers a critical examination of the role of the Indian judiciary in decision-making paralysis. Courts often delve into the merits of executive action rather than limiting their scope to procedural fairness, increasing the chance of successful challenges to regulatory or administrative orders. In addition, the book argues that the principles underpinning administrative action are frequently altered without cogent references to past decisions, causing legal uncertainty. To add to this, the Supreme Court has a history of reversing its own decisions, further adding to this uncertainty. The high volume of cases and the common issuance of interim stays prolong final judgments, often stalling executive actions for years.

Lastly, public interest litigations have led to many beneficial judgments but have also seen the judiciary legislating in areas like environment and social justice. Examples include the Supreme Court’s orders on fireworks during Diwali, sale of BS-6 vehicles, amendments to the SC/ST Act, and regulations on domestic violence cases.

The book also discusses the impact of the Right to Information (RTI) Act on decision-making. The RTI Act, enacted in 2005, greatly increased transparency in government operations but also had unintended consequences on the decision-making process. The inclusion of deliberative processes in the scope of the act led to more cautious internal communication within the government, hindering the free exchange of ideas and suggestions. This transformation into a more formal decision-making process was further compounded by the trend of activist audits and media trials. The authors suggest that the expansiveness of the RTI Act, especially regarding deliberative information, contrasts with practices in developed countries and international organizations, where such internal communications are often protected under “executive privilege.” This aspect, the authors argue, merits a dispassionate review considering the act’s impact on effective governance.
Conclusion

Though this review does not address it directly, the book also proposes solutions on many issues such as the ones relating to fixing public procurement, limiting post-retirement sinecures for government officials, early- and mid-career training, optimizing between generalist and specialized domain expertise, performance assessment, and lateral entry, among others. These sections contain many workman-like proposals for improvements that are deserving of consideration and debate.

Overall, the book presents a comprehensive and nuanced analysis of the Indian bureaucratic system—its historical context, contemporary challenges, and the paths for reform. It offers invaluable insights into the complexities of policy implementation in one of the world’s largest democracies.
On April 11, the chairman of the Central Board of Indirect Taxes and Customs released the National Time Release Study (NTRS), 2022. The study covers fifteen customs formations under four port categories—seaports, air cargo complexes, inland container depots, and integrated check posts—that handle about 80 percent of the bills of entry (imports) and 70 percent of the shipping documents (exports). It measures the performance of trade facilitation in terms of the average cargo release time, which is the time taken from the arrival of the cargo at the customs station to its eventual release for import or export. Good performance on this is crucial for reducing frictions in the trading process.

The NTRS reports a significant reduction in the average import release time in 2022 from 2021 in all the four port categories. But it reports a significant increase in the average export release time at seaports, inland container depots, and air cargo complexes. In exports, the study noted that the documentary clearance of export consignments, which is the time taken to grant approval to move goods out of India, once they have arrived, has been significantly reduced. However, the time taken to export goods, post-clearance, has increased. This may be due to frictions in global supply chains, infrastructural issues at the ports, or uncertainties associated with transport connectivity between hinterland and ports.

While the findings are noteworthy, the study is also an interesting example of how the government can systematically develop and scale performance measurement systems.

Trade facilitation has been an important issue for long, but in recent years, the impetus has come from the World Trade Organization’s (WTO) Trade Facilitation Agreement, which came into force in February 2017. The agreement includes measures to expedite the
movement, release, and clearance of goods. A National Committee on Trade Facilitation, chaired by the cabinet secretary, makes National Trade Facilitation Action Plans (NTFAP) to ensure that the agreement is implemented. The first plan covered the period between 2017 and 2020, and the second—from 2020 to 2023—is ongoing. Among other things, the NTFAP sets targets for the release time of imports and exports for the four port categories.

The NTFAP refers to four benchmarks for the government’s efforts: the Organisation for Economic Co-operation and Development’s (OECD) trade facilitation indicators; the World Bank’s trading across borders, a component of the World Bank’s ease of doing business (EoDB) Index; the World Bank’s logistics performance index; and the World Economic Forum’s global competitive index.

These international measures can be useful for comparing performance, but each country should also develop its own measures to verify their validity, reliability, and objectivity. Methodological problems, especially the subjectivity in assessment, the focus on de jure requirements or perceptions rather than de facto performance, and limitations of sampling often plague international measures. Such issues led to the discontinuation of the World Bank’s EoDB Index.

The NTRS builds on years of effort to measure the performance of trade facilitation. Time release studies were first conducted and iteratively improved in specific customs formations. These studies informed the national implementation and policy reforms. For instance, the Jawaharlal Nehru Customs House (JNCH), Nhava Sheva, regularly conducted the studies 2012 onwards, but they initially included only imports and excluded cases where advance filing of documents had been done. In 2018, they included both exports and imports and included cases of advance filing of the documents, the latter being necessary to capture the benefits of pre-arrival processing of documents. This methodology was stabilized and tested. All these studies were conducted in-house by the customs officials.

In 2019, an NTRS was done on a trial basis. Then, in 2021, the methodology was finalized, broadly based on the learnings from the JNCH studies and the 2019 study. The national study was then conducted and published. While the earlier studies in specific customs formations were conducted by customs officials, an external consulting firm was engaged for the national study. It is worth noting that since the process flow is reported online, it helps track the movement of each bill of entry and shipping document.

Such iterative development of methodology is worth considering as a practice in other public administration contexts. Iterative development of measures, by testing them in real world circumstances, before fully integrating them in the administrative functioning can help improve their quality.

The development of time release studies also fed into the policy process, and some of the officials took the initiative to conduct research using these datasets. In matters of public administration, reflective analysis by serving officials can often be useful because they understand the constraints and incentives well.
In their paper, Vijay Singh Chauhan and Arun Prasath K. identified three sets of issues leading to delays: the time importers take to submit import documents; the level of facilitation or intervention, as determined by the risk management system; and the involvement of non-fiscal concerns—primarily related to regulations in domains such as drugs and food safety, among others, that need to be processed by authorities other than customs. Such problem analysis informed policy responses. For instance, the concern around the timing of submission led to amendments of the law to increase advance filing of documents, which helped expedite the process.

Another paper, by Vijay Singh Chauhan and Sruti Vijaykumar, focused on using these studies to evaluate the international measures. They considered the four international benchmarks discussed earlier and compared their methodologies and findings with those of the time release studies. They argued that the technology-enabled, data-driven time release studies are a better metric for measurement of performance than the survey or perception-based indicators. Interestingly, they found that India’s scores for 2017 and 2019 on the OECD’s Trade Facilitation Indicators were revised long after they were initially released, leading to a considerable improvement in the scores. It seems that this revision was done in response to the time release studies published in India. So, if robust measurement systems are developed by a country, they can help improve the quality of the international measures as well.

Coming back to the time release study, is such a study useful for administrative purposes? I have witnessed many debates around measurement in education, health outcomes, regulation, and other areas, where a lot was said without properly engaging with the practical challenges of performance management in public administration. While we should not pit the perfect as the mortal enemy of the good, it is important to read these studies carefully.

First, we should consider that once a measure becomes a target, it ceases to be a good measure (an oft-quoted version of Goodhart’s Law). However, as a measure gets close to capturing the overall performance of a system, and not a particular aspect, it becomes increasingly difficult to game. Release time is a consequence of many factors, all of which cannot be gamed. But the results should indeed be seen as achieved on a best-efforts basis. This Hawthorne effect is to be expected because, to avoid seasonal effects, the data is collected during a particular period each year. Since the customs officials know this, they must be putting their best foot forward during that time. The study is still useful for year-on-year comparison of the best-efforts performance.

Second, this measure captures only the output (example, release time) and not the outcome (example, public value created by trade facilitation). For the purpose of holding the customs administration accountable, the output is useful. The public value, which is difficult to measure, is an outcome of several outputs. Customs officials should be held accountable for things that they are, more or less, in a position to influence.
Third, it is important to see the factors external to trade facilitation that may have influenced the results for better or for worse. This year, for instance, the frictions in supply chains seem to have influenced performance on exports. Further, since authorities other than customs administration also participate in the process, the overall performance may be due to delays by other authorities. The study could be used to improve accountability of other regulatory agencies and to nudge private custodians. Fourth, while it is better to have faster release of imports and exports, excessive focus on this one metric may be counterproductive. Since the customs and other authorities involved in the approvals have regulatory functions, it is important that they verify, albeit based on a pragmatic assessment of risks, before giving approvals. So, attention to capacity improvements must accompany the ambition to improve release time. An argument one sometimes hears is that measurement of performance in government is counterproductive, as it places emphasis on measurement rather than performance. Since measurement is always partial, focusing on what gets measured can crowd out a thicker understanding of public service. However, if done well, this tension between improving professional ethos among civil servants and making them accountable can be minimized. High quality measurement of outputs (and if possible, outcomes) can allow the government to give more flexibility to civil servants to exercise their professional competence in solving the problems. In the case of trade facilitation, this takes the form of developing systems to focus on the high-risk cases while taking a more trust-based approach with others. The development of NTRS seems to be a good example of building and using a measurement system based on real world experience. Other domains of public administration could learn from it.
Is excessive criminalization of economic activity holding India’s economy back? In December 2022, the Indian government introduced the Jan Vishwas Bill, 2022 in Parliament. The bill intends to decriminalize offences in Indian central government statutes. Forty-two central laws are being amended to reduce the compliance burden on individuals and businesses to build “trust-based governance.”

The assumption behind this proposal is that the excessive use of criminal law, especially that affecting economic conduct, inhibits entrepreneurial spirits. This piece lays out the arguments for and against decriminalization and speculates whether it could actually lead to improving the ease of doing business.

The forty-two central laws sought to be decriminalized include those on press and registration of books, forests and environment, agricultural marketing, food and warehousing, drugs and cosmetics, industries and patents, shipping, railways and motor vehicles, and rubber, and spices. The bill does not propose to “decriminalize” simply by removing imprisonments for offences or deleting crimes from the statute books. Instead, proposed imprisonment terms in many of these laws have been replaced by financial penalties. Additionally, fines have been replaced with penalties of a higher amount, and penalties and fines in many laws have been increased. Furthermore, the bill proposes to revise them upward automatically by 10 percent every three years.

This bill is in continuation of the effort to decriminalize criminal laws that affect business in India. As per a press release of the Indian government, in 2021, forty-six penal provisions of the Companies Act, 2013 and twelve offences under the Limited Liability Partnership (LLP) Act, 2008 were decriminalized.
In her budget speech in February 2023, the union finance minister stated that more than 3,400 legal provisions have been decriminalized since 2014. This is a large volume of legal change, and the Jan Vishwas Bill, 2022 makes many more such changes. But does decriminalization actually increase the ease of doing business?

To understand the benefits of decriminalization is to delve into the problems of “overcriminalization,” or the argument that legislatures are passing an excessive amount of laws with criminal penalties, leading to the overall detriment of the society and the economy. As one scholar, Paul J. Larkin Jr., explains, “The principal form that overcriminalization takes is the passage of unnecessary criminal statutes. Some … expand the criminal code to … conduct not historically considered morally blameworthy, others will be redundant because they just duplicate criminal laws … some will increase the penalty for conduct already outlawed.”

How many criminal offences does India have, and how do they affect business? A report by Gautam Chikermane and Rishi Agrawal titled “Jailed for Doing Business” estimates a total of 26,134 imprisonment clauses in India’s 843 business laws. State legislatures account for more than three-fourths of these clauses, at 20,895. Interestingly, the report states that five states—Gujarat, Punjab, Maharashtra, Karnataka, and Tamil Nadu—account for almost a third of the total of 6,170 imprisonment clauses.

Labor laws account for one-third of all business laws, and roughly half of all labor-related compliances are subject to criminal penalties that lead to jail terms. Some criminalized regulations under the Factories Act, 1948, for example, include the painting of the inner walls of canteens and the provisioning of spittoons. Contract labor legislation and the law governing interstate migrant workmen cover another chunk of these penalties that lead to jail terms. Social security legislation on gratuity, minimum wages, and maternity benefits also criminalize non-compliance.

The report, however, does not draw a causal link between these criminal penalties and the ease or difficulty of doing business. Other literature has, however, highlighted the problems caused by overcriminalization that may not be easily apparent. These include:

1. an increasing difficulty in understanding applicable criminal law, making it inaccessible. The sheer volume of criminal law makes it difficult to be aware of all conduct that has been criminalized.

2. a chilling effect on the behavior of individuals who are likely to be prosecuted under these laws. Excessive criminal penalties in business laws have a chilling effect on businesses.

3. the arcane or trivial nature of many criminal provisions, such as imprisonment for not providing a spittoon in a factory. These “debase the moral moment of the criminal sanction.” In other words, the profound moral character of a criminal penalty is attenuated because of the number and kinds of trivial conduct that are criminalized.
These are serious problems. Overcriminalization, framed in this way, is not just an economic issue but also has normative consequences for the character of society. Decriminalization seeks to undo the damage of overcriminalization by reducing the number of criminal offences. But whether removing criminal offences actually leads to greater economic freedom and entrepreneurialism is a normative as well as an empirical issue.

Normatively, decriminalization reduces the number and/or severity of criminal offences. This allows economic actors, in theory, to act with fewer inhibitions about the threat of criminal sanctions. The proposed reduction of criminal penalties from imprisonment to monetary penalties in the Jan Vishwas Bill, 2022 will reduce inhibitions for economic actors. At the same time, the bill also increases monetary penalties and the amounts of fines significantly. Therefore, the bill seeks to not only decriminalize but also rationalize many criminal laws. While it reduces the threat of imprisonment, it increases the possibility of stiffer monetary penalties. On the one hand, this could lead to greater entrepreneurialism among businesses, but on the other, it may embolden the state to enforce these provisions more energetically.

This brings us to the issue of enforcement and lived experience. Most people are not affected by most laws on the statute books. Rather, they are usually governed more intensively by a subset of laws depending on their jobs and socio-economic profiles. Most lawyers in partnership firms would, for example, be more affected by the decriminalization of the law on limited liability partnerships than that on shipping. When we consider the utility of decriminalization from the perspective of economic growth, we should inquire whether the laws being decriminalized are actually impediments to the same. That is, do these laws govern parts of the economy that are constrained by overcriminalization?

The harshness of criminal sanctions often has more to do with aggressive enforcement rather than the creation of new criminal offences. For example, the Indian government, specifically the Enforcement Directorate, has aggressively enforced the money-laundering law in India since 2019. As I have written earlier: 31 “Between 2012–13 and 2018–19, the central government’s Directorate of Enforcement (ED) . . . took up an average of around 180 cases per year for investigation. From 2019–20 to 2021–22, the ED has taken up about 908 cases per year on average, quadrupling its case load.”

No new law was introduced, and yet, the law has had a significant effect on businesses because of aggressive enforcement.

It is to be noted that it is sometimes possible to have both—more criminal law with less enforcement. According to Paul Larkin Jr., the U.S. Congress added one new crime every week between the years 2000 and 2007. 32 However, criminal prosecutions fell to their lowest levels between 2001 and 2016. 33 In addition, in 2019, the U.S. incarceration rate fell to its lowest levels since 1995. 34 Criminal law enforcement has been becoming less aggressive even though more crimes were getting created.
The addition of criminal offences therefore need not necessarily lead to more prosecution in society. Politicians find it easier to signal their seriousness about a particular issue to constituents by passing legislation rather than undertaking more resource-intensive enforcement.

This does not, however, mean that all of these laws are enforced, or enforced with equal vigor at the same point of time. It is probable that this behavior also explains some level of criminalization in Indian law. If so, discussions on criminalization in India should differentiate between the normative and indirect consequences of excessive criminalization of human behavior and the ability to make doing business easier through decriminalization. The latter requires a careful targeting of criminal offences that are actually hindering economic activity—not just because they exist but also because they are enforced.
Through the Finance Act, 2023, which was passed by the Lok Sabha on March 24 this year, certain amendments were made to the Income Tax Act, 1961. These amendments, inter alia, changed the mandate on tax collected at source (TCS) under the Liberalised Remittance Scheme (LRS) of the Reserve Bank of India (RBI). The LRS is a framework under the Foreign Exchange Management Act (FEMA), 1999, that lays down the guidelines for outward remittance from India by resident individuals. It allows all resident individuals to freely remit up to $250,000 per financial year. The purpose may be any permissible current account or capital account transaction.

Before the amendment, sub-section (1G) of Section 206C of the law required every authorized dealer under FEMA who received any amount, or an aggregate of amounts, of Rs. 7,00,000 or more in a financial year for outward remittance under the LRS to collect from the buyer 5 percent of such an amount as income tax. Further, every seller of an overseas tour program package in receipt of any amount upon the purchase of such a package was also obliged to collect from the buyer 5 percent of such an amount as income tax. If the remittance was for education financed by a loan, the rate of collection was 0.5 percent.

Through the Finance Act, 2023, this provision was amended to increase the rate of collection to 20 percent for purposes other than education and medical treatment without any threshold as such. No change was made to the TCS for remittances under the LRS for education and medical treatment.
Another related change announced after the budget was that credit card payments would be brought under the LRS. Through an e-gazette notification on May 16, the government notified Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023, to remove the differential treatment for credit cards vis-à-vis other modes under LRS.

The Finance Act stated clearly that these amendments would take effect from July 1, 2023. But on June 28, the union government issued a press release to make certain changes to the TCS mandate and to extend the date from which the new rates and thresholds would apply.

In the press release, it was announced that there would be no change in the rate of TCS for all purposes under LRS and for overseas travel tour packages, regardless of the mode of payment, for amounts up to Rs. 7,00,000 per individual per annum. So, no TCS would apply on remittances under LRS up to Rs. 7,00,000, and a 5 percent rate would apply for remittances for overseas tour packages up to Rs. 7,00,000. The press release also announced that the government is providing more time for the implementation of revised TCS rates and for the inclusion of credit card payments under LRS. While it is not clear when the differential treatment of credit cards will end, as of now, the e-gazette notification has been superseded. Further, the new rates and thresholds will apply from October 1, 2023.

Following the press release, on June 30, the union government issued a circular reiterating the changes conveyed in the press release issued two days earlier. The circular stated that the changes are being made to “remove difficulty in implementation of changes.” This power to remove difficulties comes from sub-section 1-I of Section 206C, which says, “If any difficulty arises in giving effect to the provisions of sub-section (1G) or sub-section (1H), the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.” On the same day, the government also issued a notification whereby a new Rule 7 was inserted into the FEM (CAT) Rules, 2000, to exclude credit card spends outside India from LRS.

This sequence of events raises three sets of questions about the process of making and implementing laws and rules.

First, it appears that a press release was used to amend an Act of Parliament. The Finance Act stated clearly that the amendments would come into effect from July 1 of this year. The June 28 press release has changed this date to October 1. More importantly, the press release is seeking to amend the substance of the law itself. The Income Tax Act, as amended by the Finance Act, 2023, clearly states that no threshold would be considered for the application of the 20 percent TCS on remittance under LRS for purposes other than education and medical treatment. The press release states that this is now being changed—5 percent TCS would apply on remittances of up to Rs. 7,00,000 under LRS for overseas tour packages, and no TCS would apply for other purposes below that threshold. Although a circular was issued on June 30, the first instrument to be used was the press release. Further, the circular stated that the changes are being made to “remove difficulty in implementation.” That can only justify the change in date and not the change in the threshold itself. Can thresholds and tax
rates be changed in the name of removing difficulty in implementation?
At the end of the press release, there is a statement: “Legislative amendment in this regard shall be proposed in due course.” This means that the Parliament will be given a fait accompli to accept the amendment.

Second, the final law and rules are being treated as though they were drafts circulated for comments. In addition to the extension of the date, there are important changes made to the income tax law and the rules made under FEMA. The press release states, “Numerous comments and suggestions were received which have been carefully considered. In response to the comments and suggestions it has been decided to make suitable changes.” Such comments and suggestions are usually sought on a draft of a law or rule. If a law or rule that has already been notified is revised based on public criticism, it reflects a responsive government, but it also shows a failure of process in the government. Had the government first released drafts for public comments and given the public adequate time to submit their comments and suggestions, the version of the announcement made in the budget speech, the income tax amendment placed in the Parliament, and the rules made under the FEMA Act would all have been better informed and also more in accordance with the realities of India's political economy.

Third, the sequence of events does not stand to reason. The circular should have been issued prior to the press release, because the change in the law is supposedly coming from the circular. Usually, a press release is only meant to communicate the change made through another instrument. But in this case, the press release was issued two days before the circular. Further, the circular being issued hours before the date of application sends a signal that the government is acting in haste and under pressure. All those who had updated their systems to comply with the amendments from July 1 were, in a way, punished for their actions—they would have had to reverse to the old rules at the last moment.

While it is obvious that any instrument of state power should be used within its scope—a press release cannot be used to amend an Act of Parliament—and that a press release should be issued after the relevant circular, it is equally important to consider the deeper failure due to which things came to this point. There is a way of policymaking that involves putting out drafts of laws, regulations, and rules for public comments, seeking inputs from the public at large, considering those comments, and conducting a thorough assessment of the expected impact of the proposed law, rule, or regulation. The rationale for this is not just to strengthen accountability and the legitimacy of the decisions but also to mitigate the problem of lack of information with public authorities. Since information is distributed across the economy and is ever-changing, an open, consultative process makes it easier to avoid mistakes. While some of the public authorities in India sometimes practice good principles of policymaking, they remain exceptions to the rule. Often, laws, regulations, and rules are issued without proper public consultations or analysis of their impact. In the case of an Act of Parliament, there is at least some opportunity for the members of Parliament to discuss the proposed law before it is finalized. For regulations and rules, even this step is usually missing. In the ongoing saga of tax collection at source, we can see the problems with this way of policymaking.
Interestingly, since those affected by this move are mostly the upper middle class and the rich, they were able to force the government to make these concessions. But should not this make one wonder: How many such laws are made that mostly affect those who are not able to get such concessions?

*Note: The author would like to thank Pratik Datta for a useful discussion on this topic.*
How can India’s transition to renewable energy be accelerated? The electricity sector is key to this transition. Changing to renewable sources of energy will require higher electricity consumption, which in turn is generated through renewable sources. However, India’s electricity sector is rife with inefficiencies, and repeated efforts to reform it have failed. The key challenge, therefore, is to increase the share of electricity generated using renewable sources in India’s electricity sector. Akshay Jaitly and Ajay Shah (2021, 2023), and Renuka Sane (2023) have written on this and argued that such an increase can be achieved if power sector reforms allow producers and consumers to follow the price mechanism.

Their simple and powerful insight is that the political economy of India’s power sector prevents the price mechanism from operating, and the absence of the price mechanism is hindering the transition toward renewable sources of energy. Shah and Jaitly point out that while 40 percent of the total installed capacity for power generation is non-fossil fuels, the actual generation of renewables is just 11 percent. Privatization is one part of the necessary reforms in the power sector. The other complementary part, as both Jaitly-Shah and Sane argue, is to let markets fix prices dynamically in the power sector. If done well, the price mechanism should be able to drive the transition toward renewables better than any centrally administered mechanism.

In this essay, I explore designs for price mechanisms in the electricity sector. I also outline some of the available design alternatives and use them to critique recent policy changes that require dynamic electricity pricing in India.
Existing Price Mechanisms in India’s Power Sector

Sane points out that moving to solar power as the main non-fossil fuel source of electricity will require a greater emphasis on using the price mechanism. This is because sunlight is limited during the day, and round-the-clock supply requires storage capacity. The costs of storage, however, are currently high. Unless there is a shift in consumer behavior that incentivizes them to consume less electricity at night, the costs of storage will make solar-powered electricity quite expensive. In addition, allowing firms to charge higher prices for the time of day when supply is dependent on storage will incentivize competition and innovation in storage technology and reduce storage costs gradually. Sane, therefore, advocates for a “surge” pricing mechanism where consumers pay higher costs for electricity at night.

Currently, most users pay for electricity based on the total amount of electricity consumed. There is a tiered structure in electricity pricing, where prices increase for higher amounts of units consumed (see some tariffs for Delhi, Mumbai, and Ahmedabad). This structure does not take into account the variation in electricity consumption during the day, which is of critical importance in the case of solar energy. Shifting to solar-powered electricity will require a shift from this “static” pricing model to a dynamic one that allows for price surges.

Dynamic Models for Pricing Electricity

Globally, jurisdictions are experimenting with different forms of dynamic pricing models. These usually price electricity by using a time-varying element. Different designs of dynamic pricing now exist, each of which incentivizes consumers to change their consumption patterns. These are:

1. Time-of-Use Tariffs (ToU): In this structure, rates are set for hourly time periods in advance, and consumers are informed about the prices in advance as well, allowing them to vary their usage in response to the prices. Prices and time periods are fixed a year in advance.

2. Critical Peak Pricing (CPP): Prices are high for a few peak hours in the day and discounted during the rest of the day. The peak remains the same for all days.

3. Variable Peak Pricing (VPP): Here, the peak prices vary from day to day, with advance information being provided to consumers.

4. Real-Time Pricing (RTP): Here, prices change at hourly intervals, and consumers are informed shortly before prices change. This is the purest form of dynamic pricing, but also requires a high degree of information communication between producers and consumers.

5. Peak Time Rebates (PTR): Consumers are provided rebates for lower-than-expected consumption during peak hours.
As one can see, each one of these designs varies in the degree of dynamism and price signals it sends to producers. RTP is the best design choice from the perspective of sending signals to consumers and producers. However, it also increases the potential for variance in prices. In addition, because the real-time price can only be communicated to consumers shortly before it is implemented, it requires a higher cognitive burden from consumers to plan their consumption accordingly. On the other hand, a CPP is probably the least dynamic of the different designs and is used primarily to reduce power consumption during peak hours as well as reduce the load on the grid. Of these designs, a ToU is the most widely used dynamic pricing mechanism. However, ToU designs fix prices a year in advance.

How well do each of these mechanisms affect consumer behavior? Two pieces of infrastructure are necessary for dynamic pricing to allow for granular measurement of electricity consumption. Smart meters are one. They allow the transmission of periodic consumption patterns to producers who in turn can make better decisions related to pricing, production, and investment. Smart meters typically record electricity consumption in intervals of one hour or less and communicate this information daily to the utility. A 2014 report for the National Smart Grids Mission found that in the United States, “feedback-induced savings” require that in-home displays or online displays be used as a complement to smart meters. Smart meter penetration in India is low as of now. While close to 220 million meters have been sanctioned, 8 million have been installed. Therefore, not only does the move to dynamic pricing require smart meters, but behavioral change in consumption also requires effective price communication about varying prices. The costs of such communication are increasingly becoming trivial, but the point remains that such communication is necessary.

Given these design options, which one should policymakers adopt? Any shift to dynamic pricing will require a significant penetration of smart meters and associated communication paraphernalia. This leaves the choice of dynamic pricing mechanisms up for discussion. The shift to solar-powered energy requires not just higher consumption during sunlight hours but also efficient information about pricing for storage equipment manufacturers.

Of the various design options, RTP is the most dynamic, the best communicator of actual prices, and should lead to real-time behavioral choices by consumers for producers to act upon. However, it also makes planning difficult. Thankfully, electricity consumption by itself is fairly predictable. Significant volatility may occur during limited periods of time in a year; for example, an adverse weather occurrence during certain days in a year may lead to a spike in consumption. This in turn reduces the need for an hourly RTP mechanism. As long as producers can forecast consumption with a certain degree of accuracy and consumers can forecast prices with a certain degree of certainty, the price mechanism should work reasonably well. An RTP mechanism that can fix prices a few days or weeks in advance should enable both predictability and certainty.
Recent Changes in Electricity Pricing

With this in mind, let’s look at an amendment the Indian government made to the Electricity (Rights of Consumers) Rules, 2020, in June 2023. Through the amendment, the government mandates the following:

a. smart meters be read at least once every day and the relevant data be made available to consumers through websites or mobile apps

b. a Time-of-Day (ToD) tariff be introduced for commercial and industrial consumers by April 2024 and for all other consumers (other than agricultural consumers) by April 2025.

It makes two further stipulations. First, peak consumption charges for commercial and industrial consumers should be charged at least 1.20 times the normal tariff and 1.1 times the normal tariff for other consumers. Second, it states that tariffs for “solar hours” (eight hours in a day, to be determined by state electricity regulators) will be at least 20 percent less than normal tariffs.

This amendment essentially requires dynamic pricing in the electricity sector. It creates a minimum level of price variation for peak hour prices (which is different depending on the category of consumer) and mandates state electricity regulators to determine tariffs in such a way that they are provided at a 20 percent discount to normal tariffs during solar hours. Is this amendment creating a better price mechanism? It does create a better price mechanism than the existing situation, which is a static price system, but it falls far short of what is desirable.

First, the amendment mandates dynamic pricing but does not define what design states should adopt. On the one hand, this is a good idea—states should be free to design pricing mechanisms based on their own empirical reality. On the other hand, it introduces the idea of peak pricing and mandates a minimum level of tariff escalation for peak hours. This immediately creates definitional issues. If prices are changing dynamically in response to demand, why is there a need to stipulate a minimum escalation of prices during peak hours?

Second, it seems to presume that a solar hour period (of eight hours) can never be a peak hour because it mandates a 20 percent discount on tariffs during solar hours. This militates against the idea of an efficient price mechanism, where producers change the quantity supplied in response to demand. Some research indicates that peak hour patterns in India are changing and that peak hours are now shifting toward late afternoons rather than early evenings. Consumption patterns change in response to various stimuli, and the new rules do not account for this.
The consequence of these requirements is that the dynamic price mechanism is being distorted even as it is being created. The amendment could instead have simply stipulated the need for states to move to a dynamic pricing model, outlined the different alternatives available to them, and, since these rules are titled “Rights of Consumers,” defined minimum standards for providing information to consumers.

To conclude, moving to a pure price mechanism in the power sector is desirable not just because it is the most efficient system but also because it enables a faster transition to renewables. While other reforms like privatization and greater competition are necessary for the market to work properly, the design of the pricing mechanism is also an important consideration.

*I am grateful to Renuka Sane for discussions and inputs.*
Economists Douglas W. Diamond and Philip H. Dybvig shared this year’s Nobel Prize with Ben Bernanke. The most seminal work by Diamond and Dybvig is on the economics of banking crises. In this essay, I consider one of their classic papers published in 1983 in the *Journal of Political Economy*, “Bank Runs, Deposit Insurance, and Liquidity” and reflect upon it in the context of India’s banking system.52

Bank deposits are callable at par. Depositors expect them to be returned immediately and fully whenever they make the demand. Bank assets are, however, mostly in the form of loans with long maturity periods (in India, about two-thirds of bank assets are in the form of loans) and only a fraction is in liquid instruments, such as government securities, well-trade corporate bonds, and currency. Banks work in spite of this mismatch between callable deposits and illiquid assets because only a small number of depositors usually withdraw their deposits on any given day. They are also able to make profit by maintaining a spread between the interest they pay to the depositors and the one they charge from borrowers (and the return they make on their holding of securities).

If a large number of depositors go to a bank to withdraw their deposits at the same time, the bank would be unable to meet all the demands because it cannot immediately convert its assets into cash, and if it tries to do so, it would incur losses that may lead to its failure. When do depositors rush to get their deposits from banks? When they perceive the bank to be failing. But the key is that it does not matter whether the bank was indeed failing. Since bank balance sheets are opaque, it is difficult for third parties to be sure about their health at any given time. Once panic spreads, a bank run becomes a self-fulfilling prophecy, making even a previously healthy bank fail in the attempt to meet the depositors’ demands. Faced with such a situation, the only options for a bank are—failure or suspension of withdrawal.
Banks often choose the latter.

Diamond and Dybvig begin the paper by observing this problem with banks. Written at the time when the savings and loans crisis was beginning and banking was being deregulated in the U.S., the paper presents an elegant model to understand how banks add value to the economy, why bank runs happen, and what could help avoid them. Their model demonstrated that banks can do better allocation than exchange markets between savers and borrowers by “providing better risk sharing among people who need to consume at different random times.” However, the demand deposit contract providing this improvement has multiple equilibria with different levels of confidence in the bank. One of these equilibria is undesirable—a bank run in which all depositors panic and look to withdraw their deposits immediately, including even those who would prefer to leave their deposits in if they were not concerned about the bank failing. Diamond and Dybvig also show that bank runs cause real economic problems because even “healthy” banks can fail, which has negative effects on the economy. They then go on to show that a deposit insurance mechanism offered by the government or central bank can, in certain circumstances, work better than the alternative—suspension of withdrawals.

Deposit insurance mechanism typically involves payment of a premium by the banks (and eventually by the depositors), recognition of the failure of a bank, and payouts to all eligible depositors. Deposit insurance can reduce the chances of bank runs by assuring the depositors about the safety of their deposits with banks. The main benefit of such a mechanism is to prevent failure of healthy banks on account of bank runs motivated by false information about the bank’s health. Functionally, deposit insurance is similar to the “lender of the last resort” activity that central banks sometimes undertake during crises, when the interbank markets are not able to provide liquidity. Both these mechanisms protect banks that are solvent but are facing a liquidity crisis. Deposit insurance is not free. Even if it is efficiently priced, it creates a moral hazard—the incentive of depositors to exercise prudence while choosing a bank is considerably weakened. So, it should be accompanied by regulatory oversight.

In the paper, Diamond and Dybvig gave elegant explanations for phenomena like banking crises and deposit insurance, which had existed for long. Their achievement was in explaining something that already existed. As Raghuram Rajan noted in a recent tribute to Diamond and Dybvig, a major contribution need not be complicated. It could be simple. Similarly, a major contribution need not propose something new in the world but may offer a better explanation for something that already exists. Most social science research is about explaining phenomena that already exist.

Now, let’s consider India’s banking system. In India, among the scheduled commercial banks, government-owned banks account for about two-thirds in terms of share of bank deposits. These banks run maturity mismatches, but the depositors do not worry about the bank failing. They see these banks as extensions of the government’s balance sheet. The role that Diamond and Dybvig suggest deposit insurance should play is played by the implicit
guarantee by the government to save these banks, as the depositors expect government-owned banks to be recapitalized before they fail. This has many consequences.

First, there is a difference between the backstop available to private banks and that available to government banks, which becomes a source of fragility for the former. Deposit insurance covers all banks, but government banks have a stronger backstop—the government’s fiscal resources. So, in a crisis, the depositors having more deposits with private banks than are covered by deposit insurance have an incentive to shift their deposits to public sector banks in search of safety. Viral Acharya and co-authors show this effect in a recent paper. They also argue that this leads to poor resource allocation in the aggregate.54

Second, as Urjit Patel has argued, the problem of moral hazard is aggravated in public sector banks due to the enhanced backstop that they enjoy.55 While deposit insurance creates moral hazard for all except those who place deposits larger than the deposit insurance limit still have an incentive to make a careful choice, with government banks, no such incentive exists as there is no cap on the backstop as such.

Third, since the basic rationale for prudential regulation of banks—assuring the depositors that the bank is healthy—does not really exist for government banks, there is little incentive to allocate regulatory resources to these banks. Regulatory authorities, like all organizations, face resource constraints, which necessitate allocational choices. For the Reserve Bank of India (RBI) as the banking regulator, it does not make sense to give equal priority to regulating government banks and private banks. Further, the special backstop available to government banks also encourages the regulator to delay the recognition of balance sheet problems. Timely recognition of problems and corrective action can prevent bank runs triggered by suspicion of bank failure and help with quick resolution when a bank cannot recover. Neither of these is a factor when it comes to government banks. So, when the problems are eventually recognized, there is some exchange of tough words between the government that foots the recapitalization bill and the RBI, but things again go back to how they were earlier.

Fourth, some inefficiency is created by covering government banks in the deposit insurance mechanism even though they are not expected to use it. Government banks pay premia for deposit insurance. The deposit insurance fund now has about Rs. 1.5 trillion, which is about 1.8 percent of the insured deposits. However, since the deposits with government banks are not expected to use this mechanism, the fund is excessive. This is an inefficient allocation of resources.
A key insight from the Diamond-Dybvig paper is that efficiency gains and crises are two sides of the same coin. Banks improve efficiency of resource allocation by running maturity mismatches, but this can sometimes get them into a crisis. Government interventions should seek to mitigate the latter while doing as little harm to the banks’ contribution as efficient resource allocators as possible. Government ownership of banks obviates bank runs but creates significant distortions in resource allocation done by banks in the economy. So, there may be a silent crisis of inefficiency. It may be better to count on a combination of regulation, resolution, and deposit insurance to ensure safety and soundness in the banking system.
The repeal of the contentious farm laws did not spell the end of reforms in agricultural marketing in India. Even though the Union government was forced to repeal the laws in the wake of protests by farmer organizations, mostly from Punjab, state governments in India have reformed their state agricultural marketing laws by adopting many components of the repealed central laws. Many states have, over the past decade, been gradually moving towards liberalizing agricultural marketing laws, opening alternative avenues for agricultural trade, and opening up agriculture marketing to competition.

In fact, as I argue in this essay, the dominant tendency in the agricultural sector is towards reforming agricultural marketing along the lines proposed in the repealed laws, by removing monopolies in agricultural marketing and promoting greater competition.

In a previous edition of this newsletter, I highlighted how the existing Agriculture Produce Marketing Committee (APMC) laws hindered the development of agricultural markets in the states. State APMC laws penalize trade between a farmer and a trader outside APMC markets or mandis. They fragment agricultural markets by introducing multiple points of levy and licensing; they enable mandis to charge high commissions and fees for using their facilities—sometimes requiring traders to pay mandi fees even when they trade outside the mandis. They also create monopsonies of traders and are distant from farm gates in many states. This fragments the agricultural market, creates a long chain of intermediation, and reduces the bargaining and earning capacity of farmers. As agriculture is primarily a state subject, many states have taken steps to liberalize APMC laws both before and since the farm laws were introduced.
The central government first introduced the controversial farm laws by exercising emergency law-making powers or through the ordinance route on June 5, 2020. By then, seven states—Gujarat, Himachal Pradesh, Karnataka, Tamil Nadu, Uttarakhand, and Madhya Pradesh had already promulgated ordinances on similar lines.

All seven state ordinances removed the APMC’s monopoly and allowed multiple marketing channels, including direct marketing between traders and farmers, without having to transact within the physical confines of a mandi. All the ordinances provide avenues for online trading of agricultural produce. Most of the ordinances have provisions for enabling a single, state-wide licensing system for traders, compared to the system of requiring separate licenses for each mandi. Most of the ordinances also allow the state government to notify the entire state as a single, unified market for specific agricultural commodities.

However, gradual reformist measures targeted at curbing APMC powers in agriculture marketing have been going on prior to the center’s farm laws. Much before 2020, many states moved fruits and vegetables out of the ambit of APMC laws. As a result, subsequent trade in fruits and vegetables has been subject to neither APMC market fees nor costs arising from intermediation and cartelization. Many states also adopted provisions related to creating a unified market area within the state and created direct marketing channels within their state. Many states, including Punjab, had already enacted contract farming laws—the subject of one of the controversial central farm laws. They also made provisions for enabling online trading platforms. Bihar repealed its APMC law in 2006.

These reforms had been enacted both through encouragement and nudges from the central government, but also because many states understood the necessity of creating greater competition and better infrastructure in agricultural marketing. It is the latter that is more significant, for it highlights the “pull” side of agricultural marketing reforms—an understanding by states themselves that these reforms are an essential component of agricultural modernization.

Madhya Pradesh (MP) is one of the biggest success stories in agriculture over the past decade. The state has been able to increase agricultural production and productivity through a series of measures over the past two decades. Agriculture contributed 34 percent of the Gross Value Added in the state’s economy in 2011–12. In 2019–20, this increased to 44 percent. As per one paper, the state’s agricultural GDP grew at 11.5% compared to the national average of 4.7% between 2017–18 and 2020–21. This has contributed to making MP one of the faster growing Indian states over the past decade. Between 2009 and 2019, MP more than doubled its production of food grains, one of only two states to do so. What is perhaps even more stunning, is that its production of vegetables during this period has increased by five times, and production of fruits trebled. This transformation in agriculture has come about due to a series of measures, including reforms in agriculture marketing.
Economists Ashok Gulati and others have put this achievement down to a significant improvement in irrigation, better power supply for irrigation, mechanization, and proactive and decentralized government procurement. Simultaneously, the state government has improved storage infrastructure. It developed a new warehousing policy in 2012. Warehousing capacity increased from 7.8 MMT in 2010–11 to 16.5 MMT in 2017–18. Cold storage capacity increased from 64,603 MT in 2015–16 to 3,27,819 MT by 2017–18, an increase of close to five times in three years.

A multi-state study by scholar Devesh Kapur and others highlights how farmers increasingly participate in the market as their marketable surplus increases. In the 2000s, MP increased its wheat production significantly, putting pressure on agriculture marketing infrastructure in the state. To respond to increased production, the state moved aggressively to liberalize APMC mandis. Moves in this direction had started in the early 2000s with the introduction of private trading platforms run by ITC called “choupals”. This, and other liberalizing measures, increasingly introduced competition in the state agricultural marketing system. In addition, MP competed in wheat procurement with Punjab and Haryana by keeping its APMC mandi fees much lower than these two states. The 2020 ordinance passed by Madhya Pradesh was in continuation of this longer trend of improving marketing linkages to support agricultural modernization.

Karnataka similarly adopted a reformist attitude towards agricultural marketing in the past decade. It reformed its state APMC law in 2007 and focused on APMC modernization during that period. From 2011 onwards, there were moves to liberalize the APMC markets by creating a single market, allowing warehouses to function as mandis, and by cutting down transportation costs and expenses related to mandi fees. The state adopted a new agricultural marketing policy in 2013, where the core objective was to reduce and/or eliminate “barriers to participation in markets to foster competition and efficient determination of price.” It focused on creating a single state-wide agriculture market supported by digitization, unified licensing for traders, private and competing markets, increasing warehousing capacity, and improving information dissemination.

To improve efficiency and transparency in the state agriculture markets, the state government launched a special purpose vehicle, the Rashtriya eMarket Services (ReMS), in partnership with NCDEX, one of India’s leading commodity exchanges. The Unified Marketing Platform created by REMS has more than 48 lakh farmers on the system. In 2017, it was reported that farmers saw a price increase of 38 percent in nominal terms and 13 percent in real terms on the UMP, as opposed to the national average. ReMS claims that in comparison to the period prior to these reforms, farmers now receive an additional share of the final price the consumer pays—between 59–74 percent now, compared to 45–55 percent earlier. Karnataka therefore, also had a long history of progressive reforms in agricultural marketing before the central government’s farm laws were passed.
Maharashtra and Gujarat have similarly taken many steps over the past decade to reform their APMC laws. A 2016 paper that ranked states on their adoption of APMC related reforms ranked Maharashtra and Gujarat the highest. Bihar stands as a useful counterpoint because of the difference of its approach towards deregulation of APMCs. In contrast to other states that introduced competing marketing infrastructure while retaining APMCs, Bihar completely repealed its APMC law in 2006. As per studies, the repeal has benefitted traders but not farmers. The quality of marketing infrastructure remains poor. At the same time, Bihar has seen an agrarian transformation in corn cultivation and a trebling of price realizations from corn cultivation. As per one news report, this is, at least in part, because of the complete lack of mandi fees.

As these multiple examples highlight, different states have taken reformist approaches towards agricultural marketing based on their local political economy considerations. What is common to these approaches is the idea that APMC reforms are an important part of modernizing agriculture. This realization importantly, pre-dates the central government’s farm laws, in some cases, by over a decade. In 2013, state agriculture ministers of a dozen states agreed on the necessity of APMC laws. This means that states that are serious about modernizing agriculture will prefer to liberalize APMC laws and institutions.

The central government’s repeal of the farm laws was a missed opportunity. The implementation of the center’s laws would have done away with mandi fees for non-APMC transactions in one go and created uniformity in the channels for private agricultural transactions and marketing at a national scale.

However, even if the creation of a national market in agriculture is a missed opportunity, states increasingly seem to be competing on the basis of marketing regulation and infrastructure. Madhya Pradesh’s approach of investing in infrastructure and cutting mandi fees to outdo Punjab in wheat procurement exemplifies both. The reformist trend in agricultural marketing remains strong.
About the Authors

Suyash Rai is a deputy director and fellow at Carnegie India. His research focuses on the political economy of economic reforms, and the performance of public institutions in India. His current research looks at the financial sector, the fiscal system, and the infrastructure sector.

Anirudh Burman is an associate research director and fellow at Carnegie India. He works on key issues relating to public institutions, public administration, the administrative and regulatory state, and state capacity. He has also worked extensively on financial regulation and regulatory governance.
Notes


6. Ibid.


30. Ibid.


32. Paul J. Larkin Jr., (see note 26).


42. Ibid.


48. “Smart Grids: An Approach to Dynamic Pricing in India” (see note 46).


66. Ibid.


74. Ashok Gulati et al., (see note 71).

75. Ibid.

76. Ibid.


80. Ibid.


86. Ramesh Chand and Jaspal Singh (see note 65).


For complete source notes, please read this compendium at CarnegieIndia.org.
Carnegie India

Carnegie India, founded in 2016 and based in New Delhi, is part of a robust global network that includes over 200 scholars. The center focuses primarily on three interrelated topics: technology and society, political economy, and security studies. Led by Indian experts with decades of policy experience, Carnegie India engages with governments, policymakers, academics, students, industries, practitioners, and civil society to provide insightful and fresh analysis on India’s pressing challenges and its rising global role.

Political Economy Program

This program studies contemporary developments in India’s political economy, with a view towards understanding and informing India’s developmental choices. Scholars in the program analyze economic and regulatory policies, design and working of public institutions, interfaces between politics and the economy, and performance of key sectors of the economy such as finance and land.

Carnegie Endowment for International Peace

The Carnegie Endowment for International Peace is a unique global network of policy research centers around the world. Our mission, dating back more than a century, is to advance peace through analysis and development of fresh policy ideas and direct engagement and collaboration with decisionmakers in government, business, and civil society. Working together, our centers bring the inestimable benefit of multiple national viewpoints to bilateral, regional, and global issues.