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## Appointing CEC: Oppn must have say

Serious questions have been raised about the neutrality of the Election Commission and the fairness of some of its actions and decisions in recent months. Its conduct of the Gujarat election has come under criticism for its seeming bias in favour of the BJP. There was no convincing reason for it to withhold the announcement of the poll schedule for Gujarat when it announced the date for Himachal Pradesh. This was probably to enable the central and Gujarat governments to announce sops to the people before the model code came into force. On the last day of campaigning, it issued a notice to Rahul Gandhi for giving TV interviews after campaigning ended and ordered the filing of FIRs against channels which aired the interview. But it ignored Prime Minister Narendra Modi's roadshow on voting day, which was shown on TV. When Congress complained to the EC, it said it would act on the matter after the conclusion of polling. Later, it withdrew the notice to Rahul Gandhi, probably because it could not find a reason not to issue one to Modi, too.

The EC's flip-flop has drawn attention not only to its unfair conduct but also to Section 126 of the Representation of People Act, which bans election meetings and public display of poll-related material on the eve of polling. This was relevant till two decades ago when campaigning was done through public meetings, rallies,



"Neutrality of EC came under question in Gujarat"

etc. But a lot of campaigning takes place through social media now, which cannot be checked. It may be unfair to disallow campaigning on traditional media when there are no restrictions on campaigning on social media. The commission has set up a committee to study this and suggest amendments to Section 126. It is unfortunate that the Election Commission, which was considered a credible and impartial institution, has been embroiled in controversies and attracted adverse comments in recent months. Its decisions during the Gujarat election campaign have strengthened doubts about its impartiality. It is pointed out that the CEC and the members of the commission have previously been closely associated with Modi while he was chief minister of Gujarat. The Election Commission has a vital role in a democracy and its credibility should be beyond question. There is a strong case for changing the method of appointment of the CEC, who is now selected by the government of the day. If eligibility criteria are laid down and the selection is made by a panel in which both the government and the opposition are represented, that will enhance the acceptability of the commission. Both the Supreme Court and the Law Commission have supported such a procedure, and it is better than the present system.

## Lanka port: China's plan worries India

Sri Lanka's formal handing over of Hambantota Port to China on a 99-year lease has enormous ramifications for the island as well as the region and beyond. Unable to repay the roughly \$8 billion debt plus interest it owes Beijing, Colombo has handed over the port and an industrial zone surrounding it to China. Under an agreement signed by Sri Lanka Ports Authority and the Chinese government-controlled China Merchants Port Holdings Company, the latter will now control 70% of the stake in Hambantota Port. Through the grant of equity to China, Sri Lanka believes has solved its debt problem. Chinese management of the port and investment zone, the Sri Lankan government claims, will give the island's economy a shot in the arm by promoting industrial development and tourism. The port and related road and airport infrastructure are indeed top class and Colombo may have bought itself time. But this route to chipping away at debt comes at a heavy cost. It will undermine Sri Lanka's sovereignty. Besides, this is just the start. What other assets will Sri Lanka sell to China when the next debt servicing bill arrives?

China's operation of Hambantota port has serious implications for India's security. Chinese presence so close to India's southern coast is worrying. Importantly, there is concern in Delhi that the People's Liberation Army-Navy (PLAN) ships and submarines will dock at Hambantota. To reassure India, Colombo has made the Sri Lankan security forces responsible for Hambantota port's security. It has also clarified that it will not allow this port to be used by the Chinese navy. Delhi, however, cannot but remain uneasy. After all, former Sri Lankan president Mahinda Rajapaksa had allowed Chinese submarines to dock at Colombo, after assuring India that he would never do so.

Countries in South Asia and elsewhere, which are taking huge loans at high rates of interest from China for infrastructure projects, should draw lessons from the Sri Lankan experience. Chinese funds for projects don't come free and, like Sri Lanka, they, too, are likely to be drawn into the quicksand of debt sooner than later. When a debtor country is unable to service its debt obligations, Beijing demands its pound of flesh, which is in the form of ownership of the port as in the case of Sri Lanka, ceding of land as with Tajikistan, or the setting up of a naval base as in Djibouti. Countries that are lining up to join China's ambitious Belt and Road Initiative should look before they leap into debt with China. Beijing offers no free lunches.

# Comment

## LAWYERS' CONTINGENT FEE AGREEMENTS

# An unethical practice

The Supreme Court has once again reignited the debate on the professional ethics practised by Indian Bar

By Nachiketa Mittal

Do lawyers weigh litigants' purse more than the case brief? This is the unfortunate but real face of the legal profession today. Is it alright for a lawyer to demand a percentage from the outcome of a case? Would it not amount to misconduct and breach of professional ethics?

The judgement of the Supreme Court delivered on December 5, 2017, in the case of B Sunitha vs The State of Telangana & Anr, answered these fundamental questions and categorically declared that such a practice amounts to professional misconduct. This case has reignited the debate on the professional ethics practised by the Indian Bar and its repercussions on the overall administration of justice in the country. A reality check is essential to see the role of lawyers as equal partners in justice delivery and how their misconduct can be extremely damaging to society.

### Contingent Fee Agreements

A strong legal foundation for the prohibition of 'contingent fee agreement' entered into by a lawyer is provided in Rule 20, Bar Council of India's 'Standards of Professional Conduct and Etiquette' (Bar Council of India Rules, 1975). This rule states that "An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof." Such contingent fee agreements are also unlawful by virtue of the operation of Section 23 of the Indian Contract Act, 1872, for being against professional ethics as well violating public policy. The core essence of this prohibition has been to guard the interest of those seeking justice against the abuse by a lawyer of his professional position.

Therefore, if a lawyer enters into an agreement to charge fees on percentage basis, a lawyer then doesn't remain 'professional' anymore. Instead, such an act would mean that the law-

yer has become both personally and pecuniarily interested in the result of the litigation, thereby surrendering his position as an advocate and becoming a litigant in the garb of an advocate. The Supreme Court made this observation in 1954 in Registrar, High Court, Appellate Side, Bombay vs K L Gauba. Around the same time, in another case, the Supreme Court again declared that an act of an advocate to enter into a contingent fee agreement with a client cannot be lawful and would amount to professional misconduct and violation of public policy.

Claims for fees based on a percentage of the decretal amount is not only unethical but a clear example of a lawyer's greed for money. The increasing practice of charging exorbitant fees by the lawyers is a sophisticated act



of extortion or terrorising a litigant by creating a fear psychosis that he or she would lose a case if a particular sum of legal fee is not paid. The money extracting tactics of the lawyers is doing grave disservice to clients, rather than any form of noble service to the community.

### Regulatory Framework

The Legal Practitioners' Act 1846, enacted during British India, provided legal practitioners a freedom to charge any fees for the professional services rendered by them, leaving barely any place for the poor to access the counsel for effective representation of his case. Even in today's con-

text, the situation is more or less the same. That is, the Advocates Act 1961, presently in force, is silent on the issue of lawyers' fees but retains its focus on professional quality and discipline. A regulatory framework to check the astronomical fees charged by lawyers is absent. Also, there is no sign of legislative intent to evolve a law-based solution to this corrupt practice.

### Unfinished debate

The recent judgement by the division bench of the Supreme Court in the case of B Sunitha vs The State of Telangana & Anr, must therefore not be ignored as a continuation of several observations made by the Supreme Court in so many cases since independence. The mere declaration of contingent fee agreements as unlawful will not close the chapter on this practice. It is not a regular case where decision on a conduct being lawful or unlawful would end the debate. It is about the sanctity of the legal profession, the abundant respect and confidence that lawyers enjoy in society.

When lawyers are regarded as equal partners in justice delivery, compromising professional conduct and ethics will have far reaching implications. In the case of Ministry of Information & Broadcasting, In re, (1995) 3 SCC 619, the Supreme Court had cautioned the legal practitioners about such consequences by observing that if people were to lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. This sad reality and a perception that lawyers never lose a case because they control the litigant's brief as well as the purse must change.

Whenever there has been a travesty of justice, the apex court of the country has stepped in to protect the fundamental rights and civil liberties of the common man. Even today, when legal practitioners are going astray and there is no law to set it right, we look up to the Supreme Court to regulate the behaviour and conduct of the Bar, and to remain the everlasting sentinel of justice, as it is most deservedly called. (The writer is Assistant Professor, National Law University Odisha and Assistant Registrar, Research, Supreme Court of India)

## RIGHT IN THE MIDDLE

# A memorable Christmas

Her merry mood of previous night had vanished as darkness fell

By Suryakumari Dennison

One particular Christmas, over four decades ago, is vivid in my memory. In a break with tradition, my parents, brother and I did not celebrate the festival at home in Delhi. For reasons I cannot recall, we decided to spend it in Madras (not Chennai then) with my maternal grandparents. Since we usually visited them in the month of May, boarding the Grand Trunk Express with my father on a cold winter evening was an exciting experience.

My mother and brother had left Delhi the week before, but my father and I had to wait till December 22. He did not have much leave, and I could not miss my classes at college. Still, we expected to reach Madras on the 24th

morning, well in time for midnight Christmas worship. Eventually, however, we missed church completely. A train moving ahead of ours was derailed, and the journey was delayed so long that we reached our destination only on December 25.

Blissfully unaware of the trouble to come, my father and I made the acquaintance of the other occupants of our compartment, a lady and her daughter. I was delighted to discover that the latter, like me, was studying English literature. She was my senior and on her way to acquiring a Master's degree in the subject. Recalling the requirements of her former course, she gave me useful tips on how to tackle my BA Honours texts.

Her mother was less loquacious. After the preliminary pleasantries, she evidently wished to be left alone and gazed out of the window. The following afternoon, when she finally conversed, she spoke so softly that I could hardly hear her. I noticed that my father was paying her sympathetic attention and

that the bright and articulate student was strangely subdued. Her merry mood of the previous night had vanished and, as darkness fell, she sat in sombre silence.

Suddenly, there was a commotion at a station, as a large group of foreigners entered our carriage. They spread out and a few of them looked in on us and settled down on our berths, in a friendly fashion. They were headed for Auroville, a township that had been established recently and of which I was, then, quite ignorant. "Let's have some Christmas carols," one of them suggested, and they sang the songs of the season.

I might have joined them if I had not observed that the girl I had grown to admire was close to tears. I learnt later that she had lost her father in an accident, earlier that year. While my father and I were looking forward eagerly to a joyous family reunion, our travelling companions of the past two days were faced with the painful prospect of a bleak and lonely Christmas.

## LETTERS TO THE EDITOR

### No Sunny, read between the lines

Sir, Apropos "Sunny says safety first, calls off Bengaluru bash" (DH, Dec 20), Actor Sunny Leone cancelled her year-end nite citing non-cooperation of the police. Police are understandably apprehensive about the event after what happened last year — an intoxicated and unruly crowd can create messy law and order situation. But, the state home minister asking police not to allow the event shows his government in a bad light. Is he not

confident of the police managing the law and order if at all situation gets out of hand or is there something to be read between the lines? With state elections around the corner, it looks like the Congress government doesn't want to give an opportunity to the BJP to use this as a political poll plank as the saffron party is known to raise such issues.

YOGARAJ CHANNE GOWDA, Bengaluru

### Timely advice

Sir, It's very true of our Prime Minister in the editor's column "Obama's advice on minorities timely" (DH, Dec 20), that he chooses to keep silent on hate speeches. He speaks on everything except reining in his elected representatives or party cadre from passing such comments. His silence only encourages fringe elements to break the law. The PM must have an inclusive agenda for minorities to trust him.

AMARNATH DINESH ROY, Bengaluru

### A lesson for all

Sir, Apropos "NOTA sealed fate of many candidates" (DH, Dec 20), the recent Gujarat election in which over 5.5 lakh voters chose the None of the Above (NOTA) option, should lead all political parties to read the writing on the wall. It invites them to understand that stirring up communal emotions by visiting temples or

raising issues such as Babri Masjid during election time can appeal only to a few narrow-minded elements.

ASIF IQBAL QASMI, Hyderabad

### BJP has other tricks

Sir, In regard to the EVM hacking controversy one may ask why should BJP take the risk of hacking EVMs for its electoral advantage when it has the power, money and Hindutva-skill to hack the majority of the poor and gullible voter's minds?

BALVINDER, Chandigarh

### Aadhaar is a nuisance

Sir, Apropos "Aadhaar not must for property deal" (DH, Dec 20), Aadhaar is against privacy and not worth taking a risk on personal financial matters of citizens and which is being unconstitutionally forced on people. It has also become a way of harassing senior citizens. Aadhaar cannot be held legal in a democratic set up. The SC must be

presented with all the acts of misuse of Aadhaar and a referendum should take place on whether people are in its favour or not.

M KUMAR, New Delhi

### Tall claims

Sir, Apropos "Headless rights body, uncaring govt" (DH, Dec 20), the editorial has shattered the tall claims of Karnataka on human rights. The judiciary is the most appropriate body to deal with cases of human rights violations. The rich still approach the court. It is the common man's rights that are denied by keeping the commission headless for all these years.

MATHEWS PHILIP, Bengaluru

### More letters on 'Net Mail' at www.deccanherald.com

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## SPEAK OUT



"We are not demanding an apology... But PM should come to the House and say that he has made such statements to win the elections"

Ghulam Nabi Azad, Leader of Opposition

Guilt has very quick ears to an accusation.

Henry Fielding

## IN PERSPECTIVE

# After Vikas Shivar, Railways in a freeze

Crucial projects on safety and revenues are stuck in files and are yet to see the light of day

By Arun Kumar Das

It is more than a year since the Railways organised the Rail Vikas Shivar at Surajkund with much fanfare, with the aim of generating innovative, yet practical, ideas in the most crucial areas of rail operations and to chart out a roadmap for Railways. Supervised by the then railway minister Suresh Prabhu, the three-day session was eventful, as 55 far-reaching strategic initiatives, including some out-of-the-box ideas, were firmed up to transform Indian Railways.

But with the change of guard at Rail Bhawan, perceptions about Rail Vikas Shivar have also changed, though the basic aim remains the same — improving the functioning of Railways. Incidentally, Railway Minister Piyush Goyal has also emphasised on out-of-the-box ideas to enable game-changing reforms. Strangely though, the Transformation Cell, a separate cell created by Prabhu to implement innovative ideas, did not find much favour with the new minister and has been told to merge with another group, the Mobility Cell.

More than one lakh new crowdsourced ideas — a first for Railways — for improving the State-run transporter were generated and examined by various teams during the previous regime and selected ones were taken into the actionable agenda. It's not that the present dispensation is completely averse to the many strategic initiatives started by Prabhu, but it seems to be moving at its own pace. As a result, many crucial reforms have not moved towards implementation.

While Prabhu had launched 55 actionable points to improve safety, increase earnings, decentralise decision-making, enhance passenger amenities and expand infrastructure, Goyal, also keen on reform, has recently laid out 10 principles to improve rail functioning. These are: (1) Partnership with all stakeholders, (2) Decisive leadership, (3) Outcome-oriented action, (4) Root cause analysis, (5) Rule of law and transparency, (6) Prioritisation of issues, (7) Time-bound execution and fast dispute resolution, (8) Innovative financing, (9) Technology focus, and (10) Accountability and close monitoring. A close analysis will reveal, however, that these 10 points are all embedded within the previous 55 actionable points agenda, too.

However, despite the same aim and purpose, the proposed, and much-awaited, onboard condition monitoring system (OBCMS), online monitoring of rolling stock, provision of a device called 'Trinetra' on locomotives as aid to drivers to work in foggy weather and the 'End

of Train Telemetry' (EOTT) system in freight trains to remove the brake van and do away with guard service, and implementation of access control systems at all major stations were some crucial initiatives decided on earlier, but have not moved forward at all. In fact, OBCMS and Trinetra, a radar-based system to alert the locomotive pilots about signals during poor visibility in the winter season, were even showcased to Prime Minister Narendra Modi as examples of the use of the latest technologies to improve safety and prevent mishaps.

The OBCMS, Trinetra and EOTT, along with many others promised earlier, are stuck in the Railways files and are yet to see the light of day. In the meantime, Railways has witnessed a series of derailments and disruption of train services due to fog in many parts of north India. All north-bound trains are running late by several hours due to the prevailing poor visibility condition this winter.

### Actionable steps

Developing a much-needed real-time intelligent system to tabulate the potential delay of each late-running train so that passengers could be informed in advance, redesigning service contracts, development of a policy framework to jointly develop technological solutions for priority areas with private players are some of the other actionable steps that Railways hasn't moved on at all.

Cash-starved Indian Railways is heavily dependent on fares and budgetary support from the government. It aims to perk up earnings through non-fare sources. For this, there were plans to set up two lakh screens across 2,175 stations and to vinyl-wrap trains to turn them into advertising platforms to shore up non-fare revenues. Both the initiatives have been stuck for long at the pre-tendering level.

Many other plans were made, too, at the Rail Vikas Shivar, that remain plans: upgradation of goods sheds with end-to-end logistic solutions through PPP, rolling out a time-table for freight services, developing an integrated dashboard for receiving and processing complaints online, and trials of dwarf containers for domestic cargo. The freight pricing model was to be redefined to incorporate route utilisation and transit time assurances, an inflation-indexed pricing model was to be developed for passenger services, and a vendor interface management system was to come up. At best all these plans are moving on a very slow track.

Most crucially, the train protection warning system, mooted almost five years ago, is still undergoing pilot trials on a limited section, and no one knows when such a critical project for preventing rail accidents will take off on major trunk routes. Meanwhile, rail mishaps continue.

(The writer is a senior journalist based in New Delhi)

## OUR PAGES OF HISTORY

50 years ago: December 21, 1967

English necessary for 'a long, long time'

New Delhi, Dec 20. M C Stelvald (Nom) today made a strong plea in the Rajya Sabha for the continuance of English as an official

language for "a long, long time to come".

Initiating the debate on the official languages (Amendment) Bill, Stelvald asked opponents of English not to forget that "we owe the spirit of freedom to English".

25 years ago: December 21, 1992

CM: benefits for Christian converts under study

Bangalore, Dec 20. Chief Minister M Verappa Moily today said that the government would consider extending the benefits now

enjoyed by Hindu Scheduled Castes/Tribes to Christian converts from among them.

Moily said that the status of SC/STs had not changed despite their conversion from Hinduism to Christianity.