Law panel moots life term for torture

Recommending life in jail for public servants convicted of torture, the Law Commission on Monday said the government should ratify a United Nations convention to tide over difficulties in getting extradited criminals from foreign countries due to the absence of a law preventing harsh treatment by authorities.

The panel also said that in case the government decided to ratify the UN convention on torture and other inhuman and degrading treatment or punishment, a Bill should be introduced in Parliament to amend various laws to prevent torture by government officials.

The draft Prevention of Torture Bill, 2017 proposed “stringent punishment” to perpetrators to curb the menace of torture and to have a deterrent effect on acts of torture.

The punishment could extend up to life imprisonment and include a fine.

The report submitted to the Law Ministry said the Criminal Procedure Code, 1973, and the Indian Evidence Act, 1872, require amendments to accommodate provisions regarding compensation and burden of proof.

Compensation favoured

It recommended an amendment to Section 357B to incorporate payment of compensation, in addition to the payment of fine provided in the Indian Penal Code.

The report, now in the public domain, said the Indian Evidence Act required the insertion of a new Section 114B.

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The judiciary should exercise firm grip over criminal cases involving politicians

On March 10, 2014, the Supreme Court passed an order in a case brought by the Public Interest Foundation. Various issues dealing with electoral reform were involved, including whether candidates for election should be disqualified only after conviction in a criminal case, or at the earlier point of framing of a charge sheet by a court. That issue was postponed for a more detailed hearing.

However, **Justice R.M. Lodha utilised the occasion to pass a succinct and categoric direction**, hopefully the forerunner of a game changer for cleaner politics in India. In relation to cases against sitting Members of Parliament (MP) and Members of Legislative Assemblies, who have charges framed against them for serious offences specified in Section 8 of the Representation of the People Act, 1951, the trial should be conducted expeditiously, he said, in no case later than one year. If this was not possible, the Chief Justice of the High Court should be notified.

Move the frame to the present. On November 1, 2017, Justices Ranjan Gogoi and Navin Sinha **pick up the baton**. They want to know how many of the 1,581 cases involving MLAs and MPs (as declared in their nomination papers to the 2014 elections) had been disposed of within the time frame of one year, and how many of these ended in conviction. The questions are as succinct as the previous order. The Central government will take six weeks to respond. It fairly states that it will cooperate in setting up special courts to try criminal cases involving political persons.

Hardly any reports have filtered in about convictions following Justice Lodha's order; it is likely that the answer to the court's questions will show extremely low numbers, corresponding to a high degree of violation of the court's order. This by itself is a serious concern affecting all branches of government. However, it makes it all the more desirable that the Bench now exercises a firm grip over this case and steers it to conclusion. This will be as great a contribution to governance in India as any other.

Except perhaps for tainted politicians, the rest of India will acknowledge that those with criminal backgrounds cannot govern us. It is not just a few politicians, and not just any criminal background — out of the 542 members of Lok Sabha, 112 (21%) have themselves declared the pendency of serious criminal cases against them — murder, attempt to murder, communal disharmony, kidnapping, crimes against women, etc. These are the people who make laws for us. Furthermore, our ministers are largely chosen from MPs and State Assemblies. Crime and venality stalk the corridors of power. Those with criminal tendencies do not compartmentalise them. They also engage in corruption and infect the bureaucracy and the police. If virtually every aspect of public governance is tainted — from tenders and contracts to safety of buildings and roads to postings and transfers — lay the blame squarely on the decline and fall of political morality. Urgent judicial relief is therefore a necessity.

It is also a real possibility. Few things stand in its way. The argument that we will be somehow breaching the law of equality by creating special courts to try this lot can be brushed aside; Article 14 permits classification based on criteria and nexus; MPs and MLAs form a distinct class and their early trial is a democratic must. They thus deserve to be given priority treatment (as they get in so many other instances). A shortage of judges can be overcome. The Constitution, under Article 224A, provides for the reappointment of retired High Court Judges as ad hoc judges. There is thus a large pool of judges of integrity and experience to choose from.

Special attention needs to be paid to two factors. One is the necessity of having prosecutors who are not attached to any political party. A directorate of prosecution, headed by a retired senior

judge, who chooses prosecutors in turn vetted by the Chief Justice of the High Court, should be able to address this aspect. The other danger is that the main trial will be obstructed by interim orders. Experience has shown that political leaders are adept at finding legal counsel who file multifarious interim applications which stymie the trial; High Courts and the Supreme Court have sometimes failed to address these expeditiously. This needs to be avoided, and can be if Chief Justices have a superintending mission.

One concern expressed is to find funds to create the infrastructure and staffing for the special courts. A government which comes up with 2.11 lakh crore to clean up bank balance sheets should have no difficulty in finding a fraction to clean up political criminal spread sheets. And if required, the Finance Minister can devise a ‘Swachh Politics Bharat Bond’. It is bound to be oversubscribed, many times over, by delighted citizens.

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The definition of harassment needs to be constantly updated, and the process for justice made more robust

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Teaching ethics to aspiring civil servants

The arrest in Chennai of an Indian Police Service (IPS) officer on probation, **for cheating during the civil services examination**, raises questions on future recruitments to the All India Services and the training of officers. It is tellingly ironic that the incident occurred around the same time when the nation was **commemorating the birth anniversary of Sardar Vallabhbhai Patel**, who stood for integrity in government and was considered the chief architect of post-Independence civil services. The incident also took place some months after the **government approved all the recommendations of the Seventh Pay Commission**, which was done in the hope that more pay would mean greater levels of honesty and dedication on the part of public servants.

Unlike in normal criminal justice matters, the burden here of proving innocence rests with the offender, as long as the decision is to proceed against him in an internal inquiry and terminate his services thereafter. However, going by the severity of the offence, it is doubtful whether the ends of justice will be met by resorting only to departmental action. There is always a public perception that double standards are applied when punishing criminality in high places. This is why there is no option but to prosecute the officer in a court of law. Of course, he should be given every opportunity to defend himself, but the dice seems heavily loaded against him. The punishment aside, what needs to be revisited in this context is the provision in civil service rules that permits a serving officer to constantly look for opportunities outside the service to which he or she had been allotted in the first instance.

The question is, is this instance of misconduct by a public official, chosen on merit and pampered later with enviable perquisites, a mere aberration or is it symptomatic of a wider malaise? What is worrying is that there are growing accounts of dishonesty among public officials, especially in the State governments.

This is not to say that amid widespread corruption, senior civil servants cannot but yield to a dishonest political executive. Ultimately it is the moral fibre of an individual officer that counts. A substantial percentage of senior officials still stick to the path of virtue and act according to the codes of good conduct. It is this phenomenon that gives us hope that all is not lost.

The pride of the Indian Police is the National Police Academy in Hyderabad that trains IPS recruits. It offers comprehensive training to shape the profile of police officers. In recent years, some measures have been initiated to impart instructions in ethics. The Chennai incident throws serious doubts over the quality of such inputs aimed at character-building. It is not my case that a greater emphasis on ethics will measurably improve civil service conduct. However, we also cannot say nothing can be done in the matter; that would be disastrous.

The NPA faculty, including its director, must enhance the quality of instruction in ethics. The institution will receive ample support from the Home Ministry, which has been most generous in granting the finances needed to sharpen police training in the country. In sum, there must be indoctrination of trainees in ethical behaviour. Other training inputs take a back seat.

Further, supervisors in the State Police do not play the role required of them to train IPS probationers once they are assigned for field training after finishing the course at the NPA. Only a few senior officers take interest in instilling the right values in IPS trainees. This is not only because of sheer indolence and the low priority accorded to responsibility of monitoring training, it is also because of the declining moral standards of senior police officers themselves.

If the IPS stands somewhat discredited in the present time despite its glorious record in maintaining order in the most difficult of terrains, including in Jammu and Kashmir and Naxalism-

affected areas, it is because a large number of senior officers concentrate on their own careers at the cost of guiding trainees. A vibrant and well meaning national debate on the future of the IPS therefore seems appropriate.

R.K. Raghavan is a former CBI Director. Views expressed here are personal.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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Paradise challenge

The largest ever leak of financial data — a trove of 13.4 million corporate records from Bermuda's Appleby and Singapore's Asiaciti, featuring 19 global tax havens which help the global rich and powerful to come up with complex offshore structures to dodge tax — underlines yet again the severe challenges in combating tax evasion. The Paradise Papers, the new set of papers on offshore finances, being investigated by The Indian Express in collaboration with the International Consortium of Investigative Journalists (ICIJ) and Suddeutsche Zeitung, Munich, shows a link to 714 Indian names, including prominent individuals and corporates, and raises questions on the legitimacy of some of these offshore transactions and beneficiaries. This comes on top of the previous ICIJ expose on British Virgin Islands and the Panama Papers last year besides the HSBC leak, all of which forced governments worldwide to strengthen efforts to combat tax evasion and forge pacts to plug loopholes in tax treaties, share information and carry out policy changes.

In the wake of these exposes, and after the 2008 financial crisis, there has been a visible resolve to tackle the "dark side of capitalism", as a British official once described it. The data leak which reveals the global trail of many Indian corporates in tax havens has to be viewed against this framework. For sure, not all these offshore structures are illegal. Many large Indian firms have global operations now and may, like their global peers, take recourse to "aggressive" tax planning. But as the ongoing investigations show, this could be a grey zone and some of them may have to pay a price for this secrecy. There is a larger message from this expose to the government, individuals and corporate firms. To begin with, there must be a tighter regulation of cross-border flows. That doesn't mean unleashing a raid raj and using the revelations which flow from the data leak as a weapon to crack down and create an atmosphere of distrust which can dampen business sentiment.

As more Indian companies extend their global footprint, we could see more such complex offshore structures being designed, making it imperative for firms to balance their tax planning and comply with the rules. This also underlines the need for systemic reform, especially the urgency of simplifying India's taxation laws, at a time when the government has been tom-tomming the surge in the country's ranking in the ease of doing business.

After the Panama leaks, the government was quick to form a multi-agency group to probe all cases of Indians who had set up such offshore structures and launch prosecutions in some cases. It is welcome that the government has swiftly responded this time by announcing a multi-agency group to probe the Paradise papers. As the government gets ready to celebrate the 'anti-black money day' on November 8, to mark a year after demonetisation, it is worth recalling what Finance Minister Arun Jaitley had said last year after a similar expose — that there are "no holy cows". That promise will be on test this time too.

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Eliminating the mafia from Indian politics

Last week, the Supreme Court asked the government about the status of criminal cases pending against elected ministers, underlining the importance of breaking from the history of law-breakers becoming law-makers. The court recommended setting up fast-track courts to deal with the cases, but that is unlikely to be an effective strategy, unless complemented with reforms to improve governance and bring transparency in campaign financing.

Criminalization refers to the use of criminal activities by politicians; either by direct malfeasance or by indirectly recruiting someone. It is not a new phenomenon; the first instances of “booth-capturing” were reported in 1957, and involved hired goons who would mobilize or suppress turnout, or vote on behalf of disenfranchised voters. In return for their work, politicians would protect these criminals from prosecution. From such petty engagement with elections, *goondas* and gangs have come a long way to contest elections themselves. Milan Vaishnav, author of *When Crime Pays: Money And Muscle In Indian Politics*, calls this an example of vertical integration. Until the late 1960s, the re-election rates of incumbents were high. Hence goons were relatively assured of political favours after they helped a politician win the election. As political competition increased, the uncertainty around re-election of incumbent candidates also increased. This led to the entry of criminals in politics in order to maximize control over their own survival and protection. Many goons who had not been involved in politics joined it as a competitive response as they feared missing out on opportunities, or a crackdown by a competing gang.

Vertical integration does not explain why political parties chose to field such ruffians; criminality of the candidates could have brought bad press. That process began with Indira Gandhi banning corporate financing of elections in 1969. This eliminated the most important legal source of campaign finance and pushed financing underground. At the same time, the costs of contesting elections kept increasing due to a rising population, increasing political competition—the number of political parties increased from 55 in the 1952 general election to 464 in 2014—and the trend of giving freebies for votes. This led parties to a competitive search for underground financing, and they played into the hands of criminals and racketeers who had the means to acquire and dispose of large amounts of cash without detection. Thus parties fielded tainted candidates because they could contest an election without becoming a burden on the party’s limited coffers. Data from the last three general elections shows that the strategy was an electoral success as candidates with criminal cases were three times more likely to win than a “clean” candidate.

The root of the problem lies in the country’s poor governance capacity. On the one hand, India has excessive procedures that allow the bureaucracy to insert itself in the ordinary life of people; on the other hand, it appears woefully understaffed to perform its most crucial functions. The density of allopathic doctors, nurses and midwives is 11.9% per 10,000 residents in India (2014), at half of the benchmark set by the World Health Organization (WHO). Furthermore, the density is ten times larger in urban areas than villages. Despite internal security concerns—from Maoist violence to religious extremism and organized crime—there is a 30% shortfall in personnel of the Intelligence Bureau. India has the lowest number of police officers per capita—122.5 per 100,000 people—of any G20 member state, and the vacancy rate stands at 25%. Vacancy rates are 37% for high courts and 25% for local courts.

This scarcity of state capacity is the reason for the public preferring ‘strongmen’ who can employ the required pulls and triggers to get things done—someone who can enforce contracts, deal with the police when they get into trouble, handle the government babus while procuring a licence or help get admission to a government hospital for treatment. Sometimes these politicians align on communal lines as well, promising to serve the interests of a caste or religious community. Criminality, far from deterring voters, encourages them because it signals that the candidate is

capable of fulfilling his promises and securing the interests of the constituency.

Fast-track courts are necessary because politicians are able to delay the judicial process and serve for decades before prosecution. But it is obvious that this will do little to break down the symbiotic relationship between politicians and criminals on the one hand, and the dependence of voters on strongmen on the other. Prosecuted politicians can field their relatives in the contest, thereby retaining power within the family.

The reform needs to change the incentives for both politicians and voters. First, bringing greater transparency in campaign financing is going to make it less attractive for political parties to involve gangsters. Thus, either the Election Commission of India (ECI) should have the power to audit the financial accounts of political parties, or political parties' finances should be brought under the right to information (RTI) law. Second, broader governance will have to improve for voters to reduce the reliance on criminal politicians. That requires a rationalization of bureaucratic procedures and an increase in state capacity to deliver essential public goods like security of life and contracts, and access to public utilities. Standing alone, fast-track courts for politicians will be ineffective in cleansing Indian politics.

How can the decriminalization of politics be achieved? Tell us at views@livemint.com

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Cases pertaining to 'Panama Papers': Investigation in full swing

Pursuant to revelations made by the International Consortium of Investigative Journalists (ICIJ), a Washington based organization in April 2016 about certain Indians having linkages with entities in offshore no tax/low tax jurisdictions, the Government constituted a Multi-Agency Group (MAG) on 4th April 2016, *inter alia*, to facilitate co-ordinated and speedy investigation. The MAG consisted of officers of Central Board of Direct Taxes (CBDT), Enforcement Directorate (ED), Financial Intelligence Unit (FIU) and Reserve Bank of India. So far, the MAG has submitted 7 reports to the Government.

The Panama Papers contained brief particulars of about **426** persons, *prima facie*, Indians or persons of Indian origin. The Income Tax Department conducted enquiries in all **426** cases, *inter alia,* through making 395 references to **28** foreign jurisdictions. Based on analysis of the information obtained and investigation conducted, the outcome so far indicates **147** actionable cases and **279** non-actionable cases (non-residents/no irregularities etc).

Out of the **147** actionable cases:

- Investigations have led to the detection of undisclosed credits of about **Rs. 792 crore**, so far;
- **Searches** have been conducted in **35** cases and **surveys** in **11** cases;
- In other cases, the persons have been confronted with the evidences during enquiries;
- In **5** cases **criminal prosecution complaints** have been filed;
- In **7** cases notices under section 10 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 have been issued;
- Further investigation in all the above cases is in progress.

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Investigations in cases of ‘Paradise Papers’ to be monitored through reconstituted Multi Agency Group

Investigations in cases of ‘Paradise Papers’ to be monitored through reconstituted Multi Agency Group

Revelations made today in the media under the name **‘Paradise Papers’** [based upon expose done by the International Consortium of Investigative Journalists (ICIJ)] indicate that out of 180 countries represented in the data of offshore entities held by persons of different nationalities, India ranks 19th in terms of number of names. 714 Indians reportedly appear in the tally. The Paradise Papers include nearly 7 million loan agreements, financial statements, emails, trust deeds and other paperwork over nearly 50 years from inside Appleby, a prestigious offshore law firm with offices in Bermuda and beyond. The leaked documents include files from the smaller, family-owned trust company, Asiaciti (Singapore), and from company registries in 19 secrecy jurisdictions.

Names of only a few Indians (legal entities as well as individuals) have appeared so far in the media. Even the ICIJ website (www.icij.org) has not yet released the names and other particulars of all the entities. The website of ICIJ suggests that information will be released in phases and structured data connected to the Paradise Papers investigation will be released only in the coming weeks on its Offshore Leaks Database.

The Investigation units of the Income Tax Department (ITD) have been alerted to take note of revelations for immediate appropriate action. It has been reported that many cases of offshore entities are already under investigation on fast track. As soon as further information surfaces, swift action as per law will follow.

Further, the Government has directed that investigations in cases of Paradise Papers will be monitored through a reconstituted Multi Agency Group, headed by the Chairman, CBDT, having representatives from CBDT, ED, RBI & FIU.

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SHe-Box Online Complaint Management System for working women to lodge complaints of sexual harassment at workplace launched by Smt Maneka Sanjay Gandhi

SHe-Box Online Complaint Management System for working women to lodge complaints of sexual harassment at workplace launched by Smt Maneka Sanjay Gandhi

WCD Minister Smt Maneka Sanjay Gandhi today launched a comprehensive SHe-Box online complaint Management System for women working in both public and private organizations to lodge complaints of sexual harassment at workplace. The SHe-Box was launched in New Delhi today to ensure the effective implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (the SH Act), 2013.

The new SHe-Box portal offers the facility of making online complaints of sexual harassment at workplace to all women employees in the country including government and private employees. Those who have already filed a written complaint with the concerned Internal Complaint Committee (ICC) or Local Complaint Committee (LCC) constituted under the SH Act are also eligible to file their complaint through this portal.

Launching the online facility, the WCD Minister, Smt Maneka Sanjay Gandhi said that this is a historic step since it is probably the first ever time that the government of any country has launched an online portal to receive complaints of sexual harassment at workplace. The government is completely committed to provide a safe and fair environment to working women. It is for this reason that the WCD Ministry has made efforts to make the setting up of Internal Complaint Committees mandatory at all workplaces, the Minister explained. She said that the WCD Ministry has also produced a manual and has organized training programmes for Internal Complaint Committees and in the next significant step, the SHe-Box has been launched to provide platform to aggrieved women to make their complaints directly so that suitable action is taken to redress their grievances. These complaints will be monitored by the WCD Ministry, Smt Maneka Gandhi assured.

SHe-Box portal is an effort to provide speedier remedy to women facing sexual harassment at workplace. Once a complaint is submitted to the portal, it will be directly sent to the ICC/LCC of the concerned employer. Through this portal, WCD as well as complainant can monitor the progress of inquiry conducted by the ICC/LCC. This is a proactive step taken by MWCD in the wake of the worldwide social media campaign #MeToo, where women have related their experience of facing sexual harassment and abuse. The portal can be accessed at the link given below:

Link to the SHe-Box portal: http://shebox.nic.in/

Users of SHe-Box also have the option of interacting with Ministry of WCD through this portal, with an assured time-bound response. The portal also provides information on 112 institutions empaneled by MWCD to conduct training/workshops on the issue of sexual harassment at the workplace. It also has the option for resource persons and institutions willing to contribute to training on this subject in various organisations to submit their applications. SHe-Box will provide a platform to these empanelled institutes/organisations to share their capacity building activities with the Ministry which in turn will be able to monitor the activities of these institutes/organizations so empanelled from across the country.

The Ministry has published a Handbook and Training Module on the SH Act to provide information about the provisions of the Act in easy to use practical manner. The private organizations are encouraged to customize the Training Module as per their extant service rules and disciplinary procedures prescribed therein.

Ensuring the dignity and safety of women must be first priority for any digital society. Towards realisation of the vision of the Digital India programme, the Ministry is promoting

utilisation of information and communication technology to achieve the goal of gender equality and women empowerment. It is an effort to utilise the digital space to enable speedier response to the complaints of women against sexual harassment at workplace.

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Can an FIR be filed against a sitting judge?

Can the police or any investigating agency file a first information report (FIR) against a sitting High Court or a Supreme Court judge and even the Chief Justice of India?

The question was repeatedly asked by Justice Arun Mishra in a Constitution Bench hearing on November 10. Justice Mishra was repeatedly heard telling advocate Prashant Bhushan that it is contempt to claim that the FIR in the medical college bribery case directly involves the Chief Justice of India. “It is contempt to say that the FIR names the CJI. Can there be an FIR against a sitting judge of a superior court? That is not the procedure,” Justice Mishra observed. So, what is the procedure? The answer is found in the majority judgment delivered by a five-judge Constitution Bench of the Supreme Court in the *K. Veeraswami* case.

The majority held that no criminal case shall be registered under Section 154 of the Criminal Procedure Code (an FIR) against a judge of the High Court, Chief Justice of the High Court or a judge of the Supreme Court unless the government first “consults” the Chief Justice of India. The justification given was that the CJI’s assent was imperative as he was a “participatory functionary” in the appointment of judges.

The *Veeraswami* case specifically dealt with the Prevention of Corruption Act in judiciary, but the majority judgment had extended its ambit to “any criminal case”.

“Due regard must be given by the government to the opinion expressed by the Chief Justice. If the Chief Justice is of opinion that it is not a fit case for proceeding under the Act, the case shall not be registered,” the majority judgment held.

The verdict held that if the the Chief Justice of India himself is the person against whom the allegations of criminal misconduct are received, the government shall consult any other judge or judges of the Supreme Court.

If the CJI allows the FIR to be registered, the government shall, for the second time, consult him on the question of granting sanction for prosecution.

The *Veeraswami* judgment holds that “it shall be necessary and appropriate that the question of sanction be guided by and in accordance with the advice of the Chief Justice of India”. The majority in the Constitution Bench classifies a judge as a “public servant”.

Consultation with the CJI while registering a criminal case against a judge, whether of the High Court or the Supreme Court, has been made mandatory to protect the independence of judiciary.

Similarly, the Supreme Court has also laid down guidelines for the arrest of a judicial officer of the subordinate judiciary.

Only a formal arrest

The Delhi Judicial Service Association versus State of Gujarat judgment of the Supreme Court was the product of the notorious treatment meted out to the Nadiad Chief Judicial Magistrate by a few Gujarat police officials. It had the country’s legal and judicial bodies in an uproar, compelling the Supreme Court to issue directions of the procedure to be followed while arresting a judicial officer. Primarily, the court held that a judicial officer “should be arrested for any offence under intimation to the District Judge or the High Court”.

The immediate arrest shall only be a “technical or formal arrest”, after which it should be immediately communicated to the District and Sessions Judge of the district concerned and the Chief Justice of the High Court.

The arrested judicial officer shall not be taken to a police station without the prior orders of the District Judge and no statements shall be recorded from him or her except in the presence of a counsel. He or she will not be handcuffed.

Section 3 of the Judges (Protection) Act of 1985 protects judges and former judges of the Supreme Court and the High Courts from “any civil or criminal proceedings” for any act, thing or word committed, done or spoken by him in the course of their judicial duty or function. No court shall entertain such complaints.

Section 77 of the IPC exempts judges from criminal proceedings for something said or done during judicial duties.

The government can initiate criminal proceedings against a sitting or former judge of a superior court under sub section (2) of Section 3 of Judges (Protection) Act, 1985 if it can produce material evidence to show that a judgment was passed after taking a bribe.

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The lowdown on the fight against criminal MPs

The Supreme Court has asked the Centre to come up with a scheme to establish special courts to try politicians facing criminal cases. The government itself was not averse to the idea. It will now have to spell out within six weeks the funds that it is ready to earmark for setting up these courts throughout the country. Thereafter, the court intends to address the issue of appointing judicial officers, prosecutors, and other manpower and infrastructure requirements. The court has indicated that it will interact with representatives of the States too, as it is the State governments that will be prosecuting most of these cases. In addition, the court has sought details of the status of 1,581 cases involving candidates who had disclosed details of pending criminal proceedings against them while filing their nominations for the 2014 elections. As per a March 2014 Supreme Court order, cases against politicians ought to have been disposed of within one year. In addition, it has sought details of fresh cases filed since then and the status of their disposal.

The matter came to court, thanks to a petition filed in public interest by Ashwini Kumar Upadhyay, an advocate who says he has been active in anti-corruption movements. He is also a spokesman for the Delhi unit of the Bharatiya Janata Party. Last year, he moved the Supreme Court for a direction to the Centre to come out with steps to debar all convicted persons from electoral politics for life. Under the present law, a convicted person is disqualified for contesting elections for six years from the date of release from prison. The petition also demands that special courts be set up to decide criminal cases related to those in the legislature, the executive and the judiciary within one year. He has submitted that 34% of the Members of Parliament have criminal cases pending against them and the government is doing nothing to decriminalise the polity. He has cited various reports of the Law Commission and other documents relating to electoral reforms and criminalisation of politics to back his claims.

Criminalisation of politics is an issue that worries independent institutions such as the Supreme Court and the Election Commission more than the political parties in the country. The perception that the political class manages to wriggle out of serious criminal cases because of a protracted and repeatedly postponed trial adds to the problem. While the law's delays are quite well-known, it is obvious that such delays have a beneficial effect on influential accused, who invariably face the case while being free on bail. In most cases, delayed trials result in poor accused languishing in jail for long. Further, it is seen that many political leaders facing criminal proceedings continue to engage in routine political activity, fighting elections or even holding public office. It is not often that some of them quit office in the interest of a fair trial.

As the Supreme Court has already fixed a one-year deadline from the date of framing of charges for completion of trials involving Members of Parliament and Assemblies in an order passed in 2014, the court can be expected to take a tough stand on delayed trials against politicians. The establishment of special courts will be subject to the availability of funds, especially from the States. Some individuals affected by the order may some day question the validity of subjecting to them to proceedings in special courts rather than the regular courts of jurisdiction. The Criminal Procedure Code provides for a speedy trial. Under Section 309, once the examination of witnesses begins, the court should hold day-to-day hearings until all listed witnesses are examined. However, this provision is hardly adhered to. Merely complying with this may significantly expedite cases involving politicians. It is possible that the current proceedings may lead to some legal changes aimed at decriminalising politics. While the Election Commission has taken the stand that it may support the plea for debarring convicted persons from electoral contest for life, the Centre will have to make up its mind on whether it would endorse such a drastic measure.

K. Venkataramanan

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Justice in tumult: on the turmoil in Supreme Court

There is absolutely no doubt that the Chief Justice of India is the master of the roster. So, it is impossible to dispute the legal reasoning behind Chief Justice Dipak Misra's ruling that no one but he can decide the composition of Benches and allocation of judicial work in the Supreme Court. However, the circumstances in which he had to assert this authority have the potential to greatly diminish the court's lustre. The scenes witnessed in the court amidst troubling allegations of possible judicial corruption are worrisome for their capacity to undermine the high esteem that the judiciary enjoys. Chief Justice Misra chose to stick to the letter of the law, but there remain troublesome questions about potential conflict of interest in his decision to overrule Justice J. Chelameswar's extremely unusual order that delineated the composition of a Constitution Bench to hear a writ petition seeking a fair probe into the corruption allegations. It is a fact that in the Prasad Education Trust case, the petitions alleging that some individuals, including a **retired Orissa High Court judge**, were plotting to influence the Supreme Court, had been heard by a Bench headed by Chief Justice Misra. However, it would be perverse and irresponsible to attribute corrupt motives without compelling evidence. At the same time, by heading the Bench himself, the Chief Justice may have contributed to the perception that he will preside over a hearing in his own cause, rather than leaving it to another set of judges to reiterate the legal position on who has the sole say in deciding the roster.

Prashant Bhushan storms out of court after spat with CJI

Justice Chelameswar, the senior-most puisne judge, may have passed his order based on the petitioner's claim that there would be a conflict of interest were the Chief Justice to choose the Bench. But in doing so, he chose to ignore the principle that allocation of judicial work is the preserve of the Chief Justice. Both justices may have found themselves in a situation in which law and strict propriety do not converge. As for the lawyer-activists involved, it is one thing to flag corruption, another to foster the impression that they want to choose the judges who will hear them. The only way to end the current turmoil in the judicial and legal fraternity is to ensure that the Central Bureau of Investigation holds an impartial probe in the case registered by it. The involvement of serving judges may only be a remote possibility, but it is vital to find out whether the suspected middlemen had any access to them. An unfortunate fallout of the controversy is the perception of a rift among the country's top judges. To some, the charges may represent an attempt to undermine the judiciary. These perceptions should not result in the sidestepping of the real issue raised by the CBI's FIR: the grim possibility of the judiciary being susceptible to corruption. Tumult and turmoil should not overshadow this substantive issue.

Revving up infrastructure spending is necessary, but not sufficient

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Education is a key instrument in developing social infrastructure: Vice President

Addresses East West Cultural Festival

The Vice President of India, Shri M. Venkaiah Naidu has said that education is a key instrument in developing social infrastructure - for it breaks the vicious cycle of poverty and underdevelopment. He was addressing the East West Cultural Festival in commemoration of the 121st birth anniversary of Srila Bhaktivedanta Swami Prabhupada, Founder and Acharya of ISKCON, here today.

The Vice President said that for millenniums, India has served as the seat of knowledge, combined with its deep and rich culture, it has taught countless people the righteous path of life. He further said that India has also been the land of Maha-purushas who dedicated their lives to serve humanity.

The Vice President said that due to globalization and technology, the world has become interconnected and multi-culturalism is common. He further said that much before all of these began, Swami Prabhupada had already built a bridge between the East and the West and that bridge was a cultural bridge. It allowed the west to experience the rich heritage of India, he added.

The Vice President said that we meet at a very peculiar time where on one hand the world is making rapid advancement in various fields; yet on the other hand many challenges in the form of terrorism, environmental degradation, drug addiction, hatred, hunger & poverty continue to stare at us. He further said that culture, on the other hand, is the life-sustaining force of social infrastructure. It enlivens ethical and moral values that seem to be eroding in our modern lives, he added.

Following is the text of Vice President's address:

"In many ways it is astonishing that a person who is seventy years old did all of this, sleeping just three-four hours a day and produced so many books which have been translated into 82 world languages.

But, we meet at a very peculiar time where on one hand the world is making rapid advancement in various fields; yet on the other hand many challenges in the form of terrorism, environmental degradation, drug addiction, hatred, hunger & poverty continue to stare at us.

It is in challenging times like these that I find the message of Swami Prabhupada very relevant. The beauty of his teachings lay in the fact that he united everyone under the banner of devotion and service without making any distinctions of race, gender, caste, religion or social status. He and his movement are equally accessible to anyone and everyone.

This is the teaching of this land that we see everyone as one family without any bias or distinction – *Vasudhaiva Kutumbakam*.

It is natural that when we see the world as one family, our care and concern extends to everyone. This was witnessed in the life of Swami Prabhupada. He not only provided spiritual teachings but equally cared for the wellbeing of others.

Community welfare too is at the very heart of the social infrastructure that dominated our Indian civilization for millennia. It is our great civilization that gave the world the famous slogan:

lokah samasta sukhino bhavantu
sarve janah sukhino bhavantu
sarva jiva jantu sukhino bhavantu

“May the whole world be happy and peaceful. May all the people in the world be happy and peaceful. May all forms of life be happy and peaceful.”

I’m happy to learn that the project he started as the Hare Krishna Food For Life is today the world’s largest food relief program. Under the Annamrita program, ISKCON members daily feed 12 lakh government school students free meals. Under the tribal care initiative the organization is providing education, health care in remote parts of Assam, Tripura, Jharkhand, Odisha and West Bengal. All these initiatives are highly commendable.

Education is a key instrument in developing social infrastructure - for it breaks the vicious cycle of poverty and underdevelopment.

Culture, on the other hand, is the life-sustaining force of social infrastructure. It enlivens ethical and moral values that seem to be eroding in our modern lives.

But to me – Swamy Prabhupada’s greatest achievement was that he was an exemplary ambassador of India’s ancient civilization. He carried the same traditional values that you, his followers, are now promoting from inside and outside the shores of India.

And he was so remarkably successful in doing this, that today we see hundreds of thousands of westerners who are exceptionally Indian in their outlook and remarkably Vedic in their lifestyles.

This fits in well with one of the seven purposes of ISKCON "…. to educate all people in the techniques of spiritual life in order to check the imbalance of values in life and to achieve real unity and peace in the world."

Movements like ISKCON, which celebrated its 50th anniversary last year, are helping the youth of India who are our future to lead a compassionate, service oriented life free of vices.

The 15th century saint Sri Chaitanya Mahaprabhu enjoins all Indians to do *paropakara* or welfare activity for humankind. This is what our scriptures have also said – "Paropakaararthamidam Shariram" (This body of ours becomes useful if it serves others). This is a direct order that Swami Prabhupada, who comes in the lineage of Sri Chaitanya Mahaprabhu, took to heart when he travelled worldwide and promoted the true glory of India.

He spread Krishna consciousness around the globe. It is a consciousness which promotes love, harmony and enables each human being to realize the divine forces lying latent within us.

Once again, I thank you for inviting me to be here amidst all of you for this nice festival. I wish you all success in your future endeavors to serve the society.

Thank you very much.

Jai Hind!"

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KSD/BK

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Supreme Court, diminished

The Supreme Court of India is facing its worst crisis of credibility since the Emergency. With an occasional exception, the quality of the court's reasoning, the inconstancy of its judgment, the abdication of its constitutional role in some cases, and its overreach in others, are already denting its authority. But the institutional crisis that the Supreme Court has now created for itself will puncture more holes in the authority that it so valiantly tried to exert. It will also create the conditions under which it will be easier to legitimise diluting judicial independence.

The current crisis was occasioned by an order passed by Justice J Chelameswar to constitute a five-judge bench in a petition filed by CJAR that demanded that a SIT be constituted to look into an alleged corruption scandal pertaining to a case involving a medical college. There are two issues: Can the chief justice be part of the hearing, since the scandal allegedly implicates a judgment the CJI wrote, even though he has not been named in the FIR? Second, could a constitution bench be constituted bypassing the chief justice in violation of the current procedure through which such benches are constituted? This is not the place to recount the ugly sequence of events that transpired. But consider the different ways in which the judiciary has now rendered itself vulnerable.

First, there is the vulnerability that arises from the CBI itself. There are issues of corruption in the courts. The judiciary has failed to find a mechanism to deal with allegations of corruption within its ranks. Every justice in the court needs to be above suspicion. But a lot of care needs to be exercised so that the anti-corruption measures taken do not undermine the independence of the judiciary. This is not a very popular thing to say, but we should also consider the possibility that the threat of being investigated by the CBI, or speculative naming (or suggestion in a CBI report), can itself also be an instrument of seeking recusals or undermining the independence of judges, as is sometimes done with other government officials. This subtle institutional challenge to the judiciary is not outside of the realm of possibility. More than the conduct of Justices Misra and Chelameswar, the judiciary will have to think of how it will deal with instances where the Chief Justice of India or other justices becomes hostage to possible CBI innuendo.

The challenge of fighting corruption in the judiciary will be this: How do you do this in a way that does not make the judiciary vulnerable to implicit blackmail and leads to undermining its independence? But a clamour for reforms that undermine independence in the name of accountability will be a natural consequence of the current chain of events.

It is precisely because such a danger looms that the judiciary's conduct needs to be above board. And here, the judiciary has made itself doubly vulnerable. A court carves out its authority by the compelling character of its reasoning on behalf of constitutional values. We have had a succession of chief justices who have failed to exercise intellectual leadership and the present chief justice is no exception. It is not difficult to understand the chief justice's consternation. He has not been named in an FIR, and the prospect of a CJI's integrity being questioned on the basis of an unaccountable CBI is not a prospect we should relish. He was also institutionally humiliated by one of his brother justices, who disregarded existing court procedure and appointed a constitutional bench. But notwithstanding this, this is clearly a chief justice who seemed not to understand the concept of conflict of interest. He let his consternation on a procedural matter get the better of his judgment in a cringingly unbecoming way. He also gave the impression of not giving counsel a proper hearing. In the way he has constituted benches, he has also shown deep distrust in the capabilities of his senior colleagues. By setting himself up as a judge in his own cause and setting up a bench whose composition looks arbitrary, he has undermined the authority of the judiciary.

But Justice Chelameswar's order setting up a five-judge bench also made the judiciary vulnerable. Surely, there were better ways of securing the recusal of the chief justice and setting up a bench in a way that did not depart from existing court procedure or humiliate the chief justice. The danger is that the pursuit of justice and the need to project virtue often results in a grandstanding in its own right. Rather than build a robust judicial consensus, judges project their own individual heroism.

Between a chief justice who does not recognise conflict of interest, and justices who think the only recourse is public grandstanding, the judiciary will not be able to survive. Many learned counsel have defended Justice Chelameswar's move by invoking Article 142 that gives judges the power to do whatever it takes to secure justice. But the use of Article 142 has also become a sign of immense judicial indiscipline, where judges can easily ride roughshod over other procedural proprieties.

Taken together, both the chief justice's and the judge's conduct highlights one obvious fact: There is no Supreme Court left any more. In expanding its powers, the Supreme Court first replaced the rule of law with the rule of the court (they are not the same thing); now the rule of court has been replaced with the anarchic will of individual judges. The Supreme Court has effectively ended an institution. There is no real command structure left. On procedural matters, whether it is protocols for appointing judges, or handling conflicts of interest, the court is all over the place.

Communication between judges seems to have broken down to the point where the senior leadership of the court is incapable of getting together and coming up with common sense procedural solutions to cases like this. The distrust amongst judges, as evident in the ways benches are being constituted, seems extraordinarily high. And the sense of injured virtue amongst individual judges seems to be trumping any consideration of the reputation of the judiciary as a whole.

There are lots of legal nuances to the case at hand. But the court's loss of external credibility combined with internal anarchy does not bode well for Indian democracy. Instead of becoming a constitutional lodestar in our turbulent times, the court has itself become a reflection of the worst rot afflicting Indian institutions.

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Ill-judged

The confrontation that has broken out in the Supreme Court over the last few days is unedifying and disheartening. As Chief Justice of India Dipak Misra and Justice J. Chelameswar take on each other, and as lawyers take sides in the tussle in open court, the case itself — arising out of the arrest of a former high court judge for allegedly holding out a promise to influence a decision by the highest court in a matter concerning medical college admissions — has been overtaken by the spectacle it has occasioned. At stake, now, is something much more important and large: The reputation and credibility of an institution that has earned itself the title of India's most trusted, a protector of citizens' freedoms, an upholder of the constitutional poise. What is more, this public display of divisions within comes at a time when the court appears at its most vulnerable without. In the last three years or so, the independence of the judiciary has often seemed besieged in the face of a strong political executive that has sought to use the electoral mandate to subdue dissent and circumscribe other institutions, including in the crucial matter of the appointment of judges.

In this courtroom drama, all the lead players are in the dock, even though each of them — from lawyer for the petitioner, Prashant Bhushan, to Justice Chelameswar and CJI Misra — has a formidable record of advancing judicial independence. By listing the case in question before a constitution bench comprising the five senior-most judges, Justice Chelameswar can be accused of playing with procedure, and of attempting to bypass the CJI in his role as "master of the roster". It is the CJI's prerogative, and his alone, to constitute a bench and to direct that a particular matter be heard by that or any other bench. The argument that Justice Chelameswar did so in order to prevent a conflict of interest — even though the CJI's name does not figure in the FIR, a judgement previously given by him is implicated in the case — is undermined by the ill-judged manner in which Justice Chelameswar sought to make his point. At the CJI's door lie two key questions: How to address potential conflict of interest issues and how to assert the primacy of his position in a manner that strengthens rather than divides the institution.

Judicial corruption is an important issue but the judiciary cannot address it by turning on itself. If its seniormost judges give the impression of using a case to settle scores with each other, the institution will only lay itself open to further onslaught by an executive asserting its right of way with all the agencies at its command, including the CBI. Most of all, it will be failing in its duty to live up to the trust and faith that the people of India have come to vest in it.

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A question of probity

On November 10, a five-judge Constitution Bench of the Supreme Court led by the Chief Justice of India, in a case concerning corruption arising out of certain judicial proceedings, declared that the Chief Justice is the **master of the roster** with the sole prerogative to determine which Bench of judges gets to hear which cases. That the Chief Justice, as the head of the judiciary, determines the roster is a platitude that pales in public significance to the critical role of the Chief Justice as the embodiment of moral authority of the entire judicial system. This moral authority suffered a fatal blow when the Chief Justice chose to reassert his own administrative powers in the face of allegations concerning the possible lack of probity of senior public functionaries. The situation demanded statesmanship — unfortunately the Court engaged in whataboutery, raising the spectre of contempt of court, only to drop it finally.

A criminal conspiracy

The genesis of this episode lies in the filing of petitions by Prasad Education Trust before the Supreme Court and Allahabad High Court. The trust operated a medical college whose permission to run certain courses had been declined. Justices Dipak Misra, Amitava Roy, P.C. Pant, A.M. Khanwilkar and D.Y. Chandrachud heard the parties and passed several orders in the Supreme Court; Justices Narayan Shukla and Virendra Kumar-II passed an interim order in Allahabad High Court.

A simultaneous investigation by the Central Bureau of Investigation (CBI) indicated a possible criminal conspiracy to ensure a favourable judicial order in this matter. According to its FIR, two persons managing the affairs of the trust, approached a retired judge of Allahabad and Odisha High Courts, Justice I.M. Quddusi, through Sudhir Giri of the Venkateshwara Medical College (part of Venkateshwara University, in whose case another judgment had been passed by Justice Dipak Misra in the Supreme Court). Quddusi recommended the filing of a petition before the Allahabad High Court, in which partial relief was granted.

The tumult in Supreme Court over corruption: the story so far

Subsequently, when the matter again reached the Supreme Court, the FIR reveals that Quddusi and his associates assured the trust of getting the matter “settled” in the Supreme Court through “their contacts” and engaged Biswanath Agrawala, a resident of Bhubaneswar. Agrawala claimed “very close contact with senior relevant public functionaries” and demanded significant gratification for settling the case. Quddusi, Agrawala and four associates have now been arrested for offences under the Prevention of Corruption Act and the Indian Penal Code.

Since the FIR indicated an attempt to fix a judicial proceeding, the Campaign for Judicial Accountability and Reforms filed a writ petition in the Supreme Court requesting that a Special Investigation Team under a retired Chief Justice of India be set up. This request was made since it was apprehended that leaving the investigation to the CBI might mean allowing the government to influence judges who would be brought under investigation.

The merits of such a request are a distinct matter. However, propriety would plausibly demand that since the FIR pertained to a case where Justice Misra had been the presiding judge, as Chief Justice of India, he would not perform his default role of allocating Benches for determination of this case or exercise his prerogative of hearing the case himself. Doing so would imply that the Chief Justice would not be “like Caesar’s wife”, the puritanical standard of propriety the Court expects of public servants. The same principle would apply to any judge in the Supreme Court and Allahabad High Court who had earlier participated in the proceedings. Recusal would not be an

admission of complicity; instead it would be an affirmation of the principle that justice not only be done but be seen to be done.

Diminishing propriety

Unfortunately, by allocating the matter to a Division Bench, the Chief Justice gave this principle a go-by. It is moot whether the Bench entrusted by the Chief Justice would ensure justice or not — the critical point is that such a Bench chosen by the Chief Justice was congenitally defective. This impropriety set off a chain of improper actions — filing of a second petition in the same matter, hearing of the second petition by Justice J. Chelameswar, the second-most senior judge of the Supreme Court, and an order by his Bench that the matter should be heard by five senior-most judges of the Court.

Justice in tumult: on the turmoil in Supreme Court

To be certain, devoid of context, each of these actions is improper. But the impropriety in these actions is technical and not substantive. That it is the prerogative of the Chief Justice alone to list matters and constitute Benches is a convention based on long practice. However, when doing so would cast a shadow of doubt on the process of justice delivery itself, it is not only proper but also necessary that this task is performed by another judge. The Court cannot stand on formality and sacrifice substantive justice for a vacuous conception of prerogative power.

This episode of plausible administrative impropriety was unfortunately compounded by the Chief Justice constituting a five-judge Bench, including himself, to hear the matter on the judicial side. A resounding reiteration of the Chief Justice's own powers to determine the roster, annulling the order of Justice Chelameswar and hearing supportive bystanders in the Court, were signs of a Court ignoring the need for justice to be seen to be done. Again, whether the right decision was reached or not is moot — a decision was reached in which the Chief Justice was unarguably judge in his own cause. That itself suffices to make this judgment bad in law.

Glasnost and perestroika

To blame one individual or another, or attribute motives for this episode would be to miss the wood for the trees. Instead, there are two structural issues of consequence to anyone who cares about judicial integrity. First, the cardinal principle that the Chief Justice of India is the master of the roster must be re-examined. Although there can scarcely be any argument against it as a tenet of judicial discipline, it would be naive to consider it an absolute principle of justice delivery.

In the U.K., Lord Chancellors had, for long, used the prerogative of Bench selection to serve partisan ends. As scholar Diana Woodhouse writes, Lord Halsbury wanted the power of trade unions reduced and selected Benches accordingly; Lord Hailsham chose Benches to constrict his colleague Lord Atkin's ability to progressively interpret the law and Lord Loreburn's cherry-picking of judges to reach favourable conclusions is well-known. The history of such abuse of prerogative led the U.K. to statutorily establish two leadership positions in the new Supreme Court — that of the President and the Deputy President, together with a professional registry and a Chief Executive. The unchecked power of the Chief Justice of India to constitute Benches must be similarly circumscribed. Doing so does not amount to mistrusting the Chief Justice, but rather being cognisant of changing demands of accountability.

Second, much has been said of the indiscipline demonstrated by Justice Chelameswar's Bench in listing a case and determining the Bench that hears it. Discipline lies at the heart of judicial functioning — its complex rules on filing, unwritten conventions of seniority, expected decorum in courtroom seating are all critical components to ensure institutional discipline. But a single-minded

reiteration of such formal norms appear perverse when confronted with a case where the personal probity of individuals in the judiciary is in doubt. If only to conclusively dispel such doubt, an independent investigation was warranted. This might well have been the logical conclusion of the technically improper order passed by Justice Chelameswar's Bench listing the matter before the five senior-most judges.

For several senior members of the Bar to focus solely on this apparent impropriety while remaining blind to graver improprieties elsewhere and larger questions of probity is symptomatic of a legal fraternity that steadfastly refuses to practice the values it preaches to others. Closing ranks and taking refuge in hidebound norms of propriety is like playing the proverbial fiddle, while pretending that public confidence in the judiciary is a gift that will keep on giving.

Justice Kurian Joseph of the Supreme Court wrote in respect of judicial appointments that a 'glasnost' and 'perestroika' is required if the system is to regain public confidence. If the moral authority of the Chief Justice of India and the Supreme Court is to be restored, something similar is needed urgently. Otherwise the Supreme Court will soon be a far cry from the institution we all revere. Some might say, it already is.

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Students should continue to learn, earn and yearn to serve with clear vision, pure heart and strong shoulders: Vice President

Students should continue to learn, earn and yearn to serve with clear vision, pure heart and strong shoulders: Vice President

We need leaders who will walk the talk and be bold enough to tread untrodden paths

Addresses Eighth Convocation of Gandhi Institute of Technology and Management (GITAM)

The Vice President of India, Shri M. Venkaiah Naidu has said that Students should continue to learn, earn and yearn to serve with clear vision, pure heart and strong shoulders. He was addressing the Eighth Convocation of Gandhi Institute of Technology and Management (GITAM), in Hyderabad today. The Minister for Irrigation, Marketing & Legislative Affairs, Shri T. Harish Rao, the Chancellor of GITAM University, Prof. K. Ramakrishna Rao and other dignitaries were present on the occasion.

The Vice President congratulated the students for acquiring the coveted degrees, prizes and medals and also congratulated the teachers for sharing and imparting invaluable knowledge to mould the young minds in different disciplines.

The Vice President has expressed his happiness that the University has established Centralized Research Laboratories in key thrust areas, such as Water Quality, Nano-Technology, Medical Bio-Technology and Advanced Materials & Processing. He also commended for setting up of research centers in the areas of Cancer, Urban & Sustainable Development, Integrated Rural Development, Climate Change & Disaster Management.

The Vice President said that India is on the threshold of emerging as a major economic power and we are an old civilization with a young population which is a great demographic advantage of country.

The Vice President said that we must prepare ourselves to cope with the emerging dramatic changes and we must be pro-active rather than be reactive. We must be agile and ride the waves of change, he added.

The Vice President said that the Government of India is fully aware of the changing environment and is relentlessly orienting itself towards innovation. He further said that it has taken many measures to transform the country into a digitally empowered knowledge economy and these include a number of flagship schemes and programs like ‘Make in India’, ‘Start up India’ & ‘Stand up India’ to give a huge fillip to manufacturing and entrepreneurship. The ‘Digital India’ program aims to transform India into a digitally empowered society and knowledge economy, he added.

Following is the text of Vice President's address:

"I am delighted to be here today at the Eighth Convocation of Gandhi Institute of Technology and Management. This institution, we all know as GITAM, has been contributing immensely to the cause of quality education in our country. It is preparing a large number of our young boys and girls to achieve their potential in academics and contribute to the society and economy of the country.

As the Indian Education Commission of 1964-66 had stated in the opening paragraph of its Report – "The destiny of our country is being shaped in our classrooms." The knowledge, skills and attitudes acquired by students form the basis for nation building.

On this momentous occasion, I would like to congratulate the students for acquiring the coveted degrees, prizes and medals. I also congratulate the esteemed teachers for sharing and imparting invaluable knowledge to mould the young minds in different disciplines. I consider that the faculty have nurtured and enriched the human resources of our country and commend them for their endeavours.

I am happy to learn that this institution is offering quality higher education for over 37 years. I am extremely delighted to note that GITAM has today three picturesque campuses in Andhra Pradesh, Telangana and Karnataka. With a multi-disciplinary approach, it is currently offering 144 UG, PG and Doctoral programs in diverse subjects and has over 20,000 regular full-time students, 1,200 research scholars and well over 60,000 students in distance mode.

I am told that the University is among the few universities that took lead in implementing Choice Based Credit System (CBCS) which provides flexibility in learning beyond the core discipline and pursue career of one's choice.

I am happy to note that it has established Centralized Research Laboratories in key thrust areas, such as Water Quality, Nano-Technology, Medical Bio-Technology and Advanced Materials & Processing. Setting up of research centers in the areas of Cancer, Urban & Sustainable Development, Integrated Rural Development, Climate Change & Disaster Management is also commendable.

I am glad to note that GITAM has taken the lead, with great foresight, to introduce the state of the art courses in many disciplines. I am told that GITAM is the first university to establish a FinTech Academy, and offer academic programs in Block-chain technology.

It has also taken the initiative to provide its students a world class learning experience. In this context, it has signed MoUs with a number of world ranking global universities for collaborative research and also tied up with Stanford University to develop the stream of 'advanced biotechnology and life sciences' and create a Centre of Excellence.

Today, universities are expected to excel not only in providing quality education, but more importantly in developing global citizens.

The world is shrinking into a global village because of information technology resources. The universities of today have to build the competencies required for functioning effectively in a globalised world. This calls for an attitudinal change and learning how to learn. Students should know how to access, absorb, adopt and adapt new knowledge. They should know how to collaborate, coordinate and compete in different contexts. They should aim for excellence and efficiency and not settle for mediocrity or business-as-usual approach.

As all of you are aware, India is on the threshold of emerging as a major economic power. My dear students, we are an old civilization with a young population. No other country is having this kind of demographic advantage.

My earnest appeal and advice to you, dear students, is to dream big and set your sights high. This world is full of opportunities. You must seize them. As Swami Vivekananda exhorted a hundred years ago- " Awake, arise and stop not till your goal is reached". Keep learning from the best around the world. Use the knowledge and skills you acquire to grow further, transform your world and the world of people around you. Today's world is a world of unprecedented changes in many spheres of human life. Innovative technologies and creative disruption are changing the way we live our lives. Some of the changes are for our good but some are creating new challenges.

Dear students, you must develop the abilities to separate the wheat from the chaff, the good from the bad and be bold enough, wise enough to choose the option that contributes to making our planet a better place to live.

The nature of our economy and the very concept of 'work' are also changing. This *Fourth Industrial Revolution* and the advances in digital technology and robotics will together make certain types of jobs obsolete and also create many new jobs.

We must prepare ourselves to cope with the emerging dramatic changes. We must be pro-active rather than be reactive. We must be agile and ride the waves of change.

The Government of India is fully aware of the changing environment and is relentlessly orienting itself towards innovation. The Government has taken many measures to transform the country into a digitally empowered knowledge economy and these include a number of flagship schemes and programs.

For example, '*Make in India'* '*Start up India*' and '*Stand up India*' programs seek to give a huge fillip to manufacturing and entrepreneurship, while the '*Digital India'* program aims to transform India into a *digitally empowered society and knowledge economy.*

Dear students, India is at the cusp of a massive transformation in all spheres. You will be entering this exciting world of infinite opportunities after your graduation.

Keep your eyes open. Keep your ears to the ground and carve out your future in an area of your choice.

I am happy that Sri T. Harish Rao, Minister for Irrigation, Marketing & Legislative Affairs, Telangana is also with us here. The industrial policy brought out by the Telangana Government has made Telangana an attractive destination for both international and domestic entrepreneurs.

I am happy that Hyderabad is also hub to IT, Biotechnology and Pharma industries. Hyderabad is the second largest exporter of IT products in India with about Rs. 67,000 crores of exports. In tune with Govt. of India's commitment towards building a skilled India, the government established a T-Hub, to attract the best start-ups and entrepreneur organizations from across the world to Hyderabad. Major IT giants like Microsoft, Infosys and Wipro are already functioning from Hyderabad.

Therefore, dear students, you have a number of opportunities right here. But do not restrict your vision. If you have a firm knowledge base, the right skill sets and a positive attitude, you can scale new heights you may not even be able to visualize today.

Before concluding, I wish to underscore the great role the faculty can play in shaping the universities into crucibles of positive change in society. By paying attention to not only 'what' is taught but also to 'how' it is taught, you can transform the destiny of our great nation.

I would like to point out that economic growth of a country is highly dependent on *"the creativity of human resources and innovation through research and development".* The faculty must devote some time to relevant research. This will improve the intellectual stature of the Universities and make them the powerhouses of knowledge. They can potentially be the think tanks for national policy development.

Our country is facing a number of challenges like global warming, ocean acidification, loss of biodiversity, urban migration, increasing demand for energy, shortage of drinking water, polluted air, lack of safe waste disposal mechanisms and fuel-inefficient transportation. Universities should equip students with multi-disciplinary knowledge and inter-disciplinary skills to study these problems and look for solutions to meet the challenges.

I would like to commend GITAM for introducing such inter-disciplinary courses like *Cyber Forensics* and *Information Security, Fin Tech*, *Pharma Chemistry, Food Science and Technology* and a host of other programs needed for today and tomorrow. A multi disciplinary approach as is being followed by GITAM is the way forward.

There is also a strong need to set up technology incubation centres in universities to develop entrepreneurial skills among students and I am told that GITAM University has already established two incubation centres to train students in entrepreneurial skills and enabled them to establish more than 24 start-ups.

Friends, I have no doubt that you will always remain proud alumni of this great institution and dedicate a part of your time and resources to maintain the pre-eminence of your alma mater and bring glory to the university and our great nation.

I would like to thank the university authorities for inviting me to this function and providing the opportunity to meet the young and dynamic graduates.

I once again offer my hearty wishes to all those who are receiving degrees, prizes, medals and honorary doctorates.

My dear young students, today you got your degrees. These are, I sincerely hope, likely to be passports to a brilliant future and excellent life. Think of them also as a badge of honour, a decree of responsibility to live up to the University's expectation and nation's hopes. I do hope you will continue to learn, earn and yearn to serve with a clear vision, pure heart and strong shoulders. We need leaders who will walk the talk and be bold enough to tread untrodden paths.

I congratulate the management of the University, the Vice Chancellor, his team of academic leaders and the entire staff of the University for setting a high benchmark and relentlessly trying to achieve excellence.

My best wishes to you all. JAI HIND."

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KSD/BK

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The danger of electoral bonds

If being ranked 100th out of 190 countries in the World Bank Ease of Doing Business Index was a matter of national celebration, how do we celebrate India being ranked a far more impressive 19th out of 180 countries in the Paradise Papers leaks? Though more than 700 Indians figure in the documents cache, celebrations have been muted, to say the least.

Link with shell firms

All these Indians are on the list for one reason: their association with shell companies set up to siphon vast sums of money out of India and into a tax haven under the cloak of secrecy. The best part is that it's all legal, more or less.

An interesting case unearthed from the Paradise Papers pertains to a law firm's refusal to supply nominee directors to two Mauritius-based companies of an Indian business group due to fears of 'round-tripping' — a term that denotes the (illegal) routing of Indian-origin illicit funds from a tax haven (in this case, Mauritius) back to India.

What if there was a legal channel for companies to round-trip their tax haven cash to a political party? If this could be arranged, then a businessman could lobby for a change in policy, and legally funnel a part of the profits accruing from this policy change to the politician or party that brought it about.

Well, the government introduced precisely such a scheme earlier this year: electoral bonds. These bonds share with tax havens the two characteristics that make the latter such attractive destinations for black money: secrecy and anonymity.

Transparency in political funding is the global norm. The 255th Law Commission Report on Electoral Reforms observed that opacity in political funding results in "lobbying and capture" of the government by big donors. The lower the transparency in political funding, the easier it is for the super-rich to buy the kind of government they want.

According to the NGO, Association of Democratic Reforms, 69% of the income of political parties is from unknown sources. But even the 31% from known sources pertains only to the income that the parties declare to the Income Tax (IT) department.

Thanks to black money, the real incomes of political parties are far greater than their declared income. In other words, not only is the source unknown for the greater chunk of a party's income, even the very existence of this income is 'unknown', as it is not captured in any official record — either with the Election Commission (EC) or with the IT department. Put simply, transparency in political funding in India is already abysmal.

This is despite the existence of declaration norms, traditionally governed by four legislations: the Representation of the People Act (RPA), the IT Act, the Companies Act, and the Foreign Contribution (Regulation) Act (FCRA). Under these laws, political parties have to declare the source and the amount donated for all contributions above 20,000.

Similarly, companies have to declare in their profit and loss (P&L) statement the party-wise break-up of political donations. Also, a company must be at least three years old to contribute to a party. Its contribution cannot be more than 7.5% of its average net profit in the three preceding years. And parties cannot accept foreign contributions.

But declaration to an institution is not the same as disclosure to the public. Even with all these stipulations, as of today, it is barely possible to glean, via multiple Right to Information applications, a rudimentary idea of political parties' sources of funding. Now electoral bonds are set to eliminate even this smidgen of transparency.

The government set the ball rolling with the Finance Act 2016, which amended the FCRA to allow political parties to accept donations from foreign companies. This year, the Finance Act 2017 did the rest, by amending the RPA, the Companies Act and the IT Act. The Reserve Bank of India Act was also amended to enable the issuance of electoral bonds, which would be sold through notified banks.

What electoral bonds do

Electoral bonds are essentially bearer bonds that ensure donor anonymity. They are like cash, but with an expiry date. Let's say company 'X' wishes to contribute 100 crore to political party 'Y'. It could buy ten electoral bonds of 10 crore each from bank 'A'. These bonds would carry only a serial number and not the identity of the buyer.

X would have these bonds deposited in Y's designated account with bank 'B'. B would know that this money belongs to Y but it doesn't record the fact that it has come from X.

The cluster of amendments around electoral bonds makes the scheme's intent amply clear: first of all, they eliminate the 7.5% cap on company donations (which means even loss-making companies can make unlimited donations); also gone is the requirement for a company to have been in existence for three years (paving the way for fly-by-night shell companies); and finally, companies no longer need to declare the names of the parties to which they have donated (so shareholders won't know where their money has gone).

As for political parties, they no longer need to reveal the donor's name for contributions above 20,000, provided these are in the form of electoral bonds. In a nutshell, a foreign company can anonymously donate unlimited sums to an Indian political party without the EC or the IT department ever getting to know. It is difficult to imagine a better instrument to ease the flow of black money into the coffers of political parties.

Danger to democracy

By far the most pernicious feature of electoral bonds is their potential to load the dice heavily in favour of the ruling party. In the hypothetical transaction above, only bank 'A' knows the identity of the donor, while bank 'B' knows only the identity of the recipient.

But both the banks report to the RBI which, in turn, is subject to the Central government's will to know, though it remains to be seen if the former's autonomy can withstand the latter. So, only the ruling party — and no one else — can ascertain which companies donated to the Opposition parties. It is then free to use the organs of the state to gently dissuade (or retaliate against) these misguided donors. What this means is that once the scheme for electoral bonds is notified, the Opposition parties may struggle to raise adequate funds to put up a fight. The implications for democratic politics are obvious.

The government's stated rationale for introducing electoral bonds was that they would protect donors from harassment by enabling anonymous contributions. But this argument falls flat as only the government is in a position to harass, or alternatively, protect, donors from harassment by non-state harassers.

Going forward, there is little doubt that democracy will be the biggest casualty if electoral bonds see the light of day. Former Chief Election Commissioner S.Y. Quraishi has suggested an alternative worth exploring: a National Electoral Fund to which all donors can contribute. The funds would be allocated to political parties in proportion to the votes they get. Not only would this protect the identity of donors, it would also weed out black money from political funding. But without pressure from the citizenry, it is unlikely to interest a political class hell-bent on insulating itself from public accountability.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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India has put 'Dharma' at the centre of governance: Vice President

Addresses the Members of Andhra Pradesh & Telangana Advocates Associations

The Vice President of India, Shri M. Venkaiah Naidu has said that India has put 'Dharma' at the centre of governance. He was addressing the Members of Andhra Pradesh & Telangana Advocates Associations, in Hyderabad today. The Acting Chief Justice of Andhra Pradesh & Teleangana, Justice Ramesh Ranganathan, Deputy Chief Minister of Telangana, Shri Mohammad Mahmood Ali and other dignitaries were also present on the occasion.

The Vice President said that Dharma is for the stability of society, the maintenance of social order and the general well-being and progress of human kind. Whatever conduces to the fulfillment of these objects is Dharma, he added.

The Vice President said that upholding Dharma means sustaining our civilization and if we follow the rule of law, our human society will survive and this is why we say: “Dharmo Rakshati Rakshitaha”. He quoted Chanakya as saying “Law and morality sustain the world”. We all have a stake and a role to play in making this happen in our lives, he added.

The Vice President said that the implementation of the laws and the dispensation of justice need to be much more effective, speedy and perceived to be fair and just. He further said that the conduct of lawyers, judges and the courts has a deep impact on the civilian life in this country. Dynamism of the lawyers is the foundation for “Judicial Activism”, he added.

The Vice President said that justice Dispensation System, as an institution, is now at crossroads and faced with many challenges. He further said that the general decline in ethical and moral values, has affected the Justice Dispensation System as well. Lawyers must equip themselves with the changing trends and assist the Judiciary with proper input, he added.

Following is the text of Vice President's address:

" I am pleased to be with all of you this evening as it brings many pleasant memories of my association with the legal fraternity before and after completing my law degree from Andhra University. Though I had enrolled here as an Advocate long time ago, I didn’t have an opportunity to be in the legal profession for long. I joined the political arena and practiced law in another form. I joined the fraternity of **‘law makers’**.

I am glad to meet many of my old friends as well as new entrants practicing this noble profession in this high court.

High Court of Andhra Pradesh which celebrated its golden jubilee in the year 2006 has passed from one stage of evolution to another carving out a place of distinction for itself not only in the judicial history of the State but in its public life as well.

This High Court has the proud distinction of having contributed many jurists and judges to the Supreme Court of India: Justice Koka Subbarao, Justice Jayachandra Reddy, Justice Chinnapa Reddy, Justice Jeevan Reddy, Justice Ramaswamy, Justice Jagannadha Rao, Justice Sudarshan Reddy, Justice Jasti Chalameswar, Justice N. V. Ramana and Justice L Nageswara Rao, the last three Hon'ble judges are now serving.

This Court also has the distinction of producing a galaxy of eminent lawyers and judges at the High Court level. We remember Justice P.A Choudary whose judgement in Saritha's case has been internationally acclaimed to say that the 'Fundamental Rights' will walk into the bedroom of the person as well, reaffirming the salutary principle of Liberty that "over his body and mind, an individual is sovereign".

We also remember Justice Jagannadha Rao for defining a new scale for calculating compensation for the victims of motor vehicle accidents.

This High Court houses some interesting historical documents like the Shri Kishan's first Public Interest Litigation in this Court opposing formation of State of Andhra Pradesh in 1957.

I am told that the handwritten copies of the petition, in original, are still available in the Registry of this Court and its judgment has been reported in Shri Kishan Vs. State of Andhra Pradesh in All India Reporter in the year 1957.

There are many stalwarts from this Bar. Shi DuvvuriNarasa Raju, Sri K. Pratap Reddy and Sri Padmanabha Reddy, Sri Venkat Reddy, Sri Movva Chandrasekhar Rao, Sri Ananta Babu, Sri B.V Subbaiah to remember only a few.

Some Advocates from this Bar have even made it to Supreme Court of India. To remember some stalwarts – Sri P.P. Rao (Padma Bhushan awardee), Sri V.R. Reddy who had also served as Solicitor General, and as Chairman of the Bar Council of India, Sri L. Nageswara Rao has the distinction of serving as Additional Solicitor General for 3 terms in different party regimes and eventually got elevated as Judge of Supreme Court. Sri P.S. Narasimha is currently serving as

Additional Solicitor General.

List of the stalwarts from this Bar will not be complete without making a reference to Dr P.C. Rao(Padma Bhushan awardee), who had served as Law Secretary, Union of India and later had a long stint as Judge, International Tribunal for the Law of the Sea.

Reference to these stalwarts is sufficient to indicate the richness and diversity of the Bar. This Court has achieved so much of name and fame only because of the great quality of the lawyers of this Court.

My salutations to each one of those great men and women who have served this august institution as advocates, judges and jurists.

Dear brothers and sisters, as you well know, we have solemnly resolved through our constitution, to secure, to all our citizens, **social, economic and political justice.**

In fact, India has put ‘’Dharma’’ at the centre of governance.

Let me remind ourselves what Mahabharata says:

“Dharma is for the stability of society, the maintenance of social order and the general well-being and progress of human kind. Whatever conduces to the fulfillment of these objects is Dharma.”

Upholding Dharma means sustaining our civilization. If we follow the rule of law, our human society will survive.

This is why we say: **“Dharmo Rakshati Rakshitaha”.**

As Chanakya had also said **“Law and morality sustain the world”.**

We all have a stake and a role to play in making this happen in our lives.

The citizens are looking up to the institutions of governance like the legislature, judiciary and the executive. The expectations are that these deliver 'SURAJYA' and contribute to improvement in the quality of life. The trust and confidence that an average Indian places in these institutions is getting eroded.

The implementation of the laws and the dispensation of justice need to be much more effective, speedy and perceived to be fair and just.

The conduct of lawyers, judges and the courts has a deep impact on the civilian life in this country. Dynamism of the lawyers is the foundation for "Judicial Activism".

We have given to ourselves the democratic form of governance with the bedrock principles of 'Rule of Law' and 'Separation of Powers'. The role that the lawyers of this country play in safeguarding these constitutional values has a primary place in the legal history of this country from the days of freedom struggle till date.

Bar and the Bench, the two sides of the same coin, have a big responsibility and should look upon their work not merely as another profession but as an ethical and moral glue that keeps our national edifice together.

Courts render justice but that justice is rendered only with the able assistance of the lawyers.

Service rendered by lawyers to the litigants is a public service. Litigant reposes trust in his lawyer as an infant child reposes blind-trust on his mother. Lawyers should always stand up to the trust that the litigants repose in them.

Justice Dispensation System, as an institution, is now at crossroads and faced with many challenges. Public confidence is the cornerstone of Justice Dispensation System. This Institution cannot betray the confidence that the public repose on it.

The general decline in ethical and moral values, has affected the Justice Dispensation System as well. Being an optimist, I repose confidence on the members of the Bar to reclaim and achieve those highest moral and ethical values.

There is a huge backlog of cases, partly because of unfilled vacancies. According to Prison Statistics in India, 2015 report released by the National Crime Records Bureau, 67 per cent of the prisoners in Indian jails are under trials. According to the Law Ministry, there are 18 judges per million population, while the Law Commission has recommended 50 judges per million.

There are also complaints that lawyers tend to delay the progress in the disposal of cases. This should be avoided to restore people's trust in the system. After all, we know, Justice **Delayed Is** Justice Denied. Lawyers may not strike work, for it affects the rights of the litigants. Striking of work by lawyers is also one of the causes of delay in disposal of cases.

Deviance and crime in the Society have assumed new and complex forms. While the social benefits of advancement in science and technology cannot be ignored, it has also opened up a floodgate for commission of crimes and economic offences in more complex manner which our traditional crime investigation bureaus and the prosecutors should handle. Lawyers must equip themselves with the changing trends and assist the Judiciary with proper input.

Armed Forces are guarding our borders and keeping us safe, while the lawyers are the guardians of human rights, civil liberties, transparency in administration, Rule of Law and in maintaining checks and balances between the three organs of the State which is conceptually called as the 'Separation of Powers'.

The lawyers have been champions protecting the fragile environment and in curbing pollution. I urge all of you to keep up this sharp focus on public welfare and public interest.

We who occupy important positions and wield power have another major responsibility.

For instance, the judges and advocates have to model good behavior. Purity of thought, courtesy in speech and commitment to the constitution of our great country can inspire our youth. Any slip or casual utterance can be detrimental. Any corrupt thought or action can be an assault on country's collective consciousness. Let us steer clear of these avoidable paths.

Friends, as you all know laws are meant to improve the lives of people and enable them to lead a dignified life. The Indian judiciary has always remained independent and played a stellar role in strengthening democracy and in ensuring socio-economic justice to the common man.

The World Justice Report ranked India at 66th position in its Rule of Index 2016. Denmark, Norway

and Finland were the top three countries, while Afghanistan, Cambodia and Venezuela were at the bottom India has vast scope to improve its ranking if concerted effort is made by all the stakeholders.

In a developing country like ours, lawyers and jurists will have to play a crucial role by ensuring that nobody is denied access to justice and the poor and illiterate in particular are not deprived of their legitimate rights.

Lawyers should act as conscience-keepers of the society and take advantage of the mechanisms like Public Interest Litigation (PIL) to serve the needy and the poor.

Lawyers must be well-versed in the laws they are specializing in and constantly acquire knowledge to be updated on the latest developments. A strong and well equipped Bar will result in having a strong judiciary because judges are picked up from the Bar itself. Therefore there is every need that the products that come out of our law schools should simply be the best in the world. It is not difficult to achieve this target in a decade's time if the members of the Bar Councils show their commitment.

The legal system in the country is a good indicator of country's governance. A people- friendly, people centric, objective, non-corrupt, inclusive administration of justice can considerably enhance the 'ease of living'.

Like judges, lawyers should also observe self-imposed restrictions and also usher-in practising moral and ethical values in their professional and personal life. A lawyer has to be an 'Officer of the Court' and a 'Gentleman' in the society. Bar members shall always desist from unruly behaviour, both inside and outside the court, and set an example to the public of being a gentleman.

Every lawyer should do public service by accepting cases of poor litigants 'pro bono' and render Free Legal Aid to the needy litigants. Please do keep in mind the salutary principle that no litigant should go helpless merely because of his inability to pay the lawyer's fee.

This is the reorientation I am looking forward to as we, as a nation, have set our sights very high.

Lastly, I would like you all to remember the illustrious legacy you have inherited from legal luminaries of the yester years. They had put country first and ''social, economic and political justice to all, especially those who are marginalized" as the sacred duty towards nation building. I am sure you will do your best to add to the glory of this noble profession and keep in mind the

following words from the Mahabharata: **“The State can only be preserved by Dharma, under the rule of law”.** Let us create a new Bharat that not only has some of the world’s best, inclusive thoughts but also demonstrate that we can live our daily lives and take action along those lines.

My good wishes to you in your endeavours.

JAI HIND!"

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KSD/BK

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Socially responsible investing: The next paradigm for businesses

Traditionally, investing has focussed around delivering financial returns. While the use of proceeds has always been important, the consequences on the environment and humanity has not been a consideration in decision-making. While some businesses have corporate social responsibility (CSR) programmes and some investors follow policies around ethical investing—avoiding sectors such as tobacco, alcohol, gambling etc.—there have only been a few such instances, and the implementation of these policies has been ad hoc and inconsistent.

However, times are changing. Globally, an ethical and long-term sustainable investing strategy is gaining importance. Stakeholders now reco-gnize the importance of res-ponsible investing and the role of financial markets in fostering sustainable development.

Firms and investors ack-nowledge that social and environmental issues can be material to the financial outlook of investments, and ultimately, their own performance. There is a noticeable trend, that, to the extent it is consistent with their investment objectives, investors are now looking to incorporate environmental, social and governance (ESG) issues as part of their decision-making processes.

ESG comprises the following dimensions: environmental—resource-depletion, renewable energy, clean-technology, pollution, climate-change; social—human rights, workplace-conditions, discrimination, community-relations; and governance—compliance, transparent reporting, managing conflicts.

Europe and North America have been the early adopters of ESG. Six EU countries have started a four-year project to implement circular models, where the focus is to use materials for longer and preserve their value through smart solutions. Corporates too are getting involved—a supermarket in UK only sells food that would have been discarded.

Ikea is expanding circular offerings by reselling used furniture and creating new products from leftover textiles. Between 1940 and 1980, Costa Rica suffered from large-scale deforestation—it was stripped almost bare from a 70% forest cover.

The government enacted strict deforestation guidelines and rainforests are now back to 52%. The consequence of this environment-focussed decision, benefitted the agriculture industry, and the improving climate is attracting tourism, making it the top industry.

Why are ESG policies, that were once viewed as additional costs, now being embraced? The primary reason is a change in the awareness of the social and institutional environment. The interpretation of what constitutes fiduciary duties has also changed. Hitherto, the application of ESG criteria on returns on investment was believed to be in conflict with fiduciary duties. However, recent legal analysis has concluded that considering the intangible benefits of ESG is not a breach of fiduciary responsibilities.

Reports indicate that over $2 trillion has poured into sustainable investments during the last two years, aggregating to almost $9 trillion, or 20% of managed investments.

Analysis indicates that socially responsible funds have performed on par with peers. In fact, some analysts believe that as ESG algorithms improve, and as such funds gravitate towards finding better companies, rather than excluding bad ones, they may outperform conventional funds.

With stakeholders looking at indices and performance reviews in choosing products, business

leaders are looking to improve their reporting standards. ESG can create a distinguished outlook for businesses. Firms look for new ways to differentiate themselves. There are studies that screen corporates and products based on sustainability—these studies evaluate ESG compliance, reporting, ESG-related controversies, etc., and rate firms alongside their peers. Businesses that have a high ESG rank will generate positive interest.

Of the three ESG dimensions, governance is considered to be most relevant in creating shareholder value, and is more visible. However, the materiality of an ESG dimension, and the type of ESG criteria varies across sectors and geographies.

While measuring ESG, environmental and social factors will have a lower weightage for a services business, compared to an industrials business.

Similarly, nations with access to cheap labour will consider more social factors, while environmental factors will be more relevant for developed nations with higher levels of mechanization. ESG indices should be filtered and weighed, to reflect such differences. Currently, there aren't globally accepted standards to determine ESG scoring, but principles are being laid out and these standards should evolve.

While still at a nascent stage in countries like India, ESG is still an important issue. There is mounting global pressure on countries to enact legislation around climate-change, resource-depletion, pollution, human rights etc. and non-compliant nations face risks of a backlash.

The 2015 Paris Agreement on climate-change, signed by 194 nations, is one such initiative. While developed nations may differ from their developing counterparts on the applicability and extent of the standards and milestones, as well as the implementation time frames, there is a general consensus towards being more ESG-compliant.

India has enacted regulations around improving corporate governance, with requirements to have independent directors, more accountability, transparent boards, etc., addressing potential conflicts of interests of stakeholders. However, environmental and social norms remain low. Foreign capital plays a significant role in the Indian capital markets. As investors become more compliant, they may be forced to avoid businesses that do not meet their requirements, and this will affect the valuations of such firms.

Norway's Government Pension Fund Global (GPFG), the world's largest sovereign wealth fund, managing around $1 trillion—put many Indian companies in the metals, coal and thermal power sectors on its exclusion/watch lists, citing human rights, environmental and climate-change concerns.

In April 2016, GPFG div-ested from 13 leading Indian coal firms and made strong observations on ongoing transgressions in operations and increasing, unaddressed human rights risks in a large Indian natural resource company. Several other top-league funds such as T-Rowe Price and Blackrock are also moving their portfolio to only include ESG-compliant businesses.

The need of the hour is to start the process of moving towards sustainable investing practices and being socially responsible, instead of a knee-jerk reaction when regulatory compliance becomes mandatory. Corporates need to be at the helm of implementing policies in the true spirit and being transparent in disclosing their actions.

Ashley Menezes is a partner at ChrysCapital. Views expressed are personal.

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