

Another Legal Blow to Commercial Logic

Sanctity of contract is not an end in itself

The Supreme Court ruling against grant of compensatory tariff for Tata Power and Adani Power in the wake of an unforeseen, policy-induced jump in Indonesian coal prices is yet another blow to business sentiment in the country. If the legal machinery keeps turning a blind eye to the commercial consequences of its actions, the result would not be benign for the economy. The court has referred the matter back to the electricity regulator. If the regulator were to come up with a commercially viable solution, even if that involves a rise in the tariff to accommodate higher fuel costs, as it should, it would be unfortunate if the court did not simply accept it.

The court's main rationale is sanctity of contract, that the power purchase agreement between the power producers and assorted distribution utilities must be honoured, regardless of changes in fuel prices. In essence, the court is saying that the companies should sell power at a price that does not cover cost, must accumulate losses,



render the loans they have taken from banks into non-performing assets and finally get liquidated, never mind if, even after adding in the compensatory tariff approved by the electricity regulator, these companies offer some of the cheapest power available in the country. A power producer can control

the cost of making a plant available to generate power, but has no control over the cost of fuel over the project's lifetime. It makes sense for distribution companies to invite bids for the least-cost generation availability, while allowing fuel cost to pass through, with checks to ensure that the lowest cost option is being utilised. Any bid for thermal power that does not provide for fluctuations in fuel costs is flawed in design. It is meaningless to penalise just the power producer in this regard.

The regulator could separate out the capacity charge from the composite tariff that was bid, and keep that firm, and allow for flexible fuel costs. And, separately, the fuel cost could be benchmarked against the lowest available price per unit calorific value, factoring in transport costs to the specific plant locations.

Corporate Bonds, Not Yet Another Lender

A Reserve Bank of India discussion paper has called for the setting up of wholesale banks that provide long-term finance for infrastructure and greenfield projects, with a minimum capital requirement of ₹1,000 crore. The idea needs to be nipped in the bud. Instead of more bank finance for long-gestation projects, what we need is a thriving corporate bond market, arm's-length financing and multiple vetting.

The paper has proposed that the eligibility criteria for promoters of wholesale and long-term finance banks be the same as those for a 'universal banking licence', which means that large industrial houses cannot take more than 10% stake in these new financial institutions. Also, the licences are to be available 'on tap', so as to boost supply of loanable funds. The proposed banks would not need to open branches in rural and semi-urban areas, and may also be exempt from norms like the statutory liquidity ratio, as per which banks are required to invest 20.5% of their deposits in government securities. But the notion that banks are best placed to provide long-term funds needs to be contested. The idea is fundamentally flawed. It would merely lead to more opacity, and almost certainly much more inefficiency, in providing long-term funding. Instead, we clearly need to develop an active bond market.

And it is far from clear what purpose one more layer of intermediation between the saver and the user of capital would achieve and how it would be cost-effective, without subsidies of some kind or the other. The point is that a thriving bond market, complete with secondary market trading, would lead to regular disclosure and oversight. And wholesale banks would be a very poor second-best solution, and one that runs the risk of promoting crony capitalism.

We must stand united in the search for the defining terms of our times

Reaccommodating a New Word Order

Every nation whose people purport to speak English have brought variety and nuance to the language. So much so that it has almost come to the stage where ostensibly two English-speaking people may only barely understand each other. If the utterances of former BJP parliamentarian Tarun Vijay left more than a few listeners in the dark last week, the novel use of the word "reaccommodate" by the CEO of United Airlines recently has dragged his company down by a billion dollars in the market. The incident gave Indians a glimpse of the flip side of what can happen when airlines put their employees before passengers, especially in an "overbook situation", but flyers should note that Indian airlines have never resorted to reaccommodating passengers thus. Indian police forces, however, have never been shy of reaccommodating people in a strikingly similar fashion.

Seen against the backdrop of United's statement replete with oxymoronic gems about the volunteer who refused to leave voluntarily, it is evident that "reaccommodate" will give serious competition to "alternative facts" — the current front-runner offered by the Trump Administration — as the defining linguistic term of the year. There is a good chance that by December, more candidates will emerge as worthy possible 2017 successors to "post truth", last year's winner.

Forget apologies. Shiv Sena's Ravindra Gaikwad should be in jail

Let the Law Loose on Us



Swaminathan S Anklesaria Aiyar

The scandalous episode of Shiv Sena MP Ravindra Gaikwad hitting an airline official 25 times with a chapal has ended the wrong way. In any civilised country, he would quickly have been jailed for assault, and expelled by his party. Alas, India falls far short of civilisational standards when it comes to justice, above all for VIPs.

After the slapping incident, Gaikwad on TV repeatedly justified his behaviour, saying there was no question of apologising. "Yes, I beat him with a sandal 25 times. Should I tolerate abuses from the media, from the company [Air India] just because I am an MP?" Then, all airlines banded together and banned him from travel. Gaikwad castigated them, posing as a victim rather than an attacker.

He was fully backed by the Shiv Sena, a party that draws heavily on goons and musclemen. Indeed, the history of Shiv Sena violence makes Gaikwad's action look like a mere peccadillo. When an FIR was filed against Gaikwad, he said he did not care since there were already so many other cases against him.

The Shiv Sena claimed that the travel ban on Gaikwad was illegal, and virtually gheraoed the civil aviation minister in Parliament. The BJP ultimately struck a deal with him. Gaikwad apologised, and Air India was

told to lift its ban.

But, surely, the matter should not end there. The penalty for assault is supposed to be jail, not a travel ban or forced apology. Alas, hundreds of legislators have criminal cases far more serious than this one. They get out on bail, and blithely carry on their business (which includes the use of muscle), confident they will not be convicted beyond all appeals. The judicial process takes so long that few powerful criminals are convicted by the Supreme Court before their death (J Jayalitha's posthumous conviction being a case in point).

Gaikwad's case is an open-and-shut one. So are many acid attacks on women in the presence of witnesses. The victims are crippled, blinded and disfigured, while their attackers are out on bail and have little fear of being convicted beyond appeals.

Gangsta Rap

For two decades, I have argued that the greatest reform India needs is police-judicial, not economic, reform. Much of the economic reform agenda — though by no means all — has been implemented. But the delivery of justice is woefully unreformed.

I once discussed this matter with Abhayanand, the famous Director General of Police who was the brain behind Nitish Kumar's successful campaign for speedily trying and convicting criminals in Bihar. With Abhayanand's help, Kumar could jail over 90,000 gangsters, hugely improving the security and investment climate. This helped produce 11% economic growth and repeated re-election for Kumar.

Abhayanand told me that while there were several causes for judicial delays, including endless adjournments, the fault also lay in standard police procedures. The police were train-



Say hello to Law, Order and Justice

ed to question dozens or even hundreds of witnesses, many of whom absconded or turned hostile during lengthy court trials. The Mumbai blast case took over a dozen years to be heard on a day-by-day basis since over 300 witnesses had to be examined and cross-examined.

Modern police forces the world over rely mainly on forensic evidence. Witnesses can turn hostile, but not forensic evidence. Alas, India's police are not known for either forensic skills or equipment. Nor do they seem inclined to abandon their traditional methodology of written statements from long lists of witnesses.

In Bihar, Abhayanand promoted speedy trials to quickly jail criminals and, thus, transform the law and order situation. Instead of prosecuting criminals simultaneously under several sections of the penal code, something that could take years, he used the Arms Act to jail those with unlicensed weapons.

Just two police witnesses sufficed for conviction under the Arms Act, so he could jail gangsters speedily. The courts saw the government was serious and helped create fast-track procedures. In some cases, gangsters were jailed within one week. That is the approach we need in all

cases. In Gaikwad's case, he has confessed on TV and in writing to assault. So, these damning pieces of evidence should suffice for a quick conviction. This may not, of course, be politically convenient for the BJP, which places some value on its troubled ties with the Shiv Sena.

For He's a Jolly Good Felon

However, even in terms of realpolitik, there is a strong case for the BJP to arrange a speedy conviction of a self-confessed felon. This will show, in calibrated fashion, without excessive provocation, who the boss is in this relationship.

The same methodology of using limited but conclusive evidence for quick trials should be used in as many cases as possible. Why not make a start with the case against R K Pachauri for misbehaving with women in Teri? The police investigated the case for a year and filed a 1,400-page charge sheet, which makes for a lengthy trial. Why not just depend on his emails and SMS messages to the victim? That makes further evidence almost superfluous.

The writer is the author of 'From Narasimha Rao to Narendra Modi: 25 Years of Swaminomics'

Modern police forces the world over rely on forensic evidence. Witnesses can turn hostile, but not forensic evidence. Alas, India's police is oblivious to this shift

PHARMACEUTICAL INDUSTRY

A Chill Pill That India Needs



D G Shah

The domestic pharmaceutical sector witnessed a compound annual growth rate of 12% during 2012-16. It registered its highest growth of 15% in 2015. However, since then, it is on the decline for two consecutive periods: to 11% for 2016 and further to 9% ending in February 2017. Not only should this be a matter of concern for the government, but it should also worry those working for access to safe, effective and quality medicines at affordable prices for the people of India and other developing countries.

The decline in rate of growth can be directly linked to the arbitrary implementation of pricing policy by the National Pharmaceutical Pricing Authority (NPPA) and certain policy initiatives of the Central Drugs Standard Control Organisation (CDSCO). Unless corrected, the aberrations will continue to erode the sector's growth. It may be a coin-

cidence that both regulators have worked in tandem and hit the growth driver of the sector.

The biggest contributor to growth, accounting for 50% of the sector is new introductions, followed by volume (33%) and price (17%). The NPPA knew where it would hurt the sector most. It, therefore, came up with a set of revised guidelines for application for price fixation and revision of a 'new drug' formulation related to the National List of Essential Medicines (NLEM) formulation. It had the intended effect.

The guidelines have led to delay and denial of price approvals for several new introductions. This was further compounded by the NPPA in February 2017 when it notified not to entertain applications for retail price fixation of new introductions, representations against price calculation sheets, etc, unless certain information was furnished online through the Integrated Pharmaceutical Database Management Systems (IPDMS).

This would result in further slowdown if the industry is not ready to implement it. The system is cumbersome. Its compliance is even more difficult. Unlike annual returns, the system requires day-to-day online feeding. The companies believe that they are in the business of manufac-



Pop one now

turing and selling their products, not filing of daily returns.

Frivolous litigations by patent holders have delayed the development and launch of new generics. This has denied Indian companies the benefit of the 'first-to-file' provision in the US. This, in turn, has resulted in the loss of revenue and market leadership. It has also delayed access to affordable generics to the public.

Unsettled by arbitrary implementation of the pricing policy, many Indian companies have been increasingly investing in setting up and acquiring manufacturing facilities abroad, thereby not only slowing down inv-

estment in the country but also taking jobs out of India.

To add to the woes of the sector, it is now proposed that sale of 'single salt' formulation should be in 'salt name' only. This would shift the choice of a product from medical professionals to chemists, compromising patient interest, as all products are not of uniform quality.

More than half of India's exports of pharmaceuticals are branded products. The popular brands in the domestic market enjoy certain brand equity in other emerging markets too. If India were to eliminate brands for 'single salt' formulations, exports will suffer, as the domestic industry will lose its product identity. Moreover, many countries emulate India for policies governing the pharma sector.

Brands may also be done away with, thereby eliminating product differentiation. This would put Indian manufacturers at a significant disadvantage in export markets vis-à-vis imports from other countries and local manufacturers. It is time that policymakers wake up to the decline in the rates of growth and the damage that the new policy initiatives may cause to a sunrise sector of India.

The writer is secretary general, Indian Pharmaceutical Alliance

FUNNY BUSINESS

It's All Very Plane and Simple



Anuvab Pal

There's an old joke that goes, "How do you get a millionaire?" "You find a billionaire and get him to buy an airline company." Yes, there was once a golden age of air travel. Humans smoked, flirted, sat in giant seats and glided (turbulence-free) across oceans, eating lavish meals in seats large enough to be a one-bedroom flat in Mumbai.

This is not that age. Nowadays when one flies, what one is doing is basically being thrown around in the wind or clouds. Rather than a journey, every flight is a near-death experience. Culminating not in having reached your destination for work or pleasure, but thankful for just being alive.

Being a comedian, I'm on a lot of planes and over the last year of the 350-odd flights I was on, seven had no turbulence, over 167 had continuous turbulence, and it didn't matter if the plane was the size of a small city. Everything I need to know about climate change is summarised by

the fact that this is how the world is now. In 1987, one could fly to London in a Bangladesh aircraft, which I think was mostly made from Lego, with zero turbulence.

That's just the air part. Then there's the human part, when airline staff are beating you up, MPs are beating up airline staff, drunk domestic passengers are molesting air hostesses. Not to mention being charged to sit down, get up, have a carry-on bag, a last name and walking like a human instead of on all fours. God forbid you ask for a glass of water. That could lead to handcuffs.

This age of flying is aptly summed



Flying was better

up by a recent Mumbai-Bangalore journey I was on where the pilot announced, "Ladies and Gentlemen, we have taken off." And sometime later, "We have landed." Everyone clapped. That seems about right for our times. An incident-free, drama-free, pick up and drop off where no news is good news.

Aviation throughout the 20th century has been man's greatest ambition and downfall. Every rich man wants to buy an airline company that often bankrupts him mainly because he gets enticed by the glamorous side of lounging in the sky, pilots and air hostesses and booze, forgetting the actual side: men in thick moustaches from Hindustan Petroleum or the Airports Authority of India taking away all your profits.

In India, we're fortunate to have our great domestic carrier, where it is likely the plane will fly backwards and your flight might be delayed by the length of time it takes your infant child to become an adult. Yes, one totally understands the outrage of the nation against a politician beating up an airline staffer with his slipper (think: Tinkle comics). However, it takes the genius of Air India to give MPs the privilege of business-class travel without actually having a business class on the plane. Genius. However, when it comes to be the absolute worst in global air travel,

we have to turn to the US. A country that has Netflix, iPhones, the Grand Canyon, Priyanka Chopra, somehow manages to make situations absolutely horrific for anyone flying domestically. And, for some reason, customers take it. Things that wouldn't last a minute in any other industry.

Show up and they tell you, you can't get on the plane? Sure. If you say I have urgent work and need to fly, can they beat you up with no recourse? Absolutely. If you look a little different or say something weird, could they confine you indefinitely in a basement with wild dogs? Guaranteed. Airlines that do try to get you some pleasure (yes, that sounds wrong, but...), mostly the West Asian carriers like Emirates and Etihad, weren't allowed laptops on board for planes going into the US. Possible terror was the given reason. But the real reason was that the US airline lobby decided, "Well what is the next thing we can do after giving truly rubbish service to our customers? Let's see. How about we poke competitors who are providing great service?"

Maybe the lesson all airlines need to learn is: this is 2017. The charm of flying is over. We've got to do it. Like a health check-up or getting a divorce decree. So, instead of punching customers in the face, let's just get through this together. The rest is up in the air.



the speaking tree

Death of the Self

CHRISTOPHER MENDONCA

Christians the world over celebrate the Sacred Triduum, the three holy days that form the core of their spiritual calendar: Maundy Thursday, Good Friday and Easter mark the commemoration of events that literally changed the course of history. The word 'memorial' in Hebrew means to relive the event; so, the celebration of the Eucharist is much more than a mere commemorative event.

The practice of Christian meditation dates back to the beginning of Christianity; its objective is to daily "empty the self" to experience the fullness of God. It is consonant with Jesus' invitation to his disciples to take up their cross daily and follow him. And, it is central to Easter celebrations — 'dying' to rise to a New Life.

The way of meditation is the way of silence. The way to silence is the way of the mantra. Choosing a sacred word and repeating it from the beginning to the end of the period of meditation forms part of the essential teaching of Christian meditation. It is advisable to choose a word of four syllables and pronounce them with equal length. The recommended word in the Christian Tradition is Ma-ra-na-tha. In Aramaic, the language of Jesus' time, it means "The Lord comes".

Remember, we are not to assess our progress. We are not to look for "experiences" in our meditation. So, be faithful to the recitation of the word/mantra during the period of meditation, and to the daily practice, twice a day, morning and evening. The minimum time prescribed is 20 minutes, the optimum, 30 minutes.

Chat Room

Let Us Say No to Mutual Hate

It is incomprehensible how jingoism, sabre-rattling, bellicosity, warning of consequences and the call for the declaration of Pakistan as a terror state would persuade Pakistan to reverse the decision to send Kulbhushan Jadhav to the gallows. One leader has even said that the recognition of Balochistan as an 'independent nation' should follow Jadhav's execution. It would be imprudent on our part to say or do anything that provokes Islamabad to grant no clemency to him. This is the moment to demonstrate that we do not want to be prisoners of mutual hate.

G DAVID MILTON
Maruthancode

Investing for Greater Benefit

Apropos 'India Savings: The Great Shift' (Apr 12), for ages, we have been told by our parents to prefer bank deposits and gold as investment options. So, it is heartening to see our savings start flowing towards mutual funds.

It is all the more advisable that in a low-interest-rate scenario where FD, savings account and PPF rates are set to fall further, we put our hard-earned money into a more lucrative and fruitful investment option. We will surely soon see more people ending their obsession with gold and real estate.

BAL GOVIND
Noida

Banks Recover NPAs From Us

In the name of Digital India, banks have started charging heavily for services that were free. Be it withdrawal of money, issue of cheque book, request for certificate, verification of signature or maintenance of minimum balance in account, there is a charge for everything. Banks are burdened with NPAs of about ₹7 lakh crore that they cannot recover; so they have decided to make good this shortfall from the ordinary people whom no authority listens to and who keep suffering in silence for the proverbial better days to come.

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