

Unacceptable Rise in Rail Accidents

Renew tracks, set up statutory safety regulator

Reports suggest that the railway accident on Saturday at Khatauli in Uttar Pradesh that left 22 people dead and over 200 injured was due to gross managerial negligence. The Haridwar-bound Kalinga Utkal Express sped along track that was undergoing repair, without being warned beforehand or at the site of the repair. It suggests sheer callousness and shocking disregard for rail safety. This is not acceptable and tweets about better food and hygiene cannot compensate for safety lapses.

The Railways has initiated swift disciplinary proceedings against several officials. But the latest mishap suggests systemic failure. Derailments seem to have become commonplace. There were over 60 such untoward incidents in 2016, up almost 40% from the previous year. Worse, there has been massive underinvestment in track renewal and signalling systems for long, as the safety review committee headed by Dr Anil Kakodkar noted in 2012. It is welcome that rail minister Suresh Prabhu had announced earlier this year that the Railways would allocate about ₹10,000 crore for renewal of tracks and adopt the latest technology to detect rail fracture. The Railways is also reportedly setting up a ₹1,00,000 crore safety fund, as recommended by the Kakodkar committee. But the investment backlog, when it comes to rail safety, is massive, and we need organisational changes and attendant revamp. True, since 2016-17, the rail minister has stepped up the annual track renewal target to 2,950 km, up from just about 1,028 earlier. However, despite the faster rate of track renewal, it would take the Railways some 40 years to complete the task nationally over 1.2 lakh km. Hence the pressing need to better manage operations. Callous failure to coordinate repair work with train movement, as happened in Khatauli, must not recur, ever.



In parallel, there's the express need for a statutory and empowered Railway Safety Authority as called for by the Kakodkar panel, for vetting routine rail safety and maintenance. A complete change of track is warranted. This authority must be answerable to Parliament.

Use Aadhaar for Financial Transactions

Sebi's reported plan to make Aadhaar, a person's unique identification number, compulsory for stock trading is welcome. It will create audit trails, curb money laundering and tax evasion through the stock markets. Already, large financial transactions are tagged to the tax department's Permanent Account Number (PAN). Quoting of PAN is mandatory for, say, opening a demat account, investment in mutual funds and even trading in unlisted shares beyond prescribed limits. However, PAN is not foolproof. To weed out duplicate PANs, the government has mandated linking PAN with Aadhaar.

Eventually, PAN will become redundant at least for individuals and should be phased out. Already, over a billion people have secured their Aadhaar, compared to about 30 crore people who have PAN cards. Instead of multiple identifiers, Aadhaar should become the single identifier that should be tagged to all financial transactions. The tax deduction and collection number, or TAN, is mandatory for legal entities responsible for deducting or collecting tax. The RBI has also done well now to introduce the legal entity identifier, a global reference number that uniquely identifies every legal entity or structure that is party to a financial transaction in any jurisdiction. It will be implemented for all participants in the over-the-counter markets for derivatives in a phased way. The objective, to improve the quality and accuracy of financial data systems for better risk management, makes eminent sense.

What extensive use of Aadhaar makes imperative is a rigorous data protection law. Aadhaar does have the potential to be abused, for instance, by using this tag to collate information on a person's financial history. Citizens must be empowered to complain and get redressal if their data is misused.

Nothing like a misspelt word to keep the American public distracted

A Time to Heal or Come to Heel?

Donald Trump is not known to have ever had them, so he cannot be accused of resorting to common phrases exasperated owners use to calm their obstreperous pets, "Heel, boy, heel!" It can only be surmised, therefore, that some clever White House aide, maybe damaadji Jared Kushner, advised him to wag the dog at a time when the fur is figuratively flying in the presidential premises. Particularly as recent experience has shown that nothing distracts a growling American public more than a misspelt word. Social media mutts worried the word covfefe for days, shaking it this way and that in order to tear it apart, leaving Trump room to get in a bit of work unnoticed. So, his use of the word 'heel' instead of 'heal' twice in successive tweets before getting it right in the third one appears to have been calculated to ensure no one misses the flub. Predictably, there have been howls of derision in response, and even a helpful selection of homonyms for the word, along with definitions, from the Merriam-Webster dictionary again.

However, some may also regard his tweet, "Sometimes you need protest in order to heel & we will heel" as accurate, taking that last word to mean to calm down and fall in line. Whether heel was indeed a persistent auto-correct error or a Freudian slip will depend on the outcome of the current protests.

Walk away before you further destroy your reputation and debilitate Infosys

Mr Murthy, When You Gotta Go, YOU GOTTA GO



Omkar Goswami

Dear Mr Murthy, I have known and admired you for over two decades, been an independent director of Infosys for 15 years, and still serve as a board member of Infosys BPO. Unfortunately, I am obliged to write this formal and public letter to you.

Formal, because the events that have occurred involving you, your supporters and Infosys — starting from November 2016 and culminating in Vishal Sikka's resignation on August 18 — need a formal response. And public, because it is no longer a private matter between you and the board of the company.

I, and each ex-independent director that I've known, held you in high regard when you invited us to join in your vision of reinventing India's boardrooms and building a thriving institution that would survive us all. Today, each of us is deeply upset by your public conduct, and of your two ex-Infosys supporters.

Your actions have de facto created a crisis that has forced the exit of a CEO, led to a stupendous 9.6% drop in the share price, and a loss in market capitalisation of over ₹22,600 crore in one trading day, and initiated the process of class-action suits in the US. Despite my friendship with you and the tradition that most directors strive to follow where board matters remain within the board, I have finally decided to come out in the open.

Let me broadly recapitulate the events. In October-November 2016, you and some other ex-directors of Infosys, including I, were disturbed by the board agreeing to a huge severance pay to its ex-CFO, Rajiv Bansal. This had never occurred before, not even to executive directors who left the company. You sent a letter to the Infosys board to that effect — one where I played a minor role in redrafting.

The board responded, admittedly



Take that road trip now that you always planned

belatedly, by freezing Bansal's remuneration to what was actually paid out, which was 70% less than what it had agreed to. It also asked David Kennedy, the legal counsel, to resign at his pre-contracted, pre-joining severance pay.

You also wanted the chairman and two other directors to quit, and the board to induct another independent director from your list. After discussions with you, the board appointed an ex-Infoscon, D N Prahlad. For the record, I sit with Prahlad on the Infosys BPO board and respect his fiduciary qualities.

It didn't end there. Following a whistle-blower complaint in February, you started publicly pressuring the com-

pany's board to conduct a legal-cum-forensic investigation on the \$200 million acquisition of the Israeli software firm, Panaya, and then to disclose the entire report on the company's website. An investigation was done by Gibson Dunn & Crutcher LLP, a reputed US law firm, for which you, too, were interviewed.

The Panaya report absolved the management of wrongdoings, and

its basic conclusions were disseminated to the public. My first question: would you have posted the full report if you were running Infosys? You wouldn't, as you didn't in instances that needed detailed investigation.

You then wanted a co-chairman who met with your approval. Here, too, the board complied by elevating Ravi Venkatesan. By accommodating you, it created a fiduciary eccentricity of three different people at the top: a chair, a co-chair and a managing director and CEO.

Why did the board agree to so many of your demands, all played out in public fora? A generous interpretation is that it respected you and wanted to arrive at a middle ground. But it appears that you have not played your part, and have publicly leveraged your lionised position to constantly shift that middle ground for extracting more concessions.

Truth be told, the board was collectively timid. So, here's my next question: if you were at the helm, and a person representing a small proportion of Infosys' share capital did what you have done, how would you have reacted? You would have blasted him out of the water with no quarters given.

It didn't end there. You and your two colleagues in this war complained about Sikka's pay, though it was performance-linked and backloaded.

You praised UB Pravin Rao, but criticised his pay as well. The list is too long to accommodate here.

What does this mean for Infosys? The company was lagging behind industry when Vishal took over. It is now in the top quartile. Per-capita revenue has grown for six successive quarters. In an extremely difficult competitive milieu, Infosys had started increasing its margins while undertaking a profound change in business from leveraging labour costs to offering all-inclusive solutions to clients. Vishal's task was far from complete when you entered the fray. And now, thanks to you, he is leaving.

How can Infosys strengthen employee morale under these circumstances? How can it find a worthwhile replacement for Vishal with you sniping at the wings?

How can it get away from this sapping, deleterious war that has got it lower valuation and titters from the competition? How can it focus on doing business if you are readying to reararm your weapons?

You will claim that it is all for corporate governance. But why don't I, your corporate governance disciple, believe this any more? Nor does any other ex-independent director that I have spoken to, each of whom you respect.

Enough is enough. You have drawn first blood. Do not mortally wound the organisation by persisting in your actions. Let Infosys get on with its business, heal itself from the injuries that you have inflicted and again grow shareholder value. Learn to walk away, as you had promised when handing the reins to Vishal. The corporate governance halo that was conferred upon you is shrinking. Let it not disappear.

I have respected you more than many others in the corporate world. So, pardon me for this missive. How I wish it weren't needed.

Omkar

The writer was a member of the Infosys board, 2000-15



Thoughts and Projections

J KRISHNAMURTI

Thought plays so important a part in our life, thought that has created our culture, whether it is the eastern or the western. All religious structures, beliefs, sects and dogmas are brought about by thought. Our gods, saviours, masters and gurus are the result of our thought. And without understanding the structure and nature of thought, we cannot go deeply into the meaning and significance of life.

Thought can project any meaning, any purpose, any goal, but it is still divisive, separate, it breaks up. And if we understand the deeper significance of life, one has to understand oneself, know oneself, not according to some philosopher or psychologist, ancient or modern, but to know oneself as we are — not according to somebody else.

As we are, without condemning, without judging, without rationalising, just to observe what we are, neither being discouraged nor hopeful, neither being depressed nor encouraged, but to observe. And then one will see how extraordinarily important it is to understand the movement of thought because we have to learn from ourselves psychologically.

You may learn technological things from another but psychologically, we have to be our own teachers, our own disciples. Then there is no authority, then there is no 'someone' to follow. But in studying oneself, one learns what the meaning of this self-centred activity leads to. We need to talk about what we call living, what we call love and this question, which has bothered, which has created such myths and romance and illusion, with regard to death.

Chat Room

You Built Infy Well, Mr Murthy

Apropos 'Why Can't We Let Go?' by G R Gopinath (Aug 21), no one can deny the immense contribution of the visionary N R Narayana Murthy who almost single-handedly created a great company, Infosys, from scratch. He led by personal example, worked hard and drove his colleagues to do the same, lived a frugal life and didn't grudge hundreds of his colleagues becoming crorepatris when the term was rarely heard of beyond the confines of traditional family-owned business empires. However, as a minority shareholder, Murthy's only recourse was to raise the issue at an extraordinary general body meeting of the company. Hopefully, the controversial governance issue is sorted out, and the company continues to move on the growth trajectory.

KRISHAN KALRA
Gurugram

e-Cars and R&D Investment

This refers to the Edit, 'R&D Investment in e-Cars, Not Imports' (Aug 21). e-Mobility has been in the pilot stage for



three decades but is yet to become a reality. Two-wheelers account for about 90% of India's vehicle population. Yet, the country has not done anything other than flooding the market with two-wheeler imports from China that become redundant after 2-3 years as new batteries are not available at affordable price points. As rightly said in the editorial, if the country wants to promote e-mobility, it is important to invest in R&D on solar-charged lithium batteries with high efficiency and life.

S C SHARMA
Greater Noida

Sharad Yadav Sure Can Do It

Apropos 'He Who Holds the Strings' by Neeraja Chowdhury (Aug 21), Sharad Yadav has the potential to steer a united opposition. The opposition should stand strong and united to be taken seriously.

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PRIVACY AS FUNDAMENTAL RIGHT

Minding Our Business



Smriti Parsheera

The Supreme Court's upcoming verdict on whether we have a fundamental right to privacy will be one of the most momentous decisions of our times. It is, however, inopportune that this vital issue has arisen as an offshoot to the Aadhaar litigation.

Both sides are alive to the fact that the decision will take them a step closer or further from proving their stance in the main petition. This has undeniably coloured the arguments in court. The real implications of the nine-judge decision will, however, run much deeper than the immediate questions of Aadhaar.

The term 'privacy', while not expressly spelt out under the Constitution, forms the crux of what it means to live a dignified life in a liberal democracy. The concept of a secret ballot, for instance, finds its origin in the need for 'political privacy', our ability to vote anonymously, without the promise of reward or fear of persecution. Section 94 of the Representation of the People Act, 1951, codifies this right by providing that a person cannot be mandated to disclose for whom she has voted, not even before a court of law.

Then there's 'physical privacy' that guards a person's body and physical space from unwelcome intrusions. 'Behavioural privacy' gives us the freedom to keep private our religious practices, sexual orientation and associations. 'Informational privacy' deals with the expectation of privacy in the collection, storage and use of personally identifiable information. 'Cognitive privacy' calls for new thinking about the use of technologies that can decipher thoughts and brain activities.

Some of these rights are already covered by existing constitutional provisions, some have been protected under laws, while others are still waiting to be born. A legal right can, however, not be a substitute for a fundamental right. Legal rights can be conferred and withdrawn at will and their validity rests on conformity with the Constitution.

The declaration of privacy as a fundamental right will not imply that it will become an unassailable, paramount right, which can never be

undone. The contours of privacy, and the limitations on its scope, will have to evolve through jurisprudence developed by the courts. Even until recently, when we believed privacy to be an integral part of the right to life and personal liberty under Article 21, the Supreme Court had pointed on several occasions that privacy is not an absolute right.

For instance, in Mr X vs Hospital Z ((1998) 8 SCC 296), while dealing with the right to confidentiality of an HIV patient, the court held that in case of a conflict between right to privacy and right to health of another, the latter prevails. In another case, ordering a person to undergo a medical examination was not regarded as being violative of the person's right to privacy where the test was necessary to determine unsoundness of mind, a recognised ground for divorce. The person could still refuse the medical examination, allowing the court to draw an adverse inference (Sharda vs Dharmpal, AIR 2003 SC 3450).

Conferring privacy with the status of a fundamental right will achieve two key goals. One, it will offer a guaranteed constitutional framework to test against incursions into the various dimensions of privacy. Two, it will provide courts with greater confidence when comparing the trade-offs between privacy and other constitutional protections.

The separation of powers between the legislature and the judiciary demands that courts cannot question the wisdom of legislative actions. So, any law, no matter how odious it may appear, cannot be struck down by a court unless covered by certain specific grounds. These grounds, as stated

most recently in the Aadhaar-PAN case (WP Civil No. 247 of 2017), are that the legislature did not have the competence to make the law; or the law is void for being in violation of any of the fundamental rights or any other constitutional provisions.

If privacy is not to be a fundamental right, what protection would we have against future transgressions of this right by various laws? Always having to derive this right from other provisions in the Constitution would dilute its efficacy. Relying on political processes to solve the issue would be too little, too late.

The key challenge, therefore, is not just about the privacy implications of the Aadhaar Act, or any other legislation, but the unforeseen laws and practices of the days to come. A few years ago, the Bombay High Court directed the UIDAI to share the biometric information of Aadhaar holders in Goa to aid the CBI in a rape investigation. The UIDAI challenged this before the court on grounds of privacy, which was accepted by the court.

The passage of the Aadhaar Act has now closed the door on such speculative searches, at least so far as biometric data is concerned. If the law were to be subsequently amended to allow biometric data to be shared for investigation and surveillance purposes, one would like to believe that the supporters of the Aadhaar architecture will join the detractors in opposing such a move. What we will need then is a fundamental right to privacy against which the actions of the legislature can be tested.

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Scenario in Steels

TORALF HAGENBRUCH

Operational excellence is the one improvement lever steel producers control completely. So, it's natural that these players are especially cost-sensitive and constantly on the lookout for new ways to optimise the cost and performance of their assets. Although many do well on these measures, price and margin pressures are relentless — so, achieving a competitive cost position remains high on the agenda, year after year.

Yet, while steel producers typically know their own production assets very well, there is limited transparency about what is actually achievable across the industry, and how the results might be replicated. What's more, given the many differences among production assets and configurations, it's tough to be sure that a given benchmark is valid for your own operations.

This article reviews the situation the steel industry faces, the importance of cracking the cost challenge, and the potential value of working with multiple operating points. Steel producers are fighting hard for financially attractive volumes in nearly all international steel markets. Successful benchmarking has helped some steel producers identify further cost-improvement opportunities in the range of 5-10% of the total cost base. Further challenges to steel producers' performance include exogenous effects such as international steel-trade flows, which are shaped by two major drivers: low transportation costs globally and overcapacity in China.

Despite the cost focus over the last few decades, and particularly in the last 5-10 years, there remain significant gaps between steel producers on operating cost and operational performance.... In our view, that makes the case for why operational excellence to increase cost competitiveness is, and will remain, high on the agenda.

From 'How Benchmarking can Improve Cost Competitiveness in Steel'

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