

13 EXPLAINED



SOCIAL INTELLIGENCE

"Equal rights for others does not mean fewer rights for you. It's not pie."

JESSE WILLIAMS,
American actor, model and activist; 2.23 million followers on Twitter

Inside the shell: What Sebi's rap to non-trading firms indicates

What is a shell company? This is probably the first time that the regulator has issued a circular naming as many as 331 listed firms as suspected shell companies. Why are they being investigated?

KHUSHBOO NARAYAN
MUMBAI, AUGUST 9

CAPITAL MARKET regulator Securities and Exchange Board of India (Sebi) has directed stock exchanges to initiate action against 331 listed firms that the Ministry of Corporate Affairs suspects are shell companies. The companies have protested — and several of them moved the Securities Appellate Tribunal against Sebi on Wednesday. Why has the regulator acted with this seemingly unprecedented harshness? What is the significance of the order, and where can this situation lead?

What is the Sebi order against the suspected shell companies?

Sebi has directed that shares of 331 companies will be kept in Stage VI of the Graded Surveillance Measures (GSM) with immediate effect. GSM is a framework of enhanced surveillance of companies that came into effect on March 14 this year, to enhance market integrity and safeguard the interests of investors. According to an FAQ on GSM on the web site of the Bombay Stock Exchange, "securities which witness an abnormal price rise not commensurate with financial health and fundamentals like Earnings, Book value, Fixed assets, Net worth, P/E [Price/Earnings ratio] multiple, etc." will be put under GSM. Under the GSM framework, monitoring is carried out in six stages, with progressively tighter actions. Stage VI is the highest stage of surveillance.

Starting Wednesday, therefore, the shares of these companies have stopped trading on the bourses, and will be allowed to be traded only once (the first Monday) every month. The companies will be subject to independent audit, and to a forensic audit of their financials. After the completion of the audits, if the exchanges do not find evidence that these companies indeed exist, they will be delisted. They will not be permitted to deal in any security on an exchange platform, and their holdings in any depository account will be frozen until the completion of the delisting process. Of the 331 firms identified by Sebi for action, 162 were actively traded on BSE Ltd; 48 were traded on the National Stock Exchange (NSE). The rest have already been suspended by the bourses on account of irregularities.

How have the companies reacted against the regulator's directive?

Several companies have protested the Sebi directive as unjust. Firms such as builder Parsvnath Developers, steel and mines company Prakash Industries, liquor manufacturer Pincon Spirits, financial software firm SQS India BFSI, and construction engineers J Kumar Infraprojects, have all said they are not shell companies. Some companies, including Prakash Industries and J Kumar Infraprojects, on Wednesday moved the Securities Appellate Tribunal (SAT), the statutory body to which appeals against Sebi's orders lie.

But what is a shell company? Is it illegal to set up a shell company?

In common parlance, a shell company is a non-operational company that is used as a vehicle for various financial manoeuvres, or is kept dormant for future use in some other capacity. Interestingly, the term "shell com-

pany" is not defined under the Companies Act, 2013. A shell company is *per se* not illegal — as long as it is not used for an illegal act, such as manipulation of share prices, evading taxes, or financial fraud.

So, why did Sebi move against these companies?

These 331 companies are allegedly being investigated for tax evasion and corporate fraud, and have been referred by the Income-Tax Department and Serious Fraud Investigation Office (SFIO) to the Corporate Affairs Ministry and Sebi for further action. As part of its efforts to stamp out black money, the Ministry has already cancelled the registration of more than 1.62 lakh companies that have not carried out business activities for long. In July 2015, the Special Investigation Team (SIT) on black money had recommended proactive mining of the Registrar of Companies (RoC) database to weed out shell companies. The recommendation came after the SIT found shell companies were being used to provide accommodation entries to launder black money in a number of high-profile cases that had been investigated recently.

The government has also constituted a task force under the co-chairmanship of Revenue Secretary Hasmukh Adhia and Corporate Affairs Secretary Tapan Ray to monitor actions against deviant shell companies by various law enforcement agencies.

SIMPLY PUT

And what is the significance of the Sebi directive?

This is probably the first time that Sebi has issued a circular naming so many companies as suspected shell companies. The regulator has in the past asked the bourses to suspend trading in companies and initiate penal action, including suspension of trading, for violations of its norms.

According to the BSE, the total public float of the 331 companies is Rs 12,000 crore. At least 13 firms had a market capitalisation of more than Rs 300 crore each. The ban on trading may adversely affect both institutional and small investors in these companies. The damage to their reputation is a big reason why companies are protesting.

While the companies accuse Sebi of having violated the principles of natural justice in not giving them a hearing before issuing the circular, proxy advisory firms feel Sebi's move will help protect the interests of small investors.

J N Gupta, co-founder and managing director of proxy advisory firm Stakeholder Empowerment Services, said Sebi's preventive measure will have a temporary negative impact on the stock markets but will help weed out companies which do not have genuine business operations, and will limit the exposure of small investors to such companies in future.

According to Amit Tandon, founder and managing director of Institutional Investor Advisory Services, Sebi's circular is in the direction of expanding the role of bourses, the frontline regulators that ensure compliance and keep a watch over economic offences and money laundering. "Stock exchanges will now have to gear up for this, and come up with mechanisms to monitor companies," Tandon said.



A robust male surveys his territory in Pilibhit, a key portion of the increasingly fragmented Terai Arc tiger landscape stretching across India and Nepal. WWF-India/UFPD

How not to share space with tigers

In Pilibhit, tigers have killed 6 people over the last 3 months. Classic elements of man-animal conflict, plus site-specific triggers, have made one of India's youngest tiger reserves one its worst conflict zones



IN FACT
BY JAY MAZOOMDAAR

EXPRESS EDITORS INTERPRET

WITH TIGERS killing two people in the farmland of Pilibhit's Amaria *tehsil* this week, the toll in the areas around the Pilibhit tiger reserve in Uttar Pradesh has risen to six in the three months since May 8. This is a new high even for this notorious conflict zone where wild animals killed 11 people in the seven months preceding this period.

Data from the Ministry of Environment show tigers and elephants killed 1,587 people in the 1,508 days between April 2013 and May 2017. Of this, the share of elephants was 1,459. Although it is as good a stealth artist as any in the wild, the elephant's greater requirement for space and resources makes it more prone to conflict.

By contrast, even the biggest of our big cats, despite not being quite as ghost-like as its spotted cousin, manages to stay largely invisible. Surrounded by a billion humans, India's 2,200-plus tigers killed no more than 128 people in over four years. Given the chance, they are good at avoiding people.

But to really appreciate the tiger's natural disinterest in humans, the all-India figures need to be broken down further. Typically, the bulk of human casualties occur in just a few pockets of acute conflict.

Since April 2016, for example, two tiger reserves that are together home to no more than 7% (150-odd) of India's tiger population, have accounted for 70% (23) of 33 deaths caused by tiger attacks across the country. For the remaining 2,000-odd tigers within and outside India's other 48 tiger reserves, therefore, this adjusts the liability for human kills down to 10 over 16 months.

So what went wrong in Tadoba (Maharashtra) and Pilibhit, the two reserves that saw the bulk of the recent deadly attacks?

Traditionally, tigers have killed more people in the Sunderbans than anywhere else. Areas in and around the Tadoba and Pilibhit tiger reserves are more recent examples of chronic conflict. Corbett in Uttarakhand also



Given a chance, tigers are good at avoiding people. Joydip Suchandra Kundu

sees tiger attacks fairly frequently. Certain factors are common to all these conflict zones. And in places such as Pilibhit, there are additional site-specific triggers.

Most conflict zones have a history of drastic changes in land use. The Sunderbans had to absorb a huge influx of settlers under the British, and again after the Bangladesh war. Dense malarial forests along the Shivalik foothills — the *terai* — became 'inhabitable' for the masses of people who moved in rapidly following Independence.

Change of land use in a forest begins with deforestation. In Pilibhit, timber contractors marched in with their axe-wielding armies, and others rummaged through the surviving forests for firewood and fodder. Fisherfolk ventured deep into the channels of the Sunderbans, while honey-collectors roamed its spiky mangrove clusters.

Riverbed (boulder) miners set up colonies for migrant labourers who entered the Corbett tiger reserve every day to defecate and to collect firewood. Villagers spent long hours inside Tadoba's tiger forests harvesting and then slicing bamboo because carry-

ing bamboo 'products', unlike whole bamboo, required no permits.

So many people spending so much time inside tiger forests greatly increased the chances of accidental encounters with the big cats. In Pilibhit, the conflict was exacerbated by the reckless farming choices made by the local community.

For wildlife, farmland at the immediate edge of a forest creates an illusion of extended habitat. Herbivores raid these fields and predators follow them. Standing crops also provide the cover that is necessary for daily lounging, and even for long-term safe-keeping of cubs.

In the winter of 2010-11, trying to evade a mighty suitor, a single mother with two cubs fled the Ranthambhore tiger reserve and took refuge in cropland that had only recently been carved out of the Chambal ravines. The forest department deployed a team to track the tigers daily and warn farm hands to keep away until the animals moved to another field.

One morning, accompanying an inspec-

tion team checking the fields for pugmarks, this correspondent wandered within 10 yards of the tiger family hiding under the mustard and red gram crop that stood some three or four feet tall. The result was a mock charge with persistent roars, and an instant scattering of forest staff as well as farm hands. The tigress held her nerve and broke off in time, but edgier cats often end up attacking in self-defence.

If a mustard field can shelter tigers, imagine the allure of Pilibhit's sugarcane fields. The cash crop, which covers a third of the district's 2.35 lakh hectare sown area, is harvested in batches at long intervals, and can harbour even resident wildlife for months on end. If the absence of a functional buffer area — that is, a gradual change in land use around a forest — was not enough, the choice of sugarcane and rice as prime crops has brought tigers and people dangerously close in Pilibhit.

With conditions ripe, a tiger population that has risen from 28 to 50-plus since Pilibhit was declared a tiger reserve in 2014, has set off a spiral of tragedies.

Indeed, every success in conservation extracts a price. Unless wildlife corridors — forest connectivity — allow tiger-deficient forests to absorb surplus cats from crowded reserves, humans will have to deal with young tigers wandering out of forests. And as long as the tigers keep confusing standing crops for their extended habitat, they will keep walking close to human habitation.

As a solution, the authorities are apparently considering fencing off the reserve. This is impractical, and will reduce the reserve to a zoo. Given that certain thin stretches of the reserve are flanked by human habitations on both sides, strategic and limited physical restrictions may help. But only a safer land use model and practical crop selection can ease the conflict here in the long run.

Local goodwill is essential for the tiger's future, and undermining human safety only hurts conservation. Every time a tiger is established as a deliberate or habitual maneater, it has to be removed immediately and efficiently. Releasing "reformed maneaters" back into the wild, as India's forest authorities are known to do, is a recipe for manmade conflict.

Finally, even after all prescribed precautions are taken, chance encounters with predators — or even the rare maneater — will always remain a possibility. Not everyone caught in those situations will be lucky. It is to be noted, however, that lightning kills over 2,000 people in India every year.

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In Maratha quota clamour, echoes of an enduring farm crisis



BEYOND THE NEWS
BY KAVITHA IYER

EXPRESS EDITORS INTERPRET

A YEAR after the Marathas first staged large demonstrations across Maharashtra, there is agreement that the rape and murder of a Maratha girl in Kopardi, Ahmednagar district, was only the trigger for the series of *muk morchas*, or silent protests, that followed. As they gathered, sometimes in lakhs, in every

district head and many *taluka* towns, disavowing slogans and leaders, they asked first for reservations in jobs and educational institutions, and a review, or dilution, of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The Act, they claimed without statistical evidence, was being widely misused by Dalits to settle scores with members of dominant castes. Other, disparate demands were added on, including the expeditious erection of a grand Shivaji statue in the Arabian sea off Mumbai.

Reservations, however, remained a central theme through the 57 *morchas* held in the span of a year. At the end of the 58th and final *morcha* in Mumbai on Wednesday, Chief Minister Devendra Fadnavis announced a slew of measures that acknowledged the movement's focus on economic progress. His announcements will help Marathas skill their youth, and provide better financial assistance and amenities for

Maratha youngsters who take up higher education. On reservations, the CM said, the Backward Classes Commission would be persuaded to complete and submit its report to the High Court in a time-bound manner.

As the Congress and NCP pointed out on Wednesday evening, the announcements are low-hanging fruit — and not just because the knotty issue of reservations is now in court. On the streets of South Mumbai on Wednesday, marching Marathas discussed jobs as well as agrarian distress. One memorandum of demands spoke of diminishing Maratha numbers in spheres of industry and entrepreneurship. Marathas were finding agriculture an increasingly unsustainable profession, it said.

It was sowing season when the first Maratha *morcha* was held in August 2016. One year later, rural Maharashtra is looking back at a year of plentiful rain and bumper crops, but is unable to find remunerative

prices for agricultural commodities. Even after a good year following back-to-back droughts, economic distress is deepening.

The Marathas, who account for over 32% of the state's population, dominate the socio-political milieu of much of rural Maharashtra. They are seen as a major political force, and have dominated successive Maharashtra cabinets. And yet, they have found, not unlike the Jats and the Patels, that years of low returns from land, coupled with fractured landholdings and inadequate non-farm incomes, have led to increasing privations for the community.

A total 52% of government jobs and seats in educational institutions are currently reserved. The Congress-NCP government initiated another 16% reservation for Marathas and 5% for Muslims — a move the present government has backed, but which has been challenged in Bombay High Court.

At least 30 lakh youth across the state are

registered as unemployed, not including the lakhs who are unregistered, and agriculturists who are looking for a way out of unproductive farms. Over the last three years, the government has promised lakhs of jobs in various industry projects, mega infrastructure projects such as the Shendra-Bidkin industry clusters, the Mumbai-Nagpur Samruddhi Corridor, and more. It has also launched widely lauded skill development schemes. Job creation, however, remains dull. Some high-profile projects that were announced with fanfare are yet to take off, even though Maharashtra holds the top position in states' share of industry and investment proposals.

Young Maratha men and women facing unemployment and low returns from land, along with large numbers of economically backward Marathas, formed the bulk of the Mumbai agitation. Their problems are not caste-specific, but the movement has framed inadequate opportunities in jobs and educa-

tion for Maratha youth in opposition to the affirmative action enjoyed by SCs, STs and OBCs.

At inception, the movement barely veiled its anti-Dalit stance. The rape and murder of a Maratha girl, allegedly by Dalit youths, provided reason for muscle-flexing *vis-à-vis* the backward communities. Any resentment that might persist over Dalit men seeking relationships with upper-caste women, was not on display in Mumbai. The focus of the speeches by 13 girls at Azad Maidan, as well as of the delegation that met Fadnavis, was on jobs and reservations. The Chief Minister bought peace, but the protesters' central demand, and the central problem of the continuing economic distress of an agrarian community, remain unsettled.

It was the last *muk morcha*, the Marathas have said, although it will not be the end of their agitation.

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16 THE EDITORIAL PAGE

WORDLY WISE
THE SCULPTURE IS THE ART OF THE INTELLIGENCE.
— PABLO PICASSO

The Indian EXPRESS

FOUNDED BY

RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

And the winner is EC

Gujarat Rajya Sabha election was BJP versus Congress.
But it's the ECI that covered itself in glory



S.Y. QURAISHI

LOW AND HIGH

RS poll tally: BJP lost, Congress did not win, and EC showed how an institution should push back

THE CONTEST FOR the three Rajya Sabha seats in Gujarat presented a dispiriting snapshot of India's democracy, redeemed only by the last frame. The Congress roused itself from its general political stupor only to ensure the indirect re-election of a backroom potentate. The BJP raised the stakes in unprecedented ways and appeared bent on crossing the bounds of fairplay in order to defeat Ahmed Patel. There were floor-crossing Congress MLAs and the party herded the rest of its flock to the safety of Congress-ruled Karnataka to protect it from a predatory BJP. Towards the last, as the drama shifted to Nirvachan Sadan in New Delhi, the Election Commission intervened. Votes of two Congress MLAs who had allegedly violated the voting procedure and secrecy of ballot papers were invalidated and Patel won the seat. But look closer and it is clear that the BJP is the loser but the Congress did not win — and the EC has proved yet again the difference that an upstanding institution with a sense of its own role and responsibility can make.

The BJP headed by Amit Shah, who has just completed three years as party president, and who is now elected from one of the three Gujarat seats to Rajya Sabha, is said to be a new BJP. There has been evidence aplenty of a party more purposeful and indeed, more successful, with a greater hunger to win. Yet, in these RS elections in Gujarat, the defections of Congress MLAs to the BJP, and the timing of income tax raids on a Congress crisis manager involved in safeguarding party legislators from alleged BJP lures, have raised a troubling question: Just how far is the BJP willing to go, to win? Gujarat RS elections have only reinforced the unease sparked by the backroom manoeuvres through which the BJP has managed to form governments in states it had lost in the elections to other parties, be it Manipur, Goa or Bihar. Its large mandate in 2014 gave it a position of dominance, but the BJP seems to show little deference to the checks and restraints that also come with power in a constitutional framework.

It was left to the Election Commission to serve a valuable reminder of the countervailing institution. Once the RS poll theatre shifted to its office in Delhi, it used the powers vested in it by Article 324 of the Constitution, the Representation of the People Act, 1951, and the Conduct of Election Rules, 1961. It demanded video footage of the voting, and struck down the Returning Officer's decision on the breach of procedure and ballot secrecy by two Congress legislators. But most of all, it drew upon an institutional memory and rich legacy left behind by the ECs that have gone before — of ensuring a level playing field, of being the fair and impartial arbiter of polls. On Tuesday night, the EC talked back to the BJP delegations which insisted that it had no power to intervene in the RS poll in Gujarat. In the end, that is the only voice worth remembering from a very noisy episode.

IN ONE FELL SWOOP

Crack down on suspected shell companies by all means. But the regulator must show greater transparency

ON TUESDAY, THE Securities and Exchange Board of India issued a circular to local stock exchanges to take action against 331 listed companies suspected of being shell companies. Based apparently on a list passed on by the Ministry of Corporate Affairs, the move has rattled the markets. The Sebi circular to stock exchanges says that these companies — 162 of whose stocks are actively traded — will not be allowed to trade this month in line with the Graded Surveillance Measure introduced by the capital markets regulator earlier this year. The regulator has also told the stock exchanges to carry out a forensic audit to examine the financials of these firms besides an independent audit — indicating that further action such as delisting could follow if there is evidence of wrongdoing.

The latest crackdown on suspected or real shell companies should not come as a surprise given the government's drive against tax evasion. Last month, Prime Minister Narendra Modi had said that the government had cancelled the registration of over one lakh companies in one fell swoop and that more than 37,000 shell companies had been identified for further action. What is surprising, however, about Tuesday's action is that neither have the companies, nor investors and other stakeholders been told on what count they have been punished or the laws they have violated. Presumably that will follow. But the question is whether the move of a quasi-judicial authority like Sebi should have been guided more by the principles of natural justice and whether the reasoning is sound given the consequences of this action and the fact that existing laws such as the Companies Act or the Sebi Act do not define a shell company. A public listing facilitates the processing of information by investors who then make investment choices based on that. That's why it is important for the regulator to demonstrate to the market through its reasoning while launching action against suspected shell companies that curtailing or stopping trading in stocks of such firms and denying trading rights was in the interest of investors.

Failure to do that is bound to lead to a prolonged round of litigation and the risk of a credibility knock of the securities market regulator, negating the gains over the last few years. It may well be worth reminding the regulator and policymakers that at the height of the Satyam accounting fudge, despite calls from many quarters, Sebi never halted trading in that stock. Investors weren't the losers then, as subsequent events show.

STATUE!

Can monumental statuary alter history and freeze approved versions in time? It is such an embarrassingly Soviet idea

TIME MACHINES CANNOT exist outside science fiction because they violate the law of conservation of mass and the first law of thermodynamics. The history of culture is presumably governed by similar, unstated laws, which baffle the monumental projects of political parties. The BSP had turned Uttar Pradesh into a commemorative elephant graveyard, now deserted. The BJP is forging a statue of Sardar Patel out of ploughshares and scrap and the alert art police in Guwahati have denounced Ramkinkar Baiji's statue of Gandhiji, and want it dismantled like the busts of Stalin in the former USSR. The great modernist stands accused of equipping the Mahatma with disproportionate spectacles, hands and feet.

The charge misses the obvious distinction between photocopying and art, which alters perceptions by taking liberties with reality. Consider the dog which is part of Ramkinkar's 'Santal Family', in his native Santiniketan, which is seen by thousands of visitors every day. To the artless eye, it seems to be mutating into a monitor lizard. The un-nerved realist may wish to put such regressive phylogenetics out of sight by demolishing that statue, too. And there's Ramkinkar's most visible work, the yaksha and yakshini guarding the doors of the Reserve Bank of India in the capital. They are disproportionate by definition, because no one knows the proper proportions of their tribe. The RBI is already embarrassed by a disproportionately low understanding of the volume of the nation's cash. Must we burden the institution with visible disproportion at its doors?

So many sculptural wrongs, so little time. Would it not be economical to replace allegedly disproportionate statuary with proportionate holograms, embellished with Gandhara-style drapery? Because when the bulb lights up for those who would alter the history of culture, they could just switch off the projector.

NO ELECTION TO a single Rajya Sabha seat has ever generated so much heat as the one that concluded past midnight yesterday. People were glued to the television throughout the day. Social media was abuzz with speculation. What made this election so special? Was it the media hype by the TV channels vying for TRPs, or were the issues involved really serious and unprecedented? It was indeed the interesting issues ranging from the scourge of horse-trading to the operation of the anti-defection law, the power and role of the EC, NOTA, secrecy of the ballot, and the two questionable votes whose secrecy was violated.

The first issue of horse-trading began with large-scale defections from the Congress. Six Congress MLAs joined the BJP, seven more defected later and one cross-voted. When the defection game began, the Congress transported 44 of its remaining MLAs to the safety of Congress-ruled Bengaluru, where they camped at a luxury resort. The unfortunate practice of taking MLAs to secret places, often against their wishes, is nearly three decades old. Remember Aaya Ram Gaya Ram? With rampant money power, it is almost impossible to prevent defections. The purchasability of our legislators is notorious and has popularised the phrase "horse-trading". We have been seeing it with sickening regularity across the country. The figures mentioned are obscenely high, running into crores — maybe tens of crores.

The debate that ensued over the holidaying MLAs was interesting, where the poachers were heard blaming the party that was trying to save its flock: The proverbial pot calling the kettle black. The fact that none of the holidaymakers defected proves the efficacy of this step.

The second issue was the applicability of the anti-defection law. The law did operate in this case when the six MLAs who defected to BJP were unseated and disqualified from voting. However, the seven who crossed over could not be disqualified as the anti-defection law operates only when the whip is violated as a part of legislative proceedings; an election is not part of those proceedings. It is noteworthy that defections become rampant when the term of the House is coming to an

end anyway, and the outgoing legislators have nothing much to lose. They suddenly discover some forgotten "principles" or "suffocation from the leadership style" of the erstwhile party.

Another issue that arose was NOTA, which has been in operation since January 2014 but was suddenly discovered by the Congress, which protested about it even alleging mala fide intent against the EC. They took the matter to the Supreme Court which rightly refused to stay the operation, questioning why they had not raised it for three-and-a-half years. The SC, however, will still decide NOTA applicability in the peculiar case of Rajya Sabha elections. Their refusal to stay was rooted in the fact that Article 329 specifically prohibits any judicial interference in the election process that has been set in motion. The EC did invoke this Article. I personally feel that it does need reconsideration, just like the elections of the office of President and Vice President have been kept out of NOTA and have caused repeated confusion in their operation necessitating clarificatory notifications.

The secrecy of the ballot was another debated issue. The normal rule is that all votes in all elections are secret and anyone who shows his vote gets his vote cancelled. There is, however, one exception — the Rajya Sabha election. To checkmate horse-trading, the election rules have provided that the voter in Rajya Saba election would show his vote to an authorised representative of his party and no one else (Rule 39, Code of Election Rules, 1961). In the Gujarat case, two Congress MLAs showed their vote to rival BJP leaders to prove their new loyalty. The Congress lodged a protest with the Election Commission of India (ECI). The BJP raised the issue that the protest is too late as the votes have already been put in the box and cannot be identified.

This was the time when the ECI came under the scanner of the public (read media). Social media buzzed with speculation. Questions were raised about the integrity of the commissioners, both BJP appointees. Both the involved parties launched an onslaught of delegations. Many critics questioned the wisdom of the EC in seeing these delegations repeatedly. I feel that was the right thing for the EC to do as it must hear

every conceivable point that may help it to decide the case with watertight credibility and also in deference to the principle that justice should not only be done but appear to be done as well.

Questions were raised by the BJP about the power of the EC vis-a-vis the Returning Officer (RO). In response to public questions, I had tweeted that till the results of an election are announced the power of the EC is total and exclusive though after the result it is zero, and shifts to the high court. It is true that the RO has the ultimate power under the law and if he wanted he could have started the counting and declared the results even if there was a blatant fraud. But to prevent such a possibility, which has happened in the past, the EC sends an observer who can stop the counting and the result till he and the EC are fully satisfied. This is exactly what happened in this case.

An interesting question is: How were the disputed votes identified after these were already mixed up in the box with all others? Such practical "difficulty" can never be a reason to let go of a fraud. Even one bogus vote is enough to "vitiate" a poll on which ground the entire election can be countermanded. That's why the EC rules provide a safeguard and a procedure. The impugned votes are identified by the unique number printed on the back of each ballot paper.

The ECI came out with flying colours. Contrary to speculation that both the commissioners being appointees of the BJP, (the CEC, in fact, is the former chief secretary of the then-CM of Gujarat, Narendra Modi) would be under pressure to rule in favour of the ruling party, they delivered a brilliant judgment. I would like to mention from my experience that there is a kind of aura around the office of the CEC and the institutional memory and framework that keeps the conscience active. The EC is also conscious of judicial scrutiny and the public image.

The contest was between BJP and the Congress. The winners are [Achal Kumar] Jyoti and [Om Prakash] Rawat. Proud of you, my friends.

The writer is former chief election commissioner of India and a distinguished fellow at Ashoka University



ABDUL KHALIQ

TRYST WITH INEQUALITY

India has failed the Constitution's commitment to social justice

AS WE APPROACH our 71st Independence Day, one cannot help but reflect on where we stand as a nation. I can think of no better way to assess our progress than to measure it against the noble aspirations enshrined in the Preamble of the Constitution which spells out our resolve to secure justice, liberty, equality for every citizen and promote fraternity among all. How far have we progressed on this commitment?

Our Constitution should have helped us create a truly egalitarian society but the power elite has failed miserably in ensuring equality and justice for all. Despite impressive economic growth in the last two decades, inequalities and injustices are pervasive. According to World Bank estimates (2015), there has been a decline in India's poverty rate but this is cold comfort — 172 million citizens still live below the poverty line and constitute 24.5 per cent of the world's poor. That the neoliberal juggernaut has trumped distributive justice is evident from the fact that India's richest one per cent now hold 58 per cent of the nation's wealth.

A great blot on our society is the prevalence of manual scavenging despite stringent laws prohibiting it. There are about 2.6 million dry latrines across the country that require manual cleaning, a loathsome task imposed on the Dalits of all religions by social sanction. That is not all. Although elaborate

laws specifically aimed at protecting Dalits are in place, there is no let-up in the atrocities against this group. According to the National Commission for Scheduled Castes, there were 54,355 registered cases, including rape, murder and arson committed against Dalits in 2015 compared to 39,408 cases in 2013.

Another arena darkened by injustice and inequality is rural India where 68 per cent of our people live. India is today self-sufficient in agriculture, is the biggest exporter of rice in the world, the biggest producer of milk and second-largest producer of fruits and vegetables. The farming community made this happen. Yet unending waves of farmer suicides are overt manifestations of an on-going human tragedy. They are victims of an iniquitous system where even bumper harvests do not ensure reasonable profits; where there is no insurance against the vagaries of nature or volatility of the market; where the government's focus is on containing food inflation in cities with hardly a thought to whether the producer is adequately remunerated; where the governing class obsesses about smart cities and bullet trains while rural India remains without basic infrastructure.

Our founding fathers had underlined fraternity as a vital ingredient for building a vibrant democracy. Jawaharlal Nehru had cautioned that "it is the responsibility of the dominant community not to use its position

in any way which might prejudice the secular ideal of the nation." After Partition, there was animosity between Hindus and Muslims but that has abated over time. However, since the late 1980s, the mutual suspicion and distrust have intensified, and the country is witnessing a majoritarian assault on the Muslim and his way of life.

Lynching for beef eating and suspicion of cow slaughter has become virtually quotidian. Politicians have been fishing in troubled waters by instigating the worst elements in both communities. With even educational institutions and cultural bodies purveying the gospel of hate, what we see today is an overpowering communalisation of the public space. The social gulf between the two communities that seems to be widening poses a greater threat to the nation's well-being than terrorism or Pakistan.

Extreme gender inequality and intolerance to dissent are further manifestations of a deeply polarised society. I am reminded of what James Baldwin, the great Afro-American novelist observed in 1963 about white racists, the powerful and the wealthy in America: "I am terrified at the moral apathy, the death of the heart that is happening in this country." We all need a change of heart.

The writer, a former civil servant, is secretary general, Lok Janshakti Party. Views are personal



AUGUST 10, 1977, FORTY YEARS AGO

CHAVAN ON INDIRA
Y.B. CHAVAN, WHO successfully resisted the attempts made by Mrs Gandhi's group to control the affairs of the Congress, ruled out her expulsion from the party. Chavan, who was addressing the media in New Delhi, was asked to comment on Jayaprakash Narayan's statement suggesting that Congressmen expel Mrs Gandhi from the party if they wished to revive it. Chavan, the leader of the Congress Parliamentary Party (CPP), said he had great respect for JP and would not comment on the statement. But Chavan added that the Congress would not do anything that would encourage disunity. "There is no question of expelling this individual or that indi-

vidual. Any move to divide the Congress Party will not be encouraged by us," he said. He added that there was no extra-constitutional authority nor was there any interference in the affairs of the CPP.

TIBET AND CHINA
THERE WAS SPECULATION that Felix Green, a filmmaker who had spent five weeks in Tibet, was acting as a mediator between the Dalai Lama and the Chinese government. Green reportedly had a series of meetings with the Dalai Lama in Dharmashala. He refused to reveal what had transpired between him and the Dalai Lama but *The Guardian* quoted him as saying that "it had been agreed

with the Dalai Lama's office that the meeting as well as the substance of the talks should be kept secret". Green told *The Guardian*, "the issues are very complex. I would rather not voice an opinion." The filmmaker was in Tibet as a guest of the Chinese government.

PM ON NUKE POWER
THE PRIME MINISTER said in the Rajya Sabha that nobody could stop India from using nuclear explosions for peaceful purposes. A Congress member, Leela Damodara Menon, said she wondered why the prime minister had declared that India should not use nuclear explosion for peaceful purposes. "When did I say that," Morarji Desai asked.

17 THE IDEAS PAGE

Let's not suspend disbelief

The UIDAI's touching faith in Aadhaar blinds it to the dangers of the project



JEAN DRÈZE

IN TWO RECENT articles ('Criticism without Aadhaar', IE, May 13, and 'The demonisation of Aadhaar', IE, July 12), Ajay Bhushan Pandey, CEO of the Unique Identification Authority of India (UIDAI), responds to various criticisms of Aadhaar. Pandey must be credited for having made the UIDAI's case with clarity and reason. The case, however, is far from convincing.

Interestingly, Pandey does not invoke the UIDAI's pet claim that Aadhaar is a "voluntary facility". This claim never made much sense, and lost all plausibility with the compulsory PAN-Aadhaar linkage. Changing gear, Pandey now argues that the possession of Aadhaar is a reasonable demand on Indian residents. Just as someone who refuses to get a driving licence must forego driving, he says, someone who rejects Aadhaar must "make a conscious choice of foregoing the benefits". This analogy is deeply misleading. First, what an Aadhaar-less person has to forego is not just any odd benefit, like being able to drive a car, but a whole gamut of essential facilities. For a person with taxable income, it could even mean going to prison for failing to file tax returns. Second, a driving licence, unlike Aadhaar, does not entail any serious infringement of privacy or civil liberties. Enrolling for Aadhaar, by contrast, means submitting oneself to lifelong state surveillance, or at least the risk of it.

Pandey assures us that there is no danger of Aadhaar being used as a tool of surveillance. This is like the Ministry of Rural Development telling us that nuclear weapons will never be used for a first strike. The UIDAI has little more control on the uses of Aadhaar than the Ministry of Rural Development has on the use of nuclear weapons. It is mainly the government, not the UIDAI, that uses Aadhaar. If the government decides to use Aadhaar as a tool of surveillance, the UIDAI (or the Aadhaar Act for that matter) is unlikely to stop it.

Along with downplaying these concerns, Pandey reiterates the UIDAI's grand claims on the benefits of Aadhaar, including bogus estimates of government "savings". "Critics who dispute these figures," he adds, "may refer to the World Bank's Digital Dividend Report 2016 which has estimated that Aadhaar could annually save the central government US\$ 11 billion if used in all welfare programmes". The said report, however, does not present any savings estimates. All it does is to make a passing reference to another study, by Shweta Banerjee and others, where it is pointed out (again in passing) that the Indian government spends about \$11 billion every year on five major cash transfer programmes. There is not a shred of evidence in it of Aadhaar-enabled savings, actual or potential.

In recent months, some of us have tried hard to uncover the basis of the government's savings figures. We have found none so far. For instance, when a clarification was sought from the Ministry of Rural Development under the Right to Information Act, the ministry was unable to go beyond the general statement that "savings are in terms of increasing the efficiency and reducing the delays in payments". The only savings figures that have a semblance of substance are those pertaining to the LPG subsidy. Even those, however, are very speculative, and have been so distorted and misquoted that the chief economic ad-



CR Sasikumar

visor, one of the co-authors of the original estimates, had to distance himself from them ('Clearing the air on LPG', with Siddhartha George, IE, 2 April 2016). It is another matter that the CEA himself initiated the confusion with a misleading claim, published in *New York Times* on July 22, 2015, that Aadhaar had already saved more than Rs 12,000 crore of government money.

Aside from government savings, Pandey argues that Aadhaar is also a blessing for ordinary people. The latest UIDAI refrain is that Aadhaar "empowers" the citizen. Really? How does it empower an elderly person who lost her pension for lack of Aadhaar? Or a child who has to run from pillar to post because her name is spelt differently in the school register and her Aadhaar card? Or a destitute widow who finds herself unable to buy her monthly food rations because she fails the Aadhaar-based biometric authentication (ABBA) test? Against this, Pandey's main argument is that "the citizen is also empowered because it is harder for anyone to impersonate him". That does not sound like a great consolation for those who have been deprived of critical entitlements, or who resent Aadhaar's "electronic leash", as Shyam Divan aptly calls it.

Finally, Pandey dismisses the "collateral damage" done by Aadhaar in various contexts. He claims that evidence of this damage is limited to stray anecdotes, such as "a few instances of elderly people being denied food rations". That is a very complacent reading of the alarming stories that are pouring in day after day. Further, the evidence goes much beyond isolated stories. Talking of the

The latest UIDAI refrain is that Aadhaar 'empowers' the citizen. Really? How does it empower an elderly person who lost her pension for lack of Aadhaar? Or a child who has to run from pillar to post because her name is spelt differently in the school register and her Aadhaar card? Or a destitute widow who finds herself unable to buy her monthly food rations because she fails the Aadhaar-based biometric authentication (ABBA) test?

public distribution system (PDS), for instance, there is clear evidence from both official statistics and independent surveys that in Jharkhand alone millions of people are currently unable to buy their food rations due to ABBA-related problems. Further, the victims often belong to very vulnerable families, for whom the PDS is a lifeline.

Aside from downplaying the problem, Pandey claims that it reflects a failure of the "field agencies" to comply with the government's instructions. He presents a novel interpretation of Section 7 of the Aadhaar Act, whereby these agencies are bound to ensure that a person who fails the ABBA test is able to use the PDS in some other way. He claims that instructions to this effect have been issued and that "violators have to be punished". Coming from someone who urges the critics to pay more attention to "the facts on the ground", this is a little lame. The situation on the ground is that this interpretation of Section 7, if it applies, is routinely violated, and that no violator of these alleged instructions has ever been punished.

Ultimately, the fixation with Aadhaar in government circles rests more on faith than facts. The last line of Pandey's first article reflects this touching faith: "Aadhaar is India's technological marvel which, while empowering people, will enable India to leapfrog towards the status of a developed nation". This faith seems to blind the UIDAI to the severe damage Aadhaar often causes on the ground. It's time to get real.

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WHAT THE OTHERS SAY

"The only way to understand Trump's vocal support of an obvious turkey (immigration law) is as yet another attempt to energise his dwindling base of right-wing and nativist supporters." — **THE NEW YORK TIMES**

Public service and the pravasi

By allowing Overseas Indian Citizens to appear for UPSC exams, government could broaden the pool for recruitment



BIBEK DEBROY

A RECENT GOVERNMENT decision has the potential to blur the difference between public and private recruitment. All public recruitment agencies (UPSC, Staff Selection Commission (SSC), Railway Recruitment Board (RRB), RBI, armed forces, paramilitary, public sector banks, public sector enterprises) will use the Ministry of Labour and Employment's NCS (National Career Service) portal to disclose scores/rankings of candidates in the final stages of recruitment processes. Courtesy NIC, there will thus be an integrated information system for public recruitment agencies. This will have all the details about a candidate.

As a candidate, when I fill out an application form, I have the option of opting out of the disclosure scheme. If not, my data are there on the portal for other private and public sector agencies to use. As an applicant, I may have got through to final stages, but may not have been able to clear the last hurdle for whatever post I applied for. In that event, my data can be used by other recruiters. Take the railways. Not long ago, there was an announcement about a little more than 18,000 non-technical posts and more than nine million applied and were tested. (Sure, all 9 million don't qualify for final stages, but that's not relevant.) Subsequently, railways advertised for 2,54,587 non-technical posts. Within the public segment, there is a wealth of application and testing information and the private sector routinely complains about the lack of people with requisite skills. If an initiative matches excess demand in one with excess supply in the other, it can only improve the efficiency of the intermediating function.

Who is entitled to sit for the UPSC examination? I don't mean academic eligibility, age, or number of attempts, but nationality. For the Indian Administrative Service (IAS), Indian Police Service (IPS) or Indian Foreign Service (IFS), the candidate must be an Indian citizen. For other services, the candidate can be a citizen of Nepal, Bhutan, a Tibetan refugee (who migrated before January 1, 1962), or a person of Indian origin who has migrated from Pakistan, Burma, Sri Lanka, East African countries (Kenya, Uganda, Tanzania, Zambia, Malawi, Zaire, Ethiopia) or Vietnam with "the intention of permanently settling in India".

For non-Indians, the Government of India has to issue an eligibility certificate. This doesn't necessarily have to be produced at the time of taking an examination, but must be produced before the appointment letter is issued. For public office and public appointments, all countries, India included, have a requirement that the person must be a citizen. There are several different ways to become an Indian citizen — be-

fore the commencement of the Constitution, by birth, by descent, by registration (Section 5 of the Citizenship Act), by naturalisation. "Intention of permanently settling in India" and the consequent "eligibility certificate" sound vague and discretionary and are often reflective of historical legacies. Public office and public appointments should have the requirement of being an Indian citizen, not only for IAS, IPS or IFS, but all services. When? At the time of taking the examination or time of issuing the appointment letter?

Since the Pravasi Bharatiya Divas in 2006 (and preceding amendment to Citizenship Act in 2005), there is a category known as Overseas Citizen of India (OCI). The former PIO (person of Indian origin) system has gone. OCIs have several privileges — multiple entry, multi-purpose life-long visas, exemption from foreigner registration requirements, parity with NRIs (except in the purchase of agricultural land and plantations). Progressively, there has been more liberalisation — parity in inter-country adoption, domestic air fares, entry fees for wildlife sanctuaries (2007), employment, parity in entry fees to national monuments and museums (2009), easier proof of residence (2012). However, OCI doesn't mean dual citizenship, at least not from an Indian perspective (the UK has a different view). Therefore, there are three rights OCIs don't possess today — the right to vote, right to public office and right to public appointments. But given the distinction between taking an examination and the issue of an appointment letter, why shouldn't OCIs be allowed to take UPSC exams? Logically, it is an appealing idea. If a person is selected, an appointment letter will be issued only after the existing citizenship has been renounced in favour of Indian citizenship. This is the kind of announcement that can be made at the Pravasi Bharatiya Divas in 2018.

Note that security clearances are necessary before any public appointment is made. So security concerns are non-sequitur. If PoK or CoPoK (China occupied Pakistan occupied Kashmir) residents wish to take the UPSC examination, so be it. In the process, they will learn something about India. More seriously, Pakistan is outside the ambit of OCI.

On occasion, there has been lateral entry into public service at senior levels by people who were PIOs, not NRIs. They renounced their existing citizenship and became Indian citizens. But these were isolated instances, on ad hoc basis. Lateral entry increases competition and the broader the catchment area, the better. It is unlikely that a large number of OCIs will wish to take UPSC exams. Given the nature of the exam, it is unlikely that many will qualify, even if they wish to. Even then, from the competition point of view, why not broaden the base? From the appointment point of view, becoming an Indian citizen and imbibing things Indian are easier at an age of 25 than they are at an age of 55. We have done it on ad hoc basis at age 55. Let's do it more systematically at an age of 25.

The writer is member, Niti Aayog. Views expressed are personal

LETTER TO THE EDITOR

FRANCHISE MATTERS

THIS REFERS TO the article, 'Paradox of the vote' (IE, August 9). It has been often suggested that a strong state like that in China would have been much better for India's development. In a similar vein, this article suggests that incremental democracy would have tackled the problems of the country more systematically. But these are simplistic solutions. The suggestion that limited franchise would have allowed much more focus on aspects like education and health because of the middle class's pressure is blinkered to the abject poverty of the poor. Universal franchise gave a voice to such people. Making the state answerable to only urban or rural magnates, on practical grounds, would have widened the gaps between haves and have-nots. That development of Western nations is not a product of limited franchise but technological churning and colonialism.

Manisha Legha, Bikaner

BABUS AND EXPERTS

THIS REFERS TO the article, 'The case for lateral entry' (IE, August 9). The argument that civil services in India must be made flexible to attract professionals from outside the government is a progressive suggestion. In 2006, the Second Administrative Reforms Commission and the Sixth Pay Commission pitched for lateral entry of professionals in crucial decision-making positions. Unfortunately, the issue never gained momentum in public policy discourse. The modern-day governance paradigm

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has changed immensely from the days of revenue collection and policing functions. Social welfare and inclusive prosperity have become the underlying objectives of government. Technological advancements in areas of public service enhanced the capacities of government to reach a wider public. The government, therefore, will require experts and specialists in to construct new technical paradigms like Aadhaar.

Bibhuti Das, New Delhi

Making common cause

Varnika Kundu took on her stalker, united otherwise warring news channels



TELESCOPE

BY SHAILAJA BAJPAI

WHEN THE SAME "exclusive" CCTV footage was shown by almost all news channels (Aside: Does it remain "exclusive" when this happens?), they hailed it as a victory — their victory. And certainly, the continuous coverage of the alleged stalking of Varnika Kundu by a "VVIP brat" (CNN News 18) in Chandigarh, by news channels throughout Monday, made it impossible for the Haryana police to avoid the question: Where has all the CCTV footage gone?

How conclusive the very brief CCTV footage shown by TV news will be in proving the stalking remains to be seen but at least it came to light at a time when the Haryana police claimed it was missing, leading to an outcry against the BJP government in Haryana as the alleged stalker Vikas, is the son of BJP leader Subhash Barala.

Varnika achieved what few men and women can these days: She united news channels in English and in Hindi in a common cause to support the "Braveheart". Why even Times Now and Republic, otherwise sworn competitors, were in sympathy: #IndiawithVarnika proclaimed the former, #StandwithVarnika exhorted the latter. The star of the moment was undoubtedly

the shaken but unbowed young lady who took her fight against her tormentors to the channels. Monday evening, on CNN News 18, anchor Shreya Dhoundal thanked Varnika for appearing on air live to give her 26th interview of the day, many of which were conducted while she was in her vehicle retracing the midnight journey of "terror". Equally impressive was her father. Together, they appeared on Ravish Kumar's show (NDTV India) and Mr Kundu was eloquent in support of his daughter and his expectations of a fair and impartial investigation by the police.

The incident and its subsequent TV coverage also had a lesson for politicians and their love of slogans. One of the current ruling party's has been the inspiring, "Beti Bachao Beti Padhao". The news channels latched on to this slogan and used it to mockingly: "Beti Bachao ya Beti Uthao?" (Aaj Tak), "VVIP Beta Bachao" (India Today), "Beti Bachao, Beti Padhao just a slogan?" (CNN News 18), "From Beti Bachao to Beta Bachao" (NDTV 24x7), were some of the variations coined by the channels.

Once the CCTV surfaced across channels on Tuesday, the latter, mostly, lost interest. There was a far juicier story to divert its at-

ention: The major Rajya Sabha battle in Gujarat where Congressman Ahmed Patel was struggling to save Sonia's blushes. The headlines screamed as only TV headlines can, the questions dripped fatalism, "Can Patel save the Gandhis?" (Times Now) and everything was larger than life — why you'd think an Olympic medal or the Nobel Peace Prize, was at stake here. Usain Bolt's dramatic loss in his last 100 metre race at the World Athletics Championship couldn't have matched the inflated proportions the coverage assumed of what was, after all, a Rajya Sabha seat.

By late evening and into the night, there was pandemonium outside the Election Commission office in Delhi and although it became tiresome — literally — to watch, there was a silver lining: It was live, breaking news instead of the shouting brigades evening lung work out. For that you should be very grateful to the two cross-voting Congress MLAs who created the fracas in the first instance.

By Wednesday morning, small, straightforward headlines informed us that Patel had indeed allowed the Gandhis to live to fight another day. Had he lost, we would have been watching their political obituaries, no doubt.

Returning to Varnika: There are many lead female characters in TV serials who start out at brave as her: How many times have you seen one of them slap a young man who misbehaves with them? However, what transpires after that is usually straight out of a Harlequin romance. The rough and gruff hero falls for the damsel and she for his brawny, brash, brutish charm. Cannot think of even a single show where the female character is strong, independent minded — and happy. Even if they start out so, by episode 50, they dissolve into tears and need a man of character and, preferably with a beard, to rescue. Thus in Kundali Bhagya (Zee HD), Rishabh steps forward to prove Preeti's innocence after his Kareena Bua accuses her of stealing her daughter's ruby — but only after the wicked Bua has reduced Preeti, her mother and her sister into dripping sponges.

Postscript: When Vikas Barala was arrested on Wednesday afternoon, many channels claimed it was their doing: "ABP ka asar", Times Now "impact"; India Today "impact" CNN News "impact" and Republic "campaign impact" (?).

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