

Jaipat's

India

Briefing

*An Occasional Commentary on
Law and Happenings in India*

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Eleven Members were expelled by the Parliament, the federal legislature, within eleven days of a video footage broadcast over a cable news network that showed them accepting cash in exchange of promises to ask questions in Parliament.^{1,2}

The last time Parliament was confronted with a similar situation was in 1951 when a Member accepted money to lobby for Bombay bullion merchants. It took the new republic's stunned Provisional Parliament three months before recommending that Member's expulsion.³

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¹ A committee of *Lok Sabha* ("Peoples' House"), one of the two Houses of the Parliament, investigated the matter and recommended expulsion. See report at <http://164.100.24.208/ls/Inquiry/IRreport.pdf>. Another committee is investigating conduct of eight other Members in a separate event of a similar nature.

² The episode is reminiscent of Abscam where one Senator and five Congressmen were convicted. While the Federal Bureau of Investigation conducted the sting in the United States, it was zealous journalists in India.

³ For a summary, see in general: <http://www.flonnet.com/fl2227/stories/20060113004803200.htm>.

The swiftness with which Parliament now expelled eleven of its Members is eloquent for a country where corruption since 1951 has grown to be pervasive, open and notorious.⁴

Heavy Hand for Affirmative Action

Law in India does not require private educational institutions that do not receive government aid to "reserve" a certain percentage of available seats for the benefit of incoming students belonging to historically "socially and educationally backward classes," tribes or "untouchable" "castes." And because law does not so require, they do not. That is, up to now. Last month, India enacted a Constitutional amendment to require most of them to do so.⁵ The exception: schools run by "minorities" such as Christians and Muslims.⁶

Enlightened Princely States⁷ introduced "reservation" (also called "quota system") in India in early 20th Century. Post-independence India continues to most rely on that system to support affirmative action. Many among India's vocal, largely "upper caste" middle class protest this method of social change.

⁴ Seven years ago, India's Supreme Court, in a celebrated case against a former Prime Minister charged with bribing Members, held that a Member of Parliament that accepts bribe violates no law. See *P.V. Narasimha Rao v. State*, AIR 1998 SC 2120; *Cf. United States v. Brewster*, 408 US 501 (1972). The Supreme Court left it to the Parliament to enact appropriate laws. The Parliament enacted no laws.

⁵ A new Article 15(5) has been added to the Constitution by The Constitution (One Hundred and Fourth Amendment) Bill, 2005, Bill 160 of 2005.

⁶ It is ironic that the first amendment to the Constitution of India was made, in part, to overturn a Supreme Court decision that invalidated "reservation" in government schools. See *State of Madras v. Dorairajan*, 1951 AIR (SC) 226. The amendment now made overrules another Supreme Court decision, *Inamdar v. State of Maharashtra*, Civil Appeal 5041 of 2005, 2005 (6) SCC 537.

⁷ India had over 500 mini-kingdoms within the British Empire. However, since there could only be one king, these mini-kingdoms were called "Princely States."

American Influence

India enacted for the first time a criminal procedure law on “plea bargaining”; invited public comments to a concept paper on limited liability partnerships; and its federal securities regulator announced it was considering “negotiated settlement of disputes.” The developments are billed in India as being inspired by American law.

“Plea Bargaining”

Fifteen years after the Law Commission of India, a statutory body created to revise pre-independence laws, recommended “concessional (*sic*) treatment for offenders who on their own initiative choose to plead guilty without any bargaining” and set forth a procedure for making such pleas.⁸ India amended its Code of Criminal Procedure, 1973, to add a new Chapter XXIA called “Plea Bargaining.”⁹ The caption is misleading because there is no bargaining involved, no role for the prosecutor or the defense counsel, but a plea of guilt knowingly made directly before a judge who is authorized, with the consent of the victim and the prosecutor, to pass substantially reduced sentence prior to trial.¹⁰

LLPs

Businesses are organized in India mostly as corporations (called “companies”) or general partnerships, both of which are taxed on their income. India now seeks to create a new, pass-through taxation form of business entity, of

⁸ 142nd Report of the Law Commission of India, 1991. The Law Commission found that acquittal rates in Indian criminal trials were 90%. See paragraph 2.9, page 4. These rates are now lower. See “Crime in India, 2003” on <http://ncrb.nic.in/crime2003/cii.html>. Prisoners routinely languish behind bars for long periods awaiting trial; in a recent case brought before the Supreme Court, for over 50 years. See http://news.bbc.co.uk/2/hi/south_asia/4601414.stm. The law is expected to help courts clear their dockets.

⁹ Bill No. LX of 2003; passed in 2005.

¹⁰ The “scheme” is available to first time offenders for most crimes where the maximum sentence, if awarded, is less than seven years.

limited liability partnerships (“LLPs”), under which a partner’s liability will ordinarily be limited to her capital. Its chief intended beneficiaries: lawyers and accountants; existing law prohibits them from forming corporations to limit liability.¹¹ The proposed LLP law provides for potentially unlimited personal liability of manager (one or more individuals resident in India may be managers) for acts of the LLP done in violation of the LLP law, and sweeping oversight and executive authority in the hands of the federal government.

Negotiated Settlement

The government in India seldom settles a dispute; it merely escalates it to a higher forum. A recent announcement by the Securities and Exchange Board of India (“SEBI”) that it was considering negotiated settlement of disputes is therefore a milestone. SEBI is a force behind the phenomenal growth and sophistication of India’s securities market.

Disaster Management Law

India enacted its first federal disaster management law.¹² That law creates a “National Disaster Management Authority” chaired by the chief executive officer, the Prime Minister, and similar authorities up to each district level.¹³

No Smoking

A mesmerizing scene from a Bombay movie of my childhood that I often remember was of a favorite actor bravely setting off sticks of dynamite with his lighted cigarette after a relaxed puff. Modern-day kids will miss that in their modern-day favorite actors as India outlawed cigarette smoking on celluloid effective January 1, 2006. And that seems to be the idea.

¹¹ For a copy of the Concept Paper, see: http://dca.nic.in/opening_roc.htm.

¹² The Lok Sabha passed the Disaster Management Bill, 2005, on December 12, 2005.

¹³ See November issue of INDIA BRIEFING for India’s legal structure for managing disasters.