

Jaipat's

India

Briefing

*An Occasional Newsletter on
Law and Happenings in India*

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September is usually a "happening" month in most of India, particularly in and around New Delhi, its capital city. The summer heat and winds have been quelled by the monsoon, the farms are green, the courts and schools are open, the Parliament has just completed a month of legislative activity and the month has no national holiday for any religious denomination.²

Stocks All-Time High

September's most newsworthy story did not come from New Delhi, however. It came from Mumbai (*nee* Bombay) where the Bombay Stock Exchange ("BSE"), representing approximately \$500 billion in market capitalization, reported that its key stock index, Sensex, had hit an all-time high. The Sensex has continued its upward climb in October.

Two months after rains and flooding killed reportedly about 1,000 mostly poor people in Bombay, the BSE news highlighted the contrast

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² India is a country of bountiful religious holidays. More on that later.

in India of enormous industry and wealth-creation amidst a sea of helpless poor.

Stock Exchange Reform

Talking about stocks, another development during the month merits mention. The Securities and Exchange Board of India ("SEBI"), a body similar to the United States Securities and Exchange Commission, announced a program under which all, except two, of the remaining stock exchanges in the country shall be converted from mutual associations to for-profit corporations. The existing members of the mutual associations shall be the initial shareholders of the corporations and each exchange is required to have fifty-one percent shareholding held by the public within twelve months.³ In recent years, India's stock exchanges have emerged as efficient institutions.⁴

Employment Guarantee

As it happens, the notable legislative event of the month – enactment of the National Rural Employment Guarantee Act, 2005⁵ – seeks to aid the rural poor that's been incessantly migrating to cities such as Mumbai in search of work. Under the Act, any adult living in designated rural areas, willing to perform casual manual labor at the statutory minimum wage, is guaranteed employment for a minimum period of 100 days per household per year at public works administered by the government. The Act begins to give legal substance to a statement of intent set

³ See

http://www.sebi.gov.in/Index.jsp?contentDisp=Section&sec_id=1

⁴ India's stock exchanges follow, effective April 1, 2003, a t+2 settlement cycle. See <http://web.sebi.gov.in/circulars/2003/smdcir6.html>. SEBI has been toying with the idea of t+1 settlement. This may be a step ahead of the t+3 settlement cycle in the United States. For current United States position, see SEC Concept Release: Securities Transactions Settlement, 17 CFR 240.

⁵ Act 42 of 2005. See The Gazette of India, No. 48, September 7, 2005.

forth fifty-five years ago in the Constitution of India.^{6 7}

Admission to the Bar

Issues relating to who is eligible to practice law are often hotly debated among lawyers in India.⁸ A recent controversy exemplifies the restrictions surrounding admission to the bar. The Bar Council of the State of Kerala denied admission to the bar to a nun because she was a nun. She appealed to the State High Court. On September 6, the Bar Council of India (the "Bar Council") wrote to the State High Court that nuns and priests were not eligible to be enrolled as advocates ("advocate," not "attorney-at-law," is the usual form of designation in India). The Bar Council submitted that nuns that took an oath of obedience and celibacy had already entered a profession. Anyone who intended to enroll as an advocate should be willing to take up advocacy seriously, an affidavit by the Bar Council said. Rule 49 of the Bar Council disallows a full-time salaried employee of any government or non-government entity to be enrolled and to continue on the rolls of the Bar Council during the term of such employment.

⁶ Article 41 of Indian Constitution provides, in pertinent part: "The State shall...make effective provision for securing the right to work...and to public assistance in cases of unemployment...and in other cases of undeserved want." The provision is a "Directive Principle of State Policy" and is not enforceable in a court of law.

⁷ However, for a contrary view, read the Wall Street Journal story of September 15: "Good Intentions, Bad Ideas." It starts as follows: "The road to hell is paved with good intentions and nobody knows that better than India's poor. For more than half a century, a well-intentioned and bloated state has only perpetuated poverty with misguided policies and regulations. And New Delhi still hasn't learned from these mistakes. The Indian government is soon to embark on perhaps the grandest waste of taxpayers' money yet: the Rural Employment Guarantee Bill...The problem is that there is no evidence that the Indian Government is capable of properly implementing any social welfare plan."

⁸ A controversial topic is admission of foreign lawyers in India. More on that later.

"Outsourcing Fears Help Inflate Stats"

An interesting column in the Wall Street Journal called "The Numbers Guy," by a Carl Bialik researched the oft-repeated statistic that China produced 650,000 and India 350,000 engineering graduates each year as against the U.S.'s 70,000.⁹ It turns out that no one cites any authentic source and as to India, there is no credible body that tracks the number of engineers graduating each year. It also turns out that those who have researched the subject recently estimate that in India, the number of engineering graduates each year may be between 120,000 and 200,000. Mr. Bialik, however, adds: "Even the most reliable numbers on engineering graduates deserve to be examined with nuance" given the different types of degrees and curricula.

Small Steps

- Microsoft launched a starter version of Windows XP in nine different Indian languages.

- United States Pharmacopoeia ("USP") established in India its first overseas laboratory. USP, founded 1820, is the nonprofit, nongovernmental organization that sets our official reference standards for pharmaceutical products.¹⁰

- A U.S. contingent of 7 officers and 35 soldiers underwent jungle warfare training in India. Outlook, an Indian newsmagazine reports: "According to the Americans, the U.S. army has very little training in jungle warfare and anti-insurgency operations—the only such combat school closed down nearly a decade ago."

⁹ See the Wall Street Journal of August 26, 2005. The statistic was apparently reported in the Fortune magazine in a July 2005 issue, rephrased by Bill Gates in a speech, among other places where it appeared.

¹⁰ USP's press release of September 13 says: "The USP-India site will allow USP to work more closely with Indian and regional constituencies, including the Indian Pharmacopoeia and Indian pharmaceutical manufacturers, to promote the manufacture of good quality, safe, and effective medicines and dietary supplement ingredients and products for the U.S. market and elsewhere."