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Ensouth

The E-magazine brought to you by

N South

Advocates

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Managing Partner's message

It's been a short hot summer, prematurely ended by an angry early monsoon which heralded its arrival with great violence. We can't say the same for the Indian Economy. The summer of our economic discontent has not ended but the violence of rising prices and declining currency remains. Social, financial and political restructuring – which is what India has been trying to do for near two decades now – is for sure a long and painful process with many pitfalls.

This time, Ensouth comes in three parts: Video, New laws and current affairs.

Our video section goes to the heart of our legal system to disclose the reality of how we have structured our judicial processes. First in **Buffalo Jurisprudence**, we present a highly abridged exposition on India's endemic school of jurisprudence. Next in **Seven Noble Truths of Litigation in India-Part I**, we examine the first two truths of how courts function in India.

Moving to the section on new laws, we focus attention on the new Companies Bill. Thus, in **Hostiles on Company Boards**, we criticize the move to make independent directors liable for the mismatch between political amorality and the enthusiasm to discover corporate culpability. Next, in **Terrorizing Auditors**, we examine the manner in which Auditors are now being asked to treat their own clients as potential fraudsters as part of the job description.

Proceeding finally to the current affairs section, we contextualize international law on the police that has jurisdiction to arrest you if you screw up abroad in **Absconding Italian Stallions** with reference to the case of the Italian Sailors who killed Indian fishermen last year. Finally, in **Reformation by Rioting in Rajpath**, we address the core of the issue of the violence against women in contemporary India, and while exorcising some devils, offer thoughts on measures we need to take to address the issues.

Ranjeev C Dubey
(Managing Partner)

Section I - Videos

Video: Buffalo Jurisprudence: the Essential Principle.

At the Heart of India's legal system lies our unique and endemic school of Jurisprudence: the Buffalo School. This short video sets out the essential principle.

The Video may be viewed at:

<http://www.youtube.com/watch?v=KrWVfynGuJs>

Video: Seven Noble Truths of Litigation in Indian Courts.

What are the rules by which litigation in India is run? This shorter version synopsis Noble Truth No 1 and 2.

The Video may be viewed at:

<http://www.youtube.com/watch?v=rIIaHLdTJJ4>

Section II – Print Media

Fine Print: Hostiles on Company Boards

On the indefensible move to make Independent Directors liable for the mismatch between political amorality and corporate culpability in the New Company Bill

Ranjeev Dubey

There are of course countless ways to give up the good fight. When it comes to Corporate Governance and Compliance, Parliament has decided that the best way to do it is to find a third party sucker and drop the dying donkey in his laps! Why else would the Companies Bill 2011 provide that the entire ethical burden of the company be carried on the shoulders of Independent Directors? This may be radical and innovative, but as Ganga is my *maiyya*, somebody gonna get hurt!

Since 1956, we have run a great Company law which helped our political-industrial complex thrive without being unduly bothered by the finer points of probity. Boards of Indian companies reveled in credible deniability. No individual director had either power or responsibility and the role was performed in the collective wisdom of the Board. In the upshot, every individual could claim that it wasn't his scam to run or support and proof of conspiracy being as hard as it is, the system ticked along rather nicely.

To wit, SEBI did try to spoil the mood in this happy paradise when it pushed Independent Directors to take an iconoclastic line as part of clause 49 of Listing Agreements. It made a poor start though, because it defined Independent Directors as people who had no "other material pecuniary relationship" with the company, its promoters, management or subsidiary outside the directors remuneration which "*in the judgment of the Board may affect independence of judgment of the directors*". When conflict of interest becomes a matter of opinion, you can be damn sure the law isn't worth a damn, and it wasn't.

That didn't end the matter. SEBI's clause 49 also let directors off the hook except in circumstances where the "*offence has been committed by the connivance or is attributable to any gross negligence of the officer*" (Sec 21 SCRA). On top of that, other than the Audit Committee, Independent Directors really had no role at all. This was par for the course because everyone knew that Independent Directors were creations of promoters who served under their pleasure. You could say this bit of "tokenism" kept India's crony democracy in place while feeding our appetite for moral posturing. It was all good thus far in the *desi* badlands.

Meanwhile, storm clouds were looming. To take India to the next level, our intellectual elites determined that we needed transparency, honesty and probity in corporate life. How to get there? The Company Bill 2011 is the result. First, we have decided to assign a specific individual responsibility based role to every director. Thus, Section 166 expects directors to act in accordance with the Company's Articles, promote objects of the Company for the benefit of every one and their uncles including minority shareholders, employees, the community and protect the environment too! It sounds like the kind of speech Michael Jackson would have made when he won his first of eight Grammys for "Thriller"! Sec 166 then goes on to specify other duties. The good news though is that if a director breaches these duties, he shells out some cash - five lakhs at most - and he's out of there.

Independent Directors don't have it so easy. First, Sec 149 sets out a comprehensive definition of who is qualified to be one so it's hard to be an independent director this side of *Gandhigiri*. Next, it steers Independent Directors to a seriously heavy weight Schedule IV which creates a whole new role for them. Speaking compositely, the new bill does four things. First, it identifies Independent Directors as GRC drivers. The upshot of this is that the guy who sits on the outside with an independent role and has no money in the company carries the moral burden while the guy who sits on the inside and on the money slips through the compliance fingers. That's pretty curious. Second, it enjoins Independent Directors to become protectors of minority shareholders, a sort of stake-less David taking on the might of the successful entrepreneur. That is institutionalized in-board hostility on the principle of it. Third, it expects him to be an independent voice expected to "*scrutinise the performance of management in meeting agreed goals and...monitor the reporting of performance*". Curiouser and curiouser thought Alice! Finally, it expects him to hold separate meetings without management or the other directors and review the performance of the rest of the Board. So now, the *gandhigiri* saint who is hostile to the promoter and reviews promoter performance at board meetings also meets behind the back of the company's prime movers and second guesses whatever they do. If this was Jim Morrison's idea, you could say that out here in the parameters, we are stoned immaculate!

This enlarged role may be great for the ego of a kick-ass external director of SEBI's dreams, intent Dirty Harry style on making his day but it comes with grave risk. Sec 149 also provides that "*Independent Director shall be...liable only in respect of acts of omission or commission by a company which had occurred with his knowledge, attributable through board processes, and with his consent or connivance or where he had not acted diligently*". (Emphasis Supplied). So what does "acted diligently" mean for an Independent Director? Please refer to Schedule IV.

Schedule IV is one hell of a diligence list to meet. Allow me to share some potential infractions with you. Schedule IV, Part 1, Guidelines of Professional Conduct Clause 1 requires Independent Directors to "*uphold ethical standards of*

integrity and probity". Clause 9 of the same part expects them to "*assist the company in implementing the best corporate governance practices*". Schedule IV, Part II, Role and Functions, Clause 4 expects them to "*satisfy themselves on the integrity of financial information*". Forget the rest: would you say that this last clause 4 is enough to damn every Independent Director of every Indian company or not? The next time the Great Satyam Scam reincarnates, every Independent Director is going to have a long haul summer in the cooler. That apart, when we get to Sec 23M of the SCR Act, we are talking ten years in jail and 25 Crores in penalties.

To me, the Independent Director's new role is impossible because of the manner in which our democracy is structured. I dealt with this in last month's Fine print when observing that the Companies Bill was unfairly [Terrorizing Auditors](#) and I would encourage you to check it out if you haven't already. Very briefly, our democracy consists of coalitions of colluding castes who come together to seize power in each state in order to appropriate the state's enormous resources to themselves and their supporters. In turn, state level groups collude to establish a Union Government who then usurps Union resources in the same way. Extortion of the corporate sector is part of the deal. The ruling dispensation in Delhi right now is not run by fools who have distributed billions to fraudulent 'social upliftment schemes' and bankrupted the Government without very good reason knowing fully well that this allows all sorts of dodgy state sponsored criminals to misappropriate most of this equity and distribute it to a variety of political constituencies. Some of these misappropriation schemes are also run as corporate empires and there is more on this in [The Pontification Of Politics Processes](#). Asking Independent Directors to stem the tide of political payments and radically alter the structure of our democracy is more than an exercise in fantasy. At the very least, you can't ask them to carry this burden without placing a similar burden on those who do the extorting. Till this is done, they can take a bribe, you can't give it and you can't run your business without giving it either. Basically, you are toast: any which way but lose.

I must admit though that there is reason for hope though. It may well be that the mismatch between – how should I put it - political amorality and corporate culpability is in the process of being bridged. Already, when I see the Chautalas in jail and the Kalmadis facing charge sheets, I begin to believe that the inflection point has been crossed. But two swallows don't a summer make and I don't yet see a systemic prosecution of political corruption. You can be optimistic, but you aren't immune from extortion. Maybe, the new world of blissful honesty will dawn, and dawn soon, but till it does, Independent Directors will face clear and present danger of being the fall guys in times of radical change. As the situation stands today, the choice before an independent director then is to either stop a bullet or immediately draft a really polite letter of resignation. In pursuit of a pragmatic instinct for self-preservation, I am for the resignation.

Fine Print: Terrorizing Auditors

On the attempt to increase the burden on to the long-suffering auditor in the new Company Bill who now needs to continually investigate his own client for fraud.

Ranjeev C. Dubey

India's enduring obsession with victimising auditors continues to defy my comprehension. When we punished two PWC auditors for failing to discover the accounting fraud at the root of the Great Satyam Scam, I argued in **'Fall Guys'** that you can't send a guy to jail for not doing a job that's not his job to do. Now that Lok Sabha has passed the new Companies Bill 2011, it seems likely that increasing numbers of auditors will find themselves accused of crimes they really shouldn't be looking for at all. What's going on?

In essence, the new Company Bill inflicts three new mega burdens on to the long suffering auditor. First, Sec 143(3) (a) enlarges the role of the auditor by asking him to confirm that he has "sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit". Thus, it practically invites him to go riding *gangnam* style into the dodgy dealings of his client. Second, it creates a direct line of communication between the auditor and the central government. It's no more a matter of auditors qualifying balance sheets. If he "has reason to believe that an offense involving fraud is being or has been committed against the company ... he shall immediately report the matter to the Central Government" [Sec 143(12)] or risk paying a fine up to Rs 25 lakh for failing to do so [Section 145(15)]. Third and finally, his liabilities for discharging his role have been substantially enlarged in that Sec 147(2) sends him to jail for a year with another fine of Rs 25 lakh if he has failed to do his job "knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities". Worse, under Section 145(5), if a partner "has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers", all his partners become jointly and severally liable with him, not just to the money but to going to jail as well. If this law existed when the Satyam scam broke, a lot of very eminent personalities in corporate India would have been national sons-in-law!

What this means for the job though is that every auditor now needs to look for frauds and if he can't find it, it's a long hot summer in the cooler for him. So what's different you may ask? Well, everything! In the good old desi Robber Baron days between 1947 and 2011 before people as powerful and wealthy as Om Prakash Chautala got convicted for selling government jobs to teachers, the auditor's job was defined by the Bombay High Court's decision in *Tri-Sure India Ltd. vs A.F. Ferguson And Co.* which ruled that:

“The auditor is required to employ reasonable skill and care, but he is not required to begin with suspicion and to proceed in the manner of trying to detect a fraud or a lie, unless some information has reached which excites suspicion or ought to excite suspicion in a professional man of reasonable competence....What is reasonable care and skill must depend upon the circumstances of each case. Where there is nothing to excite suspicion and there is an atmosphere of complete confidence, ...less care and less severity of scrutiny may be considered reasonable.”

The substance of the difference comes down to this: In the Robber Baron days, he had to be suspicious before he asked inconvenient questions. The new bill now expects him to ask questions till he precludes suspicion! It's not clear how far he has to ask these questions. When I say don't bother till you have a suspicion, that's pretty clear what is expected of you. When, like the SHO of a cop station, I say a crime has been committed so keep asking questions till you know who dunnit, that's pretty clear too. But what do you do to allay your suspicion when you know that we live in a world where everybody is making improper payments and fudging accounts? How many questions will you ask? Allow me to clarify this issue.

I have argued in my new book *“Bullshit Quotient”* that accounting frauds and corporate sponsorships fund the entire democracy machine in India. I have also argued that we would not be able to run this democracy as currently constituted without corruption. In such a world, it follows that the auditor's job is to ‘dent and paint’ a balance sheet like an aging socialite in order to refurbish her beauty. It's unfair to ask an auditor to make a spectacle of himself asking embarrassing questions and paralyse the company's ability to make political payments and run its business. You can find this same point made in a variety of contexts in previous columns of Fine Print. In **Bullshit Quotient of Scams**, I argued in the context of Coalgate that “India sits on vast mineral resources. Indian politicians have created a complex plethora of laws and regulations which arrogates to themselves the absolute power to mate and dole this wealth to their sponsors, clients and cronies for cash and for favours.” In **AbracaVadra**, I argued in the context of the trials and tribulations of Robert Vadra that “when the dust does settle on Vadra Gate as dust inevitably returns unto dust, the fruitiest piece would undoubtedly be the explicit acknowledgement of real estate is perhaps the biggest generator of political funding in the banana republic of the mango people.” Similarly, in **Pontyfication of Political Processes**, I argued that “The sovereign has created laws wrapped in morally righteous hoopla the net effect of which is to allow it to mate and dole thousands of Crores of potential benefits funded by tax payer's money to anyone at its pleasure. The liquor business is ‘regulated’ to control social evil but the result is the generation of vast political booties. Social welfare schemes are established for poor children but the result is misappropriation of truckloads of charity money.” These are three different contexts but the conclusion is unchanged.

We need to understand the bottom line. India's democracy is a formalized contest between competing elitist groups – some rich and urban and others poor, OBC, dalits or whatever – to come together in political combinations and then seize power through the ballot box. To garner support sufficient to be able to win, leaders of these groups have to promise post electoral benefits to their constituents. If they win, they then usurp the enormous wealth owned or controlled by the country in three ways in order to deliver on their promise. First, they pass laws that benefit their constituency to the exclusion of everyone else. Second, they syphon off state resources by means foul and fouler. Third, they engage in wholesale extortion of the kind we generally mean when we talk about 'corruption'. The upshot of each of these electoral compulsions – pillars of democracy if you are having a really cynical day – is that large scale financial skulduggery informs the corporate world. Indian's democracy will shudder to a halt if you now require that every account of every company in the country be snot-free and spotless.

In this environment, when you wake up on one delightfully optimistic February morning to the sound of birds singing in the garden and – in isolation and free of any other paradigm shift – decide that we will send to jail every auditor who doesn't find the fraud that we know is to be found on every company's books, what exactly are we trying to do? Is it that we have just outsourced another sovereign function by asking auditors to do what the income tax department will not since the tax department is such a huge part of the problem? Or are we in search of a bum-of-the-month who we shall horsewhip on Main Street at high noon in full media glare so that the public may have the satisfaction of vengeance for the sins, not of the auditor, but of the king? Either ways, a step like this in isolation only makes it impossible to discharge the auditing function. You couldn't define a no-win better. If he doesn't do his job, he goes to jail but if he does do his job, no company will ever complete its audit and India will inevitably grind to a very terminal halt.

Fine Print: Absconding Italian Stallions

Understanding who will arrest you if you screw up overseas!

Ranjeev C. Dubey

Lost in the din of the high decibel TV heat generated by the Italian government's short lived refusal to let two trigger happy sailors come back to India to face murder charges was the fact that there was a real legal issue here that Italy was trying to unsuccessfully agitate with India.

Recall the facts. MV Enrica Lexie was traveling from Singapore to Egypt with a crew of 34 including 19 Indians accompanied by six Italian marines from the San Marco Regiment, while the fishing trawler St. Antony left Neendakara Kerala with a crew of

11 to fish for tuna. If you buy the Indian story, the incident occurred at approximately 16:30 IST on 15 February 2012 some 20.5 nautical miles off the coast of Kerala within India's Contiguous zone. If you buy the Italian story, satellite tracking confirms that the tanker was at the time 33 miles off the south west coast of India, well outside our territorial waters. Clearly, there is a disputed question of fact here you can really practice your prejudices on. Either ways, the tragedy may have been a warning shot based on a misreading of the situation that went wrong. It may be true that small fishing boats do not chase down ocean going tankers but it is equally true that I wouldn't want our soldiers tried by a court in Congo or elsewhere because they went on a turkey shoot in the rebel infested African bush and hit some locals. This is classic mixed emotion stuff.

The key thing though is that you don't have to be a soldier to inadvertently kill someone. In every such case, if you achieve this terrifying unlikely event in international air or water, the question is: who should try you? Which is why the Supreme Court has so far unsuccessfully tried to get our United Particularly Ambivalent Government to set up a special court to decide this question?

You would be naïve to think this could not happen to you. Imagine yourself basking in the tropical sun along the railings of a cruise ship in the Strait of Malacca. Your only cousin, who will inherit half of your ancestral house in Chanakyapuri Delhi strolls towards you holding his sixth double Pina Colada and being unsteady on his feet, kicks your toe, loses balance and is pitched over the side. You hear a splash far below, and then see sharks in frenzy in rose tinted waters that quickly ebb away. The sole witness, standing twenty feet off simply saw you trip him up. There is no body to recover and no autopsy report of too much alcohol in the bloodstream. Why will I not assume that you killed a co-inheritor of a valuable property? Will you find yourself meeting your fate in the jail in Malacca?

Why deal with such grave stuff? You brush against a man in the aisle of an airplane: the man loses his temper and expresses an opinion about your mother while pushing you violently. You are bent over backwards as he reaches for your face. You try to right yourself and you push back. He trips over, hits his neck against the seat and breaks it. Like it or not, you probably are guilty of killing him and you are going to be tried for it. Not everyone accused of a crime in a foreign land picked up a gun and brought on his own Armageddon. All life is a wager and so many get it in the neck for very little - or nothing - they did. Which court hauls these guys across the legal coals?

Let's look at Indian law on this point. First, Section 4 of the Indian Penal Code extends the operation of Indian law to every citizen of India regardless of whether the offense was committed in or out of India. So if you decide to kill someone in Barkina Faso, you can be tried in India, which may be no bad thing given the state of the jails in Sierra Leone! The Penal Code also extends the same courtesy to every person who is on a ship or aircraft registered in India. In sum, any Indian citizen

anywhere in the world, and every foreigner in India, or on an Indian ship or aircraft overseas, can be tried in an Indian court. Most countries have created similar laws.

To resolve conflict of laws, nations have signed a multiplicity of treaties that govern this question of jurisdiction. Let me try and summarize the position for you. First let's look at crimes committed at sea.

If you are an NRI holding an American passport aboard Cruise ship Superstar Libra on the Kidmat Island to Goa cruise from Bombay, you will find yourself on a ship run by a Hong Kong company but on a ship registered in Nassau in the Bahamas. Now, if you are accused of tripping your cousin into the shark infested waters of the Indian Ocean, you can be tried in the Bahamas. At the same time, if you pitched your cousin into the sea within the territorial waters of Lakshdweep, you can be tried in the Indian courts at the same time. Third, if you committed this crime on the high seas, you would ordinarily be tried by American courts. Finally, although you are an American national, if you have spent the last ten years working in your company's manufacturing facility in Chengdu, you can also be tried in China because that is where you can be "ordinarily found"! Either ways, once that cousin has been tripped, four legal dogs will be tearing you limb for limb with intent to try you in their court.

It's not quite different for flying. If you are an ethnic Indian holding an American passport aboard an Aeroflot flight on your way from Delhi to Hurgada in Egypt, you could be tried for pushing your abusive co-passenger where the airplane is registered i.e. Moscow. You could also be tried in Egypt because that is where the plane landed after the crime was committed. As you can guess, you can also be tried in America because you are after all an American citizen. In addition, if you want your teenage daughters to grow up in India and are trying to stabilize an outsourcing set up in Gurgaon for the last few years, you could be tried here. Any which way you look at it, pushing people around in the air is a dodgy idea though I can see the potential for jailbird tourism in it!

Given all these confusing 'jurisdictional' realities of high seas and international air space crimes, what are we to think about what to do with our Italian stallions? The Kerala sessions court has arrogated to itself the power to try these men even though we know that this court's jurisdiction does not extend to the next district, leave alone twenty or thirty three miles out to sea. Considering that this court has done so with respect to soldiers of another country on duty on a ship running the risk of piracy, I would expect the Italians to be upset. Since the jurisdiction of the state extends to only 12 nautical miles, on 18 January 2013, the Supreme Court of India ruled that Kerala did not have authority to adjudicate on the case. The Supreme Court also asked the Union Government to constitute a special federal court to try these marines in accordance with international law. Well aware of all these issues, why should anyone be surprised that the Supreme Court was less than paranoid in granting the Italians bail to go home for short periods from time to time? Do bear in

mind that ten weeks later, there is still no court in sight and we may not see one for ten years.

So what is the correct position in international law? It is debatable at the best of times. Italy claims sovereign immunity for its soldiers from prosecution in foreign courts. India claims there is a limit to sovereign immunity because these soldiers were on contract protecting the private interests of the ship owners, not projecting the power of the Italian sovereign. The jurisdiction question is as we have noted above a complex one but on this we should be able to agree: in such situations, everyone and their country cousins have jurisdiction and jurisdiction is exercised most legitimately by he who nabs the stallions first. This is probably the greatest learning that any jet setter can derive from this international tragedy. If it is your misfortune to find yourself on the accused end of an inadvertent crime, since you know that the hounds will tear at each other to get at you, you would do well to be sure that you hold on to your hat and go running into the kennel of the hound that has the least brutal way of dealing with under-trials and persons accused of crimes.

Fine Print: Reformation by Rioting At Rajpath

**We ask for promulgation of illegal laws to achieve legally laudable ends.
Educated urban elites need to become leaders, not case studies of anger
management gone berserk**

Ranjeev C. Dubey

When lakhs of urban Delhi elites took to the streets on the weekend before Christmas 2012 demanding security for women to a standard that any civilized society would take for granted and were then water cannoned for their protest, you had to ask yourself if we inhabited a land of tribal warfare and anarchy. When female protesters were in turn molested by lumpen bazaar riff raff at that same demonstration, you had to ask yourself if you were an observer of a surreal political theatre. When those same protesters were accused of killing a cop who died it appears because he was physically not fit to engage in high adrenalin duties, you had to ask what one could expect from a sovereign who self-servingly converted tragedy to farce. Running like an unspoken thread through all this is this question which urban elites refuse to frame, leave alone answer: We know that the call to revolution is heeded by illiterate underclasses and steered to fruition by educated urban elites: when urban elites behave like illiterate underclasses, who will lead India to the dawn of a new era of liberal freedom and true democracy?

More's the pity because this same question has been blowing in the wind for the last eighteen months and we are no closer to an answer. Fifteen months back, when lakhs took to the streets to demand the promulgation of a Lokpal law led by a team of ostensibly well-meant political novices, I said in **Melas with Missions:**

"Perhaps, when it all comes down to dust, you will conclude that while we Indians have always loved our melas, we have now progressed to organising melas which have an ostensible mission even though in the long run, its only so much redundant drama, symbolism and emotional purgation."

What was the ruckus on Rajpath but a Bob Geldof type head bangers ball with the ostensible mission to save Indian women instead of Ethiopian stomachs? As a lawyer of 33 years vintage, I am appalled of the extent to which our urban educated elites extoll the employment of illegal means to achieve the promulgation of just laws. I am equally appalled at the extent to which we ask for the promulgation of patently illegal laws to achieve legally laudable ends. We hang *jihad* indoctrinated youth with lacerated minds so that we may protect our plural democracy. We want to castrate rapists to usher in a peaceable society. How do you achieve good by doing bad? Violating men who violate women only begets a nation of the violated, especially when we know that crimes against women are not 'law and order' problems? Or don't we know it? Let me explain.

First and foremost, the terrifying violation of a young girl in a bus while trying to get a ride home on a dark winter Delhi evening is a horrific and unforgivable crime perpetrated by damaged minds. This is no 'sex crime' by more or less 'normal' males with a bad attitude to women who are going to get reformed by closer policing and the promulgation of even more laws carrying even harsher penalties. We don't live in a medieval central Asian khanate with bazaar's overrun by legless, armless, castrated beggars without noses and ears in some Zia-ul-Huq type martial law regime turned nightmare. We have all seen enough satellite TV to know that no society is able to prevent such crimes anywhere in the world, especially through the promulgation of law alone and without addressing their underlying causes.

Second, we need to recognize that violence against women on the street is only an extension of violence against women in our homes. You can't fix one without fixing the other. In a world where rich brothers are doing their sisters out of a share of the ancestral home, where boys are educated better and fed better and clothed better than girls, where parents turn their backs on their own daughters after they are 'married off' leaving girls with no choice but to terminate their lives under the incessant pressure of dowry demands, to expect society generally not to carry this terrifying contempt of women from the home to the street is perverse.

Third, there are far too many credible studies of the socio-economic basis for crimes for us to assume that tighter laws mean a more civilized society. We know that disempowered members of any gender inevitably prey upon those weaker than them. The inherent violence of and extreme inequities in our society encourage many men to do terrible things to weaker women. Class conflict, powerlessness and extreme frustration run like a sub-stream through our society with consequences

that we need to ponder with an honest heart. We urban elites who sit on top of the 'power' heap are part of the problem, for our own predation on the weak is equally culpable, regardless of gender.

Allow me an aside here. Our attitude to such crime is also highly class contextualised. When the victim of these disempowered men is 'one of us', we take to the streets and talk about hanging and castration. When one of us does something to one of 'their' women, then it's a blackmailing maid making a fast buck because the guy was alone at home. And when 'one of them' does something to one of 'their' women, then who gives a pig's poke?

Four, superior policing never hurts but in contemporary India, better policing is impossible when so few policemen are expected to make themselves available to so many members of the political classes who need so many policeman to protect them from so few of us who may harbour violent intentions towards them! For educated Indians to target too few overworked underpaid policemen for crimes that lie deep in the Indian psyche is disgusting and distressing.

Five, agitation politics is the very antithesis of the role that urban educated elites should be playing in our society. We are expected to be thought leaders, steering our country to go to a better, more civilized place. We know that between our lumpen polity and our opportunist political classes (of which I am very sure I wish to specifically include Kejriwal and Ramdev), every genuine protest runs the very real risk of getting hijacked. Educated urban elites need to become leaders, not case studies of anger management gone berserk. We need to have a clear sense of what is wrong, what the fix is and what we need to do to implement the fix.

But then you may ask: what am I doing discussing violent street crime in the legal column of a business magazine? I am doing it because this issue is more important than anything else that this column can conceivably say about India today. When half the population of this country is treated as children of a lesser God and live under clear and present threat of eminent violence without warning for no reason except their gender, for me to sit around pontificating about corporate governance and equal protection of business laws and better regulation is to avoid thinking about India's biggest developmental challenge. Yeah, sure, you may say, but what do you want business to do about any of this? What is a corporate manager supposed to do about street crime or dowry deaths? Everything, says I.

If we want a society in which business can flourish – and bear in mind that we are always only a couple of *Bharat bandhs* away from operating losses - we have to work towards a stable relatively peaceful society where civilized norms are valued and street violence – whether led by criminals or by very angry protesters – is condemned. At the heart of the current protest is a social problem: the problem of the empowerment of women. You cannot legislate out of a social problem by

increasing the punishment, police it out of existence or combat it through harsh violent legal or administrative measures. You can and should legislate out of a social problem through affirmative action and gender specific empowerment. It has been shown time and again, in society after society, regardless of culture or geography, that the quickest and most efficient way to address a multitude of developmental challenges including notably the inherent instability of the third world is to empower its women. Many political thinkers in India recognize this, which is why we have reserved seats for women in local self-government bodies and are trying to replicate it at the national legislative level. For the average corporate guy, this has two implications.

First, we are all duty bound in the corporate world to do whatever it takes to empower women in the corporate environment so that they are the equal of men in their ability to deliver value to their companies. We simply cannot have women as victims of their biology. If this means appropriate working conditions, so be it. It also means that if affirmative action is necessary, we need to adopt it. If that means sufficient representation on boards, as head of departments or whatever, so be it. I am not on the topic of this but nor that. When the destination is clear, the route is frequently pretty obvious. What doesn't work for me is to have hyper ventilating hotshots breast beating about rape while simultaneously condemning equal opportunity laws that give women half a shot at the hotshot's spot.

Second, we can't have empowered women at work who go home to transform magically into second rate citizens. We cannot conceive of a man who treats women as equal at work but treats women at home as unequal. Male attitudes must be consistent, across work and home environments, across class distinctions of master and servant, and across economic classes of rich and poor. I am unconvinced that either corporate India or educated westernized urban elites see the inherent contradictions in our attitudes which aggregate the violence of our society which we then rage against. Women's empowerment begins by specifying the working hours of the live-in maid at home.

At the end of the day, we need to ask ourselves a basic question: do we want a new India or are we double speaking demagogues paying lip service to one set of values while living by another? Do we want to protect our women by empowering them or do we want others not to ravish them just so long we are able to mistreat them? In the ultimately analysis, do we want to drive change in India through a very clear vision of the society we want to create or are we drug crazed head-bangers in heavy metal concerts in search of catharsis when clearly the sickness is within?