



## Loud and clear

New Delhi must snap out of its denial on the discord with the U.S. on market access

After a scathing speech by U.S. Commerce Secretary Wilbur Ross in New Delhi this week, it is no longer possible for the government to brush under the carpet its differences with Washington. Speaking to Indian and U.S. businesspersons, Mr. Ross lashed out at what he called India's unfair trade practices and “overly restrictive market access barriers”. His comments followed a series of measures by the U.S. that have affected India. These include a refusal to revoke or waive tariff increases made last year on steel and aluminium, an ultimatum that India “zero out” oil imports from Iran by May 2 even without securing comparable alternatives, and the decision to withdraw India's GSP (Generalised System of Preferences) trade status. Mr. Ross repeated President Donald Trump's accusation that India is a “tariff king”, and threatened India with “consequences” if it responded to U.S. tariffs with counter-tariffs, something New Delhi had threatened but not yet implemented in the hope of hammering out a comprehensive trade package. Despite rounds of talks, however, a package has remained elusive, and it is time for the government to articulate the problem on its hands.

In the face of growing U.S. aggression on the issue, the government that takes office after the election will have to urgently consider its options ahead. Clearly, the strategy of the past year, to ignore the differences in the hope that the problems would be resolved or that the U.S.'s trade war with China would occupy the Trump administration more, has not worked. New Delhi and Washington need to make a more determined attempt to sort out issues, starting from scratch if required, with tariffs. While the 50-60% duties on motorcycles and cars and 150% duties on American liquor that India imposes need a second look, the U.S. must see that average tariffs imposed by India (13.8%) are not much higher than those levied by economies such as South Korea and Brazil. In addition, the government will need to revisit some of its decisions like data localisation requirements and new e-commerce regulations, which were declared suddenly, while the U.S. must show some flexibility on India's price caps on coronary stents and other medical devices. The U.S. must understand the cultural differences over the labelling of non-vegetarian dairy products. It is unlikely that the Trump administration will temper its “my way or the highway” approach to Iranian oil sales, and New Delhi will have to work closely with other countries to build alternative financial structures to avoid U.S. sanctions. Where a compromise is not possible, the government should be ready to push back on unreasonable demands. Perhaps the most worrying signal from Mr. Ross's outburst was that Washington may not be willing to meet India halfway on trade issues. New Delhi must prepare accordingly.

## Endless war

The U.S. must put pressure on the Taliban to heed the Afghan government's concerns

After a call by Afghanistan's Loya Jirga, a grand assembly of senior politicians and tribal and religious leaders, for a ceasefire between government troops and the Taliban underscores the mood in Kabul. Afghanistan's leaders, from its rulers to tribal chieftains, want to resolve the 17-year-long conflict. Over a four-day meeting that ended on May 2, the Jirga asked the government to set up a negotiating team with members from the assembly for talks with the insurgents. It also backed women's rights, a critical issue being debated by the political class amid the Taliban's rising clout. President Ashraf Ghani has said his government would honour the assembly's proposals, but wants the ceasefire to be mutual. The Taliban, for its part, immediately shot down the proposal, vowing to continue attacks through the Ramzan month. Without the Taliban's reciprocity, no ceasefire will hold. The group controls half of Afghanistan and has shown its capacity to strike anywhere, including in the most fortified of locations. It has also been engaged in direct talks with the U.S. for months. But the peace talks haven't prevented the Taliban from carrying out its summer offensive against the government. By rejecting the Loya Jirga proposal, the Taliban has once again made it clear that it is not ready yet to engage with the government in Kabul.

The Taliban's intransigence has darkened the prospects for peace. The talks between Taliban representatives and Zalmay Khalilzad, the U.S. special representative, are primarily focussed on withdrawing foreign troops from Afghanistan. The U.S. seeks, in return, an assurance that Afghanistan will not provide a safe haven to transnational terrorist groups such as al-Qaeda and the Islamic State. But for an eventual settlement of the Afghan crisis, the government and the Taliban need to talk. The war has long been in a stalemate. But the government and the Taliban see different ways out. The government is willing to engage the insurgents, a move which has now been endorsed by the Loya Jirga as well. But the Taliban, like any other successful insurgent group, wants to prolong the conflict, hoping that it can weaken the government's morale and reduce its military strength. The Taliban will change tack only if it is forced to do so militarily or through pressure. The government lacks the resources to accomplish either. It cannot defeat the Taliban militarily, as the 17 years of the war suggest. It cannot forge peace on the Taliban's terms as it would mean endangering whatever few freedoms the Afghans enjoy right now. This resource deficit can be bridged only with the help of the international community. The U.S., which is in talks with the Taliban, should not overlook the interests of Kabul. It must put pressure on the Taliban to cease hostilities and engage with Mr. Ghani's government.

# A vote for the sake of Parliament

Constituents must weigh their candidate's commitment to restoring the dignity of the legislature



NEERA CHANDHOKE

When political historians write of a government that came to power in 2014 on an impressive majority, what will they write? Will they write of a Prime Minister who had promised to set right everything that had gone wrong in India? Will they chronicle the political biography of a man who sadly frittered away the colossal mandate Indian citizens gave him? Will political satirists compare the Narendra Modi government to Sanjay Leela Bhansali's movies, all spectacle and din but little substance? Might political historians write of a man who refused to be accountable for his government's failure to provide the basic preconditions of a dignified life to citizens? Or might they record his government's refusal to deter criminals who openly bullied, maimed and murdered our own people. Will our historians tell frightening stories of Mr. Modi nearly taking his country to war, threatening the use of nuclear weapons, and using this to garner votes from a bewildered India? Do people in power really not know of the unimaginable death and destruction that nuclear wars bring upon people for generations to come? Historians will wonder.

What story history tells future generations will depend on the historian, her political vision, her interpretive skills and her commitment to the ordinary citizen who ekes out a life in want and misery. Court historians will lavish praises on Mr. Modi. But even they can hardly ignore his contempt for his-

tory, for the Prime Ministers that ruled the country before him, and above all his disregard of institutions that his predecessors had built laboriously.

### Questions about institutions

Take Mr. Modi's attitude to the august institution of Parliament. India's Constituent Assembly witnessed a rich and informed debate on the virtues of the parliamentary versus the presidential form of government. Members knew of the hijacking of Parliaments by executives, they were aware of dictatorial Prime Ministers, and they were cognisant of the fatal tendency of political parties to serve their own interests more, and those of their constituents less. Yet members of the Constituent Assembly decided on a parliamentary form of government.

They had good reasons for this. In a plural society, citizens hold diverse and sometimes contrary beliefs; they agree on some issues and they disagree on others. It is only a parliamentary system of government that enables the expression of diverse and divergent opinions. In legislative forums, representatives are supposed to give voice to the interests, opinions and needs of their constituents. Sometimes decisions are taken, at other times backdoor negotiations lead to fragile and provisional outcomes. It does not matter that decisions are provisional. In a democracy there can be no notion of a Hobbesian social contract that binds citizens in perpetuity. Times change, public opinion changes, new issues arise on the horizon, older ones have to be reiterated, and those issues that have become redundant need to be abandoned and replaced by fresh thinking.

Even though observers have



V.V. KRISHNAN

been disappointed by the failure of representatives to represent the interests of the people, they agree that in large and complex societies a parliamentary system of government is infinitely preferable to the presidential model. No one man can collect in his own being the wisdom and certitudes of his age. The precondition of good policy is dissent and debate, the willingness to learn from others, the readiness to change one's mind. The Indian Parliament is noisy, known more for the politics of pandemonium than rational debate. But it is only a parliamentary form of government that can prevent one man from hijacking power.

### Importance of the Opposition

So when Mr. Modi and BJP president Amit Shah repeatedly state that all they want is a Congress-mukt Bharat, their desperate ambition to rid the country of an Opposition occasions puzzlement and discomfort. An Opposition is central to the working of a parliamentary system of government. Without an Opposition, the system degenerates into one-party rule. Across the postcolonial world, efforts to de-legitimise the Opposition and create a one-party state have inexorably slid into military rule, and subsequently into what western donors and academics call failed states. Pathological states can neither meet the needs of their people or institutionalise

# By established law and procedure

In the CJI case, there is no violation of natural justice for the simple reason that it is not a judicial inquiry



V. GIRI

A well-publicised case of a complaint by a former employee of the Supreme Court of India against the Chief Justice of India (CJI) has raised questions about legal provisions, procedural propriety and different facets of what could be categorised as principles of natural justice. As a constitutional institution, the Supreme Court had to respond to the same. In my view the response will satisfy the requirements of the law, though I have seen that several opinions have been published to the contrary.

### In public domain

The procedure that was being followed cannot be criticised as being either illegal or otherwise arbitrary. A procedure had to be devised as the circumstances were unique, without any precedent. The only guidance available was a “Report of the committee on in-house procedure (in brief “procedure”), drawn up by a meeting of the full court of the Supreme Court on December 15, 1999. The procedure adopted is a public doc-

ument available on the court website. It deals with situations involving a High Court judge, a Chief Justice of a High Court and a judge of the Supreme Court separately. The procedure specifically states that even in the case of an inquiry into a complaint received against a judge of the Supreme Court, the committee shall hold an inquiry on the same pattern as the committee constituted to examine a complaint against a judge of the High Court. The procedure does not expressly deal with the case of the CJI but it definitely would be applicable to the case of the CJI as well because the CJI is also a judge of the Supreme Court. Thus, the procedure does not contemplate the participation of a legal practitioner because it would not be a formal judicial inquiry involving the examination and cross-examination of witnesses by lawyers. It has to be remembered that the committee was bound by the rules under which it has come into being, and though as per the report it is entitled to devise its own procedure (where certain parameters have been laid down in the in-house procedure), the same cannot be deviated from.

The complainant did appear before the committee three times, as newspaper reports would show. It seems she did ask for permission to engage a lawyer, but it was denied. It also seems that she decided to stay away. It is her choice.



GETTY IMAGES/ISTOCKPHOTO

But it is difficult to countenance an opinion that the complainant felt intimidated by three Supreme Court judges being present, to hear and consider her version. We would do well to remember the obvious. The members of the committee are Supreme Court judges, comprising the seniormost judge of the Supreme Court and two women judges. Is not the fact that two of the members of the committee are women, one which would serve to make the complainant give her version in a more relaxed atmosphere? Is it right on our part to be sceptical about the propriety and correctness of the procedure followed by three Supreme Court judges, persons with unblemished reputations, in their character, conduct and integrity? A trust deficit would be counter-productive in these circumstances.

### Legal precedent

A claim for a copy of the inquiry report will have to be turned down going by the law laid down by the Supreme Court in *Indira Jaising v.*

power. A one-party dictatorship can hardly be the answer to din and deadlocks, it is part of the problem. Failed states abdicate sovereignty, they are rendered vulnerable and dependent on transnational financial agencies, upon conditionalities imposed by funders, they are brought to their knees by international human rights organisations, and they are despised by their own people. We should be critical of any call to do away with the Opposition – many a postcolonial country has floundered on the rocks of one-party rule.

There is more. We must never lose sight of the democratic principle that representatives proxy for their constituents. The Lok Sabha is not only a gathering of political parties, each member of Parliament represents the Indian people, even if he does so inadequately and incompetently. Members of the Opposition are in Parliament by the same rationale that members of the ruling party are. When Prime Minister Modi abuses the leaders of the Opposition, he should be aware that he abuses the people of India who have delegated power to these representatives in the first place.

If the individual is the prime unity of democratic life, and representatives merely a mode of representing her needs and interests in the forum of Parliament, candidates who ask for our vote should be worthy of our confidence. When political parties impose criminals, persons accused of terrorist activities, dealers and fixers upon constituencies, they insult the intelligence of the people who are going to vote. It is time that civil society organisations take this issue up. The moment a party announces a candidate, constituents should take up the task of debating

the merit or otherwise of the person. Realists tell us that parties choose candidates who are self-financing and who can deliver votes. This may be so, but it does not follow that contemptible people should be thrust upon constituencies. There is nothing more ignoble than invoking the nation or religion to justify candidates who send shudders down our collective spine. We deserve candidates we consider worthy, men and women of integrity.

### Text, and the practice

The system of parliamentary government that India adopted is complex, intricate and frustrating. But the institution represents citizens who are the locus of sovereignty. This is what Parliament is for. That is why it should be respected. Admittedly the Indian Parliament has not worked the way it should, but it is not the system that is flawed. In his last address to the Constituent Assembly on November 25, 1949, B.R. Ambedkar remarked presciently that the working of the Constitution does not depend wholly upon the Constitution. It depends on the people and the political parties they set up as their instruments to carry out their wishes and their politics. How will the people of India and their parties, he asked, behave? Will they uphold constitutional methods of achieving their aim? It is futile to say, he concluded, the Constitution has failed without taking into consideration the role of the people and their parties. We would do well to recollect his words. We have to insist on the restoration of the dignity of Parliament. It is a condensate of popular sovereignty.

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*Supreme Court of India & Anr* [(2003) 5 SCC 494]. The report in the said case was made to the CJI and the report was confidential and discreet, only for the purpose of his information and not for disclosure to any other person. Because the inquiry in the present case was into the allegations made against the CJI, the report has advisedly been given to the next seniormost judge (next in seniority to Justice S.A. Bobde and Justice N.V. Ramana).

The procedure laid down in the in-house procedure has been adhered to in the present case. The law in *Indira Jaising* has also been adhered to. The complainant does have remedies in law. The principles of natural justice which are alleged to have been violated in the present case, by the refusal on part of the committee to afford the complainant a right of legal representation and the decision not to publish the report of the committee, do not and cannot have a straightjacketed approach. What has been done by the committee is in accordance with the procedure that is laid down. In doing so, it cannot be said that there is a violation of natural justice for the simple reason that what is involved is not a judicial inquiry but a fact-finding one. A right of legal representation is not inherent in such an inquiry.

The higher judiciary of this country is an institution to be

cherished and its reputation is a matter dear to every citizen of this country. Some of us are more vocal than the rest, but all of us are stakeholders. The Supreme Court and the High Courts are constitutional institutions and the men and women who occupy positions in the higher judiciary are required to be persons of impeccable integrity. But men and women are not infallible, and why should judges alone be an exception thereto? The founding fathers of the Constitution were wise persons and constitutional protection is afforded to the judges to see that they are able to discharge their duties for the benefit of the citizens of the country, without fear or favour, but this is not to say that there can be no complaint against a judge of the Supreme Court or the CJI. When such complaint is made, it has to be inquired into in accordance with the procedure that is laid down by the full court of the Supreme Court itself, and the said in-house procedure has been laid down keeping in mind the constitutional ethos. The said in-house procedure has all the attributes of law. It is a law governing such situations. Where the law is adhered to, claims for deviation therefrom or complaints of adherence to it cannot be countenanced.

V. Giri is a senior advocate in the Supreme Court

## LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

### Apology to court

Congress president Rahul Gandhi's unconditional apology to the Supreme Court for his wrong attribution to it of a phrase is the right solution (Page 1, “Rahul Gandhi tenders an unconditional apology to SC”, May 9). Speech can spread poison and speech alone can also spread nectar. Our politicians should remember this. Hence they should try to speak the truth and be careful about their words.

A.J. RANGARAJAN,  
Chennai

### Plans A and B

Andhra Pradesh Chief Minister N. Chandrababu Naidu seems to be the sole crusader in trying to unite the Opposition parties and form a united front to take the BJP head-on soon after May 23 (Page 1, “Naidu meets Rahul; to call on Mamata too”, and Editorial,

“Alternative dreams”, both May 9). On the other side of the fence, the Telangana Chief Minister K. Chandrashekar Rao too is making similar efforts to form a non-Congress and non-BJP “federal front”. This is intriguing. The moot point is that a strong government should be there at the Centre for the continuation and implementation of foreign policy, internal strategies and welfare schemes, while a strong Opposition needs to be in place to protect democratic norms. In both instances, the plans by Mr. Naidu and Mr. Rao are problematic. A government with the Congress as a small player will not be stable. Either the rest of the Opposition parties should come forward to support the Congress or be prepared to see the BJP instantly form the next government with the help

of its allies and or by means of horse-trading. The example of Goa is still fresh before us.

M.Y. SHARIFF,  
Chennai

■ The polling process is yet to be completed, but the actions of the regional party chiefs, Mr. Naidu and Mr. Rao, show that regional parties could have a vital role in the formation of the next government at the Centre. However, since today's politics revolves around the number game than policies, it is too early for the Opposition to be getting into action. As the saying goes, “there are no permanent friends or enemies in politics”. We wait for May 23.

KSHIRASAGARA BALAJI RAO,  
Hyderabad

### Seeking votes

As someone who has been following Indian politics and elections for a quarter of a

century, I see that in this general election, politicians in general have thrown all caution to the wind – there has been all sorts of name-calling, threats and mud-slinging. Rahul Gandhi is immature in the sense that he has not held any position of responsibility. He is where he is now because of his family. Prime Minister Narendra Modi on the other hand has risen to power from the lowest rung. A man of that age, experience and power should not stoop to the level of name-calling. He should have fought this election on the basis of his five-year rule. Both leaders need to step back and analyse their acts.

T. ANAND RAJ,  
Chennai

### Fragile earth

It is ironic that human activity that should have been the very fulcrum of intelligent advancement of

life on earth is becoming self-destructive (Editorial, “Circle of life”, May 9). Though there is a certain degree of awareness about pollution, carbon emissions, and climate change, the enormity of the global crisis consequent to degradation of the natural world has not yet sunk in. Before it is too late, nations should initiate suitable actions to stop the impending catastrophe. In the Indian context, there is need to have a rigorous mechanism to ensure that the biodiversity angle is factored in in all economic policies. The government should encourage research and development with sufficient budgetary allocations, to identify and

document ways and means of preserving biodiversity. There should be a separate ministry of biodiversity.

KOSARAJU CHANDRAMOULI,  
Hyderabad

### Boost for rights

Asia Bibi's case sets a precedent for human rights in cases of falsified penitentiary proceedings. Her courage and perseverance are inspirational. Her lawyer deserves generous accolades for reviving our faith in humanity (‘World’ page, “Asia Bibi leaves Pakistan for Canada”, May 9).

SAM VIJAY KUMAR J.,  
Villupuram, Tamil Nadu

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### CORRECTIONS & CLARIFICATIONS:

In a Business page report headlined “Tata Chem to invest ₹2,100 cr. to expand capacity in 3 years” (May 5, 2019), the opening paragraph had described Tata Chemicals as “part of the \$110 Tata Group.” It should have been \$110-billion Tata Group.

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