



## Lokpal and the law

The ruling that the existing legislation is workable is an indictment of the government

The Centre's obvious reluctance to set up a statutory anti-corruption institution stands completely exposed after the Supreme Court made it clear that the existing Lokpal and Lokayuktas Act, 2013 is workable on its own, without having to be amended as proposed by the government. The court's order that the law, notified in 2014, is good to go is an indictment of the delay in establishing the Lokpal. It is a rejection of the attempt to explain the delay on the ground that a parliamentary standing committee's report on proposed amendments is still under consideration. The government was on weak legal footing when it claimed it was awaiting the passage of these amendments, mainly of one that related to the leader of the largest party in opposition in the Lok Sabha being considered as the Leader of the Opposition for the purposes of forming the Selection Committee to choose the Lokpal. The selection panel consists of the Prime Minister, the Speaker of the Lok Sabha, Leader of the Opposition, the Chief Justice of India or his nominee, and an eminent jurist chosen by them. The court has noted that the Act provides for the selection committee to make appointments even when it is truncated due to a vacancy. It has made it clear that the fact that some amendments have been proposed and a parliamentary panel has submitted a report would not constitute a legal bar on enforcing the existing law.

The court has rightly refused to read down the provision on the Leader of the Opposition to mean "the leader of the largest party in the opposition". At the same time, it is curious that an amendment to this effect is pending since 2014, even after it was endorsed by the parliamentary committee in its December 2015 report. Provisions relating to the selection of the Chief Information Commissioner and the Central Bureau of Investigation Director have been amended to treat the leader of the largest opposition party as the Leader of the Opposition in the absence of anyone recognised as such. The delay in passing this simple amendment is inexplicable. Another provision relating to the declaration of assets by public servants was amended last year. A simple way of resolving the impasse was to recognise the Congress party leader in the Lok Sabha as the Leader of the Opposition. There is no law, except a direction from the chair when G.V. Mavalankar was Speaker, that says recognition is given only to a party that has won 10% of the seats in the Lower House. A 1977 Act on the salary of the Opposition Leader defines the position as the leader of the largest party in the opposition and recognised as such by the Speaker. An inescapable inference is that the country does not have an anti-corruption ombudsman not due to any legal bar, but due to the absence of political will.

## Equity in taxes

Rich farmers need to be treated on a par with other taxpayers, but with a clear road map

A controversial proposal by Bibek Debroy, a member of the government think tank NITI Aayog, to tax agricultural income above a particular threshold has led to a public exchange of views. Finance Minister Arun Jaitley quickly dismissed any plans to tax farm income, but more policymakers have begun to voice their opinion, the latest being Chief Economic Adviser Arvind Subramanian who made it clear that taxing farm income is a State subject. The public image of farming being a poor man's venture and the sizeable vote share that farmers enjoy have made the idea of farm taxes a political taboo. The frequent distress faced by poor or marginal farmers, which could be attributed to structural issues other than taxation, hasn't helped matters either. But India has a presence of rich farmers as well and there exists as a strong justification for taxing them in order to widen the country's embarrassingly narrow tax base. Mr. Debroy suggested that an appropriate tax policy should draw a distinction between rich and poor farmers, thereby addressing the widespread political apprehension of bringing agriculture under the tax net. It is no secret that India's tax base, standing at a minuscule 5.9% of the working population, is already among the lowest in the world. This unnecessarily burdens the more formal sectors of the economy that are already overtaxed; at the same time, it handicaps government spending on the social sector.

The case for treating agriculture on a par with other sectors is thus clear. But policymakers must also show equal care and urgency in addressing the structural issues facing the sector. This includes, among many, reforms to the broken agricultural supply chain that still leaves farmers at the mercy of middlemen cartels. Such reforms are crucial if farming is to become a sustainable enterprise in the long run. Else, a tax on high-income farmers will result only in driving resources away from agriculture into other sectors. It would make no difference to poorer farmers stuck in agriculture, merely because of the lack of opportunities. In this context, the historical transition of labour and other resources from agriculture into other sectors is particularly useful to keep in mind. The said transition has been very slow in India; in fact, according to Census figures, the size of the farm workforce increased by 28.9 million between 2001 and 2011. This is due to a combination of factors, but one in particular is worth noting: the difficulty agricultural workers face in finding jobs in other more advanced sectors. A tax on lucrative high value farm ventures, which affects their ability to absorb labourers from low-value farming, could make life more difficult for farmers unable to make the cut in industry or services. Given this, policymakers ought to tread carefully as they move forward on a long overdue fiscal reform.

# Being pragmatic with Pyongyang

The U.S. must realise that neither more sanctions nor military strikes are viable options to rein in North Korea



RAKESH SOOD

Rhetoric and political signalling is an accepted element of crisis management provided the messages are clearly understood by those for whom these are intended. If not, it becomes a source of misunderstanding and a recipe for unintended miscalculation and potential disaster. Nowhere is this more evident than in recent exchanges between the U.S. and the Democratic People's Republic of Korea (DPRK) where events threaten to spin out of control.

### Trump's mixed signals

In an interview to Reuters last week, U.S. President Donald Trump, while describing it as his "biggest challenge", cautioned: "There is a chance that we could end up having a major major conflict with North Korea. Absolutely." Earlier in April, amid reports that North Korea might be planning another nuclear test to coincide with the 105th birth anniversary of long-time leader Kim Il Sung, Mr. Trump had announced that "an armada, very powerful" was headed towards the Korean peninsula. After a week it emerged that the USS Carl Vinson aircraft carrier was actually on its way to Western Australia, on account of a lack of clarity in communications. This now stands corrected. Meanwhile, a nuclear submarine, USS Michigan, has surfaced in Korean waters.

In turn, the DPRK threatened a "super mighty pre-emptive strike". After undertaking a live firing exercise off its east coast, it followed up with another test-firing of a ballistic missile on April 29 which fizzled, causing loss of face.

During the campaign, Mr. Trump had said that he would be willing to talk to North Korean leader Kim Jong-un, making it clear



that Barack Obama's policy focusing on tighter sanctions was a failure. After assuming office, he adopted a harder line, declaring that he would do "whatever is necessary" to prevent North Korea from developing a nuclear-capable missile that can reach the U.S.

In the Reuters interview, however, he reflected unusual empathy when asked about Kim Jong-un: "He is 27 years old [in 2011 when he took over]. His father dies, took over a regime. So say what you want but that is not easy, especially at that age."

In an interview to NPR last week, U.S. Secretary of State Rex Tillerson said that while the North Korean leader may be ruthless, "he is not crazy". He held out prospects of engaging in direct talks but was unwilling to engage in "negotiations about negotiations". The U.S. has not held bilateral talks with North Korea since the Bill Clinton presidency. So clearly, there is no dearth of signalling but the question is, what is the 33-year-old Kim Jong-un expected to make of it?

### Need for policy consistency

Regime acceptance and regime survival have been key priorities for Pyongyang since the collapse of the Soviet Union. A positive move in 1992 was the withdrawal of tactical nuclear weapons from the Korean peninsula and a suspension of Team Spirit, the joint U.S.-South Korean military exercises, leading to the Basic Agreement on

Reconciliation, Non-Aggression, and Exchanges and Cooperation. When joint exercises were resumed in 1993, North Korea announced its decision to withdraw from the Nuclear Non-Proliferation Treaty (NPT). The ensuing crisis led to talks and a year later, an Agreed Framework was concluded under which North Korea suspended its decision to withdraw from the NPT, agreed to freeze its nuclear activities, and in return, the U.S. pledged to build two light water nuclear power reactors. Food aid and humanitarian assistance provided by the Clinton administration from 1995 till 2000 was close to \$750 million.

The Bush administration declared North Korea part of the 'axis of evil' in 2002, cancelled direct talks and annulled the 1994 agreement. North Korea responded by throwing out International Atomic Energy Agency inspectors and formally quit the NPT thereby provoking a fresh crisis. China and Russia initiated Six Party Talks in 2004 which led to the 2005 joint statement which expanded the scope to more than the nuclear issue. However, the talks collapsed when the U.S. imposed sanctions a few months later; North Korea responded with its first nuclear test in 2006.

Since then, North Korea has made steady progress in its nuclear and missile programmes. An underground nuclear facility has been built at Mt. Musan. Nuclear tests were conducted in 2013 and

twice last year, and it is estimated that North Korea has enough fissile material for 10 to 15 nuclear devices. By 2019, North Korea will be able to develop long-range missiles that can reach the U.S. mainland. Given Mr. Trump's redline, Mr. Jong-un is convinced that nuclear capability is the ultimate security guarantee to protect his regime against U.S. intervention.

U.S. policy has oscillated between sanctions in response to nuclear and missile tests, dilution of sanctions by China, talks about closer defence ties with Japan and South Korea, citing of additional threats by North Korea and more testing, thus repeating the cycle. U.S. expectations that sanctions would lead to regime collapse were misplaced because given China's stakes, this will not happen.

### Will China nudge?

Recently China has registered a policy shift reflecting unhappiness about Mr. Jong-un's behaviour, particularly the high-profile executions of those considered to be close to China. The most recent was the assassination of Kim Jong-nam, Mr. Jong-un's half brother, in February, which prompted China to halting coal briquette imports from North Korea. Air China stopped direct flights to Pyongyang last month but these are now being reinstated. North Korea has accused China of "dancing to the tune of the U.S.". However, China can neither permit a regime collapse which would create instability nor allow its communist ally to be subsumed into a unified Korea.

Mr. Trump is trying to persuade China to exert greater leverage by praising its President, Xi Jinping, as "a good man" who is "trying hard". After the latest missile test, Mr. Trump tweeted, "North Korea disrespected the wishes of China & its highly respected President when it launched, though unsuccessfully, a missile today. Bad!" Mr. Xi is unlikely to be persuaded. At the UN Security Council meeting on April 28, Foreign Minister Wang Yi reaffirmed support for a denuclearised Korean peninsula and previous Se-

curity Council resolutions but did not support additional punitive measures. Instead, he again suggested that the U.S. and South Korea could suspend their military exercises.

More than North Korean tests, China is worried about the possibility of an unpredictable Trump initiating unilateral action which could create an escalatory spiral. Another concern is the U.S. decision to accelerate deployment of the THAAD (Terminal High Altitude Area Defence) system in South Korea though it is hopeful that a moderate President gets elected in the May 9 election in South Korea and reverses the THAAD decision.

### The way forward

Mr. Xi's objective is to persuade Mr. Trump that neither more sanctions nor military strikes are viable options; the only option is 'dialogue'. Second, while denuclearisation of the Korean peninsula can be a long-term objective, for the foreseeable future, Mr. Jong-un is not going to give up North Korea's nuclear and missile capabilities. At most, he can agree to a freeze on its programmes – no further tests, no exports or transfers and no threats. In return, the U.S. will need to provide assurances relating to regime acceptance and a gradual normalisation of relations. A moderate leader in Seoul will help the process of a sustained dialogue which also needs coordination with Japan.

Mr. Jong-un's stakes are existential and, having seen Western interventions in Iraq and Libya and Russian intervention in Ukraine, he is determined to retain his nuclear capabilities till the end of what will be a long and delicate negotiating process, a process which could all too easily be derailed by confusing rhetoric and mixed signalling that has escalated tensions.

Rakesh Sood is a former diplomat and currently Distinguished Fellow at the Observer Research Foundation. E-mail: rakeshsood2001@yahoo.com

# Guided by the Constitution

On his 25th death anniversary, revisiting some of Justice K.K. Mathew's opinions



FALI S. NARIMAN

A collection of addresses by Justice K.K. Mathew along with excerpts from his judicial opinions, published in 1978 under the title *Democracy, Equality and Freedom*, became the first work of its kind in Indian legal literature. Regrettably, it was also the last! The hope expressed by its editor, Prof. Upendra Baxi, that it would be the precursor of similar literary ventures in the future remained unfulfilled.

### Making a mark

In a practical sense, the book, *Democracy, Equality and Freedom*, published by the Eastern Book Company – with a foreword by Justice Y.V. Chandrachud, Chief Justice of India – is why Justice K.K. Mathew is still remembered, 40 years after he stopped sitting in India's Supreme Court. But for the illuminating and exhaustive 86-page introduction expounding the judi-

cial creativity and craftsmanship of the judge, K.K. Mathew would have been just one judge out of a roll-call of 186 judges who had sat in India's Supreme Court. Prof. Baxi has been moved to say that Justice Mathew's minority opinion in *Kesavananda Bharati* (one out of several in a Bench decision of 13 judges) "ensures him the fame of being the Cardozo of India".

The reason for Prof. Baxi's spontaneous remark is Justice Mathew's masterly use of contemporary jurisprudential thinking when attempting to resolve the "fundamental puzzle" of India's Constitution. His opinion in *Kesavananda Bharati* is a mini-treatise on the use of jurisprudence in judicial lawmaking. Justice Mathew approached the question of amendment of the Constitution as a constitutionalist, expounding a written document of governance. He refused to accept that the makers of the Constitution ever intended that Fundamental Rights should be subservient to Directive Principles of State Policy; rather (he said) they visualised a society where rights in Part IV and aspirations in Part IV would co-exist in harmony – "A succeeding generation might view the relative importance of the Fundamental Rights and



Directive Principles in a different light or from a different perspective. The value judgment of the succeeding generations as regards the relative weight and importance of these rights and aspirations might be entirely different from that of the makers of the Constitution. And it is no answer to say that the relative priority value of the Directive Principle over Fundamental Rights was not apprehended, or even if apprehended was not given effect to when the Constitution was framed, or to insist that what the Directive Principles meant to the vision of that day it must mean to the vision of our time."

Justice Mathew concluded that the only limitation to the amending power in the Constitution was that the Constitution could not be re-

pealed or abrogated in the exercise of the power of amendment without substituting a mechanism by which the state was constituted and organised – "that limitation flows from the language of the Article (Article 368) itself. I don't think there were or are any implied inherent limitations upon the power of Parliament under the Article."

### Another fine moment

But whatever be the contribution of Justice Mathew to the great Fundamental Rights case, the more important – the more seminal – decision of his was in the immediately succeeding case (*Indira Gandhi v. Raj Narain*: 1975 Suppl. SCC); his opinion in this case illustrated what a strict self-disciplinarian the judge was. Like other dissentients in *Kesavananda Bharati* (Ray, Beg, and Chandrachud), Justice Mathew was able to overcome the initial intellectual difficulty of reconciling his reasoning in that case with the compelling need to hold that Article 329A (challenged in *Indira Gandhi v. Raj Narain*) was constitutionally impermissible. Unlike Chief Justice Ray, he did not say (*Indira Gandhi v. Raj Narain*) that *Kesavananda Bharati* did not decide that there were any implied limitations (arising out

of the doctrine of basic structure) to the amending power of Parliament. In fact he straightforwardly conceded (as did Justice Chandrachud) that there was a seven-judge majority (in a Bench of 13 judges) for the proposition that "the power conferred under Article 368... was not absolute." Having done so, in conformity with the basic norm of judicial discipline, he then proceeded to identify democracy as an aspect of the basic structure doctrine.

Article 329A as enacted had removed past, present and future operations of the Representation of the People Act, 1951, to election disputes affecting the Prime Minister and Speaker, and despite the absence of any applicable law it had (in effect) adjudicated the election dispute between Raj Narain and Indira Gandhi. In so doing, the amending body neither "ascertained the facts of the case" nor "applied any norms for determining the validity of the election", and hence this was (according to Justice Mathew) plainly an exercise of "despotic power" damaging the democratic structure of the Constitution.

Fali S. Nariman is an eminent lawyer, constitutional jurist and a former nominated Member of the Rajya Sabha

## 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.

### Matching results

It is a pity that almost all political parties have contrasting opinions on the reliability of electronic voting machines – immediately suspecting them when they stumble in elections and showering them with praise when they win.

Having given room to the "apprehensions" of a number of political parties, the Election Commission of India has now caused unnecessary confusion in its overreaction ("EC may change recounting rules", May 1). Whether one agrees or not, automation or technology does help improve efficiency and overcome large-scale instances of fraud. We haven't abandoned the use of motor vehicles despite the risks of road accidents. We try to observe safety measures instead.

KSHIRASAGARA BALAJI RAO, Hyderabad

### A fresh mandate?

Having managed to cobble a majority on its own in the Lok Sabha and with a buffer to fall back upon – in the form of seats secured by its allies – the BJP has no reason to go in for a snap midterm poll ("Venkaiah rules out mid-term elections", May 1). The Modi government has got into its stride and been able to ward off the Opposition despite drastic measures such as demonetisation. It has been able to raise its stock considerably with a thumping win in Uttar Pradesh and has made mincemeat of both the Aam Aadmi Party and the Congress in the Delhi municipal polls. The Opposition parties are in disarray with the Modi wave showing no signs of ebbing. The prevailing situation hardly warrants a fresh mandate before time.

C.V. ARAVIND, Bengaluru

### Simultaneous elections

The idea of having simultaneous Lok Sabha and State elections is undemocratic and a denial of our opportunity to make a midterm rating of governments. Calls for and talk about favouring such a change of system now stem from a ploy aimed at reaping huge political advantages across the country over any single emotive and sensitive issue that can momentarily influence the electorate. And India is a country that has such emotive issues aplenty. The present system of separate time periods for State and general elections, though cumbersome, has ensured that the people use the State elections as a referendum to judge the performance of a government. The backers of simultaneous elections seem to want to avoid that. Besides, the huge expenditure in holding

simultaneous elections, the deployment of security personnel deployment too will be under immense pressure. The country will be left without valid and responsible administration both at the Central and State level because all of them will be under the Model Code of Conduct. It is imperative that people see through such political games and prevent the usurping of our democratic rights to choose and judge those we elect.

K.C. MENON, Cherayyil, Kochi

### Trump on Paris pact

U.S. President Donald Trump's statement on China, Russia and India "having contributed nothing under Paris Agreement" is like the pot calling the kettle black. It does not behove a country such as the United States to say such things as it is one of the largest carbon emitters

in the world and will continue to be so. It is for the U.S. to bear the cost of correcting the course of climate change as it is a world leader. It needs to lead by example.

DINESH KUMAR, Beri, Jhajjar, Haryana

### BBC Thamizhosai

It is saddening to read about the closure of the Thamizhosai BBC Tamil Radio service (Tamil Nadu, "After 76 years, BBC Tamil radio to go off air", May 1). During the India-Pakistan wars of 1965 and 1971, BBC Tamil was neutral and extensive in its coverage even though BBC was biased

against India. During the 1967 general election, when the Indian National Congress's popularity declined considerably, BBC was again objective. I recollect programmes such as "Paattondru Ketten". Whenever an important event took place in India or Tamil Nadu, BBC Tamil was among the first to contact VIPs and air their opinions. The station also played a crucial role in presenting the ground reality in Sri Lanka by interviewing Sri Lankan Tamil politicians.

SUKUMAR TALPADY, Kottara, Mangaluru

MORE LETTERS ONLINE: www.hindu.com/opinion/letters/

CORRECTIONS & CLARIFICATIONS: The scoreboard accompanying "Dominant Kings steamroller Daredevils" (Sport, May 1, 2017) erroneously gave the fall of Mohammed Shami's wicket as 9 for 69. It should have been 9 for 67.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail: readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kasturba Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com