



## Country before party

The British Prime Minister's cross-party talks may avert a chaotic Brexit

**T**his week, British pragmatism finally found its voice in the U.K.'s complex exit process from the European Union. The government's deliberations over a withdrawal had been held hostage by the English nationalists among the Conservative party who demand an exit sans an agreement. Prime Minister Theresa May, who had long insisted that "no deal with Brussels was better than a bad deal", declared on Tuesday that London would not quit without an accord. She clarified she would seek an extension of the April 12 deadline, which she did duly on Friday. Parliamentarians are trying to pass legislation that would require the government to avoid a no-deal Brexit – it has passed through the Commons by a slim majority and awaits its final stages. The government had opposed these moves, initiated by Conservative and Labour MPs in recent parliamentary votes. In a bold but risky gambit, Ms. May began talks with Labour leader Jeremy Corbyn to help break the deadlock. While the government has insisted it remains against a customs union, the talks with Labour, which strongly advocates this along with worker and environmental protections, mean that this is inevitably on the table. This is resisted vehemently by many Conservatives. Few seriously believe that Ms. May and Mr. Corbyn will agree to a deal. Equally, the Prime Minister will be severely constrained by the infuriated hardline eurosceptics within her party to not concede too much. That would force the government to ask Parliament once again to find a majority for any one of several alternatives, including the thrice-rejected withdrawal accord. These 'indicative' votes failed to deliver a majority to join an EU customs union, offer a second referendum, or revoke Brexit. But these proposals are certain to be put before Parliament with modifications drawn from inputs across different parties.

Calls for a second referendum, once voiced rather mutely by hardcore remainers, have emerged as a legislative proposal. The prevailing state of chaos and confusion, almost three years after the 2016 referendum, has caused immense frustration among businesses and people. But with Parliament having assumed charge of the process – which seems irreversible – there is reason to hope for clarity and certainty. Admittedly, Ms. May's commitment to a cross-party approach to deliver Brexit has come rather late in the day. But her willingness to put country above party at last has the potential to prevent the catastrophe of Britain going over the cliff when the date of departure eventually approaches. That is no small comfort going by the government's own assessment of the economic and social impact of the step, besides protecting the peace across Ireland.

## Probing the probe

HC remarks on Jayalalithaa death probe panel are a needed caution against a roving inquiry

**I**t is quite apposite that the Madras High Court has cautioned the Justice A. Arumugaswami Commission of Inquiry, which is probing the circumstances leading up to the hospitalisation and demise of former Tamil Nadu Chief Minister Jayalalithaa, against exceeding its brief. The commission, through its counsel's questions and averments, has been unusually proactive in attributing motives to or casting aspersions on doctors who treated her at a corporate hospital for 75 days in 2016. Although the court concluded that the commission's functioning has not been vitiated by bias, it has voiced apprehension about some aspects. For instance, it questioned the "strange" procedure adopted by the commission in having its own advocate file applications and counter-statements, when it could have passed *suo motu* any order necessary in relation to the proceedings. It described as "unnecessary and unwarranted", even "disturbing", some of the averments made by the commission's counsel in applications and replies. The Division Bench did not go so far as to invalidate the proceedings, as nearly all of the work has been done, but it questioned the need for the fact-finding body to attribute "collusion", "conspiracy" and "fraud" to the hospital, or anyone else. The hospital had argued that the commission was biased against it, citing denial of adjournments on its doctors' request, posing of questions and suggestions casting aspersions on their testimony and credentials, and other forms of "harassment". The court found no merit in any of these accusations.

The appointment of the commission of inquiry itself was a political move. It is true that there was speculation about the nature of Jayalalithaa's illness and some public misgivings about the adequacy of the treatment given to her. A shadow was cast on the role of her close aide, V.K. Sasikala, who is now serving a prison term in Bengaluru. However, it is doubtful if such speculation provided the material basis needed to order a probe, especially a fishing expedition into anything that can be fitted into the term "circumstances surrounding" a leader's death. The Tamil Nadu government ordered the inquiry as part of a political compromise under which a judicial probe was made a pre-condition for the merger of two factions of the ruling AIADMK. Given this background, it was inevitable that the commission's functioning would come under scrutiny. Its credibility and image would have gone up had the court agreed to the constitution of a medical board, comprising doctors drawn from various specialties, to assist it. Instead, it has chosen to reject the request by citing the deputation of some government doctors to go through the case records. Now that the court has found that there is nothing to suggest bias or malice on the commission's part, it has a duty to complete its fact-finding mission without giving further room for speculation that it is moving towards any pre-determined conclusion.

## A challenging text

By reworking the Indian dream, the Congress manifesto has opened up the space of politics



SHIV VISVANATHAN

**M**anifestos are generally acts of defiance and hope, which combine wishful thinking with critique. Manifestos have created world views and lived on as political and literary classics. The Congress manifesto is not quite literary or memorable but it contains within it nuggets which can shape the democratic process. In fact, there is a touch of nostalgia and dream, as the manifesto echoes Tagore's vision of a land where the mind is without fear.

### Between the binaries

The Congress document begins with a set of dualisms marking alternative choices between the Bharatiya Janata Party (BJP) and itself. The polarities are stark. The battle is between freedom and fear, harmony and hatred, exclusion and inclusion. There is a poetry to these pages before one moves to the prose of policy choices. The BJP senses the power of this text and responds by calling the Opposition the Tukde-Tukde gang. For the BJP the election is a battle between unity and disorder. One suddenly realises that it has dropped its economic development plank and become 'securitarian', hinting that a vote for the Congress is a regression to instability.

There is a hidden politics here which the manifesto exploits. The BJP is ideologically a votary of the nation state, of law and order, of patriotism as a world view. Sensing the weakness of this strategy, the Congress offers a broad weave of rights-based strategies, which provides a wide spectrum of solu-

tions including employment guarantees, the revival of agriculture and a critique of the Armed Forces (Special Powers) Act. What we have in front of us are two models of governance, modelling as two variants of democracy. The differences are stark but the Congress has at least acquired the humility to tacitly critique its errors. One wishes it had paid more attention to corruption. But its attempt to create a transformative policy of rights is genuinely welcome.

There is also a difference in world views. The BJP has a commitment to a liberal economic order serving corporate interests. The Congress manifesto makes a similar claim but one senses its claims to welfarism reflect more its socialist unconscious. But the choice, however, becomes starker. A law and order party is ready to battle a rights-oriented party which is dreaming a return to welfarism.

One must confess manifestos have been ignored in recent times, but by reworking the Indian dream, the Congress manifesto has created a challenging text that opens up the space of politics while making electoralism a real politics of choice – a choice not as a knee-jerk response between two fixed options, but as a dream of alternative possibilities which takes citizenship and agency seriously. There are shades of rethinking India especially around agriculture and institution-building. The pity is that the focus is uneven. A critique of the BJP idea of institutions would have added to the power of the document.

### The employment pivot

Manifestos exude a sense of the magical which derives from the power of keywords. If there is a keyword that dominates the Congress document, it is employment. The spectre of unemployment becomes a counter to the spectre of



R.V. MOORTHY

national insecurity. To counter the Modi model, the Congress offers a millennialism of jobs. The promise of a minimum guaranteed income has stolen the thunder from guarantees of national security. The Congress has promised to transfer ₹72,000 per year to the poorest families. This, accompanied by job creation, shifts the agenda from poverty alleviation to job creation, shifting agency back to the poor. The range of employment offered includes "make for the world", which sounds like a direct spoof of the BJP's much-touted "Make in India". By making job creation the major focus, the manifesto emphasises one of the key failures of the BJP-led government at the Centre, its inability to create jobs or to confront an economy in which the number of jobs is declining.

But what is sociologically fascinating is that it links employment to the future of the cities. The city now becomes a vision of startups for employment, and one wishes the Congress had elaborated this idea. The other part of employment which is different from the BJP's vision is the Congress's attempt to systematically link ecology and employment to regeneration of wastelands and recovery of water bodies.

Also central to the manifesto's economic imagination is the attempt to revive agriculture, especially through the Karz Mukti programme, which also decriminalises debt. Yet while

agriculture is talked about in terms of commissions and prices, one wishes the Congress had emphasised agriculture as trusteeship of diversity and ways of life. Agriculture has to contain a wider vision of society if it has to be economically effective. A mention of its own past reflection of agriculture would have made its intentions more authentic. Its critique of the Fasal Bima Yojana is important because often reform enriches corporates at the expense of farmers. One senses the Congress has acquired a sense of the ironies of agriculture policy over the last few decades.

### Rights-based model

If the revival of agriculture is one welcome strand of the Congress manifesto, its rights-based model of institution-building is another powerful counter to the Modi model of governance.

Its attempt to challenge the BJP appropriation of its achievement is also a welcome sign of a return to confidence. One must mention here its recognition of the importance of the informal economy and civil society as critical parts of processes that the BJP was dismissive about. Maybe the years in opposition have made the party a better listener than it was in the 1970s when the Emergency emasculated the integrity of our fundamental institutions.

The party's critique of a governance model where "the regulators have become controllers" shows that it has become both self-reflective and self-critical. There is a touch of schizophrenia here when it warns that government should not unnecessarily interfere in the market, alongside its cornucopia of welfarism measures. What is most welcome, however, is the attention it pays to marginal communities such as fishermen. It is a realisation that in India, margins are demographically large. A

similar set of paragraphs on denotified tribes promises an immediate repeal of the Habitual Offenders Act.

The power of the second half of the manifesto stems from its link between governance and institution building. The emphasis on transparency and accountability is welcome. The Congress promises not only that it won't tamper with the Reserve Bank of India but also that it will let the media self-regulate itself. Its promise to strengthen the Right to Information and remove provisions which have diluted it is necessary. Yet there is an overall sensitivity when it observes that "we are an over legislated and over regulated country". Its attempt to decriminalise laws dealing with civil violations is a part of this perspective.

The Congress promises to re-view AFSPA and relook at the National Register of Citizens in Assam. One senses a party rethinking itself at the institutional level. One wishes it had been more thoughtful in details about climate change but one smells the beginning of a different concern for the Anthropocene.

### Wish list or actionable?

One can dismiss the document as a wish list, as a set of promises – or one can read between the lines and see a party groping to a freshness of thought, indicating it is no longer obsessed with its past but inventing itself for a future. Reading it and placing it next to the arrogance of the BJP's sense of achievement, one realises that hubris is not one of the party's problems. A tentative manifesto is often more attractive than boring repetitions of a party which sees itself as inevitable.

Shiv Visvanathan is an academic associated with the Compost Heap, a group in pursuit of alternative ideas and imagination

## Privacy in the age of sunshine laws

The final judgment on the judiciary's right to privacy could have a bearing on other categories of people



PRASHANT REDDY T. & VAIDEHI MISRA

**A** Constitution Bench of the Supreme Court has finally concluded hearing a crucial appeal (after being nine years in cold storage) under the Right to Information Act (RTI), 2005. One of the three crucial questions raised in this case pertains to whether judges are required to publicly disclose their assets under the RTI Act in light of Section 8(I)(j). This provision prohibits the sharing of personal information that has no nexus to public activity or which amounts to an unwarranted invasion of privacy unless the larger public interest justifies such a disclosure.

The five judges hearing the matter face a difficult choice. Any attempt by them to assert the fundamental right to privacy as the basis for not disclosing assets to the public would necessarily require an implied overruling of landmark judgments in *Pucl (2003)* and *Lok Prahari v. Union of India (2018)*, in which smaller benches of the

court rubbished the privacy claims of the political class while forcing them to publicly disclose not just their assets but also the sources of their income. The final ruling of the Constitution Bench will also impact the contentious Section 44 of the Lokpal Act, 2013, which requires all public servants (this includes judges) to disclose their assets but is silent on whether the disclosure should be to the competent authority or the general public. This provision has already been the subject of an amendment in 2016.

### As RTI application

This case has its origins in an RTI application filed in 2007 in which the Public Information Officer (PIO) of the Supreme Court was asked by Subash Agrawal whether the judges of the Supreme Court had complied with the terms of a resolution adopted in 1997, in which all judges had committed to disclosing information about their assets and liabilities to the Chief Justice of India (CJI). The resolution had specifically mandated that the information would remain "confidential". In 2005, Parliament passed the RTI Act, creating a legal right to demand information held by public authorities which arguably also includes the CJI.



Interestingly, Mr. Agrawal never actually asked for copies of the declarations filed by the judges with the CJI. He only wanted to be informed of whether any such declaration were filed by the judges of the Supreme Court and High Courts. Yet the PIO sought to invoke, among other sections, Section 8(I)(j) of the RTI Act to deny him this information.

This provision of the RTI Act prevents public authorities from disclosing any "personal information" of citizens if such "disclosure had no relationship to any public activity or interest" or if such disclosure constitutes "an unwarranted invasion of the privacy of the individual" unless the PIO is "satisfied that the larger public interest justifies the disclosure of such information".

When the matter reached the Delhi High Court, both the single judge and the Full Bench concluded

that judges, like other public servants, had a fundamental right to privacy. This right, it held, could only be curtailed if the RTI applicant demonstrated a showing of "larger public interest" as required by Section 8(I)(j) of the RTI Act. In other words, public servants as a class of employees cannot be forced to disclose their personal assets to the public merely because they hold public posts. However, in individual cases, if the person seeking such information could demonstrate a "larger public interest" such as wrongdoing or impropriety on the part of the public official, the information could be disclosed.

### The implications

It is likely that the Supreme Court will follow the Delhi High Court's reasoning because of its own decision from 2012 in *Girish Ramchandra Deshpande v. Central Information Commissioner*. The court was faced with a case where an RTI applicant sought information on the service record and assets of a serving bureaucrat. In a very brief judgment, the Supreme Court ruled that the assets of the bureaucrat could not be revealed to an applicant under the RTI Act unless there was a showing of a larger public interest. The applicant could not demonstrate the larger public

interest and was denied the information.

A lot has happened on the privacy front since 2012. The litigation and the civil society campaign against Aadhaar resulted in a unanimous judgment from nine judges of the Supreme Court declaring informational privacy as a component of the fundamental right to privacy. When the Constitution Bench decides on Mr. Agrawal's appeal, it will most likely be viewing the privacy right enshrined in Section 8(I)(j) of the RTI Act through the lens of the Aadhaar judgment. If the Bench decides that all Supreme Court and High Court judges have a fundamental right to privacy (only two of the five judges hearing the case have voluntarily disclosed their assets) and that judges cannot be forced to disclose their assets to the public, questions will be asked as to why the court forced politicians to publicly disclose their assets and sources of income. It would then be only a matter of time before politicians and their spouses seek the overturning of the *Pucl* and *Lok Prahari* judgments, thereby turning back the clock on electoral transparency.

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## 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.

### Pre-poll survey

It would have been appropriate for the ruling dispensation to have gone to the electorate with its report card of what has been achieved against the backdrop of what had been promised (Page 1, "Balakot, quota & sop for farmers gave PM a boost", April 5). Though the Centre for the Study of Developing Societies-Lokniti-The Hindu-Tiranga TV-Dainik Bhaskar Pre-Poll Survey, 2019 finds that 43% of respondents favour Narendra Modi as Prime Minister, it also implies that 57% have a different choice. Though the Survey is not to be relied on in its entirety, it remains to be seen how far it is going to have an impact on voting patterns.

■ The pre-election survey makes one thing clear – that

the impact of the Rafale issue is negligible. It is true that the debate, discussion and discourse around the subject have all taken place in educated circles and not among the rural masses, who are the voters who matter. At least now all those concerned should take it up for wider discussion among the masses to allow them to decide what they feel.

A.G. RAJMOHAN,  
Anantapur, Andhra Pradesh

### Rahul in Wayanad

The statement by Congress president Rahul Gandhi after filing his nomination papers in Wayanad, Kerala, that he would not criticise the CPI (M) and "that he would absorb the CPI(M) attacks against him with happiness" was amusing to read ("Rahul files papers in Wayanad, promises not to attack CPI (M)", April 5). The Congress and the CPI(M) have been fighting each other in Kerala

on many issues. As such, it appears strange that the Congress can expect to get votes without attacking the CPI(M). Mr. Gandhi's statement could confuse his party cadre in Kerala.

D. SETHURAMAN,  
Chennai

■ The overwhelming support Mr. Gandhi enjoys was evident in the response he evoked before and after filing his papers. It is most unfortunate that the ruling party, and especially the Prime Minister, have pigeonholed the electorate in Wayanad as a case of 'us-and-them'. That a constituency's demographic profile is now dissected and spoken about in such shabby terms marks a new low in Indian politics. Members of the minority communities are as much Indian as members of the majority community. It is wrong to see politics through the religious prism. Mr.

Gandhi's statement that he would not say a word against the Left and absorb its attacks during his poll campaign should placate and persuade the Left not to lose sight of the larger political goal – of stopping the BJP's return to power and strengthening secularism, which is a pillar that holds the nation together.

G. DAVID MILTON,  
Maruthancode, Tamil Nadu

■ Priyanka Gandhi Vadra is reported to have made an appeal on Twitter asking Wayanad to take care of her brother and also assuring the electorate that he would not let them down. So far so good. But can she make one more assurance? That Mr. Gandhi will retain Wayanad if he wins both Amethi and this seat, take care of the constituency and never let his electors down? E. SETHURAMALINGAM,  
Kollam, Kerala

■ Mr. Gandhi's move may force the Left Democratic Front and the National Democratic Alliance to rework their strategies. It may also compel the BJP to rethink its game-plan to bank on the Sabarimala issue. In fact, a leader hailing from the north deciding to contest from the south makes for a good outreach strategy. It will help the Congress drive home the point that its leader has a pan-India outlook as opposed to the Prime Minister who, in 2014, chose to contest from two seats, both in north India. R. SIVAKUMAR,  
Chennai

■ The reason behind Mr. Gandhi's decision is pure and simple. It is not to jeopardise the prospects of the Left but rather to ensure his own electoral victory since Amethi is no longer a safe bet. This is a case of pure opportunism and a clear

V. LAKSHMANAN,  
Tirupur, Tamil Nadu

### The iconic Ambassador

The letter by a reader ('Letters to the Editor', April 5), on the Ambassador car, shows that the car still enjoys legendary status in India. The comfort of a ride in the Ambassador, especially when seated in the rear, cannot be matched even by present-day fancy and technologically advanced sedans. The car's unique feature of easy 'ingress and egress' makes it a desirable car even today. I do wish it makes a comeback on Indian roads. S. RAVISHANKAR,  
Chennai

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