

PM dials down the NRC, but keeps options open

PM tries to reassure people after nationwide protests; must have a full consultation the next time around

HERE CAN BE little doubt that prime minister Narendra Modi glossed over vital facts in his Ramlila Maidan speech on Sunday. Apart from his statement on there being no detention centres (for the National Register of Citizens, NRC) in the country being clearly incorrect, he chose not to recall his home minister's repeated statements on it when he told the crowds that he didn't know where all the talk of an impending NRC process came from since there was no Bill nor any proposal on this that had even been cleared by the Union Cabinet. On more than one occasion, home minister Amit Shah has been seen, on video, as saying that once the Citizenship Amendment Act (CAA) is passed and Hindus/Sikhs/Christians/Buddhists/Jain refugees are made citizens, the NRC will be used to weed out illegal immigrants; the BJP's twitter handlers even deleted a tweet from its official handle that had the home minister talking of NRC. And, though a combative prime minister continued to blame the Congress—and 'urban Naxals'—for spreading rumours about what an NRC would do to local Muslims, an important takeaway was that he was trying to distance his party and government from the process.

And, he didn't repeat his statement, made during the Jharkhand campaigning, of how one could identify who was creating trouble by just looking at their clothes; on Sunday, he applauded the anti-CAA protestors who were holding the national flag. The prime minister, though, probably struck a chord when he sought to convert the issue from a Hindu-Muslim one into one of the poor vs the non-poor; did we ask you what your religion was, he thundered, when we built 1.5 crore houses for the poor, or when 5 crore poor were covered under Ayushman Bharat and 70 lakh were given free treatment... And why, he asked, would I regularise the homes of 40 lakh homeless Delhiites if I had to, at the same time, take away your rights?

If the government has, in the face of widespread protests by students across the country, decided to go slow on the NRC, that is indeed good news since, more than the CAA, it was the NRC that was worrying; as a result of the countrywide protests, even chief ministers of parties that supported the CAA in parliament, said they wouldn't allow NRC in their states. It is, of course, unfortunate that India is choosing to define its citizenship on religious grounds; and while it is true that citizenship rights of Indian Muslims are not being taken away by CAA, if only non-Muslim immigrants are to be granted fast-track citizenship if they are being persecuted in Pakistan/Afghanistan/Bangladesh, this sends an unequivocal message to the Muslims in the country. Few would argue that illegal immigrants don't need to be dealt with firmly, but if the process also involves the possibility of millions of poor citizens becoming non-citizens as they don't have the requisite documents, the picture is quite different.

Indeed, the government itself has been issuing contradictory statements on this. In a bid to dampen sentiments against NRC, government 'sources' first gave the media FAQs that even suggested Aadhaar cards could be accepted as valid citizenship documents—a day later, this was even issued by the Press Information Bureau; this was odd since, with most Indians issued Aadhaar numbers, how would this weed out illegal immigrants? Indeed, the home minister had earlier said, in a TV interview, that Aadhaar is not proof of citizenship; what are citizens to believe?

It is, of course, always possible that the government could try and introduce the NRC after the anger over CAA dissipates. But, should that happen, it is to be hoped this is after a detailed consultative process, and not by stealth. Merely stating that an NRC was always part of the BJP's agenda since it was on the party's manifesto—and people voted for the BJP in 2014 and 2019—is neither here nor there; even provision of more jobs and higher economic prosperity are part of the manifesto, but neither seems like they are being fulfilled right now.

Getting skilling right

Track record of existing programmes remains poor

HERE IS LITTLE doubt the national skilling programme, under the Pradhan Mantri Kaushal Vikas Yojana (PMKVY), has got better with age. While the first iteration saw the skilling of 18 lakh persons—at a cost of ₹1,500 crore—the second one has been 69 lakh persons getting enrolled, 66 lakh getting trained, and 50 lakh getting certifications of training from agencies appointed as third-party evaluators. Where it gets worrying, however, is that apart from the fact that the training target was one crore, just 15 lakh—a fourth of those trained—actually got jobs. And, a report by the parliamentary standing committee found that despite the link between PMKVY and Mudra, just a little over 2% of candidates were sanctioned loans. Last year, a CAG audit of the Rajasthan Skill and Livelihoods Development Corporation found that just a third of the job placements claimed during 2014-17 were genuine.

This is not to say that India does not need a PMKVY; of course, it does. But, not only does the PMKVY need to reach out and train more people, the skills taught have to be upgraded in a very big way since many of the skills being taught right now are very basic and for jobs that are rapidly getting outdated. Indeed, skills being taught need to include, for instance, precision-welding for underseas pipes, or the use of big data. Dedicated skills universities, such as the one run by Team Lease, are probably a good idea where, in association with industry organisations, students can get a diploma along with some basic education in, say, management. More than that, it would be a good idea to encourage existing colleges/universities to branch out into these areas. The government would also do well to, wherever possible, also provide some kind of stipend to those undergoing training since, where the courses are not online or part-time, students need to give up their jobs as well.

UP&Down

UP identifying rioters to take action against them is good, but summary justice is not the way forward

WHILE THE UP government is firm on its stand to take action against rioters, its approach seems questionable. The government, without due course, is sealing property of those it believes to have been involved in rioting and arsoning, and it is doing so based on primarily video and photographic evidence. Videos are indeed a crucial part of evidence, but they only reveal a part of the story. For instance, of the videos circulated after the Jamia stand-off, one showed a policeman trying to pour some fluid in a bus. While many claimed it was an accelerant, it was later found that he was trying to pour water to douse the fire. Had the government gone by videographic evidence and popular opinion, the first reaction would have been to sack the policeman. The UP government would do better not to settle the matter in haste. A court-appointed investigation would ensure there is no bias. Besides, it shall also provide evidence on whether the situation got worse after police action. In the case of UP, some television channels have been using video evidence to debunk the claim that police personnel fired no bullet.

Historically, prosecuting those accused of destroying property has been a tricky proposition. The Centre came out with a law against destruction of public property in 1984 and the SC issued guidelines based on recommendations of two expert committees in 2009, but the conviction rate in such cases has been low. Data from NCRB show that in the 14,876 instances—UP, Haryana, and Tamil Nadu account for 6,300 of these—recorded in 2017, the conviction rate was only 29.8%. Confiscation of property can be a viable threat, but if UP is to set a template for the country, it should do so using legal means. Summary justice will only alienate those protesting against the government, exposing the state to accusations of abuse of power.



LOSING GAINS

NCP chief Sharad Pawar

Jharkhand is an adivasi-dominated state, poverty is more. In such a situation, the BJP tried to use financial strength to retain power. I am happy the people of Jharkhand have not accepted (the BJP)

US-CHINA TRADE DEAL

IT IS UNREALISTIC TO ASSUME THE PHASE-1 DEAL WOULD END THE US-CHINA TRADE WAR, THE UNDERLYING CAUSES OF WHICH ARE SYSTEMIC AND LINKED TO GEOPOLITICAL RIVALRY

Deal offers nothing but superficial symbolism

AMITENDU PALIT

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PHASE 1 OF the US-China trade deal marks cessation of retaliatory trade actions that the two countries have been engaging in for nearly two years now. But, it doesn't mean that trade friction between the two countries has come to an end.

The fact that both countries continue to view each other suspiciously is evident from the fact that the tariffs they imposed on each other's products over the last twenty months remain in place. The deal has not, at least till now, ensured that both countries remove the tariffs on a large number of bilaterally traded items that were set in motion after the Section 232 tariff impositions by USA on steel and aluminum imports. While these tariffs affected steel and aluminum exports to the US by various countries, including India, the later tariffs imposed by the US, specifically on Chinese products, were justified under Section 301. Section 232 tariffs are brought in on national security grounds. Section 301 tariffs, on the other hand, are driven by unfair trade practices by US trade partners—in this instance, specifically by China. None of these tariffs, imposed at various points in time by the US, are going to go. The ones imposed by China, in retaliation, are also going to stay.

What does the deal achieve then? Much of the outcome is symbolic. The symbolism is of far greater significance for the US. Unilateral tariff actions were begun by the US. It is far more important for the US, therefore, to demonstrate that it was able to fork out a deal that made the trade war worthwhile. But, does the deal justify the trade war?

The core elements of the deal are

intellectual property, technology transfer, agriculture, financial services, currency, foreign exchange, and dispute resolution. It is important to note that the core US angst against China was the 'unfair' practices maintained by the latter on various aspects of managing IP, and technology transfer. From the fact sheet released by the USTR on the subject, it is not clear exactly what the specific commitments made by China for safeguarding IP content, primarily by acting on piracy and counterfeiting, are about. On technology transfer, the fact sheet claims that for the first time in any trade agreement, China has agreed not to 'pressurise'...foreign companies to transfer their technology to Chinese companies as a condition for obtaining market access, administrative approvals, or receiving advantages from the government'. What exactly the commitment by China in this regard might be is unclear and won't be known till the text of the deal sees the light of day. But, if Chinese authorities wish to block market access for foreign companies as a negotiating chip to obtain knowledge of technology, they might well be able to do so through various other means. The mere 'agreement' provided in consultations and negotiations is insufficient for what the US was looking to achieve. Perhaps, the US trade negotiators also know this only too

well. It remains to be seen how China fares following the deal, in future Section 301 investigations, and the US IP watch. There is not much to suggest that the outcomes of these investigations would change dramatically.

On symbolism, a point the US trade authorities would wish to sell firmly to domestic constituencies is the commitment by China to remove a large number of non-trade barriers on US agricultural exports. Equally high on the symbolism quotient would be the Chinese commitment to buy more of various US goods and services. Both assume importance at a time when the US is heading into its next Presidential elections with the knowledge that trade war and tariff actions have not really delivered American producers the goods they promised to do. Less politically symbolic, but nevertheless strategically important, would be emphasis on commitments by China to refrain from unfair exchange rate practices and currency manipulations.

Principally, the deal, the way it has come out from US official agencies, underpins a situation where a naughty, ill-behaved kid (China) has

promised to behave in the future, following stern action (tariffs) by a strict guardian (the US). The US is keen to build the deal as evidence of the success of its efforts to put China 'in line'. Whether that actually is the case will only be known in future. China's ability to restrict market access through creative protectionism, notwithstanding official grant of concessions in several respects, is well known, and visible from the trade policy actions following its accession to WTO. Over the years, China has taken to blocking market through a variety of complex, internal 'beyond the border' domestic regulations rather than 'on border' restrictions, like tariffs. It might continue to do so, notwithstanding US pressure.

It would be unrealistic to assume that the Phase 1 deal would bring to an end the US-China trade war. The underlying causes behind the US-China friction are systemic, and linked to their overall efforts to gain a geopolitical edge over each other through technology-driven economic supremacy missions. More is expected to happen in the foreseeable future. The onus of such developments, till now, has been with the US. It remains to be seen whether China begins a new fold of response to the hostilities. Critical issues like data governance, and surveillance concerns arising out of suspicions over Huawei remain untouched in the deal. Symbolic commitments might not be enough to keep both countries away from locking horns on the 'alive' issues soon again.

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Fighting ships' pollution bad for planet

Health benefits may come at a cost of actually worsening shipping's climate impact. That is because the sulphates from ships' exhaust emissions contribute a cooling effect that will be lost with their removal

JULIAN LEE

Bloomberg

THE SHIPPING INDUSTRY is getting serious about cutting sulphur dioxide emissions. People who live along busy shipping lanes will see health benefits from reduced particulate emissions and a reduction in acid rain when new regulations come into force on January 1, 2020. But, the sulphur particles help offset some of the warming caused by powering the ships, so the rules may also increase the likelihood that rising sea levels caused by global warming leave those same populations without a home.

The new regulations from the International Maritime Organization, a United Nations agency responsible for ensuring safe and efficient shipping on clean oceans, allow for two ways of tackling the problem. Either ships must burn fuel with a sulphur content of no more than 0.5%, down from the 3.5% that is currently permitted outside of designated special emission-control areas. Or they must install scrubbers to remove sulphur from their exhaust.

The change targets the public-health impact of shipping, which is estimated to contribute 13% of total sulphur oxide emissions annually. It will slash the amount of sulphur dioxide from ships by 75%. Doing so will dramatically reduce premature deaths resulting from sulphate emissions from ships, according to a paper published in *Nature Communications* in 2018 by a team of researchers from US institutions and the Finnish Meteorological Institute.

Most of the health benefits will be felt by communities in coastal regions of densely populated countries with busy ports or those on major sea-trade routes, especially in India and China. People living near coastlines in the US or Europe won't see a difference since ships operating in those areas already face far stricter limits that restrict them to burning fuel with a maximum sulphur level of 0.1%.

But, these health benefits may come at a cost of actually worsening shipping's climate impact. That is because the sulphates from ships' exhaust emissions contribute a cooling effect

that will be lost with their removal.

Sulphur aerosols from ship exhaust reflect energy back into space. But, they also help make clouds brighter, so they reflect more sunlight away from the Earth as well. Mikhail Sofiev, one of the authors of the *Nature Communications* paper, explained it like this: Clouds with many small droplets are "whiter"—more reflective—than the clouds with few large droplets. Anthropogenic particles are small and numerous. They attract water and prompt formation of many small cloud droplets—and we get white-top cloud.

Fewer sulphate particles reaching the cloud tops will reduce their albedo (ability to reflect) because the cloud droplets will become less numerous, bigger and therefore, less reflective.

Most of the cooling effect from ship exhaust comes from this secondary impact on clouds, accounting for about 92% of the total. The new regulations will reduce that cooling impact from the world's shipping fleet by 81%, according to the study. The net effect of the IMO 2020 rule on the climate impact is to increase the warming effect of all human activities by 3.8%.

Removing the sulphur from ship emissions exposes the climate effects of shipping. As James Corbett, another of the report's authors, points out, "sulphate aerosols mask climate forcing, they don't change it".

The sulphur puzzle is just one piece of IMO's efforts to clean up an industry that is crucial to keeping global trade flowing, with more than 80% of global trade carried by sea. The Third IMO GHG study, published in 2014, estimated that in 2012 international shipping accounted for about 2.2% of all anthropogenic carbon dioxide emissions, and that such emissions could grow by between 50%

and 250% by 2050.

In 2018, the London-based group adopted a strategy to reduce greenhouse gas pollution. The goal is to cut the carbon intensity of international shipping "by at least 40% by 2030, pursuing efforts towards 70% by 2050, compared to 2008", according to the document. It also aims to bring about a peak in total greenhouse gas emissions "as soon as possible" and reduce them by at least 50% by 2050 compared with 2008 levels. The overall emissions target is lower than the carbon intensity goal because the volume of shipping is forecast to increase over the next 30 years.

One proposal to help achieve all of this is to lower fuel consumption by introducing speed limits. Others include technical approaches such as mandatory power limits.

Where sulphur dioxide emissions are concerned, some of the negative climate impact may be offset by a parallel reduction in organic carbon and black carbon particles from ship exhaust, which have strongly warming properties. Low-sulphur fuels contain fewer black carbon particles and scrubbers remove them alongside the sulphur. They also have another important component: They are extremely expensive.

The higher cost of IMO 2020-compliant ship fuel and the fact there is no single worldwide specification for compliant fuel may in and of itself increase the incentive for ship operators and charterers to cut consumption, Corbett argues, thereby reducing CO2 emissions.

Until an industry-wide greenhouse gas strategy is adopted and implemented that may be the best hope we have.

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LETTERS TO THE EDITOR

BJP's flip-flop

The controversy over the National Register of Citizens (NRC) has taken a dramatic twist with prime minister Narendra Modi striking a conciliatory note and reaching out to Muslims at an election rally in New Delhi. Training his guns on his political rivals, Modi accused them of spreading canard and lies and stoking fear among people. The prime minister also rubbished claims that a detention centre was coming up and confirmed that a pan-India NRC was never on the table. His statements coming on the back of home minister Amit Shah telling Parliament that NRC will happen in the country soon has stumped many and shows that the BJP is quite capable of doing a flip-flop — NJ Ravi Chander, Bengaluru

Troubled diplomacy

Union external affairs minister S Jaishankar's decision to cancel his meeting with US congressional committee has brought to the fore emerging troubles of Modi-led BJP government at the centre. As an integral part of the US government with huge diplomatic influence and substantive fiscal power, the US legislature with 435 members of the House of Representatives and 100 members of Senate has never shied away from articulating its opinion on issues grappling the world at large. Our sustained diplomacy to renew and strengthen country's bilateral relationship with the US over the decades had paid off well. But, PM Modi's politics of majoritarianism and egregious policies, including the abrogation of Article 370 of the Indian constitution and the CAA, now appears to be alienating critical sections in the US who champion human rights and religious freedoms. The perception in the US and Western world that the Modi-led dispensation is abandoning the political values that endeared India to a democratic world should not be allowed to persist for long, considering its negative repercussions on our economy and our standing as a vibrant democracy. — M Jeyaram, Sholavandan

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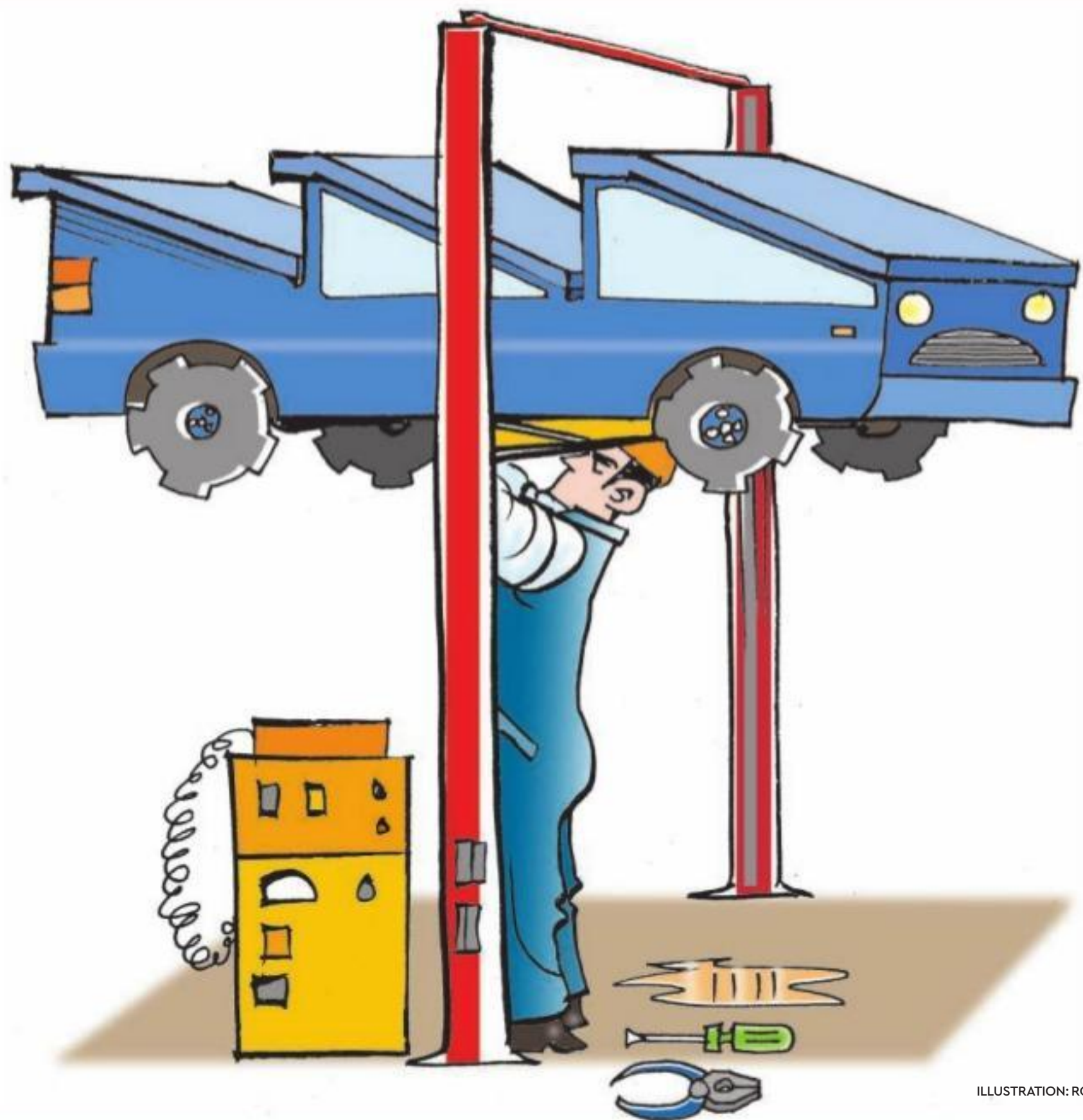


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Tackling India's economic slowdown

A weaker rupee rather than high import duties will provide protection to domestic manufacturers and improve India's export competitiveness. Liquidity situation in the shadow banking space must also improve. A key supply-side measure that can help in the short-term is a genuine attempt to reduce the compliance burden for SMEs

INDIA'S GDP GROWTH has decelerated to 4.5% in the second quarter. Neither consumption nor export and private investment are supportive. In fact, India's economic growth is being driven by government expenditure. Excluding the government part that comprises not more than 13%, the Indian economy grew just 3.05% in the July-September quarter. Therefore, things are much worse than what headline growth number suggests. Slowing GDP growth will lower tax collections, and even cap the government's ability to spend and support growth.

The government has been hinting that the global headwinds are behind sluggish exports, and this is not without reason. US President Donald Trump has removed India from the US GSP (Generalized System of Preferences) beneficiary list, with adverse implications for export items such as chemicals, pharmaceuticals and engineering goods. The American tightening of immigration rules dampens Indian information technology (IT) export prospects. The European Union (EU) is struggling with Brexit, and slowing growth in its larger economies such as Germany. The Middle East—another major export market for Indian merchandise—is troubled by its over-reliance on oil and the regional political turmoil. Supply chains are now sourcing more locally than before. All of these developments are bound to affect India's exports.

However, what the government is not telling—and which it rather should—is that India's merchandise exports have been hovering around \$300 billion for a very long time. The figure stood at \$305 billion in FY12, and it will be no different in FY20. Obviously, the problem is internal mismanagement. Countries such as Bangladesh and Vietnam are fast replacing India in the products the latter has traditionally dominated; for example, apparels. India's textile majors such as Arvind and Raymond are silently shifting their production base to Ethiopia to take advantage of cheaper labour and electricity, and duty-free market access in top consuming markets. Vietnam, in fact, is far ahead of India in attracting top electronics manufacturers and, in turn, it is now pushing electronics exports as well.

Similarly, a number of factors are

responsible for the slowdown in consumption, which has fallen to 5.1% year-on-year in Q2FY20 compared to 9.8% in Q2FY19. Continuing rural distress, which was accentuated first by the note ban and then by domestic and global supply gluts, is now capping rural demand. The wholesale prices of most agricultural crops are 15-20% lower than their MSP (minimum support price), while the prices of major farm inputs and equipment have gone up by 10% or so. This is squeezing margins and, in turn, farmers' incomes and their demand for goods and services.

High taxation and regulatory rent-seeking in sectors such as automobiles and real estate are aiding the demand slowdown. For instance, effective taxation is up to 50% for automobiles. Similarly, high GST (goods and services tax) on key inputs such as cement, protectionism-induced high-priced steel along with prohibitive stamp duty and registration charges are keeping home prices inflated and the demand for them capped. This hampers the prospects of dependent industries. Rising household debts and credit crunch in the shadow banking space are further contributing to the demand slowdown. No wonder, investment, as measured by the gross fixed capital formation (GFCF), grew by a meagre 1% in Q2FY20, even as its share in GDP continued to decline.

The decline in capacity is reflected by 3.8% contraction in factory output in October—the third month in a row. Government investments, which usually bridge the gap during a slowdown, started losing steam as state governments' capex—which makes up the major share of public investments—has shrunk in the last two quarters.

Nevertheless, a 15.6% increase in government expenditure in the second quarter, compared to 10.9% in the same quarter last fiscal, has contributed one-third of the 4.5% GDP growth rate. However, government demand is primarily dependent upon its tax collection as it can't really borrow much without forcing interest rates to rise. That crowds out private investment.

The direct tax including corporate and personal income tax grew 5% in the period April-September 15, compared to the same period last year. Therefore, to achieve the budgeted target of 17.3% in FY20, it must grow by a whopping 27%—which is highly unlikely. GST collection remains muted due to slowing growth and low base—only 1.2 million out of the 62 million companies are GST-registered. Given this backdrop, badly-timed corporate tax cut will further limit the government's ability to spend and support growth. And if that was not enough, recent disruptions related to amendments in the citizenship Act and national registry will hurt economic activities and hamper growth.

Going forward, the government can do the following to revive consumer demand. The GST Council should increase GST on low GST items with inelastic demand, and reduce GST rates for high GST items with elastic demand. That will reduce rate differentials and discourage GST evasion and corruption. That will also boost the overall consumer demand. As reviving demand remains the key to reviving private investment, reducing income tax rates for lower-income people, if not for all, can be a big sentiment booster.

Keeping import duties high, especially on key industrial raw material such as steel or polyester and synthetic fibres, hurts downstream industries and induces import of high-value finished goods—this adds to the import bill. Similarly, a stronger rupee encourages imports and hurts exports. Therefore, a weaker rupee rather than high import duties will provide protection to domestic manufacturers and yet improve India's export competitiveness. In addition, liquidity situation in the shadow banking space must improve. One key supply-side measure that can help even in the short term could be a genuine attempt to reduce the compliance burden for SMEs.

● BIT BY BIT

It's been a year of transition

NANDAGOPAL RAJAN

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The year ushered in some drastic changes that could impact how we use devices

THE YEAR IS almost over, and as we look ahead to what the new year might hold for us, it is also the time to ponder what we did well and what could have been better in the past year. As far as personal technology goes, 2019 was an interesting year, and I would think the one in which many milestones were covered when it comes to crossing over from one era to another. This could also be because 2019 was also the end of a decade, a decade that changed our lives drastically.

Smartphones, the technology product that touches most number of lives the most number of ways, saw at least one dramatic change. This was the year when large batteries became the norm across Android, and even iOS, devices. So much so that Samsung Galaxy M30s was able to offer a 6000mAh battery in a slim chassis, thus finally overcoming a problem of physics that has held back smartphones for long. With the iPhone, too, offering batteries that could charge really fast and then hold the charge for well over a day, we can say 2019 was a year when smartphones got over the big pain point of battery life.

It was also a year in which triple and even quad cameras almost became a norm. An ultra-wide, regular and telephoto lens combo is now the standard across most price points, even though we all know most users will need, and use, just one of these most of the times. Even the iPhone went the triple camera way, but offered all settings from panorama to slow-motion across all the lenses. It also showed that on a powerful phone like the iPhone 11 Pro Max, all of these lenses along with the selfie camera can record 4K footage at the same time. Unprecedented in more ways than one.

The other big switchover was in cameras. I think this was the year the mirrorless cameras finally came on their own. While these cameras have been there for close to a decade, this year they became dominant across many price points and use cases. So much so that even professionals were now looking to upgrade to a mirrorless from their speeded-up DSLRs. The fact that these cameras perform better in low light and are a bit lighter is helping them gain widespread acceptance across price points. Yes, both Nikon and Canon offer mirrorless cameras now, but it is Sony that lords over the new technology, with its Alpha range of cameras.

Then, the laptops; no one talks much about them these days. However, I was fascinated by how even affordable laptops are now thin and light. This is in contrast to the large and heavy devices most students and entry-level office executives used to lug around. With AMD Ryzen processors stealing a bit of Intel's thunder, companies like Asus were offering entry-level laptops that were not much heavier than the Ultrabooks. Even gaming laptops are becoming lighter. In fact, 2020 could be the year when it becomes pointless to launch a laptop that is an unnecessary burden on its user.

Meanwhile, in the course of the year, the iPad finally did what no tablet had done before, become powerful enough to run a heavy software like Adobe Photoshop. Yes, the latest iPad Pros are powerful enough to run a lot of software that could bother even some laptops. While Adobe launched unbundled apps that allowed users to take the power of the Photoshop to touchscreens, it also learnt that there is no longer a reason to offer 10 ways to add the same filter as it has done for decades. With some of the most powerful software in the world coming on touchscreens, we should be prepared to see a new wave of experts emerge with no context on how these software used to work before and hence with completely new, and maybe more natural, techniques to master these apps. Yes, it is truly a brave new world out there.

It was a year when large batteries became the norm across Android, and even iOS, devices. Samsung Galaxy M30s, for example, was able to offer a 6000mAh battery in a slim chassis

APPELLATE BODY

Managing the WTO crisis

The WTO Appellate Body going into slumber is a serious setback for the rules-based multilateral trading order

PRABHASH RANJAN

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ON DECEMBER 11, the World Trade Organisation's Appellate Body (AB)—which is part of the WTO's dispute settlement mechanism—went into hibernation. This mechanism, which was created to settle trade-related legal spats amongst the 164 WTO member countries, is made of two levels. The first level constitutes of WTO panels—these are *ad hoc* bodies in charge of adjudicating disputes between WTO members in the first instance. The second level consists of an appellate mechanism or the AB, which is a permanent body, comprising of seven individuals appointed for four-year terms. The AB hears appeals from reports issued by WTO panels. Three out of seven AB members serve on any one case. AB rulings are binding on the countries that are parties to the dispute. If a country fails to comply with an AB ruling, the winning country can take countermeasures against the disobedient country as per WTO rules. Therefore, the WTO's dispute settlement mechanism brings certainty and predictability to the rules-based multilateral trading order by holding countries accountable for not keeping their end of reciprocal bargains, and by sanctioning and capping countermeasures in case of non-compliance.

US's obduracy

The AB has gone into hibernation because the numbers of AB members kept dwindling, coming down to just one on December 11, due to the US blocking fresh

appointments. The US believes that the AB has gone beyond its mandate. Its major complaint with the AB is that the latter, in a series of rulings, has overturned the US practice of 'zeroing'—a controversial methodology for calculating anti-dumping duties on foreign products. The US has also expressed other concerns such as the AB's treatment of Chinese state-owned companies, violations of statutory timelines as the AB often takes more time than stipulated to decide on a case, and AB rulings having precedential value.

In the late 1990s and the early 2000s, the critics of economic globalisation used

to single out the US for creating international economic institutions like the WTO, which were, at the time, seen as part of the global imperialist state pushing neoliberal capitalism to the detriment of the Third World. In fact, the WTO's dispute settlement system was specifically criticised for creating coercive enforcement machinery pressurising the Third World countries to liberalise their markets. Interestingly, today, the US has turned out to be the biggest critic of the AB, while the Third World states like India are campaigning for its protection.

The AB has actually become a victim of



File photo of Ujal Singh Bhatia, the AB member, whose term ended December 10

its own success. In less than 25 years of existence, it has produced close to 156 rulings involving myriad of issues like taxes on alcoholic beverages, subsidies given for civilian aircraft production, importation of solar cells, anti-dumping duties on shrimps, packaging regulations for cigarettes, regulation of gambling services, measures affecting imports of beef, etc. The AB, upholding international rule of law, on several occasions, has passed judgments against powerful developed countries like the US. Both in terms of sheer volume of cases and the wealth of jurisprudence produced, the AB has out-

performed most international courts and international tribunals.

Adverse implications

The AB going into slumber is a serious setback for the rules-based multilateral trading order. The most immediate implication would be that if any WTO panel report were appealed, it would go into a 'void', as the AB doesn't have the minimum number of members required to hear the case. This would allow a country to block the adoption of the report if it loses a trade dispute, and thus not comply with the WTO panel decision. India, recently, has

appealed against a WTO panel ruling, which pronounced India's certain provisions of the domestic export incentive initiatives as WTO-inconsistent. Therefore, India can continue with these measures despite their inconsistency with WTO rules. Likewise, the US has appealed against a WTO panel ruling in favour of India in the renewable energy sector, thus allowing it to continue with the WTO-inconsistent measures.

The role of the WTO's dispute settlement mechanism including the AB is premised on the assumption that a country unilaterally determining treaty violation by another country may be wrong. Any such unilateral determination may lead to countries overreacting in suspending reciprocal concessions that form part of WTO agreements. This, in turn, will trigger greater retaliation from the other side, leading to trade wars and ushering in instability in the global economy. As the noted international lawyer Joost Pauwelyn believes, given the eventual uselessness of purely unilateral enforcement, hopefully the US will also accept third-party adjudication in some form. However, it is important for WTO member countries to carry out required reforms ensuring that the AB follows the strict timelines given in WTO rules to decide on appeals. Finally, all nations, especially the US, should remember that the liberal rules-based global economic order built so ardently post the Second World War should not be sacrificed at the altar of domestic and competitive populism.