



A partisan ruling

The disqualification of 18 MLAs in Tamil Nadu is highly questionable

The disqualification of 18 dissident AIADMK legislators by the Tamil Nadu Assembly Speaker is a partisan decision aimed at securing a majority for the seven-month-old Edappadi K. Palaniswami government after a rebellion reduced it to a minority. The Speaker's ruling comes at a time when there is an increasingly indefensible reluctance on the part of the Governor, Ch. Vidyasagar Rao, to order a floor test. It serves the political purpose of reducing the total membership of the House from 233 to 215 and, thereby, the majority threshold from 117 to 108. The disqualified legislators are loyalists of T.T.V. Dhinakaran, who heads a faction of the AIADMK opposed to the ruling dispensation controlled by Mr. Palaniswami and his Deputy Chief Minister O. Panneerselvam. The Speaker has interpreted their memorandum to the Governor expressing lack of confidence in the Chief Minister as amounting to “voluntarily giving up” their party membership. The opposition Dravida Munnetra Kazhagam had feared precisely such a turn of events. It had voiced apprehensions that the Speaker may disqualify the dissidents ahead of a possible trust vote, leading to the Madras High Court directing that there should be no floor test until September 20. The Dhinakaran faction may not command much popular support, but that is no reason for the Speaker to act in a politically partisan manner and keep them out of the House to prevent them from voting against the government. There is a growing feeling that the present regime will stop at nothing to remain in office. The Governor's silence adds to the impression that the Centre is not averse to letting the regime go on, despite its apparent lack of numbers.

The Speaker's decision under the Tenth Schedule of the Constitution is subject to judicial review. If it is challenged, the courts will have to decide whether legislators withdrawing support to their own party's government amounts to voluntarily giving up their membership, a condition under which a member may be disqualified. The second condition is attracted only when a whip is disobeyed, but even then there is a provision for the party to condone such a breach. In *Balchandra L. Jarkiholi & Others v. B.S. Yeddyurappa* (2011), the Supreme Court, in similar circumstances, quashed the disqualification of 11 MLAs in Karnataka. Last year, the Supreme Court declined to intervene when some dissenters hobnobbing with the opposition were disqualified just ahead of Harish Rawat's confidence vote in Uttarakhand. In that case, the rebels had joined hands with the opposition in meeting the Governor, whereas there is no proven link between the AIADMK dissidents and the opposition in Tamil Nadu. While such legal and constitutional questions may be decided judicially, political morality has suffered another blow in the State. This government may survive a floor test in a truncated House, but at a cost to its legitimacy.

A hand from Hamas

Its overture to Fatah gives Palestinians a stronger hand in reviving the peace process

Hamas's decision to dissolve the Gaza administrative committee and hold talks with Fatah is the strongest signal yet from the Islamist group that it is ready to cooperate in finding common ground with its political rival. Hamas, which won the 2006 elections in the Palestinian territories, fought a war with Fatah in 2007 for the control of Gaza after its West Bank government was dissolved by Palestinian Authority President Mahmoud Abbas. Ever since, Mr. Abbas's Fatah ruled those parts of the West Bank that are not under Israeli control, while Hamas dominated Gaza. However, in recent months Hamas has shown interest in a rapprochement as the humanitarian crisis in the Gaza Strip, blockaded by Israel and Egypt, worsens. In May it adopted a new political charter, softening its stand on Israel and accepting, for the first time, the idea of a Palestinian state based on the 1967 border. In the latest move, Hamas, after holding talks with Egyptian officials, has said it would allow the reconciliation government based in Ramallah to run Gaza and hold elections in the territories. Expectedly, Fatah has welcomed the statement. Over the past decade, while Israel has steadily tightened its occupation of the West Bank, the Palestinian leadership has been unable to either mount an effective resistance or launch a convincing peace bid, mainly because of the divisions within. Both Fatah and Hamas held talks several times, but in vain, about solving differences and forming a unity government.

Now that both have come forward and demonstrated a willingness to compromise, the possibility of a rapprochement is higher. But this does not mean the future will be smooth for Palestinians; sticky issues remain. Even if both sides bury the hatchet and form a national unity government, Hamas's role in such an arrangement would continue to be contentious. Hamas is seen as a terrorist organisation by several international actors, including the United States, Israel and the European Union. This is one reason why the elected government of Hamas was not allowed to rule a decade ago. Despite these challenges, Hamas's moderation is real and gradual. It first set aside a charter, which Israel and its allies saw as an impediment to peace, and it is now proposing intra-Palestinian reconciliation. This moderation offers an opportunity not just for Fatah but for other stakeholders as well. If Fatah and Hamas form a national government and ease the many restrictions currently in place on Gaza, it would be a huge relief for the territory's 1.8 million people. A united bloc would also enhance the bargaining power of the Palestinians vis-à-vis Israel. The international community should also realise the potential of these changes and respond positively by putting pressure on Israel to come forward for a new round of the peace process.

Gauging the status quo

With China's critical 19th Party Congress set to take place soon, peace on its periphery is a necessity



M.K. NARAYANAN

The Brazil, Russia, India, China and South Africa grouping (BRICS) has since long ceased to be of material significance as multilateral institutions go. The recent BRICS Summit in Xiamen (China) only seemed to confirm this. It suggests that BRICS may be going the way of quite a few other organisations.

Inconsequential declaration

Little of consequence appears to have happened, or to have emerged, from the latest summit. The Xiamen Declaration is proof of this. Considering that this meeting was taking place in the shadow of significant global events, notably North Korea's nuclear provocations and the U.S. response, other serious developments in Asia, including Afghanistan and West Asia, apart from issues of consequence elsewhere, the absence of any reference to these events in the Summit Declaration suggests that BRICS is clearly out of sync with current realities.

Much has been made by the media about the inclusion of Pakistan-based terrorist groups such as the Lashkar-e-Taiba and the Jaish-e-Mohammed among the many terrorist groups active in the region. It, however, needs to be understood that this was merely a reiteration of something already mentioned in the declaration of the Heart of Asia Conference held in India in December 2016.

The Heart of Asia declaration had highlighted the 'gravity of the security situation in Afghanistan and in the region, drawing attention to the high levels of violence caused by the Taliban, terrorist groups including the Islamic State, al-Qaeda and its affiliates, the Haqqani network, Islamic Movement of Uzbekistan, East Turkestan Islamic Movement (ETIM), Lashkar-e-Taiba, Jaish-e-Mohammed, Tehreek-e-Taliban



Pakistan, Jamaat-ul-Ahrar, Jundullah and other foreign terrorist groups'. To attach special significance to the inclusion of this passage in the Xiamen Declaration, and view it as China administering a resounding slap on its ally, would be a profound mistake.

The BRICS declaration is perhaps more significant for what it did not include. Absence of any mention of China's Belt and Road Initiative (BRI) – even though Beijing sets such great store by it – is one. At this point one can only speculate on the reason. It is possible that China may not have wanted to introduce a discordant note into the proceedings – knowing India's reservations regarding the project – of a conference that it was presiding over. Or perhaps, China does not think that BRICS could make a material contribution to the achievement of its objective.

BRICS' limited scope

One takeaway from the conference also could be that China sees little use of BRICS to achieve its geopolitical and geo-economic objectives across Asia and beyond. BRICS as a body can hardly help China in dealing with a knotty problem like North Korea. It has no need for BRICS to deal with problems such as the South China Sea and freedom of navigation on the seas. From its point of view, BRICS is an outlier as far as pressing problems in the region and beyond are concerned.

BRICS suffers from other infirmities as well. Brazil and South Africa are increasingly becoming peripheral to BRICS' aims and objectives. Russia is currently more preoccupied with establishing its supremacy in Eurasia, and its in-

terest in BRICS is not of the same order as in the past. This leaves only India, and limits the scope of BRICS to issues and regions such as Afghanistan that have featured in previous BRICS meetings.

The summit, however, provided an opportunity for leaders to meet and conduct business. For instance, Prime Minister Narendra Modi's intervention at the BRICS Business Council helped highlight India's emergence as one of the most open economies on the globe. At the BRICS Emerging Markets and Developing Countries Dialogue, Mr. Modi highlighted India's long tradition of partnership with fellow developing countries. Among the ten commitments he listed was that of creating a safer world by “organised and coordinated actions on at least three issues: counter-terrorism, cyber security and disaster management”. The Prime Minister also called for a skilled, healthier and equitable world, as also the critical importance of sustainable development goals.

Bilaterals, Beijing détente

Considerable significance attaches to the meetings held between Mr. Modi and the Russian and Chinese leaders on the sidelines of the summit. The emphasis during his meeting with Russian President Vladimir Putin seems to have been on the restoration of ties between the two countries to levels that existed in the past. Discussions also centred on ways to boost bilateral trade and investment, especially in the oil and natural gas sectors.

The meeting with Chinese President Xi Jinping acquired particular significance coming as it did after the over two-month-long stand-off at the Doklam Plateau.

The convergence between the two countries on international terrorism at the BRICS Summit seems to have led to a thaw for the time being. Assurances emanating from the meeting, and the adoption of a low-key approach, were aimed at enhancing mutual trust. The intention seemed to be to establish 'new ways' to prevent future incidents such as Doklam, and concentrate on essentials needed to establish better relations.

Notwithstanding the carefully structured discussions between the two leaders – and while Doklam did not figure in the discussions – relations between India and China are unlikely to show any marked improvement in the near, and perhaps even in the medium, term. For the present, avoidance of a conflict will remain the principal objective on both sides, with China no doubt looking for an expansion of opportunities for trade. The key watchwords would, hence, be peace and tranquillity.

The road after Doklam

It would take much longer for trust to return; as it is, trust between the two countries had begun to be affected as India moved closer to the U.S., strengthened its relations with countries like Japan and Vietnam that were not too well disposed towards China, and participated in multilateral defence exercises which appeared to have an anti-China slant. In the circumstances, restoring trust is not going to be easy.

In Astana in June this year, when the Indian and Chinese leaders met on the sidelines of the Shanghai Cooperation Organisation Summit, the emphasis was on not allowing “differences to become disputes”. This was reflected in the so-called Astana Understanding. Doklam effectively put paid to this. While Mr. Modi is possibly willing to put Doklam behind him, the Chinese are unlikely to do so and are more likely to moderate their response keeping the Doklam incident in mind. China may continue to reiterate the obvious and talk of 'peaceful co-existence and mutually beneficial cooperation to strengthen bilateral relations', but India needs to be cautious. China is

likely to view India's actions with even greater suspicion than hitherto.

The kind of language employed by the Chinese side in the context of the meeting of the two leaders is an index of this. Mr. Xi observed that China and India are “each other's opportunities and not threats”; India and China “need to show to the world that peaceful co-existence and win-win cooperation is the only right choice for the two countries”; China would like to work with India to uphold the Five Principles of Peaceful Co-existence (Panchsheel), advance political mutual trust, mutually beneficial cooperation and move forward the development of bilateral relations along the right track. This might sound like accenting the positive in Sino-Indian relations and moving to a more calibrated approach, but it does not necessarily reflect any greater willingness on the part of China to see the other side's point of view.

Evidently, the China-centric world view will continue to prevail. For the moment, China is anxious to maintain peace on its border with India, as China has lately been sensing opposition to its policies from many other countries, apart from a host of problems in its neighbourhood. In totality, these could undermine the Chinese Dream of Mr. Xi. North Korea is perhaps the most vexatious of the problems, one that is happening on China's doorstep. Smaller countries of Southeast Asia such as Indonesia, and even Singapore and Vietnam, are signalling opposition to China's restrictions on rites of maritime passage and freedom of navigation in the seas around China.

China also faces an ever widening arc of threats from terrorists of different categories such as the ETIM, the Islamic Movement of Uzbekistan and Uighur separatists to its West. With the critical 19th Party Congress set to take place soon, peace and tranquillity on its periphery has thus become an imperative necessity.

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Questions about the GST cess

They relate to its legal validity and conformity with the Constitution



ASHRITA PRASAD KOTHA & PRADNYA TALEKAR

As part of the Goods and Services Tax (GST) reforms, a new levy called the GST Compensation Cess has been introduced to make good apprehended losses to States in the first five years of GST implementation. The Cess has been introduced through the GST (Compensation to States) Act, 2017 and is levied on inter- and intra-State supply of notified goods such as aerated drinks, coal, tobacco, automobiles and the ambiguous category of 'other supplies'. The proceeds of the cess will be distributed to loss-incurring States on the basis of a prescribed formula. The schedule to the Act mentions the maximum rates of the cess, which extend to 290%.

While the policy flip-flop on the rates reveal the *ad hoc* implementation of the cess, there remains

much to be said about the legal validity of the Act.

A cess is a levy for a specific purpose. The quintessential feature of a cess is that it is levied for a 'specific purpose' and the proceeds are earmarked as such. Under Article 270 of the Constitution, a cess tax has special privilege as the proceeds can be retained exclusively by the Union and need not be shared with States. The object of granting this special status is to ensure expenditure for a specific purpose, as is evident from the Fourth Finance Commission Report.

Dilution of characteristics

A cess must have an earmarked purpose and the contributor and beneficiary must be relatable. In the past, cesses were imposed by the Central government to raise finances for specific industries and labour welfare within chosen industries. If compensating State governments is considered to be a specific purpose, any general revenue raising measure can be considered to be backed by an earmarked purpose. Once the money is transferred to State governments, it can be used to fund just



about any scheme and may even be used merely to adjust the respective State government's fiscal deficit. Further, there is no relation between the persons contributing to the cess and the recipients, the State governments. All these factors make the cess look more like an additional tax or surcharge which becomes problematic as surcharge on the GST is prohibited under Article 271.

Section 18 of the 122nd Constitution Amendment Bill, 2014 proposed a 1% additional tax to compensate States but this was withdrawn while enacting the Amendment Act. There is no provision in the Amendment Act for an

additional tax to compensate the States for apprehended losses from GST implementation. As per Article 279A(4)(f), the GST Council's power to recommend a special rate is confined to raising additional resources during any natural calamity or disaster. The cess cannot be justified under such power either. Moreover, pursuant to the 101st Constitution Amendment Act, 2016, Article 271 has been amended to state that an additional tax/surcharge cannot be imposed over and above the GST tax rates. Thus it appears that by enacting the cess, Parliament is seeking to do indirectly that which cannot be done directly, which amounts to it being a colourable piece of legislation.

Burdening select goods

The goods identified in the Act, such as aerated drinks, coal, tobacco, automobiles and the ambiguous category of “other supplies”, do not form a distinct category or class deserving the liability to pay the cess so as to compensate States, and it is doubtful it will succeed if tested under the anvil of the right to equality under

Article 14. While the sin goods argument is alluring, it is erroneous, looking at misfits such as coal and aerated drinks and the uncovered sin goods including luxury goods, jewellery, gadgets and the like. Similarly, “other supplies” leaves much to the unfettered discretion of the government.

The cess reflects the same lack of coherence as the GST regime in general, the appeasement measures being weighed down by the legal entanglements created therein. It also raises the question as to whether the targeted goods have been chosen merely because of their inelasticity – less dependence of demand on price change – ensuring the generation of not just adequate but also surplus funds for the government. While the Delhi High Court has granted relief to a coal trader against implementation of the Act, it remains to be seen if the legislation will be tested by courts on constitutional violation and colourable action.

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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.

Know your Narmada

There is no doubt that the Sardar Sarovar mega dam will usher in an era of prosperity and development in the region (“Narmada dam built despite attempts to stop it, says PM”, September 18). However, the aspirations of the people cannot be fulfilled by exploiting the rights and livelihoods of others. Raising the height of the dam has submerged many villages, rendering many homeless. The displacement rehabilitation process followed has not been transparent and there are many grievances that remain unaddressed. The State government has to take proactive steps and ensure that this aspect of the dam's construction is not ignored.

GAGAN PRATAP SINGH, Noida, Uttar Pradesh

■ The headline was interesting and triggers many questions. In building the dam, were people

whose voices matter listened to and heard? Why were people attempting to stop the dam? Was this attempt to stop the project a way to block Gujarat's development or to protect Gujarat's environment for its people for posterity? While most of us rejoice that a long-delayed project has been completed, we also need to ask ourselves whether we have heard the cries of the people who have had to bear the consequences of this project. Does India have appropriate ways and means to listen to the voices of women, the poor and others concerned even if they live beyond its boundaries?

LANCIA RODRIGUES, Chennai

Designing Amaravati

The decisions being taken by the government of Andhra Pradesh on the architectural plan for the capital city Amaravati are irrational (“Irrationalism in

city planning”, September 18). India is home to internationally renowned structures that are still in top condition even after centuries. The country also has a history of producing great architects. Therefore, it is strange why the State Chief Minister is particular about inviting foreign firms. Further, seeking the advice of cinema director S.S. Rajamouli is ridiculous. Are the sets of 'Baahubali' realistic? Let us not build structures which will remain inaccessible to the public. We need to develop a capital which has to serve future generations and is well worth the crores of tax-payer money spent.

S. GOPAL, Kakinda, Andhra Pradesh

Train travel

Implementing the new rules on sleeping hours in reserved sleeper coaches is easier said than done (“Railways cut sleep time by an hour”, September 18). Long-distance travel takes

20-30 hours on an average and to expect passengers who occupy the lower and middle berths to be seated throughout the day is beyond any reasoning. Even a teenager would find it tough. It is advisable that adjustments as far as sharing berths are concerned are left to passengers themselves. Whatever be the rules, there are bound to be skirmishes on board the train with no one to monitor. Instead, the Indian Railways should address other issues such as blocking unreserved passengers, especially office-goers, who occupy reserved compartments during the day and inconvenience passengers. Railway staff take the liberty of travelling in the air-conditioned coaches. There is also the class of passengers that talks loudly well past midnight, disturbing those who want peace and sleep. As far as hygiene is concerned, the Railways

have to stop thinking of shortcuts.

V. SUBRAMANIAN, Chennai

■ The decision of the Indian Railways to do away with the pasting of reservation charts on coaches at select stations is ill-advised (Some editions, “Reservation charts on trains set to disappear”, September 18). This 'experiment' may work well on premium and luxury long-distance trains that halt at limited stops. Not everyone is civilised or considerate towards other bona fide travellers.

PUSHPA DORAI, Nurai, Kerala

CORRECTIONS & CLARIFICATIONS:

In the Non-Fiction page (Sept. 17, 2017), a book review headlined “Meltdown and aftermath” gave the title of the book under review as “Towards a Safer World of Banking: Ban Regulation After the Subprime Crisis”. It is “Bank” – not “Ban”.

An article headlined “Research papers are getting harder to read, comprehend” (Sept. 17, 2017, Science and Technology page) talked about the analysis of the language of the abstracts of papers published over the last 34 years – between 1880 and 2015. It should have been 135 years.

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