



Unedifying episode

The Supreme Court has defused the situation, but concerns remain over stand-off in Kolkata

In its ostensibly even-handed intervention in the stand-off between the Central and West Bengal governments over the manner of investigation of the Saradha Chit Fund case, the Supreme Court has de-escalated political tensions, at least for now. The decision allowed both sides in the face-off to claim “moral victory” – even if it was West Bengal Chief Minister Mamata Banerjee who was forced to climb down from the aggressive posture she took in denying the Central Bureau of Investigation room to question Kolkata Police Commissioner Rajeev Kumar. However, while ordering him to cooperate with the CBI in “neutral” Shillong, the Court restrained the CBI from taking any coercive action against Mr. Kumar. The Police Commissioner and his Special Investigation Team investigating the chit fund case had been served a number of notices to appear before the CBI before it sent a team to his house in Kolkata. While Ms. Banerjee may have reason to believe that the timing of the CBI’s operation was politically motivated, her government’s response – manhandling and detaining the CBI officials – was shocking and inexcusable. In the polarised political atmosphere, her belligerence expectedly secured the backing of a large number of Opposition parties, and even had the Congress rally around her during an impromptu sit-in protest. However, in attempting to obstruct the CBI action in a court-ordered investigation, Ms. Banerjee once again demonstrated that she is prone to taking arguments over administrative procedures to the streets. A decade ago, she burnished her credentials as the Opposition leader who would dethrone the Left Front combine in West Bengal with her agitation over the Singur land acquisition. But her attempt now to bring the State, where she heads the government, to a grinding halt speaks poorly of her political maturity. Ms. Banerjee is free to read political motives into the actions of a Central agency – but she must conduct that fight politically and by heeding her responsibilities as a Chief Minister. To hold a dharna in aid of an officer who is required for questioning does her no credit.

There are bound to be questions whether this matter should have been escalated to such an unpleasant level. The CBI says there was no proper response to the earlier summonses it sent to the Police Commissioner, and alleges that he could have destroyed evidence that was initially gathered by the Special Investigation Team that he had supervised in the initial stage of the probe. But it is doubtful whether descending on a senior officer’s residence on a Sunday evening with a large team of officers was the right course of action for the CBI, as it was liable to be interpreted as a high-handed attempt to browbeat and embarrass the State government. The only way the CBI can escape this impression is by showing that it was justified in demanding the questioning of Mr. Kumar and establishing proof of its suspicions about his role in covering up the scam.

Timely review

The very idea of an ‘angel tax’ on start-ups must be reconsidered

Start-ups troubled by the so-called angel tax may soon receive some concession from the government. On Monday, the Centre set up a five-member working committee to look into revising the norms of the angel tax imposed on start-ups. The tax, which was first introduced in 2012 to curb money-laundering through the sale of shares of private unlisted companies at bloated prices, has caused a lot of anguish among start-up investors in the country. Start-up owners have complained that income tax officials have asked many start-ups to cough up money when they try to attract capital into their entities by issuing new shares. For its part, the IT department fears that start-ups may be used as convenient tools to launder illegally acquired money, so a tax on investments beyond a certain threshold is necessary to deter such shady operations. But while the intent of such an angel tax may be justifiable, the arbitrary nature of it means the cost of unintended consequences could be larger than the supposed benefits. In trying to curb money-laundering, Section 56(2)(viib) of the Indian Income Tax Act, 1961 gives income tax officials a free hand to harass even genuine start-ups looking to raise investments for their growth. Under the Act, the IT department is free to arbitrarily decide the fair value of a company’s share and tax start-ups if the price at which their new shares are sold to investors is higher than the fair value of these shares. The broad-brush tax on all investments means an unnecessary cost is imposed on the wider start-up community simply because of the lack of better means at the government’s disposal to tackle black money.

The committee set up by the government will, among other things, consider raising the threshold beyond which new investments into start-ups will be taxed. It is expected that start-ups with aggregate paid-up share capital and share premium of less than ₹25 crore, against the previous threshold of only ₹10 crore, will not be taxed while attracting new investment. This would definitely make life easier to a certain extent for angel investors and start-ups. But it will not address the real problem with the angel tax, which has to do with the unbridled power that it vests in the hands of the income tax authorities. Investors, foreign or domestic, may become wary of investing in new ideas when they are taxed while risking money on untested ventures. So the government should look to withdraw the angel tax and focus instead on building the capability to better identify and rein in illegal wealth. Otherwise it risks killing the nascent start-up ecosystem in the country.

Cracks in the framework

With the systematic weakening of institutions, the government risks pushing all resistance to the streets



NEERA CHANDHOKE

The Government of India has reportedly suppressed its own data on current employment, or rather job loss, in the country. It has, thereby, compromised the autonomy and the standing of the National Statistical Commission. This is the latest instalment in the rather sordid story of institutional decay in India, overseen by the leaders of the Bharatiya Janata Party (BJP). This is not to suggest that previous governments did not undermine institutions. The internal Emergency imposed on the country from 1975 to 1977 initiated the process. The government tried to tame bureaucrats as well as the highest court in the land. Postings and appointments were manipulated to suit the ruling dispensation. The BJP government has, however, earned the dubious distinction of sabotaging the autonomy of several political institutions in rapid succession.

Necessary checks

Institutional decay occasions worry because it affects ordinary citizens in disastrous ways. All governments, even those which have been democratically elected, betray an inexorable will to power. Expectedly, expansion of government power violates constitutional rights to freedom, equality and justice. The only way citizens can be protected against any arbitrary and unlawful exercise of power is by limiting the power of government. Liberal democrats, always sceptical of state power, have tried to contain dramatic surges of power by charting out of constitutions and institutional design. Institutions, as the embodiment of formal and informal rules, assure citizens that the government exercises power according to some norms that enable as well as regulate state capacity.

This makes for good political sense when we remember that most human activity is structured by systems of rules – take the intricate and rule-bound game of chess or cricket. Relationships, households, the economy, society, the games we play and do not play take place and develop within the framework of rules. Human beings are social, but we cannot be social unless we know what is expected of us, and what we should do or not do. Without rules that govern relationships – for example, the norm that friendship is based on trust – we will not know what is worthwhile and what is not, what is preferable and what should be avoided, and what is appropriate and what is expedient.

The Canadian political philosopher Charles Taylor has argued in his famous work, *Sources of the Self* (1989), that institutions embody ‘strong evaluations’. We learn to discriminate between right and wrong, better and worse, and higher and lower. These evaluations are not judged subjectively by our own desires or impulses. Institutions, which stand independently of us, give us standards that allow us to evaluate. Following Taylor, we can rightly wonder why political power should be exercised, implemented and executed without rules. Assertions of political power adversely affect our interests and our projects. We should be in a position to judge when this power is exercised fairly or unfairly. Rules in a democracy assure us that justice is synonymous with fairness.



Moreover, rules make our worlds predictable. We know what the boundaries of the freedom of expression are, we know that if the police arrests us tomorrow, we have the right to appoint a lawyer and appeal to the judiciary. Without institutions and rules our life would be chancy, unpredictable and fickle. We would inhabit a space empty of certainties, expectations, aspirations and evaluations.

Rules, not whims

In a democracy, individuals are governed by institutions, and not by men. If we do not live in an institutional universe, we will be at the mercy of capricious individuals. Democrats would rather be administered by a system of rules we can scrutinise and evaluate. Of course, rules can be, and are, unfair. But at least we can struggle against rules. We do not have to commit murders to get the ruling dispensation out of power. We might have to carry out a thousand peaceful demonstrations, approach the courts, lobby our legislative representatives, engage in civil disobedience, or withhold our vote. In a world stamped by the decline of institutions and the exercise of arbitrary power, the only way to dislodge a government is through violence.

The present government has tampered with institutions by ap-

A series of unfortunate missteps

Fixing the federal fallout of the Kerala flood relief funding row requires care



T.P. SREENIVASAN

The differences between the Kerala and Central governments over the denial of external assistance to rebuild the State after the devastating floods of August last year surfaced again last month, in the Kerala Governor’s policy speech in the Assembly as well as the statements of a Kerala Minister at the Pravasi Bharatiya Divas in Varanasi. Governor Justice P. Sathasivam had said that the Kerala government had requested the Centre to enhance its borrowing limit to mobilise additional resources for rebuilding the flood-hit State. “We are still awaiting a favourable response from the Central government in this regard,” he added. Minister K.T. Jaleel, who represented Kerala at the conclave, complained that he was not allowed to raise the issue there. The bitterness over the flood money still persists.

Competitive federalism, in the context of interaction with foreign countries, promoted by Prime Minister Narendra Modi, has proved to be a double-edged sword. Kerala Chief Minister Pinarayi Vijayan now stands accused of violating rules regarding the seeking of foreign assistance. He remains unclear on how to make up for the shortfall, of several crores. The Central government is unable to provide the funds while Kerala has been stopped in its tracks from

seeking resources from abroad, either from the Kerala diaspora or from friendly foreign governments.

The present situation is a result of a series of errors of judgment and misunderstandings on both sides. Mutual political suspicion and a lack of appreciation of the complexities of the international situation have brought about a confrontation. The Chief Minister may have even made diplomatic and tactical misjudgments.

Diplomatic trajectory

India had no qualms about receiving foreign assistance for disaster management till 2004. But when India’s aspiration for permanent membership of the UN Security Council met with strong resistance, New Delhi hit upon the idea of forcing a vote in the General Assembly. The game plan was to secure a two-thirds majority and then attempt to embarrass the permanent members into supporting the expansion of the Security Council. The two false presumptions were that India would win the required number of votes and that the Security Council would wilt under pressure from the General Assembly. In fact, many Assembly members were opposed to the veto even for the existing permanent members and had no interest in creating more permanent members with veto. India thought that it could win over the other countries if it was seen to be helping them in emergencies rather than seeking such assistance for itself.

The tsunami of 2004 and the threat of piracy in the Indian Ocean provided India an oppor-



tunity to test its new posture. Everybody was grateful, but it made no difference to India’s claim to permanent membership. There were other factors too which militated against India’s claim. The Modi government decided, however, to lay down the rules regarding foreign assistance in order to bring some clarity to the situation.

The rules, which were framed in 2016, clarified that India would not solicit any assistance but would receive relief assistance, even as cash, from individuals, charitable institutions and foundations. If cash were to be offered bilaterally by foreign governments, the matter would be considered on a case-by-case basis. Even before the extent of the damage was fully known, I had urged the Central government in early August 2018 to make a suitable amendment to the rule as the damage in Kerala was beyond the capacity to handle it. Needless to say, nobody responded at that stage.

The UAE’s offer

The saga of the offer by the United Arab Emirates (UAE) began well when the Prime Minister was informed by the UAE authorities that relief assistance was being put together as a special gesture, which

pointing its own people to positions of authority, and by using the Enforcement Directorate, Income Tax authorities, the Central Bureau of Investigation and the police as bulldozers to flatten out any site of opposition. In civil society, human rights organisations have been pulverised by blockage of funds, raids and arrests. The shameful way in which human rights activists have been incarcerated without a shred of evidence testifies to the subversion of the rule of law. The ultimate aim of government action is to dismantle institutions, and the delicate relationship of checks and balances among them. This bodes ill for democracy.

The development contravenes the spirit of the freedom struggle. As far back as the 1928 Motilal Nehru constitutional draft, the leadership of the national movement opted for constitutionalism to abridge unpredictable use of power, and grant basic rights to citizens. On November 4, 1948, B.R. Ambedkar, responding to criticism of the draft Constitution in the Constituent Assembly, clarified that the Constitution provided but a framework for future governments. But: “If things go wrong under the new Constitution, the reason will not be that we have a bad constitution. What we will have to say is that Man was vile.” The Indian Constitution established major political institutions, Parliament, executive and the judiciary, laid out the relationship between them, provided for judicial review, and codified political and civil rights. The constitutional framework does not provide thick or substantive conceptions of how we shall think, and in what we shall believe. It provides us with a thin framework that guarantees constitutional morality, or respect for the Constitution as the basis of

political life. Today the ruling party wants to legislate a thick conception of the good. We are instructed to worship the nation, respect the cow, glorify the coercive arm of the state, and listen on bended knees to leaders. Frankly the discourse is reminiscent of the naïve, and often crude, nationalist scripts authored and acted out by the film star Manoj Kumar in the 1960s. We can avoid watching his films without fear of harassment, but we cannot defy the government without being abused and subjected to violence of the pen and tongue.

Upending the balance

The government arrests civil society activists who engage with policy, and vigilante groups attack individuals who dare transport cattle, legitimately, from one part of India to another. Immediately the sympathies of the police and magistrates, some sections of the media and public opinion swing towards the perpetrator, not the victim. The leaders of our ruling dispensation seem to have no respect for the rule of law, nor for the rules that regulate speech in public spaces.

Ultimately institutionalised power that is subject to regulation, and that can withstand the scrutiny of the political public, is meant to protect citizens. Unfortunately, in the India of today institutions are used to protect the ruling class, and its sins of omission and commission. The people who rule us should know that when the relationship between citizens and the state is governed not by institutions but by individuals, politics takes to the streets. And then a thousand revolts happen. We pay heavily for institutional decline.

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the Prime Minister reciprocated with a warm reply of gratitude. But the Kerala Chief Minister’s announcement that the UAE would provide ₹700 crore, made on the same day as the Central government’s announcement of a provision of ₹500 crore, opened a Pandora’s box. It appeared as though the UAE was more generous than New Delhi was to Kerala and that the Central government was not empathetic to Kerala’s plight because of political considerations. Moreover, the source of the information was supposed to have been an Indian businessman in the UAE. An embarrassed UAE government then asked its Ambassador in New Delhi to deny that there was any specific offer of ₹700 crore.

An immediate consequence was a reluctance by other governments to make any offer of bilateral assistance. No one could answer the question whether any offer from other governments would be accepted. When the Thai Ambassador in Delhi was stopped from being at a ceremony to hand over relief goods to an Indian official, the world was convinced that India would not accept resources. The issue was politicised as one between the Bharatiya Janata Party and the ruling CPI(M) in Kerala.

It was against this backdrop that Kerala put forward an unwise proposal to despatch its Ministers abroad to collect donations. This was unacceptable in the context of the policy that had crystallised after the floods in Kerala and the Central Government having refused permission for Ministers other than the Chief Minister to travel to countries. Apart from the

ignominy of soliciting donations, there was a clear likelihood of receiving very little by way of cash donations. The possibility of loans from the International Monetary Fund and the World Bank became distant as the Centre refused to raise the limits on loans from these global organisations that a State government could take. The emergence of the Sabarimala crisis further eroded the credibility of the State Government and much of the empathy over the flood damage was also lost.

The Prime Minister had always maintained that marshalling of resources is the responsibility of the Union government according to the Constitution. Now the only option before Kerala is to demand more funding from the Centre to make up the shortfall. Undoubtedly, the situation is a tragedy of errors caused by an inadequate familiarity with decision making and the complexity of international relations.

India is a federal state, but unitary in nature when it comes to national security and foreign policy. Individual States may have some advantages in dealing with some countries in their neighbourhood, but they will do well not to transgress the thin line when it comes to managing international relations. Now it will take longer for trust to be established to have competitive federalism work again.

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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.

Stand-off in Kolkata

It is a moot question whether West Bengal Chief Minister Mamata Banerjee can save the country and the Constitution by preventing a constitutionally established Central agency from doing its duty (Page 1, “Opposition leaders call on Mamata, back her protest”, February 5). Ms. Banerjee has been elected by the people of West Bengal to govern the State and not to sit in dharna in the heart of Kolkata. If she thinks that her police chief, who is allegedly involved in a major scam, is above board, then she must fight it out not in the streets but in the

country’s top court. The blank endorsement to her stir from political figures who themselves were/are associated with major scams would lend credence to the BJP’s line that the political parties supporting Ms. Banerjee are an alliance of the corrupt. Ms. Banerjee must ask her police chief to face the investigation until his innocence is proved.

KANGAYAM R. NARASIMHAN, Chennai

■ The timing of the CBI’s action certainly leads to the perception that all this has been planned with the general election in view. The Central government’s anti-

corruption stance is flawed as there seems to be no action being taken against those associated with the ruling party and who face allegations of corruption. In Tamil Nadu, the BJP is seen to be supporting a party perceived to be corrupt. If the Prime Minister wants to prove that he is serious about going after the corrupt, he must demonstrate that it is being done without any political bias.

S. BALA, Coimbatore

A distressing cycle

It is disheartening to note the difficulties being faced by those left out of the draft National Register of Citizens

in trying to prove their citizenship (Editorial page, “A national register of exclusion”, February 5). Although the exercise is an essential part of the commitment to the people of Assam, as a part of the Assam Accord, it merits a more humane approach. The account amply illustrates how the marginalised are left to fend for themselves amid bureaucratic inefficiencies and procedural complexities. It is imperative that there be course corrections; otherwise the exercise runs the risk of fuelling a parallel movement against the state by those being victimised now. And if this happens, it would only heighten unrest

in the already disturbed Northeast.

YOGESH AGGARWAL, New Delhi

Fighting cancer

One needs to express deep appreciation to cancer survivors, those who are bravely fighting the disease and also the medical fraternity. It is a combination of medicine, the fighting spirit and the never-say-die attitude which will aid them in recovery. It was Norman

Cousins who said, “Drugs are not always necessary. Belief in recovery always is.” The answer to cancer is: Never give up, fight back. Greater awareness and early interventions are much needed to tackle the disease (Chennai, “Media should improve public understanding of cancer: N. Ram”, February 5).

T.S. KARTHIK, Chennai

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CORRECTIONS & CLARIFICATIONS: “India rises to No. 2”, said a Sports page (Feb. 5, 2019) heading. It was erroneous because India was already at No. 2 in the ODI ranking. To say that it rose to No. 2 is wrong. It would have been appropriate to say “India remains at No. 2.”

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