



Crunch time at WTO

India faces a tough challenge on farm issues at the Buenos Aires ministerial meet

As leaders at the World Trade Organisation's 11th biennial Ministerial Conference in Buenos Aires seek to define the future contours of multilateral global trade, the challenges the U.S. has mounted on the institution are impossible to ignore. Notable among the proposals trade ministers will consider are those relating to new rules on farm subsidies, the elimination of support for unsustainable fisheries, and the regulation of e-commerce. With the backing of more than 100 countries, a joint proposal from India and China to eliminate the most trade-distorting farm subsidies worth \$160 billion in several industrialised economies is arguably the most contentious agenda item at the Ministerial. The two countries see this as a prerequisite to address the prevailing imbalance in the Agreement on Agriculture, which unfairly benefits developed countries. But host Argentina has cautioned that the joint proposal could potentially unravel negotiations. Lending credence to such scepticism is the lukewarm stance the U.S. has adopted towards the WTO over the past year, suggesting that the Ministerial meet should serve as a forum for reflection rather than to shape substantive agreements. The other major dispute centres on finding a so-called permanent solution to the large subsidies that underpin public stock-holding programmes to bolster food security in the developing world. The G-33 coalition – which includes Indonesia, China and India – seeks a complete exemption from commitments to reduce subsidies, such as minimum support prices, from this poverty-alleviation programme. New Delhi has declined to negotiate any more trade-offs on this proposal at Buenos Aires, or accept calls for stringent transparency requirements to monitor these schemes. The EU and Brazil have expressed broad support for the G-33 coalition's position on public stock-holding programmes. But in return they seek agreement on their own proposal to reduce trade-distorting subsidies on a percentage basis, in both advanced and developing economies.

The existential crisis facing the WTO is heightened by U.S. President Donald Trump's combative approach to the multilateral institutional framework. Washington has been exploring an alternative, unilateral route away from the formal dispute resolution mechanism of the Geneva-based body to settle perceived and real trade conflicts with partners. It has blocked fresh appointments to fill vacancies on the seven-member WTO appellate body. The risk of Mr. Trump's protectionist rhetoric translating into economic barriers remains real. The response to that challenge is to make the gains of globalisation more visible and its transient downsides politically less painful. Trade leaders gathered in Buenos Aires can ill-afford to lose sight of this imperative.

Turn the page

South Africa's ANC must seize the chance to pull away from the Zuma cabal

This month South Africa will have a rare opportunity to break away from the difficult political legacy of corruption and governance failures that have blighted its post-apartheid years. At a conference during December 16-20, the African National Congress will pick its candidate for party leader, and that person will go on to replace 10-year incumbent President Jacob Zuma. Whoever Mr. Zuma hands over the reins of power to will be the favourite to become the country's next President in 2019. But he or she will also inherit a troubled political system and a nervous, gloomy economy. Steadily rising unemployment, now nearly touching 28%, has been the chief characteristic of what some describe as Mr. Zuma's "scandal-ridden decade" at the helm of the ANC. This has been, by most accounts, a period during which allegations of grand corruption and cronyism multiplied exponentially. Promising to root out this pervasive rot in institutional quality is one of two leading candidates: Deputy President Cyril Ramaphosa, a policy centrist and firm member of the party's constitutionalist wing. The other serious candidate in the reckoning is Nkosazana Dlamini-Zuma, Mr. Zuma's ex-wife, who was a minister across several cabinets and chair of the African Union.

Ms. Dlamini-Zuma, if she prevails, is expected to muddy the prospects of any investigation into alleged murky financial dealings between Mr. Zuma's son and three brothers of the wealthy, Indian-origin Gupta family of South Africa, owners of a massive business conglomerate that controls stakes in the computer equipment, media and mining industries. She is also expected to be the candidate of continuity inasmuch as she will echo Mr. Zuma's call for "radical economic transformation" and continue policies that are ostensibly aimed at redistributing control of resources to the nation's relatively impoverished black majority. Either way, her nomination will boost the forces of "state capture," or economic rent-seeking built on the marketisation of the South African state itself. Already, there are 783 counts of corruption relating to a 1999 arms deal pending against Mr. Zuma, yet no charges have been pressed. Similarly, despite reams of evidence against the Gupras in a report by a former Public Protector, no enforcement action has been forthcoming. According to Pravin Gordhan, who was fired as Finance Minister in March 2017, about \$15 billion "has been looted" owing to undue influence of private interests over public institutions. Yet even if Mr. Ramaphosa triumphs at the party conclave, the troubles of the ANC may be far from over. With its overall popularity declining, the party will have to work hard to bring in the next generation of leaders, with a greater political stature, if it wishes to realise a greater collective destiny for South Africa.



HAPPYMON JACOB

Thirteen thousand kilometres. That's how far North Korea's newest Hwasong-15 missile can travel, which puts the United States, its principal adversary, within striking distance. With nuclear capable intercontinental ballistic missiles in its arsenal, and with hardly any workable U.S. military options to disarm Pyongyang, nuclear North Korea is now an inevitability and here to stay. Lessons from the tragic end of Saddam Hussein and Muammar Qadhafi would further disincentivise North Korean supreme leader Kim Jong-un to give up his weapons. Pyongyang's neighbours, namely Japan and South Korea, and the international community, the U.S. in particular, however, have not reconciled to this reality provoking a nuclear crisis in the Korean peninsula.

The rationality of escalation

Kim Jong-un has been called all kinds of names, from a ruthless dictator to a madman. But Kim's actions consolidating his hold over power in Pyongyang or developing North Korea's strategic arsenal show that he is anything but irrational. More pertinently, his policy of taking on the entire international community is seemingly premised on the classical military strategy of escalating to de-escalate – to initially escalate to unacceptable levels so as to force one's adversaries to make concessions in areas they otherwise would not. Being recognised as a nuclear weapon capable state would be the foremost objective; survival of his regime and an eventual removal of sanctions would be the natural consequences of such a recognition.

Given that Pyongyang is pursuing such an escalatory strategy when there is a great deal of great power disharmony and American

indecisiveness, the odds are heavily stacked in its favour. In this game of chicken, Kim seems to be the winner.

Great power buck-passing

Ever since Pyongyang withdrew from the Nuclear Nonproliferation Treaty (NPT) in 2003, which led to the Six-Party Talks to diffuse the situation in the Korean peninsula, the North Korean regime has played the great powers against each other, exploiting their respective strategic calculations vis-à-vis Pyongyang, and each other. Having outmanoeuvred the big boys, North Korea conducted several nuclear tests and has now reached a point of no return, leaving the great powers stupefied and outwitted. Notwithstanding Pyongyang's determination to go down this road by all means, the differing great power endgames and their unwillingness to commit sustained political and diplomatic capital, individually and together, to the Korean peninsula have contributed to the current crisis in a major way.

Today, having exhausted all its strategies, from imposing sanctions to isolating North Korea, Washington has neither any leverage nor is it in a position to make a successful military strike against the country. China is not only worried about a lethal nuclear fallout in its neighbourhood and the potential rush of North Korean refugees into its territory but also uneasy about what may otherwise be an excellent solution – a reunified Korea, something Beijing thinks will undercut its rising regional predominance. Russia, having had clandestine dealings with the

Arbitrary and irrational

Declaring triple talaq a penal offence does not stand up to first principles of criminal jurisprudence



FAIZAN MUSTAFA

The proposal by the government to introduce a Muslim Woman Protection of Rights on Marriage Bill in the winter session of Parliament – wherein a husband who resorts to instant triple talaq can be jailed for up to three years and fined – needs closer scrutiny as there is stigma attached to criminal conviction. On August 22, 2017, a five judge Bench of the Supreme Court, in a majority 3:2 judgment, set aside the practice of Talaq-e-Biddat (triple talaq); the minority view of Chief Justice J.S. Khehar, who led the Bench, and Justice S. Abdul Nazeer was that triple divorce is a valid form of divorce.

If Parliament wants, it can enact a law on it. But nowhere in its judgment has the top court said that triple divorce is to be criminally punished.

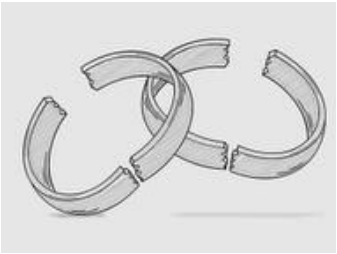
No longer valid

No one can question Parliament's power to legislate with respect to personal laws under Entry 5 of the Concurrent List. But in the Su-

preme Court judgment, the majority of three judges had already "set aside" triple divorce. Under Article 141 of the Constitution, this is the "law declared by the Supreme Court". Therefore, there is basically no need for any law as triple divorce no longer dissolves marriage. But since the court did not explicitly state the consequences of its three pronouncements, Parliament may say that the three pronouncements will count as one revocable divorce. This is the law in most Muslim countries whose examples were cited by the government in the top court.

The stand of the government, which, citing data, said that its decision was influenced by over 60 cases of triple divorce even after the Supreme Court's decision is not correct. The belief that if wrongful conduct becomes a crime, people will refrain from indulging in it is both erroneous and not been substantially proved by any authentic empirical research.

Since triple divorce no more dissolves marriage, its pronouncement is inconsequential and in no way adversely affects either the wife or society. Thus no legitimate state interest is adversely affected. In making triple divorce a penal offence, the government is in fact like the Rajiv Gandhi government after the Shah Bano case – accepting the view of conservative Ulema



who have themselves taken the stand that while triple divorce validly dissolves marriage, the person making three instant pronouncements is liable to punishment. Are we going to insist on mens rea (guilty intention) or make triple divorce a 'strict liability' offence which would mean that even if the person did not intend to divorce his wife, he would be punished for mere utterance of the word "divorce" thrice? Since the cardinal principle of criminal law is presumption of innocence and the burden of proof is always on the prosecution which has to prove the case beyond a shadow of a doubt, how will the poor wife prove instant triple divorce if declared orally when no one else was around? The husband will be entitled to acquittal claiming the benefit of doubt. Since the law makes the husband liable for the payment of maintenance, how will he pay maintenance if he is sent to jail?

Even more crucial, is this ques-

duced especially with the arrival of Mr. Trump and the assertion of China and Russia. What is even more worrying is this: the failure of the great powers to arrive at a workable consensus in crisis situations is perhaps a sign of the times to come.

Second, the current crisis is further intensified by the deal-breaking tendencies of Mr. Trump. For instance, his administration's tirade against the Iran nuclear deal, the end result of long, arduous negotiations, is sending out all the wrong signals to the international community. If Kim's North Korea is decidedly revisionist, Mr. Trump's revisionist tendencies are equally damaging.

What is also becoming clear today is that isolating states that "misbehave" does not resolve conflicts. Be it Pakistan, Iran or North Korea, isolating states in the international system can only further complicate existing crises. The reason why we have been able to restrain the development of Iranian nuclear weapons is precisely because the P5+1 (China, France, Russia, the United Kingdom, the United States, plus Germany) reached a historic nuclear deal in 2015 despite pressure from within the U.S. and countries such as Israel to use force against Tehran. Had it not been for this deal, we would have had quite a mess in our neighbourhood today.

Finally, and at a deeper level, the disarmament platitudes of the N-5 (or the five nuclear weapon states) and no progress on their disarmament commitments have eroded the faith of the nuclear have-nots in the global nuclear order. In an indirect but relevant way, such erosion of a normative global order has contributed to the North Korean crisis. Therefore, those lamenting how Kim's nukes will weaken the non-proliferation regime have only themselves to blame for it.

The future

Now that Pyongyang has crossed the nuclear threshold, international sanctions and the use of force against North Korea will not yield the desired results. It will lead to

immeasurable human suffering within North Korea and in its neighbourhood. We are way past tactical solutions, and, therefore, only a comprehensive, sustained and diplomatic solution will work, though the result of which is uncertain, and the intent for which is non-existent among the great powers at this point. However, if indeed Kim is "escalating to deescalate", Pyongyang might be open to such engagement especially since it has now gone beyond being forcibly disarmed. Moreover, for Kim, talking itself would constitute a form of recognition for his regime.

The most unpleasant part of such a comprehensive solution would involve according de facto "recognition" to North Korea's nuclear weapons. In other words, North Korea has nuclear weapons and its delivery mechanism in its custody, and there is no getting away from that fact, not now. If so, all we can do now is to consider how we can live with a nuclear North Korea rather than think of impractical military solutions to disarm Pyongyang. For sure, it would be a pity to add it to the list of states possessing nuclear weapons. But then there is a time to prevent something from becoming a reality, and there is a time to accept when it becomes an inevitable reality.

The operational aspect of this approach would involve taking on board North Korea's historical grievances, involving the regional powers including China and South Korea to reach out to Kim, and reviving the dormant Six Party Talks at the earliest. Revival of the Six Party talks is important precisely because entrusting China and or Russia to solely deal with North Korea would be unwise. Moreover, multilateral engagement would also prevent anyone from engaging in underhand dealings with Pyongyang.

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tion. On what basis has the Bill provided for imprisonment of three years?

Under the IPC

Why did the government not look at provisions under the Indian Penal Code (IPC) which is the general criminal law of the country? For what crimes does the IPC reserve imprisonment of three years? Section 148, which is on rioting and armed with deadly weapon, has a provision of three years or with fine, or with both. Section 153A, which is on promoting enmity between different groups, is also for three years, which may extend to five years and shall also be liable to fine. Section 237, which punishes the import or export of counterfeit coin, has the same term. It is the same again with Section 295A (deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs). These serious crimes are in no way comparable to an individual who instead of taking three months to divorce his wife, just took a minute in making all three pronouncements. Such divorces generally happen out of extreme anger when a person really does not know the nature and quality of his act, and already an exception from criminal liability.

A cursory look at other sections

shows these: Section 304A (Causing death by negligence); Section 147 (punishment for rioting); Section 171E (Punishment for bribery); Section 269 (Negligent act likely to spread infection of disease dangerous to life); Section 272 (Adulteration of food or drink intended for sale); Section 295 (Injuring or defiling place of worship with intent to insult the religion of any class); Section 290 (Punishment for public nuisance in cases not otherwise provided for); Section 337 (Causing hurt by act of endangering life or personal safety of others); Section 341 (Punishment for wrongful restraint) and Section 420 (Cheating and dishonestly inducing delivery of property) have much smaller terms of imprisonment and fines. Thus imprisonment of three years for triple divorce is excessive, arbitrary and irrational, and violative of Article 14.

Ideally, divorce should not be treated by divorcees as the end of the world. Our women do not need men to lead a dignified life. We must remove the stigma attached to divorces. Triple divorce should be nothing more than civil contempt of the Supreme Court.

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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.

Litmus test

In the course of the last three years, elections in various States have given the Indian National Congress opportunities to lock horns with the Bharatiya Janata Party over diverse issues. But other than "attacking" the Prime Minister and the President of the BJP on matters that hardly have any relevance in the battle of the ballot, the chronic dislike of the Modi-Shah combination has seen the Congress wasting no chance that comes its way to demean them. The Congress's efforts do not seem to have any substantial effect. It becomes difficult to

understand whether the Grand Old Party of India nurtures any further hopes of governing the country in the future or merely exists to fuel the "Modi aversion" that its leaders have been so fervently endorsing. The BJP's election campaigns are well-managed and have an aura of professionalism around them. In sharp contrast, the Congress continues to depend on the Gandhi-tag to see it through in any election. The Gujarat elections will be an indicative test of the Congress's popularity among the masses.

PACHU MENON, Coimbatore, Margao, Goa

Against the grain

The article on polyamory is startling ('Magazine' - "One life, many partners", December 10). The definition is vague and hence conveys many meanings. If a couple is committed to wedlock, there is no need to be in relationship, both mentally and physically, with multiple partners and in private places. Polyamory defeats the very idea of a matrimonial relationship. No fair-minded married person would ever allow his/her spouse to be in another intimate relationship. And when two individuals are married, an extramarital affair would

most certainly be utterly disliked by the other leading to a collapse of the marriage. The more serious angle is in it being a trigger to committing crime by those who are in polyamorous relationship as the relationship seems unregulated. Those who promote polyamory need not get married and be in relationship with whosoever they like so that a marital bond is not sullied. Are its supporters receptive to this suggestion?

V. LAKSHMANAN, Tirupur, Tamil Nadu

'We two, ours two'

It is true that India's family planning and efforts at

population control have a perplexing history ('Being' page - "The right to choose", December 10). India was one of the earliest nations to adopt family planning as a national policy and I remember a time, in the 1950's and 1960's, watching documentaries and newsreels by the government on the importance of planting trees and adopting limited families. Planting saplings, or *vanamahotsavas* as it was known, were very popular and our leaders were busy planting saplings everywhere. Over the years, while forests

dwindled, the population boomed! A fresh national approach of encouraging small families should be our priority. Women should be given access to and a range of choices in adopting different methods of limiting the size of the family. Towards this end, state benefits such as rations, gas, state medical benefits and education should be the incentives used. Stabilising India's population is crucial if we are to meet our developmental goals.

H.N. RAMAKRISHNA, Bengaluru

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