



## Avoidable crisis

President Sirisena's actions have put Sri Lankan democracy in peril

Sri Lankan President Maithripala Sirisena's decision to withdraw his faction from the ruling coalition and replace Prime Minister Ranil Wickremesinghe with former President Mahinda Rajapaksa has plunged the country into a political crisis. This was further complicated, a day later, by the President's move to suspend Parliament till November 16. Mr. Sirisena's fast-deteriorating relationship with Mr. Wickremesinghe was an open secret, and there were indications that he could be negotiating a possible partnership with Mr. Rajapaksa. But his sudden and secret manoeuvre caught everyone, including senior politicians, completely unawares. And before the details and implications of the political drama that was unfolding could sink in, Mr. Rajapaksa had been sworn in Prime Minister, beaming as he greeted the President, his chief rival until days ago. Mr. Wickremesinghe has termed his replacement "unconstitutional" and maintains that he remains Prime Minister. Confident of a majority, he has challenged the Rajapaksa-Sirisena combine to take a floor test in the 225-member House. By suspending Parliament, Mr. Sirisena is seen to have exposed his own insecurity about garnering the required strength. The next two weeks will be crucial, with attempts at horse-trading and assertions of political loyalty amid uncertainty. None of these is uncommon in Sri Lankan politics, but the circumstances, which are entirely of Mr. Sirisena's making, have led to a political upheaval that was avoidable. All this has come at a time of economic fragility, with a plummeting rupee, soaring unemployment and rising living costs.

Mr. Sirisena's appointment of Mr. Rajapaksa even before voting out Mr. Wickremesinghe on the floor of Parliament is nothing but blatant abuse of his executive powers. Guided by narrow political interests, the President's actions betray an utter disregard for the parliamentary process. In resorting to these emergency measures, he has not only put democracy in serious peril but also let down Sri Lankans, including a sizeable section of the Tamil and Muslim minorities that backed him in the critical 2015 election. The best forum to test political clout in a democracy is the legislature. An extra-parliamentary power struggle, that too using illegal means, heightens the risk of political thuggery and unrest. Still recovering from the violence and bloodbath during its nearly three-decade-long civil war, and grappling with the economic and social challenges in its aftermath, Sri Lanka cannot afford to recede from the democratic space that opened up in 2015. Mr. Sirisena and Mr. Wickremesinghe had come together in an exceptional political alliance that promised to put the country back on the path of democracy, after a decade of Mr. Rajapaksa's authoritarian rule. Leaving aside the irony of Mr. Sirisena joining hands with Mr. Rajapaksa, who he had left and subsequently unseated from office, his desire to consolidate power by hook or by crook is extremely unfortunate. Though much damage has been done already, a fair vote must be ensured when Parliament reconvenes, if possible before November 16.

## More from less

The BJP is giving up seats it won in Bihar to JD(U), a strategy that is not without its risks

It is easier to reach agreements in principle than to sign up on the specifics, but both the Bharatiya Janata Party and the Janata Dal (United) overcame a major hurdle when they decided they will contest an equal number of the 40 seats in Bihar in next year's Lok Sabha election. There is no word yet on what that number will be, as there are two other alliance partners in the equation, the Lok Janshakti Party of Ram Vilas Paswan and the Rashtriya Lok Samata Party of Upendra Kushwaha. In 2014, the NDA partners won 31 seats – BJP 22, LJP six, and RLSP three. The JD(U), which contested separately, won just two seats, but now wants to be treated as a senior partner of the alliance, having won about 16% of the vote in the 2014 Lok Sabha election and the 2015 Assembly election. What this means in real terms is that the BJP will have to stand in fewer seats than it won in 2014. Unless it manages to beat down the LJP's expectations, the BJP will not be able to contest in more than 16 seats. The JD(U) has not been a reliable ally, not for the BJP, and not for the Rashtriya Janata Dal and the Congress. To give up seats it now holds to an ally not wholly trustworthy is a gamble, but the BJP realises the situation is vastly different from what obtained in 2014. In the 2015 Assembly election, the BJP's seat share dropped substantially in the face of a JD(U)-RJD-Congress alliance that polarised votes. The BJP was unable to come to power until after the JD(U) broke away from the RJD and the Congress and re-joined the NDA. It was a hard lesson, but it was learnt well. A humbled BJP evidently thinks it wiser to be more accommodative to allies than to pursue the high-risk strategy of trying to force multi-cornered contests in the hope of coming on top in the first-past-the-post system.

If the agreement reached by BJP president Amit Shah and Chief Minister Nitish Kumar sticks, the electoral arithmetic will likely favour the NDA. But the RJD is clearly on a comeback trail, and the image of Chief Minister Kumar is much the worse for his years in power. The vote shares of the NDA constituents might not all neatly add up. In the opposing camp, the problem is not seat-sharing but putting together a winning combination. The RJD and Congress must be hoping that Mr. Kumar, after his frequent shifting of camps, will not be able to take his entire support base to the NDA. A better showing in the by-elections was a morale-booster, and the RJD and the Congress might fancy their chances as they contend with the formidable numbers of the NDA.

# In the court of last resort

The Supreme Court's actions in the CBI case underline the gravity of the institutional crisis



AVI SINGH

The Supreme Court, on Friday, stepped into the institutional crisis engineered by the "forcible transfer" of the Director of the Central Bureau of Investigation (CBI) earlier in the week. Given the patent illegality of the "forcible leave" of CBI Director Alok Verma, and the need to maintain the Bureau's legal independence guaranteed by law, the Supreme Court has chosen to attempt to sort out this mess. That it needs sorting out is hardly news.

Legally, the straightforward thing to do would have been for the Supreme Court to act according to the black and white law, and reinstate Mr. Verma, the CBI Director, and leave it there. Section 4B of the Delhi Special Police Establishment Act doesn't allow the government to transfer the CBI Director during the two-year fixed tenure without the previous consent of the high powered committee consisting of the Chief Justice of India, the Prime Minister, and the Leader of the Opposition (or a member of the largest Opposition party in the Lok Sabha). This was introduced in 2013 by the Act constituting the Lokpal. Till then, the Central Vigilance Commission (CVC) was a part of the committee mentioned in Section 4B. It isn't any longer, and thus has no role in asking the government to divest the CBI Director of his powers.

The Supreme Court has tread

more cautiously – but given the administrative breakdown, prudently. It has not immediately reinstated the CBI Director and instead has clipped the wings of the "interim" Director, restraining him from making any policy or major decisions, except those that are routine and essential for the CBI to function. The interim order also said that his decisions thus far will be reviewed by the Supreme Court, and must be submitted to it. All transfers, including of one officer to Port Blair, will be reviewed by the Supreme Court.

### The court's administration

The CBI, in essence, is now under the Supreme Court's administration. The investigations being undertaken by the Director, Special Director, and all the transferred officers will likely stand frozen. Important decisions by investigating officers or decisions to be taken in critical cases will not be taken. It is unclear what the 'routine' decisions essential to the CBI functioning are, but the "interim" Director should be loathe to act with the alacrity and brutality he deployed in the first hours when he took office. His authority stands severely diminished, and were he to take any major action, one can expect a challenge to it in court.

While taking pains to point out that it is not commenting on the functioning of the government, the Supreme Court has also taken over the powers of the CVC in this case. It is the CVC's note to the government that was the ostensible provocation for the government to wield its axe at midnight. The CVC's reasonings in that note to the government, which is challenged in the Supreme Court,



were obviously not accepted by the court, and retired Supreme Court judge Justice A.K. Patnaik has been appointed, pending his formal consent, to supervise the investigation into the complaints against Mr. Verma. That the CVC requires supervision by the Supreme Court reveals the shocking state of disrepair in the system.

Although the court did not mention the causes of its anxiety, the CVC's note makes apparent the Supreme Court's disquiet. It labours to explain why the complaint forwarded to it by the Cabinet Secretary must remain anonymous, but must be answered, though its allegations have not been independently verified, or *prima facie* established. It repeatedly points out that there is no wrongdoing found in the investigation of Rakesh Asthana, the CBI Special Director, by the CBI, but reminds the CBI that it must conduct the investigation fairly, and questions whether there should be an investigation at all without sanction from the competent authority. Other notes from the CVC are also seemingly in order to remind the CBI of Mr. Asthana's rights. Another refers to allegations found in a secret note

# Few lifelines before Brexit

Businesses are facing up to the possibility of the U.K. leaving the EU without a final deal in hand



K.S. VIJAY ELANGO

The moment when Britain would officially exit the European Union (EU) is still some months away – 11 p.m. local time on March 29, 2019 – but the tremors are being felt even now. The source of the foreshocks are the unstable machinations of the British Prime Minister Theresa May's Brexit 'war cabinet'. As the clock ticks without a breakthrough so far in the talks, anxiety is palpable among the business community and the general public.

Without a clear plan to counter the unsociable environment being created by an increasingly unempathetic EU, Ms. May's assurances as yet have not been productive.

Her team's negotiating skills are being continuously weakened by hardliners within the union. The U.K.'s pride has been dealt a few knocks on successive occasions at the negotiating table. It has also been reaching out desperately to the Commonwealth and the rest of the world for a deal before Brexit happens which could overcome the exit loss. This is a humongous

task as some of the countries outside the bloc, including the U.S., have opposed Britain leaving the EU. Even India has said that it is 'in no rush to sign a deal' with the U.K. after Brexit. 'Open Britain', an anti-Brexit think-tank, has said that an India-U.K. free trade agreement "would easily take seven years".

The trade terms that Britain set for the Commonwealth, post-war and post-independence, are not simply there now because some of them are almost ready to supersede the U.K. economically.

There are also fears that the U.K. might end up leaving without a final deal in hand. There are whispers from Ms. May's Brexit camp that she might agree to an extension beyond 2020 in order to assist Britain in establishing transitional arrangements to ensure a hold in the single market as well as the customs union.

### The next steps

Brexiters are hoping for a turnaround in negotiations at least by December even as the EU is convoking a special meeting in November to wrap up a final deal. But December will be the time for the final opportunity before which the text of the withdrawal treaty has to be cleared by a supermajority of EU leaders – a minimum of 20 out of 27 remaining members

of the EU representing at least 65% of their population. The deal will also have to be ratified at a plenary by the European Parliament. If any differential clauses persist, Parliament might refer them to the European Court of Justice. If all this happens before December, the British Parliament will take it over.

The moment of truth will come when the deal, if reached, is put to a parliamentary vote, widely considered to be an impediment for Ms. May. Adding to her woes is the fact that the Labour party has different ideas regarding legislative amendment for the voting.

If the deal is struck in December, a date for parliamentary approval will be fixed, possibly in January, to approve the bill, to be passed as a law by February – a gargantuan task fraught with controversies over people's rights, details of the transition and the final financial settlement.

The vote on which the minority government in London hopes to get the deal through hinges on Northern Ireland's Democratic Unionist Party. Ms. May's government might need to unconditionally embrace many, if not all, of Belfast's predilections.

There is also confusion raging in the British Parliament as two-thirds of its MPs are still in favour of remaining in the EU despite a

submitted by Mr. Asthana which in itself is derived from a secret, apparently undivulged, source. Any defence lawyer worth her salt will tell you that a 'counter blast' against the other side is not an effective strategy, especially when made after you have been accused first. The nature of the CVC's demands reveals a bias. The CBI has dithered in providing records to the CVC, no doubt, but there is no matter of such great concern or exigency mentioned in the note that required immediate interim measures or a midnight cabinet meeting to wield the axe.

### All about the CVC

The CVC's past history is also revealing. It usually acts as a postbox for forwarding complaints to the requisite government departments, without even bothering to ask for a reply from the department concerned. In this case, it hadn't even received the CBI's report on Mr. Asthana, which it had requested, when it voted in favour of the selection committee recommending him as CBI Special Director. Its explanation that Mr. Verma thumbed his nose at its supervisory role, leading to his removal, doesn't hold water. And if that was the extent of the problem, far less egregious measures, consistent with its powers, were possible – including actually summoning the CBI Director instead of the records, and registering a case against him, which has still not been done. The sanction to investigate, required under Section 17A of the Prevention of Corruption Act, as amended in 2018 by the government, was designed to protect officials from perceived investigative harassment, but it is hardly

the CVC's job to tell the CBI that its investigation is without the sanction of the law.

This case continues the trend of the Supreme Court stepping into the executive's domain. It has, never, however, done so to this extent. Two principal agencies in the fight against corruption, the CBI and the CVC, will function under its scrutiny.

### Under the circumstances

The Supreme Court, thus, has chosen to act according to its ideas of fairness, or equity, rather than the strict confines of the law. It has waded into the administrative crises trying to fashion a solution, but as an interim measure it has indicated that it will have to consider each decision of the "interim" CBI Director, and thus each decision of the officer transferred in every investigation. Justice Patnaik will have to supervise an investigation, within two weeks, into the vague and secret allegations against Mr. Verma. Both are woefully under-equipped for a task that requires fact-finding of such magnitude. However, as an interim measure, it is hard to think what else would have sufficed. When the executive and independent institutions act with such brazenness against the constitutional ethos, can the Supreme Court bear the entire burden of course correction? Are the sinews of the Constitution strong enough to withstand such vicious jabs?

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majority of their constituencies having voted to leave. Speculation is rife that angry Tory backbenchers might also press for a leadership change, and that Ms. May may face an exit before Christmas.

Brexit Minister Martin Callanan had earlier stated that Parliament should go for a 'meaningful vote', which, loosely interpreted, means that if the U.K. leaves without a deal, it would have to trade on World Trade Organisation terms. This means that post-Brexit negotiations could be hard-fought and the U.K. could also be left with no other choice than it is doing even now.

Border negotiations for custom clearances and travel would also take long despite optimum use of advanced technology, an addition to the chaos which could descend on markets and investors if no deal is reached in December.

Ms. May has also rejected the

demand for a second referendum. If Brexit happens without a deal, she has now announced, in order to win trust, tax cuts for 30 million citizens, with effect from April next, a year earlier than fixed, amid claims that a deal is almost done. No one believes this.

### The Indian angle

In an article in *The Guardian*, businessman, independent cross-bench life peer and anti-Brexit Karan Bilimoria has stated that Indian-run businesses would suffer phenomenally with or without a deal.

Tejinder Singh Shekawat, a construction entrepreneur and president of the Indian Chamber of Youth Entrepreneurs attached to the India High Commission in London, says, "The current status is that the Europeans have already started leaving. As a result, the rental and property prices have come down, whereas labour and material prices have gone up by 25%. Almost every business is struggling even before the Brexit happened."

A large portion of Indian businesses in the U.K. are dependent on the free European market. They are watching the developments with bated breath.

*K.S. Vijay Elango is a journalist and scholar based in Britain*

## 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.

### Churn in Sri Lanka

It would be no exaggeration to say that the political developments in Sri Lanka are a bolt from the blue (Page 1, "Sirisena suspends Parliament", October 28). It is a surprise that Sri Lankan President Maithripala Sirisena has now joined hands with Mahinda Rajapaksa, a political figure who he defeated. The quick turn of events needs to be studied more closely by New Delhi as a misstep could lead to India ending up with another difficult neighbour.

A.G. RAJMOHAN,  
Anantapur, Andhra Pradesh

■ What has hit neighbouring Sri Lanka is akin to a political earthquake. Mr. Sirisena's sudden move proves that in politics, there are neither permanent friends nor permanent enemies. India can only hope order will emerge out of the political chaos and that the island country will not plunge into anarchy.

J. AKSHAY,  
Bengaluru

■ The developments in the island nation appear to be unconstitutional and have struck a blow against democracy. The return of Mr. Rajapaksa casts a shadow on Sri Lankan Tamils. The devolution of powers to the Tamils should not be forgotten in the process. Mr. Rajapaksa is known to lean towards China and India should be extra vigilant.

N.R. RAMACHANDRAN,  
Chennai

■ Sri Lanka faces a grave political crisis with two men now claiming to be the country's rightful Prime Minister. India and China should be particularly worried as they have been struggling for influence in the island nation. Something similar happened in another Indian Ocean island nation, the Maldives. But, for the moment, India can only wait and watch.

C.V. VENUGOPALAN,  
Palakkad

■ The developments are certainly a matter of concern for India. It is evident that

somewhere along the line, the relationship between Mr. Sirisena and Ranil Wickremesinghe soured without anyone around getting any signal. Was it the allegation about India's Research and Analysis Wing that became the flash point? The fact that the Chinese Ambassador to Sri Lanka was quick to extend his greetings to Mr. Rajapaksa is intriguing. India has its task cut out in adapting to the changed circumstances.

S. NAGARAJAN IYER,  
Coimbatore

### Kerala speech

BJP national president Amit Shah's speech in Kerala on Saturday is an attempt to add more fuel to the fire around the Sabarimala temple issue ("BJP will pull down LDF govt.: Shah", October 28). His bid to score political brownie points is unbecoming of the position he holds. The Supreme Court must take *suo motu* cognisance of his speech and act against him.

VIKAS KAMAT,  
Margao, Goa

■ Everyone is aware that the temple issue is exploited by the BJP in order to gain an elusive foothold in the State ("Kerala govt. suppressing Ayyappa devotees, says Shah", October 28). The party is trying its best to inflame passions despite the fact that the highest court of the land passed the order. One wonders what Mr. Shah is implying in his observation that "the State government was hastily implementing the Supreme Court order... when there were several verdicts of the apex court that were yet to be implemented". Is this an attempt to browbeat the judiciary?

J. ANANTHA PADMANABHAN,  
Tiruchi

■ The mindless utterances have only rubbed salt into festering wounds caused by the unsavoury incidents at Sabarimala. Is Mr. Shah trying to imply that the court should be swayed by the whims and fancies of political parties and brute power on the streets? Is the Constitution to fade into the background? His crass threat

that the State government could be "pulled down" shows that power has blinded him to constitutional niceties.

MANOHAR ALEMBATH,  
Kannur, Kerala

### Path to destruction

As a resident of the Andaman and Nicobar Islands, I am in full agreement with the views of the writer ("Magazine" - "The Stolen generations", October 28). The pace at which the Government of India and the A&N administration is opening up the ecologically fragile, environmentally sensitive and anthropologically unique landscape in the garb of development is perplexing. A prime example of this is in

the way tourist vehicles are parked at the Middle Strait jetty (bang in the middle of the Jarawa reserve) to ferry tourists to 'the limestone caves and mud volcano at Oralkatcha' (now called Baratang).

In reality, this is nothing but a cover for the main attraction – Jarawa spotting or a human safari. With the construction of a bridge connecting Middle Strait to Oralkatcha, this is only bound to increase. As long as the government persists with high volume-low value tourism and unmitigated migration, the future of the Islands is bleak.

AKSHAY S.,  
Port Blair, Andaman & Nicobar Islands

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### CORRECTIONS & CLARIFICATIONS:

In a front-page story headlined "Dharmapuri bus burning case: TN Governor returns file on convicts' early release" (Oct. 27, 2018) the penultimate paragraph said: "Parrying questions on the options before Raj Bhavan when the file is sent back for reconsideration, the official said ... provisions." It should be recast to read as: "Parrying questions on the options before Raj Bhavan when the State resends a file returned for reconsideration, the official said ... provisions."

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