

BusinessLine

MONDAY, NOVEMBER 18, 2019

Political shift in Lanka

The Rajapaksas, known for their China tilt and hardline views, are back. India should take note

Is it back to the past for Sri Lanka after voters elected as President Gotabaya Rajapaksa, once the much-feared defence minister who brutally crushed the Tamil Tigers? The eyes of the world, and especially India, China and the US, will be watching the first moves of Gotabaya, who made national security his campaign's central theme after the Easter terrorist attacks. Domestically, Tamils and Muslims will be nervously watching the man, who was the favourite of militant Buddhist groups. Almost all the Tamils and Muslims, who comprise 25 per cent of the population, are thought to have voted for Rajapaksa's rival, Sajith Premadasa. Gotabaya, who belongs to the Sinhalese-Buddhist nationalist SLPP, has moved quickly to say he aims to "serve all Sri Lankans," not just the ones voted for him. India's had differences in the past with the Rajapaksa family because of its perceived closeness to China, but it's thought both sides have attempted to bridge the gaps.

Prime Minister Narendra Modi tweeted on Sunday saying he looks forward to deepening bilateral ties with the new government.

It's almost certain Gotabaya will name as Prime Minister his brother Mahinda Rajapaksa, who was Sri Lanka's strongman President until his 2015 defeat. While the President's the key constitutional authority, the Prime Minister reports to the legislature. The biggest challenge ahead for the Rajapaksas is to revive the economy, growing at a five-year low of 1.6 per cent. The island's heavily dependent on tourism, which took a hit after the Easter attacks. Indian tourists moved to the top spot from a lowly ninth after Sri Lanka allowed visa-free travel for Indians. Beyond that is the question of whether the brothers erode press freedom and democracy that lost ground during Mahinda's earlier rule as president.

The biggest question mark, though, now that the hitherto Chinese-tilting Rajapaksas are returning to power, is how they'll play the China card. The Chinese have poured money into Sri Lanka, underwriting huge projects like the Hambantota Port, and they reckoned to have completed infrastructure projects worth over \$10 billion. But Sri Lanka's been forced to give Hambantota Port on a 99-year lease because it couldn't repay the massive debts incurred on building it — it still attracts very few ships. China's also involved in a \$1.4-billion project to build a new Colombo Port City on reclaimed land in the capital. Largely to counter Chinese influence, India and Japan signed a deal in May to build a deep-sea container port in Colombo. About 70 per cent of the existing port's trans-shipment business is India-related. The US has also offered aid to Sri Lanka, but that triggered a protest fast by an influential Buddhist monk. The Chinese have been working hard to build their power in the Indian Ocean region and Sri Lanka's crucial to their strategy. India must also move smartly to ensure it doesn't lose ground in a country so strategically vital for us.

India must keep RCEP option open

In the meantime, New Delhi must enter into FTAs with New Zealand and Australia, and persuade China to invest in the country



G PARTHASARATHY

The remarkable rise of China's power and influence was evident in the Bangkok East Asia Summit, despite the fact that, as in the past, the Chinese delegation was led not by the country's supreme leader President Xi Jinping, but by its low key Prime Minister, Li Keqiang.

While Prime Minister Li's presence symbolised Chinese commitment to larger causes in East and South-East Asia and the Indo-Pacific region, the Trump Administration showed its disdain for the ASEAN, through the absence of its President, Vice-President, or Secretary of State, leaving the door open for an unchallenged assertion of Chinese power.

There are, no doubt, loud American statements, purporting to show the determination to contain Chinese power. The withdrawal of the Trump Administration from participation in the Trans-Pacific (Economic) Partnership, however, has manifested the reality that despite Trump's tough actions of economic sanctions on China, there is no clear American strategy to respond appropriately, to assertive Chinese power. This objective can be achieved only if the US works closely in regional and global forums with partners like Australia, Japan, Vietnam, Indonesia and India.

It was inevitable that in this background, China has become the *de facto* leader in a huge free trade area, extending across the eastern boundaries of the Indian Ocean and the Western Pacific, from India to the Philippines.

One cannot blame India for de-

clining to join this partnership, given the serious challenges India's economy faces at present.

Already facing a deficit of \$57 billion in its trade with China, India needed to protect its economy against a certain surge in Chinese exports, if its current duties were reduced. New Delhi also has concerns of cheap goods of Chinese origin being diverted to India, through ASEAN countries, which enjoy free trade access in India.

Moreover, the grant of duty-free entry to dairy and agricultural products from New Zealand would constitute a challenge across rural India.

More importantly, the proposed free trade agreement (FTA) would only continue the denial of access to India by ASEAN, for services, including IT. While India already has free trade access in the exchange of goods to the economies of all ASEAN members, Japan and South Korea, it could compete on a level-playing field only if it separately signs FTAs with Australia and New Zealand. Negotiations on this issue should continue.

Must look ahead

It would, however, be fatal if we sat on our haunches, after saying "no," to joining the RCEP. The reality is that countries like Japan and China fashion their economic policies to ensure the development of export-oriented industries. India is now heading towards a situation of continuing and eventually unsustainable trade deficits.

It should not be forgotten that the booming economies of today in East and South-East Asia, progressed rapidly and in a sustainable manner, by ensuring a suitable balance between export promotion and import substitution.

It makes little sense, for example, to keep exporting raw shrimps and aluminium, instead of packaged



Mind games ASEAN is hopelessly divided when it comes to its strategic relations with China **AFP**

shrimps and value added aluminium products. This would require suitable incentives and disincentives for producing value-added products and joining global and regional value-added chains. The past belief that merely ending policies of import substitution and a "Licence, Permit, Quota Raj", without a focus on developing a comprehensive policy for export promotion, would lead us into an era of sustained and accelerated economic growth, was misplaced. It would be useful if, in the light of the foregoing, we kept the option of joining the RCEP open, for at least the next five years. In the meantime, it would be necessary to move ahead in negotiating mutually beneficial FTAs with New Zealand and Australia, and working out arrangements with China for promoting Chinese investments in India, while ending their restrictions on our exports in key areas like IT and pharmaceuticals.

It may well be argued that with the advent of Trump's America, the era of free and open markets is coming to an end. The reality, however, is that the Trump administration has focussed essentially on ending an era, when China sustained its economic

growth was substantially based on American naïveté about Beijing's aims and objectives, in the initial years of the China-US honeymoon, during the Nixon and Carter administrations. Unfortunately, the ASEAN is hopelessly divided when it comes to its strategic relations with China. While the ASEAN claims to stick by principles on issues pertaining to the Law of the Seas, most its members look on helplessly as China enforces its maritime boundary claims, using force.

Myanmar, Thailand, Singapore and others, who do not have to face up to any significant claims by China on their maritime boundaries, remain silent.

Malaysia's Prime Minister Mahathir Mohammad, who remains vocal in echoing Pakistan views on Jammu and Kashmir, remains silent when China uses force to coerce his ASEAN partners to accept its maritime boundary claims.

Chinese arrogance about India is manifested in an recent article in Beijing's official mouthpiece, *Global Times*, which notes: "If India joins the RCEP, it would have to play second fiddle to China and Japan, given the size of their economies. This would

put India in a tight spot. Hence, India's vacillation is a way of highlighting its importance in the region."

Backing ASEAN

Despite their differences, the members of ASEAN do maintain a façade of unity, when it comes to issues of regional economic cooperation. India has clearly and consistently backed its ASEAN friends like Indonesia and Vietnam by declaring that issues pertaining to maritime boundaries have to be resolved peacefully, according to the principles of international law.

It has set an example for others, by handing over a disputed Island to Bangladesh in accordance with the ruling of an International Tribunal. ASEAN members, therefore, know the imperatives driving India's policies. But, given the concerns of most ASEAN countries about China's growing arrogance and assertiveness, the presence of countries like India and Japan does help them to ensure that no single power can exclusively dominate the Indo-Pacific region.

The writer is a former High Commissioner to Pakistan

Contract enforcement refuses to improve

Time-bound resolution of cases, use of technology and revision of civil and criminal procedure codes can make a difference



GN BAJPAI

Recently, a leading Indian daily highlighted the anguish of a poor old lady bargaining into the court room in Maharashtra with sheafs of papers and insisting on the implementation of a 15-year-old order by the judge. As the story goes, she was a victim of domestic cruelty, mental harassment, humiliation and penury, who finally got a divorce from her husband after prolonged litigation. The husband is reportedly not paying alimony. The judge sent her to the district legal cell with an instruction to get the issue resolved quickly.

There may be millions of such untold stories of misery. As per the World Bank, in 2018 India took an average of 1,445 days for the enforcement of contracts, scored low of 10.3 points (out of 18) for the judicial process and ranked 163rd out of 189 overall. Prime Minister Narendra Modi's

push has helped India improve its overall position in the ease of doing business significantly. However, the ranking in the enforcement of contracts has improved only marginally from earlier 186. Former Chief Justice Dipak Mishra in June 2018 voiced concern over more than three crore pending cases in India.

The Modi government has taken a series of steps to improve the country's position in the regard, including setting up special fast-track courts and repealing a number of archaic laws. The 2018 Economic Survey outlined the government's anxiety: "Despite several steps taken to expedite and improve contract enforcement regime, economic activity is being affected by the long shadow of delays and the legal landscape."

Delay seekers

The entire ecosystem of enforcement of contract and attendant litigations is mixed with rent-seekers. At every turn, there is an attempt to profit from the delays. Human ingenuity and legal acumen are applied to game the system. The slow speed of disposal of cases filed even under a thoughtful, modern legislation — the Insolvency and Bankruptcy Code,



Slow pace System needs a revamp

which expressly outlines timelines for disposal — validates this impression.

The cost of litigation in India is around 30 per cent of the total value of a contract, without accounting for the time value of money. If cost exceeds the profits under the contract, the enforcement process becomes a value destroyer. The losers are individuals, MSMEs and SMEs who cannot match the resources of the rich and powerful.

While the inadequacy of infrastructure — including the poor use of information technology, shortage and competence of judges, court holidays, archaic laws etc — have all been

spoken about, there has been no debate on how to sterilise the ecosystem so that enforcement processes transform themselves into a faster settlement and value protection exercise. There is no discussion on how to dissuade litigants from gaming the system; encourage lawyers to conclude their submissions in one or two sittings, produce all the documents in one go, use their skills in expediting the process; or intimate judges to deliver verdicts quickly.

Working for change

Transformation of the ecosystem cannot be orchestrated by the government; however, it should revise civil and criminal procedure codes, insist on the use of technology, prevent departments from unnecessary litigation and work toward improving adequacy and the competencies of the judges.

The civil society through its institutions, bar associations, court employees associations, NGOs etc, should come forward and work earnestly for the good of the common man, who is losing faith in India's judicial system. The media must expose those who sabotage the efficacy of the judicial process.

The jurisprudence of the breach of contract compensates for the loss arising out of the breach, and the quantification thereof becomes a matter of judgment. Hence, the principle of 'efficient breach of contract', originally developed in the UK and adopted in India through the special Relief Act 1963, should be replaced by the mandatory fulfilment of the obligation under the contract, rather than simply compensating for loss.

The regulation of professionals should be reoriented with incentives for quicker enforcement of the contracts, and disincentives and penalties for delays. Alternate resolution mechanisms — arbitration, mediation and conciliation — should be made robust, efficacious and promoted whenever suitable.

Adam Smith, the father of modern economics, talked about "the certainty of being able to exchange...", which can be ensured only if enforcement of contracts is efficient and efficacious. India has run some successful campaigns like 'Save the Tiger' and 'Swachh Bharat'. Maybe the next one should be "Speed up Justice".

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FROM THE VIEWSROOM

A crisis of data credibility

Burying unflattering data is fraught with perils for the economy

The NDA government's decision, announced on Friday, not to release the consumer expenditure survey results of 2017-18 citing "data quality issues" is only the latest such instance of its attempt to sweep unflattering datasets under the carpet. Leaked accounts of a draft copy of the survey results, published in a section of the media a day earlier, had established that consumer spending fell in real terms in 2017-18 for the first time in more than four decades. That fall was driven in large part by a slump in demand in rural areas, where — more disquietingly — even expenditure on food items had been scaled back. Those findings tie in with other indicators that point to a demand contraction in the economy, and particularly in rural India, as a consequence of widespread agrarian distress.

In defence of its action to withhold the survey results, the government claims it detected "deficiencies" in the report, which had then been referred to a committee. Further examination of the survey results pointed to a "significant increase in the divergence" in consumption pattern levels and even in the direction of the change, it claimed. Evidently, the committee that investigated these data anomalies recommended a refinement in the survey methodology to improve the data quality.

Even given the challenges of securing authentic data and analysing them to make sense of the larger economy, it is hard to miss the pattern in this government's repeated attempts to bury datasets that paint a harsh picture of its handling of the economy. Indicatively, earlier this year, after leaked official data established that the unemployment rate was at a 45-year high, the government had debunked the National Sample Survey Office Survey report on which the finding was based. Today, official Indian data — even on headline measures of the GDP — faces a crisis of credibility; international agencies routinely express skepticism about them. For the government to routinely discard diagnostic reports that point to an economy in ill health is dangerous: it could lead to erroneous treatment protocols that imperil the sick patient.

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BELOW THE LINE



Disappointed Javadekar

Prakash Javadekar, Minister for Information and Broadcasting, was recently disappointed when he found out that the directory of the Press Council of India (PCI), did not carry his photograph. He is also said to have expressed his displeasure when he released the directory during the National Awards for Excellence in Journalism held last Saturday.

Javadekar, a journalist' son himself, has been a nominated member of the PCI in earlier stints. He skimmed through the directory when releasing it and noticed that

photographs of multiple members, including his were missing, despite being freely available in the public domain.

Secure future at WHO

From being the Number Two in the Ministry of Health to Director of Health Systems in the South-East Asia Regional Office of the World Health Organisation, it has been a smooth transition of roles for the IAS officer Manoj Jhalani.

Jhalani chose to take up a two-year deputation, and accepted the plum posting at the WHO — next only to the Regional Director's office — drawing little less than ₹1 crore annually as salary. After having worked in the Indian bureaucracy for 32 years, whispers are that Jhalani is unsure if he will return to the Ministry at the end of this stint.

Breaking through the SBI ceiling

Several bankers in public sector banks are mighty thrilled about a

recent development, even though it was only a moral victory and not much to brag about.

At the recently concluded interviews for the SBI Managing Director post, nearly half (including executive directors) of those interviewed were from other PSBs. Many see this as a half victory, as traditionally, the SBI has been stubbornly against allowing outsiders to occupy top positions in the country's largest commercial bank.

It's a different matter that CS Setty (an SBI insider) has finally bagged the post, but at least this time the doors were opened to others.

You never know, if all goes well and the Department of Financial Services gives its blessing, PSB executives may even get a chance to take a shot at the post of the SBI Chairman when incumbent Rajnish Kumar completes his term in October 2020, quipped a banker.

When the SBI top guys can spread their wings to occupy top positions

in other banks, why can't the reverse happen is the question, ask seasoned bankers. Valid point!

Where to find the best tap water

Ram Vilas Paswan, the Union Minister for Consumer Affairs, Food and Public Distribution, always speaks his mind. No surprises then, that while releasing the Water Quality Report for 20 State capitals and Delhi as analysed by Bureau of Indian Standards (BIS), Paswan said that the objective is not to demotivate anyone; but to encourage State governments to ensure quality potable tap water to all citizens.

In the first phase, the samples were drawn from various locations across Delhi, and in the second from 20 State capitals and sent for testing as per Indian Standard 10500:2012 (Specification for Drinking Water) set by the BIS. A vast majority of the samples have failed to comply with the requirements of IS 10500:2012 in one or more parameters.

All the 11 samples drawn from various places in Delhi did not meet the requirements and failed on several parameters, while all 10 samples drawn from Mumbai were compliant.

In Hyderabad, Bhubaneswar, Ranchi, Raipur, Amravati and Shimla, one or more samples failed to meet the standard. None of the samples drawn from 13 of the State capitals — Chandigarh, Thiruvananthapuram, Patna, Bhopal, Guwahati, Bengaluru, Gandhinagar, Lucknow, Jammu, Jaipur, Dehradun, Chennai and Kolkata — complied with the requirements.

In the third phase, samples from capital cities of northeastern States and smart cities identified by Ministry of Housing and Urban Affairs have been drawn and are being tested.

The fourth phase proposes testing of samples from all the district headquarters of the country.

Our Delhi Bureau