



## Back in the game

India must cooperate with U.S. on vaccines, trade, and leverage Quad for regional stability

Prime Minister Narendra Modi's summit meeting with U.S. President Joe Biden, and his first in-person meet of the Quadrilateral Security Dialogue mark an important step forward in India's engagement with major global powers as it seeks to revive its economy and strategic role in the aftermath of the COVID-19 crisis. At the heart of the two leaders' meeting was the issue of vaccine availability – and a critical victory for the Biden administration as it received Mr. Modi's assurance that as the world's largest vaccine manufacturer, India would resume supplies to the global COVAX pool under its 'Vaccine Maitri' programme. The breakthrough comes after turmoil in this space earlier this year, when India halted exports after facing criticism for domestic supply bottlenecks as it contended with a devastating second wave of COVID-19. Around the same time the U.S. also invoked its Defense Production Act, effectively preventing the export of raw materials for vaccine manufacture in a bid to prioritise domestic production. With both countries now moving forward on their domestic vaccination programmes, albeit with the U.S. still struggling to overcome vaccine hesitancy in certain States, the summit provided them a timely opportunity to take up long-pending conversations on trade, defence ties and more. At the confluence of those two areas was the reaffirmation by Mr. Biden that India remained a 'Major Defence Partner', making it a key nation with which Washington could share information and strengthen cooperation in advanced military technologies, including, for example, a recent project to co-develop air-launched unmanned aerial vehicles.

Issues of global concern, including the ongoing pandemic, climate change, technology cooperation, supply chains and security, and preserving a free and open Indo-Pacific were themes that came up at the Quad gathering. Following on the heels of the first virtual summit of the four leaders in March 2021, this meeting builds upon the intention of the Quad member nations – India, the U.S., Australia, and Japan – to ensure an Indo-Pacific region "free from coercion and disputes... solved in accordance with international law". While India has sought to disassociate its role as a member of the Quad from the recently announced Australia-U.K.-U.S. (AUKUS) partnership, there is little doubt that the creation of a fleet of nuclear-powered submarines for Australia under the AUKUS framework will have significant and positive implications on India's strategic calculus regarding the Indo-Pacific region. From New Delhi's perspective, health concerns and economic revival remain at the very apex of the policy agenda. This is a time for India to rapidly deepen cooperative initiatives with the U.S. regarding vaccines and trade and continue engaging vigorously with the Quad for regional stability. That is the optimal strategy to navigate the uncertain global ecosystem that it now finds itself in.

## Needless row

Rajasthan's law does not validate child marriages, but helps rights of underage brides

The controversy over the recent amendment to the Rajasthan Compulsory Registration of Marriages Act is unnecessary, as it clearly does not amount to validating or legitimising child marriage. However, the issue made by the Opposition and the National Commission for Protection of Child Rights may occasion a reconsideration of the legal framework dealing with child marriages that continue to take place despite a statutory prohibition. The Rajasthan law enacted in 2009 provided for compulsory registration of all marriages. It is largely similar to the enactments in other States, and is based on the Supreme Court's verdict in *Seema vs Ashwani Kumar* (2007), which directed that all marriages in India should be registered. The original law itself did not exclude registration of child marriages, and all that the amendment does is to change the age at which the obligation to register shifts from the parents or guardians to the parties to the marriage. Earlier, it was the duty of the parties to the marriage to submit a memorandum on their marriage to the registrar if they were both above 21 years; and if younger, it was the duty of the parents or guardians. The amendment changes this age limit to 21 for men and 18 for women. It is difficult to see this change authorising the bride herself to participate in the marriage registration after the age of 18, as one that permits child marriage.

Under the law, child marriages are not void, but only voidable at the instance of one of the parties, who may approach the court for nullifying the marriage within two years of attaining majority. Registering such a marriage may help establish the legal rights of the underage party and those of any children born and deter any attempt to deny the marriage later. It may even help prosecution of those solemnising child marriages and implement provisions relating to maintenance and residence of the girl whose marriage is invalidated later. Nothing prevents the marriage registrar from alerting the child marriage prohibition officer after registering the marriage. One must note that there was never any specific prohibition on registering child marriages. Even the Supreme Court observed that even though registration itself could not be proof of a valid marriage as such, it would have "great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage". As a fallout of this controversy, Parliament ought to consider the Law Commission's recommendation to amend the Prohibition of Child Marriage Act, 2006, to make child marriages below 16 years void, and those solemnised when either party was between 16 and 18, voidable.

# These investigations are a face without a heart

There is no longer any respect for the citizen's rights but only a single-minded assertion of unaccountable authority



MADAN B. LOKUR

Gasping for breath – that is how our investigating agencies leave our citizens and now the press. Two recent cases clearly demonstrate that our investigating agencies are a face without a heart.

On September 10, 2021, officers of the Income-Tax Department visited the premises of NewsClick and NewsLaundry. According to the Editors Guild of India, NewsClick and NewsLaundry are news websites. The visit by the officers was styled as a survey and this was confirmed by the Department to a private news channel. A survey by officers of the IT-Department is governed by Section 133A of the Income-Tax Act.

**Entry that is limited, specific** Section 133A authorises an income-tax authority to enter premises where a business or profession is carried on. The purpose of entry is limited and specific – to inspect books of account or documents, check or verify the cash, stock or other valuable article or thing which may be found in the premises and furnish such information that the authority may require. A survey is not a fishing expedition. A survey can be carried out only during the time the premises are open for conduct of business or profession.

A statement released by NewsLaundry indicates that the officers came to its premises at about 12:15 p.m. and left the next day at 12:40 a.m. Similarly, a statement released by NewsClick suggests that the officers came at about noon and left around midnight. The first question: are the premises of

these news websites usually open for business at midnight with the same staff? If not, the officers violated the law in continuing the survey till the witching hour, without any compunction.

Some side issues also arise. For example, what do the officers do for lunch, dinner and snacks when a survey takes place for 12 hours? Do they carry their tiffin boxes and water bottles? What about the people in the premises – can they go out for a bite or are they expected to remain hungry? Can they even inform their family that they have been locked up for several hours and cannot come home?

Section 133A authorises the officers to inspect the books of account, place identification marks on them, and on other documents, and even make copies. They may impound the books of account or other documents inspected by them, for reasons to be recorded in writing. They are also entitled to make an inventory of the cash, stock or other valuable articles verified by the officers. Finally, they are authorised to record the statement of any person in the surveyed premises, though not on oath.

### Court's view

The Orissa High Court has taken the view that the primary objective of a survey is to inspect and if impounding is necessary, specific reasons (not general reasons) must be recorded; the reasons must be recorded at the time of impounding and not even a day later, otherwise the impounding would be bad in law.

Section 133A contains a specific prohibition that the officers "shall, on no account, remove or cause to be removed from the place... any cash, stock or other valuable article or thing". How much more prohibitory can it get?

The legal Lakshman rekha having been delineated, what is it that transpired during the survey on



September 10, 2021? The version of the IT Department is not in the public domain, so it is not known, and perhaps might never be known.

### The two cases

In its statement, NewsLaundry informs us that its CEO was not allowed to use his phone to contact his lawyer. In fact, he was asked to hand over his phone to the officers. He was asked to comply with on-the-spot directions without taking legal advice. Even a criminal is entitled to contact his or her lawyer and family. Second question: Under what authority of law was the CEO asked to hand over his phone and refrain from contacting his lawyer? Books of account may be impounded, but prohibiting use of a mobile phone, even temporarily?

The personal mobile phone, laptop and office machines (presumably desktops) were taken control of and the data on them or in them was downloaded. Ordinarily, a search warrant is required for this. Apart from anything else, this is a classic case of invasion of the fundamental right of privacy. The CEO was not given a copy of the downloaded data, which is his property and he is entitled to it as of right. On the contrary, he was asked to delete his personal data from his mobile phone within one hour so that they could take it away (which they did). Third question: Why should he delete his personal data?

The IT Department has accepted before the Delhi High Court

that it has "seized" material (including perhaps his mobile phone and laptop) and it is in safe custody. Under which law is not explained. Fourth question: Are officers of the IT Department entitled to violate the law with impunity and without any accountability?

The sequence of events clearly suggests that the staff of NewsLaundry was subjected to some sort of a house arrest or office arrest, cut off from the world for 12 hours and denied their constitutionally guaranteed fundamental rights. Is this permissible?

The fate suffered by NewsClick is no better. NewsClick issued a statement to the effect that 30 employees and support staff were 'locked up' (so to speak) for the duration of the survey, that is for 12 hours and their phones seized. If any family member had faced an emergency during those 12 hours, bad luck. To make matters worse, they were prevented from accessing their computers and indeed from working. Why? And under which law? It seems quite clear that the employees and staff underwent office arrest, something akin to house arrest. Fifth question: are the fundamental rights of speech, freedom of the press and privacy suspended during a survey of books of account by the IT Department? Surely, our fundamental rights are not that meaningless.

The phone of the Editor-in-Chief was also impounded containing private, personal and confidential data. It appears that the fundamental right to privacy is stillborn in respect of some people, particularly journalists. He may have received information from a source that he does not desire to disclose. In law, he cannot be compelled to disclose the source, being privileged information, but a well-planned survey can achieve that purpose. Journalists beware or don't care - the

choice is yours.

Loose papers were taken away from the surveyed premises. It appears that no list was prepared of these papers and no copy of the loose papers supplied to the employees concerned. E-mail dumps were taken of the Editor-in-Chief and the Editor. Sixth question: was the survey a façade for some other purpose? Nobody will know until the next 'raid'.

### More the norm now

So many questions arise from these two surveys and they provide obvious answers, but nobody cares. The issue is not what NewsLaundry and NewsClick have done or not done, in terms of adhering to and complying with the law. The issue is whether there is a rule of law prevailing and how easy it is for the authorities to harass citizens if they want to. The other issue is that government officers can get away with just about any abuse of their powers, including unlawful house or office arrest, and this is becoming the norm rather than the exception. There is no longer any respect for the citizen's rights, including journalists; only a single-minded assertion of unaccountable authority.

One last question. Are the authorities accountable for their actions at any point, or should journalists resign themselves to defenselessly watch the erosion of their rights? Harassed journalists and vulnerable targets may seek the path of least resistance. After all, they have families to feed. They did not set out to be test cases for democratic resilience. Constitutional offices, on the other hand, have a duty to not look away. Have officers forgotten that citizens of India, journalists included, deserve humane treatment under the law or is it that they do not have a heart?

Madan B. Lokur is a retired judge of the Supreme Court of India

# Flood management that cannot be watered down

For a lasting solution to the India-Nepal floods, an intergovernmental panel must be formed with local representation



ATUL K. THAKUR

Over the years, many of Bihar's districts have been facing serious challenges with recurrent and massive flooding. This year too, it has been a double whammy – of flooding and the novel coronavirus pandemic. It is the right time to look at some of the key aspects of India-Nepal flood management under the existing arrangements of India's federal system that offers enough room for better coordination between the Centre and State governments. The background: some of Nepal's biggest river systems originate in the Himalayan glaciers which then flow into India through Bihar. During the monsoons, these river systems flood causing many problems for Bihar. It is a necessity that there is process-driven coordination between the Centre and the Government of Bihar to handle the flooding in Nepal's Terai and North Bihar (largely the Mithilanchal region).

### Still pending

As part of the long-term measures to address the problem of massive and recurrent floods in Bihar, the Joint Project Office (JPO), Biratnagar, was established in Nepal in August 2004 to prepare a detailed project report to construct a high dam on the Nepal side (on the Kosi, Kamla and Bagmati rivers). The

Government of Bihar has raised the matter at regular intervals. The Central Water Commission (CWC), Ministry of Jal Shakti (MoJS), Government of India, convened a special meeting of the joint team of experts (India side) on February 10, 2020 at New Delhi to ascertain the status of the detailed project report. A group of officers formed by the CWC has to work on various aspects of the detailed project report and propose an action plan for its early completion. The Water Resources Department, Bihar has repeatedly requested the MoJS (most recently, through Letter no. 295, dated August 2, 2021) to expedite the progress of the detailed project report. Despite the best efforts made by the Government of Bihar, the task remains unaccomplished even after 17 years.

The Minister of Water Resources Department, Bihar, Sanjay Kumar Jha, met the Minister of External Affairs, S. Jaishankar, in September 2020 to highlight long-standing water sharing issues with Nepal. The crucial matter of water sharing with Nepal has been flagged by India officially as well. What is evident is Nepal's lack of prompt reciprocation. It is essential that Nepal shows the required will to find a long-term solution with India in ending a perennial disaster.

### Flood protection work

As in the existing India-Nepal Agreement on water resources, the State government is authorised to execute flood protection works up to critical stretches inside Nepal territory along the India-Nepal border. In recent years,



all such flood protection works have had to be carried out in the face of increasing local resistance. Even during the COVID-19 pandemic, the Water Resources Department, Government of Bihar, was intensively engaged at two levels: with local Nepalese authorities and through appeals to the Central government for carrying out flood protection works in 2020. After sustained coordination between the Centre and the State (Bihar) and expedited interventions by India with Nepal, Kathmandu gave its conditional permission for manpower and machinery operation in the Nepal area of Kosi basin. Accordingly, 21 out of the 22 works could be completed. Also, some progress was made to facilitate the smooth movement of manpower, machinery and flood control materials across the Gandak and Kamla rivers situated on the Nepal side to carry out flood protection work during the flood period of 2020.

But despite the requisite permission for movement on the Kosi barrage and associated embankments, the movement of departmental vehicles and work activities did not draw the attention of the Kosi Project Authority, Biratnagar, for various reasons. Since bilateral cooperation remains the

fulcrum of water sharing and water management between the two countries, Nepal must play its part in ensuring a sustainable way forward.

As in the figures shared by the Water Resources Department, Government of Bihar, a total of four new flood protection works in the Gandak basin area were proposed before the floods of 2020. A request was made on June 22, 2020 by the Water Resources Department, Government of Bihar, to the Government of India for entry into the Nepal region for execution of these flood protection works and for maintenance works of the Gandak Barrage Structure located in Valmikinagar. After receiving conditional permission from Nepal, maintenance work of the structure and components of the Gandak barrage (Valmikinagar), top regulator gates, Right Afflux Bund, and three of the proposed works in the Gandak basin were completed.

During the strengthening work proposed on the right marginal bund on the Lalbekia river, the local Nepali administration claimed that the said bund area fell in no man's land. This is notwithstanding the fact that the embankment was built by India 30 years ago and there has not been any dispute regarding its maintenance all these years. Breach closure/protective work of right guide bund of the Kamla weir remains incomplete due to the lack of permission. However, resolution of the impasse is awaited. This is another important matter to be looked at.

Aware of the operational impasse during the flood season in 2020, Bihar's Chief Minister Nitish

Kumar visited the Jainagar weir site in Madhubani, and upon sensing the seriousness of the situation, instructed the Water Resources Department to explore converting the weir on the India-Nepal border into an efficiently operated barrage. It is evident that Nepal's attitude towards mutual issues (water sharing, flood control, etc.) has been short of collaboration, unlike in the past.

### An alternative paradigm

In the best spirit of friendship, Nepal and India should restart the water dialogue and come up with policies to safeguard the interests of all those who have been affected on both sides of the border. It is time the two friendly countries come together and assess the factors that are causing unimaginable losses through flooding every year. Optimisation of the infrastructure will be decisive in finding an alternative paradigm of flood management. Moreover, it is also linked to how the Himalayan glaciers and the green cover are managed.

Water cooperation should drive the next big India-Nepal dialogue, and despite the challenges, wisdom should prevail to turn the crisis into an opportunity, for the sake of development and environmental protection. Water resources are priceless assets. By controlling the flooding and using the water resources for common developmental uses such as hydroelectricity, irrigation and waterways, India-Nepal relations can be strengthened even further.

Atul K. Thakur is a policy analyst and columnist

## 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.

### UNGA speech

It was a proud moment to hear the Prime Minister, Narendra Modi, deliver his speech at the United Nations General Assembly on Saturday. By calling India the mother of all democracies (Page 1, September 26), Mr. Modi has only forcefully reminded the world there are sane voices and that the international community must unite as one on core issues such as countering terrorism, tackling climate change and poverty, protecting human rights, encouraging women's education in Afghanistan

and even taking on COVID-19. The august assembly is sure to have lent its ears to one of the best speeches delivered for the welfare of the international community.

S. SESHADRI, Chennai

■ It is baffling that whenever the Prime Minister goes out of India he talks highly of democracy and its principles, but what is happening in India is just the opposite; his government accords scant respect to democratic procedures. In the country which is said to be the "mother of all

democracies", parliamentary democracy is hardly followed. Very often, Bills are passed without any debate or discussion, autocratically, and based on the whims and fancies of the Government.

D. SETHURAMAN, Chennai

■ I strongly disagree with the Prime Minister's speech. The fall in India's rank in the democracy index, the tag of electoral autocracy, the crackdown on civil liberties, mounting pressure on human rights groups, frequent Internet shutdowns, rising attacks on journalists and intolerance towards

minorities underline the worsening state of democracy in India.

MAHESH RALLABHANDI, Rajahmundry, Andhra Pradesh

■ The gentle hint by United States Vice-President Kamala Harris to India on the need to preserve democratic principles and human rights is an indication that the Prime Minister's rhetorical flourish about Indian democracy is likely to be taken by the international community with a pinch of salt. The intolerance towards dissent, misuse of official machinery against political opponents, and the rise in

human rights violations cannot go unnoticed internationally. India should put its house in order to recapture its moral stature.

MANOHAR ALEMBATH, Kannur, Kerala

### Social mosaic of Kerala

It is quite saddening to note the recent developments in Kerala following misguided and hateful remarks made by the Bishop of Pala. Kerala has been a State that has always promoted tolerance between various religions since time immemorial. Ours is a land that hears the call of the muezzin complement the pealing of

the bells of a temple and a church. It is indeed grievous to note how we have evolved to a situation that is marred by distrust.

If our ancestors could overcome efforts to introduce tears in the social fabric, can we hope to further their legacy by looking past constructs such as religion and caste in this modern age? The challenge lies in getting ourselves to endorse and appreciate our collective identity and our innate oneness.

ABHISHEK SURESH, Kozhikode, Kerala



To read more letters online, scan the QR code