



Vivek

Issues & Options

January- 2012

Issue: 1 No: 1



Pakistan-China Nexus

Maritime Security

Indo-US Relations

Communal Violence Bill

and many more

Published By : Vivekananda International Foundation

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Dear Reader,

Vivekananda International Foundation was launched two years back with a mix of hope and skepticism. It was envisaged as an independent think tank to study India's strategic and security challenges, foreign policy complexities, problems beleaguering governance and stemming socio-economic growth on the larger canvass of India's civilisational heritage. It aimed at providing a credible platform to the best minds in the country who in a non-partisan manner could analyse India's external and domestic environment, generate innovative ideas and offer inputs to shape nation's thinking, policies and response strategies. Many professionals and experts, most with decades of experience in grappling with problems faced by the country and having held highest positions in India's foreign and defence services, civil administration, intelligence, police, academics etc. joined hands to ideate on key national and international issues.

Two years, though a short time in the life of a think tank, gives us considerable hope and confidence. During this period, VIF organised 17 national and international level seminars, held 57 round-table discussions with top scholars, domain experts and government representatives – both from within and outside the country and received important visitors and delegations from over 26 countries including the US, UK, Japan, Australia, Germany, France, Pakistan, Nepal, Bangladesh etc. Hits on the website of the Foundation (www.vifindia.org), on which over 360 features, studies and reports generated by the Foundation were uploaded, far exceeded our expectation. Over 130 prominent personalities delivered talks or attended interactive sessions with ever expanding VIF fraternity. Dr. Abdul Kalam, HH Dalai Lama, Hon. Liam Fox, British Defence Secretary, Michael Chertoff, Former US Secretary of Homeland Security, Babu Ram Bhattarai, Prime Minister of Nepal, Maulana Fazal-ur-Rahman, Head of Pakistan's Jamiat Ulema-i-Islam, Maulana Mahmood A. Madani, Chief of Jamiat- Ulema-i-Hind, General Sir Peter Anthony Wall, British Chief of the General Staff, John Negroponte, former US Permanent Representative to UN, Soli Sorabjee, former Attorney General, Gopal Krishna Gandhi, former Governor West Bengal, Shri Mohanrao Bhagwat, Chief of RSS, etc. are a few in the long list. 'Vimarsh', our monthly lecture series with one speaker of national eminence speaking on a subject of topical interest, followed by an intense interaction, has become flagship activity of the Foundation attended by over 200 invitees every month.

I feel delighted to present first issue of the Foundation's E-magazine titled 'VIVEK-Issues & Options'. We propose to bring out the magazine by 7th of every month. I welcome your comments and suggestions to make it an effective instrument of deliberating on issues of national concern and, with your cooperation, bring about qualitative improvements.

With warm greetings for the New Year I pray and wish that 2012, does not turns out to be another wasted year and becomes a land mark year of achievement in India's onwards march to its great destiny.

Yours Sincerely,

Ajit Doval

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Dangerous Liasons : Pakistan-China Nexus Poses Strategic Threat to India

- *Kanwal Sibal*

It is more practical to limit the review of India's security mainly to the classic concept of a nation's security, not its extended definition given today that includes energy, food, water etc. With the end of the Cold War and the lowering of the threat of a military conflict between the big powers, attention has shifted to economic competition. With depletion of fossil fuel resources and the search for viable alternatives, the focus is on energy security. Climate change and prospects of water scarcity has brought the issue of food security to the fore. As far as we are concerned while issues of economic security are very pertinent, our physical security is seriously under threat not only by hostile state actors but also non-state actors inspired by violent religious ideologies that receive state support.

India's security dilemmas are

particularly acute. It is facing two hostile powers on its frontiers, Pakistan and China, and both cooperate with each other to threaten its security. With both countries India has outstanding border problems, with unsettled, undemarcated or disputed borders. With Pakistan India has a Line of Control in Jammu and Kashmir; with China India has a Line of Actual Control all along the northern border. Both countries occupy large tracts of Indian territory acquired through aggression and claim additional Indian territory. In both cases our armed forces are facing theirs across the border. All in all, while there is agreement on a cease-fire across the LOC in J&K and Agreements to maintain Peace and Tranquillity and observe CMBs across the LOAC with China, the basic situation is unstable, holding the potential of a conflict.

**Kanwal Sibal - Member Advisory Board, VIF*

Pakistan wants to have parity with us; China wants to be the dominant power in the region. Pakistan wants to limit India's regional as well as global role by blocking us westwards so that we don't have easy access to Afghanistan and Central Asia; China wants to confine us to South Asia, keep us entangled in the sub-continent so that we are unable to fully exert our influence in the rest of Asia and beyond, giving China space and time to entrench its influence there without having to face competition from India.

Pakistan is determined to confront India and China is intent on giving Pakistan the means and the confidence to continue this confrontation. China has transferred nuclear and missile technology to Pakistan, neutralizing us strategically in South Asia and limiting our capacity to dominate our neighbourhood because of our size and potential. We now have the

Pakistan is determined to confront India and China is intent on giving Pakistan the means and the confidence to continue this confrontation. China has transferred nuclear and missile technology to Pakistan, neutralizing us strategically in South Asia and limiting our capacity to dominate our neighbourhood because of our size and potential.

problematic situation of having two nuclear powers on our borders, with both collaborating with each other to put constraints on India. China has stepped up its presence in POK even as it has begun to question implicitly our sovereignty over J&K. It sees no contradiction between its stand on ONGC's oil exploration in a Vietnamese block in the South

China Sea on the ground that it is disputed area and its involvement in projects in POK, including strategic ones with military implications for India. POK is becoming key geopolitically to China's access to the Arabian Sea through Gwadar as well as its penetration into

Afghanistan with connectivities to Central Asia in partnership with Pakistan. China's increasingly strong presence in this region will act as a bulwark against the extension of India's power and influence westwards.

China opposed the Indo-US

nuclear deal to the extent it could, but with India having secured the NSG exception, the Chinese have sought to extend parity treatment to Pakistan in field of civilian nuclear cooperation by announcing their decision to set up two additional nuclear reactors there in violation of their NSG obligations. This demonstrates the depth of China's strategic commitment to Pakistan. If the US seeks to establish a new partnership with India that can weigh in favour of India vis a vis Pakistan and China, the latter is prepared to counter it with an equivalent gesture towards Pakistan. Reports that China is currently transferring technology for a new missile to Pakistan have appeared, which indicates that China's transgressions in the field of missile proliferation are not a thing of the past but continue. China, of course, is the biggest supplier of arms to Pakistan.

Given the role that the military plays in the country's internal and external politics, Pakistan can be characterized as a militarized state, with a militarized foreign policy. Rather than strengthening the civilian government in Pakistan, and hence propping up

democracy, Pakistan's key partners shore up the country's armed forces by dealing with them as their privileged interlocutors and supplying them arms to obtain more willing cooperation from them for achieving regional objectives. The US continues to extend arms assistance to Pakistan despite the Pakistani military's declared hostility towards India and avowed intention to acquire arms to counter it. The US maintains its freedom of action to arm Pakistan with the specious argument that these arms supplies do not change the conventional arms balance in the region, and agreeing to disagree with us on this issue. The consequence for India is that our adversary is being armed by the most powerful democratic country in the world as well as by the most authoritarian state.

India is a country most exposed to the threat from terrorism inspired by religious extremism. The epicenter of global terrorism is located in Pakistan. India has suffered from terrorism without obtaining the sympathy and support of the international community for long years. After 9/11 the US took cognizance of the

terrorist problem emanating from the Af-Pak region but treated Pakistan as an ally in the war on terror rather than the source of this menace. Pakistan-based terrorism became an argument, ironically, for pressure on India to resolve the Kashmir issue in order to get Pakistan to devote its full attention to curbing the activities of the terror groups operating in Afghanistan against the US/ISAF forces there across its western border. After 26/11 and US's own experience of Pakistan's two-faced policies on terrorism-combating those groups targetting it internally and supporting those that served it externally - the Americans have a more clearly enunciated thinking about Pakistan's terrorist threat to India, but this has not resulted in deterrent action against Pakistan's use of terrorism as

state policy.

With the electoral and financial need to reduce its Afghanistan liability, the US, prodded by the UK in particular, is willing to cut a political deal with the Taliban that would allow it to withdraw from that country without a

debacle. The Taliban's extremist religious ideology can be overlooked by the western powers so long as the Islamist agenda is limited to Afghanistan, links with Al Qaida are cut off and the West is no longer a target of terrorist attacks. This strategy disregards India's interest in protecting its multi-religious society from

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mounting influence of extremist thinking in the region. The Taliban may foreswear terrorism against the West in exchange for a share in the power structure in Afghanistan, but the threat to India's security would increase with greater Talibanization of the

region. India needs a government in Afghanistan that is not beholden to Pakistan and has no religious bias against us. The prospects of stability of the region, with Central Asia included, built on increased connectivity within it, would be compromised if instead of forces of moderation and modernization getting entrenched in it, the opposite happened. India's security interests in Afghanistan are therefore self-evident. The Strategic Partnership Agreement signed between India and Afghanistan recently is a step in the direction of India affirming these interests.

China's stepped up claims on Arunachal Pradesh defined now as South Tibet, characterizing high level political visits from our side to the state as provocation, internationalizing its differences with us on this issue by objecting to ADB funding for development projects in the state, reminding us in the Chinese state controlled press of a repeat of 1962 if India continued its provocations, upgrading massively its military infrastructure in Tibet, all point to the security problems we face from China, as does the uncertainties surrounding the issue of Dalai

Lama's succession, Our decision to improve the long neglected military infrastructure on our northern border, open up airfields close to it, position our latest aircraft in air bases in the east, raise additional mountain divisions etc are in response to this threat. Instead of profiting from a peace dividend by way of demilitarization flowing from our improved economic ties with China and negotiations by the Special Representatives(SRs) of the two countries to find a political solution the border issue, the border is being remilitarized. The 14 meetings of the SRs have proved infructuous in making progress in a reasonable time frame; the 15th meeting has been postponed under unclear circumstances.

Apart from facing a two front situation on its northern and western borders, India's security problems with its neighbours have other peculiar dimensions. If those borders are unsettled partially or fully, with neighbours like Nepal and Bangladesh they are either open or porous by treaty or ineffective controls, giving rise to either infiltration of intruders with designs on our security, as in

the case of induction of terrorists by Pakistan or large scale illegal immigration. Both aggravate problems of internal security, with illegal immigration, by changing the demographic composition in some parts of India, creating political tensions in addition. Nepal presents additional security dilemmas because of its traditional policy of playing the China card against us because of imaginary fears of a threat to its sovereignty by India, giving China political space south of the Himalayas. With the Maoists in power in Nepal, the pro-China and anti-Indian orientation of Nepalese policies presents an enhanced challenge to our diplomacy. While the change of government in Bangladesh has brought about a re-definition of the country's approach to India on security issues by suppressing the activities and presence of anti-Indian insurgents

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sheltering on its territory, this problem has bedevilled the security aspects of our relationship with Bangladesh in the past. With Sri Lanka, India has been embroiled in security issues connected with the ethnic conflict there. Whereas this problem has got removed with the elimination of the LTTE, Chinese inroads into Sri Lanka remains an issue of concern as we are unable to exclude its influence from our periphery in the south as China's penetration there is at the invitation of the Sri Lankan government which, in its sovereign capacity, wants China to play a balancing role of sorts vis a vis us, apart from benefitting from the China connection economically.

In essence, because of our size our smaller neighbours fear being overwhelmed politically and militarily and seek countervailing

options by bringing in outside powers to balance India. This is inbuilt into the situation, with India facing the dilemma that its inaction emboldens the neighbours to follow policies damaging its interests whereas muscle-flexing gives more reason to them to court others. India's many vulnerabilities and the tendency to be inward looking and absorb blows rather than take retaliatory action gives our neighbours the space to test the limits of our tolerance.

In the past it was both the US and China that were courted at our cost. Today, with our improved relations with the US, the contradictions between our interests in our neighbourhood and US interests there have greatly narrowed down, barring in some respects with regard to Pakistan and China individually and their close strategic cooperation with each other, including in the sensitive nuclear and missile areas which the US has preferred to overlook because

of larger strategic considerations influencing its relations with China. The US has once again decided to underplay the issue of nuclear transfers to Pakistan by China in violation of the latter's NSG obligations, even though the Chinese had made it plain that their decision was intended to balance the India-US nuclear deal. The US has taken no position on India-China border differences;

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programme to build its defences against China, including in the strategic domain.

India, dominating physically the Indian Ocean, with a long coast line and its energy and trade flows being largely sea borne, has security burdens with regard to coastal protection, the protection

of its EEZ and the safety of the sea lanes of communication. It is imperative for India to have naval assets commensurate with the responsibilities it must discharge. The sea-borne Mumbai terrorist attack exposed the gaps in our coastal security which do not seem to have been filled up sufficiently even now. To ensure the security of the sea lanes of communication, including against the new threat of piracy, the Indian and US navies have been conducting exercises regularly in the Indian Ocean. The expansion of the Chinese navy, its likely ingress into the Indian Ocean area, China's initiatives to secure access to or develop geo-politically located commercial ports in the Indian Ocean for facilitating its sea borne trade, with eventual naval access in mind, including port facilities for its nuclear submarines, are challenges that India and others have to contend with in the years ahead. For doing that India has to develop appropriate mechanisms of cooperation with other countries, especially the US and Japan, as well as Australia.

In the above context, India's security is enhanced by its increased attention to ASEAN and

East Asia. While the South China Sea is not the immediate area of India's security concerns, yet India needs to play its role in the development of security structures in this region that will have an impact on its own region. The US is exhorting India to Engage East and Act East as part of a hedging strategy against China's over-assertive conduct in the future. Any disposition on this score in East Asia would also constrain China in the Indian Ocean area and would therefore ease security pressures on India. India has to be watchful not to subscribe to strategies of another country that go beyond its own requirements, but it should have a clear sighted view of its own needs and extend cooperation within those bounds.

On the western side of the Indian Ocean, India has a vital interest in peace and stability in the Gulf region where several million Indian expatriates reside and from where enormous remittances are received. The regional impact in India of any upheaval can be considerable, as also for our balance of payments. While the size of our community is an asset in terms of bilateral relations with these Muslim countries, the

underlying vulnerability of the situation is also a fact. India needs to continuously cultivate the goodwill of these countries from which it receives most of its energy. Iran -Saudi Arabia hostility and the sharpening Shia-Sunni divide is problematic for India, as we are not in a position to choose sides, and would not like to have these divides transferred to our own soil in view of the sectarian composition of our own Muslim community. We need good relations with both Saudi-Arabia and Iran, even though in over all terms our equities with Saudi-Arabia are higher. We have been cautious in our reaction to the Arab Spring as its future course is uncertain; the extension of such a spring in the Gulf region can confront us with most difficult choices. Already we had to evacuate 18 thousand Indian expatriates from Libya.

To maintain the independence of its policy options and deal with threats, it has to strengthen its capacity to defend itself. This requires that we develop rapidly our strategic assets as well as our indigenous defence manufacturing base. We should continue to engage China without seeking to appease it. A dialogue with Pakistan can continue but without unilateral gestures that weaken our hand in dealing with it.

India's security challenges have to be seen in the context of the fact that India is not a member of any alliance. It has to deal with its problems, actual or potential, largely on its own. To maintain the independence of its policy options and deal with threats, it has to strengthen its capacity to defend itself. This requires that we develop rapidly our strategic assets as well as our indigenous defence manufacturing base. We should continue to engage China without seeking to appease it. A dialogue with Pakistan can continue but without unilateral gestures that weaken our hand in dealing with it. The partnership with the US is critical for our long term interests but care has to be taken not to be drawn into engagements flowing from the US tendency to use force in pursuit of its causes. Our relationship with Russia which is free from the kind of complications we have with the

US needs to be nurtured as much as possible, not the least because it is our biggest defence partner. With Europe the steady relationship we have should be developed to its full potential. In our neighbourhood we should leverage our growing economic strength to draw these countries increasingly into our economic orbit with a show of generosity.

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Geostrategic Factors In Indo-US Relations

- *PP Shukla*

An examination of the history of the Indo-American engagement since Indian Independence shows that there were three major occasions when the relationship might have developed along more positive lines. These were, first, in the period immediately after Independence; the second was in the aftermath of the India-China war of 1962; and the last was after the end of the Cold War and the dissolution of the USSR. This last phase is still on-going, and is showing better results than the previous two, but there is still much that needs to be clarified – and changed - on both sides.

India chose to stay non-aligned, the US was looking for allies against the USSR, or Communism more generally in the early phase, and thus could not find common strategic ground. Frequently enough, this is supplemented with references to individual differences, such as between Nehru and Dulles or Krishna Menon and pretty much everyone in the US foreign policy establishment.

understand the dynamics of these three phases in the Indo-US engagement in order to see why the results were [and are] less than satisfactory; it is not an attempt at recounting the history of the relations between the two countries. The purpose is to draw lessons from the earlier failures, to see if they can point the way to better relations in the future. Thus it will not focus on the 1970's or the 1980's, important though they are; they are of limited value in understanding why a strategic understanding was not possible between the two countries.

What follows is an attempt to understand the less-than-happy state of relations

*PP Shukla – Joint Director, VIF

between the two countries runs in terms of the differences over Cold War policies. India chose to stay non-aligned, the US was looking for allies against the USSR, or Communism more generally in the early phase, and thus could not find common strategic ground. Frequently enough, this is supplemented with references to individual

differences, such as between Nehru and Dulles or Krishna Menon and pretty much everyone in the US foreign policy establishment.

What is incomplete, or even wrong, with this explanation is that it fails to explain why, after the collapse of the Soviet Union, relations between the two countries did not improve as both sides would have wished. There was improvement, no doubt, specially from the late 1990's, but it was halting and contradictory – and the same less than satisfactory situation prevails

today. This is not to underestimate the many solid achievements, especially of the last decade or so. Nonetheless, the fact that this group is discussing this question, and so are many others, is evidence that the promise of the relationship has not been met so far.

But the reality is that India did try and offer everything that America wanted. Nehru's first visit to a superpower was not to the Soviet Union, but to the United States – as far back as in 1949. It was, in fact, the Pakistan Prime Minister who was scheduled to visit the USSR in 1949, though the visit did not take place. Nehru visited the USSR only in 1955, by which time American policies in South Asia were firmly locked down.

The first opening: 1949-54

It would, therefore, be worthwhile to explore whether the standard explanation is the complete picture. And here, it turns out, there are many facts which both sides have found it convenient to ignore. On both sides, there appears to be a willingness to let

this incomplete narrative dominate the discourse – it suits Indian amour propre, and it suits the Americans to be able to say that they genuinely wanted and tried for better relations but it was not to be.

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“Sir Girja ... pointed out that two fundamental considerations prevented Indian adherence to the Soviet bloc. First, through its association with the British, unhappy as it had been in some aspects, India had acquired the ideals of democracy and individual

liberty, which were held by the US and other nations of the west. Second, India can expect no effective assistance from the USSR in its primary objective of strengthening itself economically and militarily. In fact, the US is the only country which is in a position to aid India. ... Sir Girja stated that his remarks were being made with the full knowledge and authorization of Prime Minister Nehru...”

However, America was by then moving in a different direction. An inter-agency study had come to the conclusion that America had only limited interest and stake in South Asia, and such interest as there was, lay in Pakistan. The assessment of the Joint Chiefs of Staff in their Memorandum of 24 March 1949 reads as follows:

“From the military point of view, the countries of South Asia, except Pakistan have, under present and prospective conditions, little value to the United States. ... The Karachi-Lahore area in Pakistan may, under certain conditions, become of strategic importance. In spite of tremendous logistical difficulties, this area might be required as a base for air

operations against central USSR and as a staging area for forces engaged in the defense or recapture of Middle East oil areas.”

In order to see how this assessment affected US policies towards South Asia, it is instructive to follow the evolution of the American stance on the Kashmir question. This is important because it was by far the most important issue facing India and Pakistan at this time; it was also the issue that dominated the conversation of both countries with the US. In 1948, shortly after India took the dispute to the UN for pacific settlement under Chapter VI of the Charter, a discussion took place between American and British officials on the nature of the dispute. The American record of the conversation runs in part as follows:

“The British representative at first attempted to minimize such an analogy by asserting that Kashmir was ‘territory in dispute’. The US representatives agreed that Kashmir was a state about which a dispute had arisen between India and Pakistan but stated that

they found it difficult to deny the legal validity of Kashmir’s accession to India. In the end, the British representatives agreed with the US point of view that we had to proceed on the assumption for the time being at any rate India had legal jurisdiction over Kashmir.”

However, by February 1950, that is, after the inter-agency discussion had focused on Pakistan as the country that presented some interest to them, this American position had changed, and the State Department was arguing against this very position. In an internal note, it was argued that

“In the opinion of the Office of the Legal Adviser, execution of an Instrument of Accession by the Maharajah in October 1947 could not finally accomplish the accession of Kashmir to either Dominion, in view of circumstances prevailing at that time...”

Looking at the sequence of events described above, it is hard to escape the conclusion that this revision of the American position on the legality of the accession was a result of the conclusion drawn a

few months earlier that Pakistan was more important for America than India.

For connoisseurs of historical irony, it would be amusing to see that by August 1949, Nehru was sufficiently tired of American badgering on the subject of Kashmir to admonish Ambassador Loy Henderson that “he was tired of receiving moralistic advice from the US”. Since this is a charge the American leaders were later to level at Indian leaders, it is an indication of who went first. But on a more serious note, what this kind of testy exchange reveals is that the US frequently did not adequately understand how important the Kashmir question was for India, or the strength and depth of feeling over the issue. It is also true that the Indian leaders did not take the time to explain frankly and forcefully how pivotal this matter was to our overall foreign policy posture. In fact, all

through the Indo-American relationship, this is a major failing perhaps on both sides, certainly on the Indian side, that they did not talk with sufficient candour.

This phase in our history set the basic parameters between India and the US, and it was not very promising at this point of time.

But on a more serious note, what this kind of testy exchange reveals is that the US frequently did not adequately understand how important the Kashmir question was for India, or the strength and depth of feeling over the issue. It is also true that the Indian leaders did not take the time to explain frankly and forcefully how pivotal this matter was to our overall foreign policy posture.

However, worse was to come after the change of Administration in 1953. Whereas prior to this time, American military supplies were proceeding more or less even-handedly as between India and Pakistan, all this changed under the new Administration and by 1954, America had undertaken to

provide military assistance to Pakistan. The record shows that all sides declared that the assistance was meant for the fight against Communist aggression, in reality Pakistan was arming against India. However, this was the occasion for the entry of the USSR into South Asian politics,

and in December 1955, Khrushchev visited Srinagar and declared that Kashmir was an integral part of India and, in a pointed rebuttal of the Pakistani demand for self-determination, added that the people had already exercised their right of self-determination. As a veto wielding permanent member of the UN Security Council, this effectively put an end to any realistic chances of a UN-brokered settlement of the issue.

Two important conclusions may be drawn at this stage. The first is the great importance and sensitivity of the Kashmir issue for India. From a reading of the historical records, it frequently appears to be the case that American policy-makers did not grasp this reality. It sometimes appears as if this is still not fully understood in America. **The second is that the USSR entered this issue much after the American policy-makers had set course for a pro-Pakistan stance. In later years, i.e., in the late 1950's, senior Soviet officials were to tell their Pakistani counterparts that they took the stance on Kashmir, and, by extension, on South Asia, only after Pakistan**

joined the anti-Soviet pacts and started receiving US military aid.

In short, it was American policies in South Asia that brought India and the USSR together. Another important aspect of the politics of the region is worth emphasizing: the Pakistanis had offered to the Americans that they would supply troops to the Korean War, but pleaded that until a Kashmir settlement was found, they were unable to spare any troops for the purpose. To the British, who were then setting up the Middle East Defence Organization, the Pakistanis again offered to send troops – if they would help settle Kashmir, and address the Indian threat.

The second opening: 1962-1965

The next phase opened after the Indian defeat at the hands of the Chinese in 1962. Enough has been written about how it affected Nehru and his foreign policy, so there is no need to go over that ground one more time. What has not received adequate attention is the brief period November 1962 to about the end of 1965. The war started on 20 October and continued until 21 November 1962, giving enough time for

countries to define their positions – even their changing positions. In the initial period, the USSR was cautiously neutral, even tilting towards the Chinese. The Americans, under President Kennedy, were much more forthcoming. In the early weeks, too, both these countries were caught up in the Cuban Missile Crisis, and yet Kennedy was strongly

supportive. The Americans offered all help to the Indian Army and went much further in terms of offering air defence cover, manned by American forces.

However, once the actual shooting stopped, the Americans all but made further military assistance conditional on India's reaching a settlement with Pakistan. It is a measure of the Indian desire for American aid that the Indian leaders undertook some of the toughest negotiations on the subject of Kashmir. In response to very active shuttle diplomacy by Governor Harriman

and Secretary Sandys, India offered significant territorial concessions to Pakistan, despite Pakistan's signing a border agreement with China in March 1963, when the talks with India were at a very sensitive stage. However, the Pakistanis were unwilling to settle for anything less than the entire Vale, all the way south to the Chenab, and the

talks ended without result. By this time, habitual American positions were beginning to assert themselves, and it did not help that they offered to both sides what were called the "elements" of a settlement, which, in essence, backed the Pakistani territorial demands.

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The Soviets, by now over the Cuban troubles, and slipping into their long struggle with the Chinese, stepped in again and offered India the fighter aircraft it had asked for – with no conditions attached, unlike the Americans. Nevertheless, India did not make

any long-term commitment to either side. To his credit, Kennedy came through with MAP assistance for India at this time, and the two countries signed an Air Defence Agreement – the first and only such understanding between India and America during the Cold War. This was not easy, since the Pakistanis and their supporters in the Administration, were all for holding aid to India hostage to a Kashmir settlement.

This would be the appropriate time to pay tribute to Kennedy for his role in strengthening Indo-US ties. Alone among the Presidents during the Cold War period, he saw the virtue of a strategic accommodation with India, and over-ruled all opposition in order to build one. It is idle to speculate on what might have been, but it is certain that, had he lived, there is a good chance that Indo-US relations would have been

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Anyhow, Kennedy did not live long enough to fulfil the promise of the new relationship. And once he was gone, things began to move to their by-then traditional pattern. An observer would not have to wait long for the hint of change. As early as 30 November 1963, President Johnson was recorded as telling his aides that he was unhappy at the way President Ayub Khan was being treated, and wanted that changed.

A quote from an internal memorandum of 30 November 1963 spells it out without ambiguity:

“The president expressed the greatest of confidence in Ayub and a feeling that we had not been forceful enough with him, had not given him a feeling of confidence in our motives and that he had drifted into the thought that we would abandon him in favor of India. He stated that he wished this corrected in the most positive

manner.”

Of course, change was not that easy to bring about, since Ayub, and more particularly, his Foreign Minister Bhutto, were moving ever closer to China – at that time a source of growing difficulties for America specially in Vietnam. As for India, it was facing problems with American arms supplies, and was increasingly finding the Soviets a more responsive supplier. It was not only not insisting on any political conditions, it was also willing to supply front-line aircraft, and to transfer production facilities too.

The Indo-Pakistan War of 1965 was another milestone in the evolving strategic equations. America was neutral between the two countries, even though they recognized internally that Pakistan had started the war. However, a more serious issue was to create a breach between India and America. The Chinese made two important diplomatic interventions during the war, the first on 8 September, the second, a more serious ultimatum, on 18 September. On each occasion, the Indian Government sought the help of the American and Soviet

governments to advise the Chinese to stay out of the conflict. After the second warning of 18 September, which was an ultimatum to India to dismantle some alleged structures on the Sikkim border in 72 hours, India had sought consultations and contingency planning with America in the event of China making good on its threat. **The Americans refused to enter into such consultations, but assured the Indians that they had conveyed their concerns at the Warsaw talks that were then going on between the American and Chinese Ambassadors. The Soviets did not enter into any consultations either, but received an Indian diplomatic and defence delegation, and assured the Indian side that they had presented a strong demarche in Beijing. By this time, the Soviet-Chinese differences were out in the open, and it was clear that the Soviets were ready to confront the Chinese over this issue. The Indian Prime Minister was later to convey his thanks to the Soviets for having prevented the Chinese from taking any action in support of Pakistan during the war.**

Thus was the second chance lost. Again, it may be worthwhile

summing up the essentials of the developments in the first half of the 1960's. The 1962 war with China opened another window for better Indo-US understanding, and Kennedy was quick to seize the opportunity. The immediate and positive American response in October 1962 generated a lot of goodwill for America in India, and yet, this was dissipated first of all in forcing fruitless discussions on Kashmir. Still, the Indian side persevered, and India began to receive MAP supplies for the first time. However, after the 1965 war with Pakistan, the last of the efforts ground to a halt. Without Kennedy to push things along, old habits asserted themselves.

Again, it may also be worth pointing out that Pakistan had offered, under its SEATO obligations, to supply troops for the Vietnam War, and Pakistan's growing ties with China were a major irritant in its relations with

the US. However, Pakistan did not supply any troops to Vietnam, again citing the need first for a settlement in Kashmir, and the threat from India.

By the time the 1970's started, two other major issues divided India and the US: the Non-Proliferation Treaty and China. These issues have been aired and discussed

over the years, and there is little to add to what is already well-known.

Indians remember the American act of sending a naval flotilla into the Bay from this period, with a sense of unabated anger; it may help to mention that the Americans had considered a

similar nuclear-powered warship into the Bay of Bengal in 1962, during the war with China – in a show of support for India!

The third opportunity

The third opening dates from the 1990's. This is particularly important, because the irritant from the American side – the

The 1962 war with China opened another window for better Indo-US understanding, and Kennedy was quick to seize the opportunity. The immediate and positive American response in October 1962 generated a lot of goodwill for America in India, and yet, this was dissipated first of all in forcing fruitless discussions on Kashmir.

USSR – was gone. Once more, India looked at her strategic options unencumbered by any prior commitments. And this is where the original hypothesis of Indian neutrality being the main cause of the limited engagement between India and America breaks down. For by this time, apart from tokenistic references to non-alignment, India was no longer leaning towards any other power or group of countries hostile to the US. In fact, it was America that again rebuffed Indian overtures, including on vexed issues like Kashmir, nuclear disarmament, which had been a source of discord between the two countries over the decades, and the emerging threat of terrorism.

The Bush team had little time for India, engrossed as they were with mopping up the debris of the end of the Cold War. **The Clinton Administration stunned the Indians with his reference to Kashmir in his first UNGA speech in 1993, as did State Department officials with their unbridled hostility, publicly drawing parallels between India on the one hand and the USSR and Yugoslavia on the other. It would be fair to say that, not since the**

Nixon Administration had India faced such hostility from the US. The then Prime Minister held two conferences on this issue alone – why was the US being so hostile? This may not seem like much to an American, but an Indian will understand – we do not hold meetings to analyse anything – every Indian singly knows it all. And he brought the best minds into play in order to understand why the Americans were being so negative towards India. This was a time when there was also no American dependence on Pakistan as there was to develop after 2001, so there really was no adequate explanation.

Fortunately, this hostility was to be somewhat moderated in the second term of President Clinton, and he moved sufficiently far and fast to become the first American President to visit India after a gap of 22 years – this despite the nuclear tests in 1998. This was also the period that saw some partial, if contradictory, change for the better in the American posture in the triangle India-America-China. Nonetheless, Clinton's approach to South Asia reflected a continuing balancing of India with Pakistan, despite growing

evidence of Pakistani sponsorship of terrorism and involvement in nuclear proliferation. Where the Bush Administration had placed Pakistan under sanctions under the Pressler Amendment, and on the watch list of states sponsoring terrorism, the Clinton team removed Pakistan from the latter list, and worked earnestly to mitigate the worst effects of the Pressler sanctions.

What this note has been attempting to show is that the main hurdle in Indo-American strategic understanding is the question of Pakistan, and the central symptom there is the issue of Kashmir, though the issues of terrorism sponsored by Pakistan, not just in Kashmir but in other parts of India too, and the future of Afghanistan, have emerged as additional divisive factors. The history of India's engagement with the Soviet Union should demonstrate that support on Kashmir is both a necessary and sufficient condition for true strategic partnership. True, India is not as vulnerable today on this, and other matters, as it was in the 1950's and 1960's. Still, it remains probably our most important concern, and sensitivity on this

issue is an important touchstone – if not the important touchstone – for our foreign partners. Those who have followed our recent stand-off with China on this issue, and the linking of China's stand on Kashmir with our position on Tibet, will appreciate the point being made.

Before going further to some specific proposals for action, it may be worthwhile to recapitulate briefly the main conclusions of the summary of events described above. Two stand out.

The first is that India, and every Indian leader, tried hard to establish a solid relationship with America, and tried every reasonable accommodation possible. Certainly, America remained the major priority for each Indian leader. It was America that did not offer a reasonable response, with its insistence on a Kashmir settlement on terms that no Indian government could accept. The only exception to this was John Kennedy.

The second is that Pakistan, which was the preferred partner for America, offered support for American goals, but made a

Kashmir settlement a precondition for such cooperation. Thus, it offered help in Korea in the early 1950's, but argued that it could not spare any troops because of the Indian threat; in the 1960's, they would have sent troops to Vietnam, but for the threat posed by the Indians. Today, it is the same refrain, only now it is al-Qaeda and the Taliban, along with the other terrorist groups that find sanctuary and financing inside Pakistan. The surprising thing is that there are sober-minded people in the US who are ready to buy into this thesis even today despite this history of mistaken premises and false promises.

It is also important to stress that the Indian position on Kashmir reflects one of the few issues on which there is a national consensus. The country has gone about as far as it can in making concessions on this subject, and there is little chance that any more is possible. And this is where America needs to show more understanding. Historically, it has been sympathetic to, even supportive of, Pakistan. Obviously, it is too big an ask for America to move to where Khrushchev was in the 1950's, but there are a number

of other interim options worth thinking about.

The first is from the American record itself. In the early 1960's, when the Pakistanis insisted on raising the issue in the UNSC, the Americans informed them that they would play no role in promoting or building support for another resolution. This position was abandoned after the Indo-Pakistani war of 1965, but the change in American position was noted and appreciated in India. It would be a very good idea for America to stop leaning on India to make concessions on Kashmir and just take a back seat on this matter. America has done this before, and would be wise to recognize that there is no give in the Indian position on this issue. If in 1962, we were being asked to surrender territory to Pakistan though we lost a war to China, today we are being pushed into an even more illogical position: because ISAF is in danger of losing to Pakistan, India must make territorial concessions to Pakistan.

There is a second consideration for the Americans: this comes from the history of their dealings with

Afghanistan. Since the 1940's, America has consistently been advising that country not to agitate the question of Pashtunistan or the related issue of the Durand Line. It may be time to give the same advice to the Pakistanis too, on the question of Kashmir. Certainly, this is what the former Chinese President, Jiang Zemin, advised the Pakistanis to do in his speech to their Senate in 1996.

There is a third option, a small step, which is both eminently doable and is perfectly logical. This concerns the depiction of the Line of Control in Jammu & Kashmir. At present, the Line ends at point NJ 9842. The Karachi Agreement of 1949, which delineated the basic Line, and the later agreement under the Simla Agreement of 1972, state that the

Line runs further north to the glaciers. However, the US Defence Mapping Agency has been depicting the Line as running north-east to the Karakoram Pass. And, following this depiction, most of the map-makers around the world, have been likewise depicting the Line of Control. This is neither the legally correct position, nor does it reflect the ground situation. On the ground we have what is known as the Actual Ground Position Line, or AGPL. If the US Agency were to move to recognize the legally correct, and the actual, situation on the ground, it would be a welcome step in the right direction.

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India Should Strengthen Its Maritime Security Architecture

- *Radhakrishna Rao*

India, as a nation, seems to have gained notoriety for not learning from the past mistakes. Equally glaring is India's consistent failure to respond to the emerging situations with the speed and seriousness it deserves. And no wonder that the history keeps repeating itself with stunning regularity. Indeed, it took 26/11 for the Indian government to be jolted out of its 'smugness and slumber' to announce an ambitious plan to strengthen the coastal security architecture through a slew of measures. But here again the slow pace of the implementation of the projects as highlighted by the delay in the acquisition –the bane of India's defence modernisation programme-- could once again expose the long, porous and poorly guarded sea front of the country to attacks from across the sea channels. There is no denying the fact that the terror attack on the

commercial metropolis of Mumbai by Pak trained terrorists, who landed on the Indian mainland through the Arabian Sea channel by means of a hijacked fishing vessel, did expose the soft under belly of India's coastal security architecture. Says New Delhi based security expert and Director of the National Maritime Foundation Uday Bhaskar, "Our country is sea blind. Just securing the borders on the land is not enough". In the similar vein, India's audit watch dog CAG(Comptroller and Auditor General)coming down heavily on the Indian coastal security mechanism observed, "In an era of heightened coastal security concerns, Indian Coast Guard remains ill equipped to discharge its enhanced role and meet the challenges of today."

In fact, a widely reported incident post 26/11 did once again

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illustrate the typical mind set of “bolting the stables after the horses have left.” The glaring failure of the Indian coastal security agencies to monitor the movement of the Panamian merchant ship MT Pavit, which mysteriously grounded at Mumbai’s Varsova beach in August this year, has proved to be a huge jigsaw puzzle. That the abandoned MT Pavit could break the multi layered coastal security mechanism to land up at Mumbai’s beach front stands out as a sad commentary on the poor maritime security apparatus that India has put in place. Meanwhile, there is a speculation that the Pakistani-Iranian crew of an Iranian dhow captured by Indian Naval vessel INS Rajput, 180 nautical miles from Bitra Island in Lakshadweep group in Dec.2010, had planned a Mumbai type terror attack on a spot in Kerala. The crew of the dhow Al Javaidi consisting of 17 Pakistanis and Iranians told the Indian Navy personnel that they were engaged in fishing and had deviated to the oceanic region near Lakshadweep fearing pirates. Though the crew claimed not to have docked at any port since its departure from Jabra in Iran, much of the ration

found on board the ship was found to be of Pakistani origin including a match box made in Mirpur in Pak occupied Kashmir. And this has raised the possibility of the dhow having docked at one of the Pakistani ports. Suspicion of the Indian security agencies only increased after a crew, claiming to be a citizen of Iran, spoke fluent Hindi with an accent unique to the Kashmir valley.

“In view of the vulnerability of Indian island groups of Lakshadweep and Andaman and Nicobar islands, efforts are being made to strengthen their security. The Government is aware of the strategic importance of Andaman and Nicobar and Lakshadweep and has been taking steps to enhance their security,” said P. Chidambaram, Indian Home Minister. Proximity of Lakshadweep to Maldives, some of whose nationals are known to have been trained by Pakistani terrorist groups, is a matter of concern for the Indian coastal security agencies. Added to that, in recent months, Somalian origin sea brigands have spread their influence to the Arabian Sea region. Indeed the possibility of the islands of Seychelles,

Mauritius and Maldives becoming a stage post for sea piracy and the promotion of maritime terrorism is not ruled out. Incidentally, “Operation Island Watch” launched by the Indian Navy and Coast Guard in March 2011 resulted in the capture of Somalian pirates operating west of Lakshadweep islands after a fierce gun battle.

Similarly the need to strengthen security mechanism in Andaman and Nicobar island groups has assumed added significance in view of the growing Chinese maritime footprints over Myanmar and Bangladesh. China, which has already built a string of ports in Myanmar, will also be building an all weather deep water sea port at Sonadia near Chittagong in Bangladesh. Moreover, Bay of Bengal is vital to India’s energy security since it has huge reserves of oil and gas. Further the possibility of pirates off the coast of Bangladesh

Meanwhile, there are reports of the Chinese fishing vessels moving actively in India’s eastern coast close to Wheeler Island from where Indian missiles are regularly flight tested. There is a speculation that these fishing vessels could just be a cover to collect vital data on the Indian missile launches.

targeting ships in the Bay of Bengal cannot be ruled out. Not long back, pirate fishing vessels from Taiwan and Thailand operating in the Bay of Bengal were a common sight.

Meanwhile, there are reports of the Chinese fishing vessels moving actively in India’s eastern coast close to Wheeler Island from where Indian missiles are

regularly flight tested. There is a speculation that these fishing vessels could just be a cover to collect vital data on the Indian missile launches. Indeed, a few days before the Pak sponsored terror struck Mumbai, Antony had stressed on the

need to protect India’s 7516,-km long coastal stretch much the same way as the land borders.

Interestingly, the former Indian naval chief Suresh Mehta in the aftermath of the Mumbai terrorist attack had cited operational problems involved in checking each of the 150,000 fishing boats

plying around the oceanic waters around India. Against this backdrop, the Government of India has made it mandatory for the registration of all the fishing vessels in the country. As it is a majority of fishing boats now plying in the oceanic waters around India remain un-registered. In addition there is also a plan to involve fishermen in the coastal security plan. There is no denying the fact that the fishermen can serve as the first line of defence in so far as the coastal security is concerned. In fact, prior to 26/11 episode, fishermen had noticed a group of strangers landing in the shallow waters of the Arabian Sea on the outskirts of Mumbai. In this context the coast guard is holding regular community interaction meetings with the fishermen in the coastal belt to create awareness about maritime security. However, the plan to set up coastal police stations is proceeding at a snail's pace. Similarly, the plan to boost the operational edge of the

The state of Gujarat which boasts of a number of ports, oil refineries and industrial units along its coasts need to be extra vigilant because it shares borders with Pakistan. For long, the porous coast of Kutch had remained the stage post of arms and ammunition running by groups inimical to India.

existing coastal police stations through the state of art communications equipment and high speed boats is also lagging behind.

Indeed as stated by Antony, "The protection of our EEZ (Exclusive Economic Zone) is vital to the rapid economic growth of the country. For, we are living in a world of uncertainty with threats from maritime terrorism, piracy, narcotics smuggling and low intensity conflicts. The security of our sea lanes, communications lines and offshore infrastructure will have to be ensured for the sustainable development".

The state of Gujarat which boasts of a number of ports, oil refineries and industrial units along its coasts need to be extra vigilant because it shares borders with Pakistan. For long, the porous coast of Kutch had remained the stage post of arms and ammunition running by groups inimical to India. This is not to

suggest that the coastal stretch in the rest of the country is safe and secure; far from it. For instance, the Arabian sea coast along Kerala had widely been used by LTTE (Liberation Tiger of Tamil Eelam), an assortment of jihadi groups, smugglers and drug runners. In the backdrop of the reports of LTTE trying to regroup, there is a need to mount vigilance along the Tamilnadu sea coast. Indeed, only an eternal and effective security along both the eastern and western coastline can ensure the safety of mainland India. It took 26/11 incident for the Government of India to designate the navy as the nodal authority charged with the task of ensuring the coastal security in all its manifestations. This implies that the navy will be required to coordinate with 27 different state and central agencies to monitor the Indian coastal stretch and ensure maritime security. Lack of coordination among the multitudes of agencies involved in ensuring India's maritime security was a major causative factor for the mainland India being exposed to terror threat from across the high seas.

The elite, 1000 strong Sagar

Prahari Bal (SPB) set up by Indian Navy in the aftermath of 26/11 will take care of defence equipment in the shallow waters around India. While this force currently uses hired boats for patrolling, the Indian Navy is in the process of acquiring 80 fast interceptor craft for SPB. On another front, the plan to set up 45 static radars along the coastal stretch of the country along the mainland and Lakshadweep and Andaman and Nicobar group of islands is picking up. These highly sensitive radars in addition to detecting low flying objects can also identify boats and vessels sailing in the ocean waters from a distance of 15-20 nautical miles.

Not long back, Suresh Mehta had hinted at the possibility of cargo containers being employed to transport nuclear devices to pre determined targets by the terrorist groups. In particular the observation of Suresh Mehta applies to the hard core fundamentalist Islamic groups--active in the poorly governed and failed state of Pakistan--which in league with a section of Pakistan's defence set, could lay its hands on the nuclear weapons. Today 70-75% of the global sea going cargo

is containerized. Naturally, there is a growing concern about the safety of container transportation.

The need to strengthen security in and around the Indian ports, which play a major role in country's export-import business, has nudged the Indian Shipping Ministry to create an elite commando force equipped to take care of the security of the ports and harbours in the country. As envisaged now, each of the major Indian ports considered to be vulnerable to terrorist threat would be guarded by a group of 60 commandos equipped with the latest genre of weapons and communications devices. India has 12 major ports and 200 minor ports which account for 90% by volume and 79% by value of country's total foreign trade. This initiative assumes significance in the context of the observation by Suresh Mehta.

Looking beyond the threat from terrorists, pirates and arms traffickers, the Indian maritime security architecture should aim at securing Indian interests in oceanic waters beyond India's immediate neighbourhood. Indeed, in the context of Chinese muscle

flexing in the Indian Ocean, the Indian Navy should upgrade its capability in terms of technology, equipment and human resources to expand its footprint in this strategically located, commercially significant water body. Chinese naval presence in the Indian Ocean for anti piracy operations would receive a further boost by the permission granted to China to go in for deep sea mining in the Indian Ocean region.

It is in the fitness of things that India should join hands with Vietnam to thwart the Chinese hegemonistic ambitions in the disputed South China Sea region. Indian Prime Minister Manmohan Singh was right in his observation made during Vietnamese President Truong Tan Sang's India visit in October, "India and Vietnam are maritime neighbours. We face common security challenges from terrorism, piracy and natural disasters. We believe that it is important to ensure the safety and security of the vital sea lanes of communications. We have agreed to continue and strengthen our exchanges in these fields."

As it is, the agreement between India and Vietnam's state owned

oil companies includes new investment and the exploration and supply of oil and gas to the two countries. Irked by the Indian exploration projects on Vietnamese blocks in South China Sea, Chinese authorities raised objections claiming that it transgressed their area of control. The Chinese claim on the South China Sea was rejected by both India and Vietnam. India has also made it clear that Oil and Natural Gas Corporation Videsh (ONGCV), India's state owned venture, would continue to explore the resources rich South China Sea. For India's stand is that any country has the right of passage over this international

maritime area according to UN Convention on the Law of Sea (UNCLOS). China has claimed that South China Sea and all the islands including Sparty and Parcel belong to it. "China enjoys indisputable sovereignty over the South China Sea. China's stand is

based on historical facts and international," said a spokesman of Chinese external affairs ministry. As strategic analysts point out, the expansionist claims of this Asian communist giant has spurred a veritable arms build up in the region—from South Korea to Malaysia and Vietnam. Not surprisingly then countries which

are embroiled in dispute over South China Sea with China are responding to the Chinese sabre rattling much the same way as a India is responding to the perception of heightened threat from China on land and sea.

Observers say that India should do utmost for Vietnam in the defence

sector much the same way as China has done to Pakistan by bolstering its defence preparedness. In South China Sea, Vietnam is the only credible power that can withstand the onslaughts of China. And India should without hesitation accede to the

Observers say that India should do utmost for Vietnam in the defence sector much the same way as China has done to Pakistan by bolstering its defence preparedness. In South China Sea, Vietnam is the only credible power that can withstand the onslaughts of China. And India should without hesitation accede to the request of Vietnam for military assistance in the areas of maritime security and naval weapons.

request of Vietnam for military assistance in the areas of maritime security and naval weapons. The four areas in which Vietnam has sought Indian support are: submarine training, conversion training for its combat pilots to operate Su-30 fighters, augmentation of its strategically situated Nha Tran port and transfer of a medium sized warship. On another front, Vietnam has evinced interest in buying the Indo-Russian supersonic cruise missile BrahMos. An India-Vietnam alliance would be a win-win combine to thwart Chinese expansionist ambitions in the vital South China Sea region.

Meanwhile, China says that it has started the sea trials of what it claims to be its first aircraft carrier built around the Ukranian warship it bought as a scrap. An operational aircraft carrier would strengthen Chinese power projection capabilities in the oceanic waters especially in the

disputed stretches. A group of aircraft carriers could embolden China towards reinforcing its maritime claims for the shoals, islands and islets in the South China Sea. As things stand now, China expects to have at least three aircraft carriers in service in the foreseeable future. India too hopes to have three aircraft carriers in service before the end of this decade.

Against such a scenario, Indian Navy should strive to transform itself into a three dimensional, network centric enabled and satellite augmented blue water force to project the Indian power across the global oceanic stretch with a greater degree of credence.

Against such a scenario, Indian Navy should strive to transform itself into a three dimensional, network centric enabled and satellite augmented blue water force to project the Indian power across the

global oceanic stretch with a greater degree of credence. To boost its strike capability, Indian Navy should link up its long range missiles, radars and air defence systems on its sea based platforms to a central location through a highly dedicated satellite link. Of course, the deadly BrahMos would be a major trump-card of the Indian Navy in its quest to stay

ahead of the enemies.

As it is, the US Navy has been in a position to dominate the large part of the oceanic waters through its “sustained and creative” reliance on a variety of space platforms including satellites designed for communications, navigation as well as reconnaissance and surveillance. As a forward looking maritime force on the threshold of a major transformation, Indian Navy is fully well aware that ocean watch satellites snooping on the naval movements, electronic ferret satellites gathering data on radio frequencies, meteorological satellites predicting weather to facilitate an effective use of weapons, navigation satellites precisely guiding lethal weapons to designated locations with unfailing accuracy, reconnaissance satellites providing vital data on the strength of potential adversaries and communications

satellites ensuring a real time link up for the effective use of resources are all puppets in the chain of the modern day warfare.

However, the biggest challenge before the Indian Navy is to stay ahead in the race to acquire the best of the technologies and dominate the oceanic waters to secure Indian interests without let or hindrance. As stated by Parag Khanna, a US based geo strategist who is also the founding director of the Global Governance at the New American Foundation “Now India is being seen as much more of a naval power—overseeing and having a strategic role with respect to the Indian Ocean and the trade routes there. That actually is the geopolitical future of India. It is a very strong future”.

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Reforming the Judiciary

- *Dr. M.N. Buch*

The basic structure of the Constitution of India divides the State into three equal but separate constituents which, nevertheless, have a degree of convergence and interaction because each is incomplete without the others. These three constituents are, in the order that they are mentioned in the Constitution, the Executive which is provided for by Part V, Chapter 1 of the Constitution for the Union and Part VI, Chapter 2 for the States; the Legislature as provided for by Part V, Chapter 2 for the Union and Part VI, Chapter 3 for the States; and the Judiciary as provided for by Part V, Chapter 4 for the Union and Part VI, Chapter 5 for the States. It is noteworthy that though the Constitution is federal in character the Judiciary forms a single hierarchy from the court of first instance right upto the Supreme Court. Under Article 141 the law declared by the Supreme

Court is binding on every court in India, thus making them subordinate to the Supreme Court in all judicial matters. In the States the High Court is the court of records and is also the court which exercises superintendence under Article 227 over all courts and tribunals functioning within the territorial jurisdiction of the High Court. All courts in India can try cases under all laws, whether enacted by Parliament or by a State Legislature and in this our Constitution differs from that of the United States of America where State courts have jurisdiction in matters within the purview of the State Legislature and Federal Courts have jurisdiction in matters which lie within the purview of the U.S. Congress.

The Judiciary in India is completely independent of the Executive and the Legislature. In the appointment of Judges of the Supreme Court of India and the

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High Courts of States the Executive has no direct say because under Articles 124 (2) and 217 of the Constitution Judges of the Supreme Court and the State High Courts are appointed by the President as per the procedure prescribed by the Constitution. In fact it is a matter of some doubt whether in the appointment of Supreme Court and High Court Judges the President is required to consult the Prime Minister and the Council of Ministers at all. In the case of the Supreme Court the President shall appoint Judges after consultation with such of the Judges of the Supreme Court and High Courts as he deems necessary, as also the Chief Justice of India, consultation with whom is mandatory under the Constitution. Here the advisor to the President is the Chief Justice of India and not necessarily the Prime Minister. In the case of High Courts the President is required to consult the Chief

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Justice of India, the Governor of the State and the Chief Justice of the High Court concerned. One interpretation could be that in these matters the Constitution gives discretion to the President. This is an issue on which we need an authoritative pronouncement because at present the view is that the President has to consult the Council of Ministers. Why, then does the Constitution provides for consultation with the Chief Justice of India, Supreme Court and High Court Judges and the Governor and the Chief Justice of the State concerned?

The question of appointment of Judges has been laboured because this is an issue to which this essay will revert at a later stage, but it is of importance in determining whether the present practice is valid or calls for change. Meanwhile, we shall discuss the issue of judicial reforms. Why has this discussion become necessary?

There is a growing public perception that corruption amongst judicial officers has increased substantially and will continue to grow unless suitable remedial action is taken. The complaints against corruption are no longer confined to the lower Judiciary and have reached as high as some former Chief Justices of India. There are also complaints about irresponsible behaviour of Judges over whom there is no control. It is also alleged that the Judiciary is overreaching itself and intervening in the realm of the Executive and the Legislature also. The major complaint is that there is inadequate judicial accountability and that this has to be set right.

Taking the nature of the complaints we can break up our response into the following parts:

(1) The judicial procedure and delays caused by it. (2) Appointment and removal of Judge. (3) Accountability, judicial discipline and administrative control over courts by the Judiciary itself. The easiest part is the first one which looks at procedures. The principal complaint is that the courts are

overloaded with judicial work and that cases are inordinately delayed. This is tantamount to denial of justice. Let us take the criminal courts. In all criminal trials there is the prosecution, which represents the State and then there is the accused. In a case of which cognisance is taken on private complaint the trial court is still required to hear the prosecution, record the prosecution evidence and then proceed to try the case according to law. In both cases the State or the private complainant is required to prove the case against the accused beyond a shadow of doubt and the burden of proving the case rests with the prosecution. The accused person is not required to establish his innocence, though he may be required to defend himself and rebut the prosecution evidence if the prosecution is able to establish the guilt of the accused. The proceedings in a criminal court are relatively simple and straightforward because both the prosecution and the accused are required to produce their witnesses or request the court to issue process for summoning the witnesses. In the matter of heinous crimes in a Sessions Court

every trial is conducted by a Public Prosecutor, which means that every sessions case becomes one of the State vs. an accused person. Under section 309 Cr.P.C the Court of Session is required to continue the case from day-to-day till all the evidence is recorded and an adjournment would be an exception for which necessary reasons have to be recorded. The entire tenor of Cr.P.C is that the trial must be conducted expeditiously so that an accused may not remain under a cloud or even in custody for an excessively long period and the deterrent value of penalty is enhanced by the fact that trial and conviction or acquittal both follow as quickly as possible from the date of commission of an offence. Delay is the biggest enemy of deterrence.

Despite these legal provisions even criminal trials have a tendency to linger on for years. In a case in which my Deputy Secretary and I trapped a lady who was offering a bribe my evidence was recorded eleven years after the event and a conviction was obtained fifteen years after the offence. Here the slow pace of criminal justice had resulted in the accused virtually escaping punishment. In more

serious cases where the witnesses themselves may be from a village, so many contradictions can creep in when they are being examined years after the event that the accused often goes scot free and the conviction rate remains low. The standard excuse given is that the accused absented himself, summons were not served on witnesses or that witnesses did not come forward for evidence. What is not explicitly stated but in fact underlies most delays in trials is that an accused with a weak case uses legal tricks to delay the case and members of the bar help accused persons to obtain adjournments without proper cause. Many Magistrates and Judges are scared that if they do not give adjournments the lawyers may make complaints against them to the High Court and they would be in the unhappy situation of explaining their conduct to the High Court. That is why many Magistrates and Judges take the easy way out and adjourn the case.

It is obvious that we need some procedural changes either by amendment of the Code of Criminal Procedure or by High Court Rules and Orders on the criminal side laying down the

procedures for giving an adjournment and for ensuring service of process so that the Judges can work in an environment where they are not vulnerable to the virtual blackmail by advocates and can also take necessary steps to expedite the trial of cases. If the police is unable to serve process then we need to make greater use of alternative means, including extensive use of courier services in which payment would be made for every summons served and no payment would be made for summons not served. Because the courier is in the trade in order to earn money he would ensure that his subordinates do their duty so that the fees for serving process would flow to the courier and at the same time processes would be served so that the excuse for nonattendance in the courts would disappear. Simultaneously if an accused person absents himself from a

It is obvious that we need some procedural changes either by amendment of the Code of Criminal Procedure or by High Court Rules and Orders on the criminal side laying down the procedures for giving an adjournment and for ensuring service of process so that the Judges can work in an environment where they are not vulnerable to the virtual blackmail by advocates and can also take necessary steps to expedite the trial of cases.

hearing the court should hold him in physical custody so that the question of an accused absents himself does not arise.

In civil matters things are much worse and pendency is very high. Civil cases linger on for years and decades. Most civil cases require adjudication between two parties, the plaintiff and the defendant. There can be civil suits against government also, but these are easier to resolve because generally government does respond quickly to any process that might have been issued. That is not true of private disputes and because neither the liberty nor the life of a party is under threat, civil courts themselves take things very easy. Actually because the interests of two parties are involved and they are largely of a financial nature or relate to title, possession, fulfillment of contract, etc., both parties, should normally be eager

to obtain an early decision. Unfortunately quite often courts do not even frame issues, leave alone proceed with the trial and are happy to grant adjournments. The party which has the weaker case will try to use every means to delay a decision and these could include moving frivolous applications and then filing revision petitions, etc., questioning the intermediate orders that a court may have passed on a petition. Injunctions can be misused by a court's order of an intermediary nature and the person enjoying illegal possession of a property who has obtained an injunction for stay of ouster would be only too happy to let the case linger because the longer it takes to decide the case the longer he can continue to enjoy benefit of his possession. I am aware of the fact that the Code of Civil Procedure has been amended from time to time to take care of such contingencies. What we need are clear-cut directions from the High Courts through Rules and Orders Civil which restrict interlocutory and intermediate orders and also restrict the filing of various types of petitions which can further delay the case. As far as possible temporary injunctions should be

avoided and certainly the right of revision against intermediate orders should be severely restricted. A trial must be brought to a speedy conclusion, as far as possible intermediate orders should be avoided and it is only in appeal that the entire case should be heard. In every case when an intermediate order has been given, in order that a stay thus obtained may not lull the party concerned into a state of torpor, the case should be given a high priority in the cause list, witnesses should be examined speedily and a final decree should issue without delay. If we eliminate or substantially reduce temporary injunctions and stay orders in civil cases both the plaintiff and the defendant will have an interest in fast disposal of the case. It is about time that the Supreme Court and High Courts work out the best method of avoiding procedural delays in criminal and civil matters and emphasise that speed of disposal, without compromising justice, will be the criteria for judging the performance of judicial officers.

Our courts must become technology oriented and much greater use needs to be made of video recording of evidence long

distance so that delays on account of witness absence can be avoided. If the electronically recorded evidence is automatically printed out and the hard copy is signed and certified by the trial court, then subsequent tampering with the digital record would be avoided because it is the certified print out that would be the authentic record. To the extent that IT and ICT become tools to serve the courts we can speed up our trials.

This brings us to the next point, the appointment of Judges of the High Courts and Supreme Court and their removal where necessary. It is alleged that today the Supreme Court, through its collegium of Judges, is virtually be final arbiter of who will become a Judge. Before discussing this it is necessary to look at the quality of Judges that we are appointing. In the past it was considered an honour to be offered elevation to the Bench and some of our best legal brains came to the judicial profession. Justice

Hiralal Kania, Justice Mehar Chand Mahajan, Justice M Hidayatullah, Justice M.C. Chagla, Justice J.S. Verma, Justice Vivian Bose are some of the great names which come to mind. They were all people who could have continued to earn millions of rupees in the legal profession, but who chose the public service as Judges for a

Today the position is that the best lawyers prefer the fat fees they command and are reluctant to be elevated to the Bench. This means that mediocrities are the ones who come forward for appointment and because they know that they are not good lawyers, some of them are tempted to misuse their high office for illegal gain.

relatively paltry amount because to them service was always above self. Today the position is that the best lawyers prefer the fat fees they command and are reluctant to be elevated to the Bench. This means that mediocrities are the ones who come forward for

appointment and because they know that they are not good lawyers, some of them are tempted to misuse their high office for illegal gain. As a people we would be very foolish if we did not take cognisance of this fact. In fact the Chief Justice of India should be really worried about the quality of the Judges who are being

appointed because unless we get the best people into the judiciary we cannot expect to maintain its excellence. One suggestion is that we review the emoluments of the higher Judiciary and bring them to what I would call a comfort level. This would not make the Judges rich, but it would be sufficient to enable them to lead a life of comfort and free the family of financial worries. The amount can be left open to discussion, but if we want Judges of unimpeachable integrity and intellectual quality then we should be prepared to pay for their services.

Together with this we should also consider the age of retirement. This age for the Supreme Court is sixty-five years and for the High Courts sixty-two years. One anomaly in this is that quite often by the time a person becomes Chief Justice of India he may have already attained an age where he has a very short tenure of service left. We have had a Chief Justice who enjoyed only fourteen days of office. In order to ensure an adequate term it is suggested that the age of retirement of High Court Judges be raised to sixty-five years and of the Chief Justice

to sixty-eight years. This means that if by sixty-five years a person has not been appointed Chief Justice of High Court he will stand retired. As Chief Justice, however, he will enjoy at least three years in office. Similarly, the age of retirement of a Supreme Court Judge should be made sixty-eight years and that of the Chief Justice of India seventy years. He will thus remain in office for at least two years. A codicil to this is that like a Member of the Public Service Commission a retired Judge would be disqualified for any further appointment under government, including to a Commission of Enquiry, on superannuating from the court. This would insulate Judges from any inducement offered of post retirement appointment by government, which could be the lollipop which could influence Judges in the concluding years of service to rule in favour of government. All Commissions must be headed by serving Judges only.

Let us come to appointment proper. Article 124 (2) of the Constitution reads, "Every Judge of the Supreme Court shall be appointed by warrant under his

hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted". For the High Courts section 217 (1) reads, "Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court" The Supreme Court has constituted a collegium of Judges which is to be consulted in the matter of appointment of a Judge. Article 124 makes no mention of a collegium and the President is free to consult any Judge in addition to the Chief Justice of India as he deems fit. If the Chief Justice wants to consult a collegium in rendering his advice to the President he is welcome to

It is here that a National Judicial Commission can be appointed either to investigate the case against the Judge or to create a mechanism for such investigation. At present a tribunal is constituted by the Chief Justice of India.

do so, but the President is free to consult any Judge, including one who is or is not a member of the so-called collegium. I think the procedure for consultation needs to be clarified and it should not be such that it ties the hands of the President of India in the matter of consultation. Incidentally, unless the Constitution is changed a National Judicial Commission cannot be constituted for advising the President on the issue of appointment of Judges. If there are clear-cut procedures and practices regarding consultation, perhaps the present system needs no change.

However, what we need to look at is the procedure for removal of Judges. As per Article 124 (4), which covers Judges of High Courts also when read with Article 217, there is a procedure laid down for impeaching a Judge. There are three parts to this procedure. The first is a demand by Members of Parliament or otherwise for holding an enquiry against misbehaviour or incapacity of a Judge. This can be

regulated by a law enacted by Parliament under Article 124 (5). It is here that a National Judicial Commission can be appointed either to investigate the case against the Judge or to create a mechanism for such investigation. At present a tribunal is constituted by the Chief Justice of India. The second part of the process is that after the investigating tribunal or body presents its report, then each House of Parliament has to address the President on the basis of a majority of the total membership of that House and a majority of not less than two-third of the Members of that House present and voting. The address would recommend the removal of the Judge on ground of proved misbehaviour or incapacity. The third part is the order of the President removing the Judge. It may be recalled that in the Justice Ramaswamy case the errant Judge was found guilty on thirteen counts by the tribunal, but because the Congress Party abstained the requisite majority could not be mustered in Parliament and the corrupt Judge was thus virtually let off scot-free.

Let us take the argument further,

in fact to a stage which our founding fathers could not even have dreamt of as a possibility. Supposing a Judge of a High Court or the Supreme Court commits a heinous offence, is convicted and sentenced to a long term in prison. A government servant convicted of an offence is removed from service automatically. A convicted Judge, however, would still have to be impeached and if the political equations in Parliament are such that the Judge can muster adequate support, then the requisite majority will not be available and like Justice Ramaswamy the Judge would continue to be a Judge. He would be in jail serving a prison sentence but he would have all the privileges of a Judge. How does one deal with such a contingency? It is here that we need a fundamental reform which would enable an errant Judge to be eased out without affecting the independence of the Judiciary. I think the Supreme Court should devise a procedure for this and necessary amendments in the Constitution should be made for dealing with such a Judge. This should not be treated by the Supreme Court as a violation of its order in the Keshvanand Bharti

Case.

The third issue is one of accountability. Today judges are judicially accountable to their superiors through the medium of revision, review and appeal. The Supreme Court, of course, is accountable only to itself. One is acutely aware of the fact that if any accountability machinery other than the courts is misused to browbeat Judges this could seriously affect the Judiciary's independence and thus subvert the cause of justice. This has to be avoided at all cost. At the same time the number of errant judges, especially in the subordinate Judiciary, is increasing by leaps and bounds. There are many kinds of judicial misbehaviour. Recently a Judicial Magistrate in Gwalior who was moving around in a car with an orange beacon was checked by the DIG Police of Gwalior. The vehicle was a private one belonging to a friend of the Magistrate and neither the Magistrate nor that friend had permission under the Motor Vehicles Act to sport or flash a beacon. The Magistrate misbehaved with the police officer and was taken to a police station, from where he was subsequently

released. The Judiciary made this a point of prestige and a weak and pusillanimous government, instead of backing up the police officer for doing his duty, ordered his transfer. In such a case with the High Court backing up the errant Magistrate who is clearly in the wrong to whom does a citizen go for redressal? This is where we need a strong National Judicial Commission which would be empowered to investigate such cases and recommend suitable action. The Supreme Court also has to devise a mechanism whereby the behaviour of High Court and Supreme Court Judges can also be called to account. There is the notorious case of a High Court Judge from the Allahabad High Court who, a few years ago, took umbrage at the New Delhi Railway Station for not being given train accommodation of his choice. He treated this as a contempt of court and at the Railway Station platform he hauled up the Station Superintendent of New Delhi Railway Station and his staff. How does one call such a Judge to account? There has to be self-discipline within the High Courts and the Supreme Court.

One perception is that Public Interest Litigation, which really consists of writ petitions filed on issues of public interests which are of a high profile nature and can gain publicity, are given priority because some judges at least like to see their names highlighted in the media. Is it not time that the Supreme Court and High Courts systematically review all the cases pending before them, arrange them in order of priority and dispose of them quickly, while being very careful in the matter of admission of writ petitions? The writ jurisdiction of the Supreme Court under Article 139 and of High Courts under Article 226 is a power vested in these courts to deal with extraordinary situations where all other remedy has failed. Unfortunately our courts admit writs on almost any subject under the sun. In service matters, on trivial matters, on matters of interpretation of rules and laws writ cannot be a remedy for aggrieved parties. There are administrative remedies available

and there are normal judicial procedures available. It is high time that our courts of records accept only those writs which call for urgent intervention by the courts, while firmly rejecting all trivia. In fact the courts could probably reduce their writ case work by about ninety percent if they are careful in accepting only those writs which are of urgent public importance. For the rest let

Our Judiciary is at a crossroads today. If it decides to cleanse itself judicial independence would remain undisturbed. We need a fiercely independent Judiciary and I strongly oppose any effort by the Legislature or the Executive to intervene in this behalf.

people seek remedy before the appropriate courts having jurisdiction or the appropriate administrative authority. This will greatly reduce the total workload of the superior courts.

Our Judiciary is at a crossroads today.

If it decides to cleanse itself judicial independence would remain undisturbed. We need a fiercely independent Judiciary and I strongly oppose any effort by the Legislature or the Executive to intervene in this behalf. However, without performing an Adi Sankara on itself the Judiciary would find it very difficult to resist outside intervention in matters in

which the public perception of the Judiciary has taken a nosedive. For the sake of the Constitution and for the good of the country as a whole I would beg the

Chief Justice of India and the entire judicial establishment to apply self correction to the Judiciary so that the high regard in which it has always been held by the people is restored.

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Communal Violence Bill – A Direct Assault On The States

- *A. Surya Prakash*

The United Progressive Alliance government is readying itself to introduce a Bill to further strengthen the law against communal and targeted violence and to ensure speedy justice and reparations for the victims of communal violence. Though the objective is laudable – to boost the confidence of religious and linguistic minorities in all states and union territories – the first draft of the Bill, which has been prepared by the National Advisory Council (NAC), fails to inspire confidence. Far from promoting religious harmony and ensuring equity among citizens of all denominations, the controversial Bill has many features which are repugnant to the basic structure of the Constitution and is loaded with features which will disturb communal harmony, wreck the federal features of the Constitution, weaken the states and turn the Union Government once again into a bully who can overawe the states with its ‘firmans’. It appears as if the Bill has been drafted by persons who are unschooled in Indian Constitutional Law and who are unaware of the big strides that the country has made to promote the federal spirit and

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to build a liberal and open society.

The aim of this Bill - called the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill – is ostensibly to curb communal violence and hatred but it rests on the flawed premise that in all situations the religious majority perpetrates violence on the religious minority. Therefore, members of the majority community in every state are seen as the culprits and members of the minority communities are deemed to be the victims. Such are its provisions that far from promoting communal harmony, it could weaken the commitment of the majority to secularism and promotion of a liberal environment all over the country.

Here are some of the worrisome provisions: The Bill describes ‘Communal and Targeted Violence’ in Section 3 (c) as “any act or series of acts knowingly directed against any person by virtue of his or her membership of any group which destroys the secular fabric of the nation”. The biggest mischief is in the definition of the word “group” that occurs in Section 3(e). It says a

“group” means “a religious or linguistic minority, in any State in the Union of India, or Scheduled Castes and Scheduled Tribes within the meaning of clauses (24) and (25) of Article 366 of the Constitution of India”. This means that Hindus, who today constitute the majority in most states and union territories will not constitute a “group” under this law and therefore, will not be able to invoke its provisions, even if they are victims of Muslim or Christian communalism, hatred or violence. Similarly, the Sikhs in Punjab, the Muslims in Jammu and Kashmir and Lakshadweep and Christians in Nagaland, Mizoran and Meghalaya (where these communities are in a majority) cannot seek relief under this law in these states.

The Bill describes a “victim” as a member of a religious minority who has suffered “physical, mental, psychological or monetary harm or harm to his or her property as a result of the commission of any offence under this Act, and includes his or her relatives, legal guardian and legal heirs, wherever appropriate”. Going by this description, a citizen belonging to a “minority” in any

part of India, who is aggrieved with a neighbour who belongs to the “majority” over some issue, can turn around and accuse the neighbour of causing him or her “psychological harm”. Further, if the “victim” is not inclined to deploy this mischievous provision, the Bill allows his or her relatives to do so.

The Bill’s description of “hostile environment against a group” concludes with this omnibus provision: “any other act, whether or not it amounts to an offence under this Act, that has the purpose or effect of creating an intimidating, hostile or offensive environment”. By implication this means that a “minority” citizen can point a finger at a “majority” citizen at any time and complain that he or she feels “intimidated” or that the environment has become “hostile” to him or her

Further, when the Bill accords the

The Hindus constitute a majority in 28 of the 35 states and union territories in the country and will have to bear the brunt of this Bill’s mischievous provisions. But that does not mean that citizens belonging to other denominations are free of bother. Muslims, Christians and Sikhs could also find themselves in trouble because under our Constitution, the state is the unit to determine the issue of majority-minority.

“victim” the right to remain Anonymous; imagine the effect of these provisions. Citizens who happen to be members of the “majority” will be hauled up by the police for offences

allegedly committed by them, but the accused persons will not know who the complainants are! Section 82 even provides for attachment of property of members of the majority community pending trial . It says: Where the charge has been framed in relation to an offence under

this Act, the Designated Judge may direct that the property of the accused person be attached during the pendency of the trial and until conviction or acquittal, as the case may be.

The Demographic Reality

The Hindus constitute a majority in 28 of the 35 states and union territories in the country and will

have to bear the brunt of this Bill's mischievous provisions. But that does not mean that citizens belonging to other denominations are free of bother. Muslims, Christians and Sikhs could also find themselves in trouble because under our Constitution, the state is the unit to determine the issue of majority-minority. As per the religion data in the 2001 census, the Sikhs constitute 59.9 per cent of the population in Punjab, whereas the Hindu population in that state is 36.9 per cent. If this law comes into force, the Sikhs (constituting the majority) will be in a quandary if the "minority" Hindus start using this law to accuse the majority of promoting communal hatred and anti-secular policies. Similarly, Christians, who have an overwhelming majority in three states – Nagaland (90 per cent), Mizoram (87 per cent) and Meghalaya (70.30 per cent) – will find themselves in deep trouble if the Hindu minority in these states begins to leverage this law and lodge complaints against the religious majority. For similar reasons, the Muslims in Jammu and Kashmir and in Lakshadweep are not going to be very happy with a law of this kind. Therefore, citizens who happen to be

Muslims, Christians or Sikhs should not be taken in by the sweeping claim made by the promoters of this Bill because this law does not treat all perpetrators of communal violence and hatred equally.

There is yet another anomaly in regard to determining the majority and the minority in some states because of the demographic reality in many states and union territories. For example, there are states like Manipur (46 per cent Hindu) and Arunachal Pradesh (34.60 per cent Hindu) where no religious group has a clear majority. So, who is the "culprit" and who is the "victim" in these states? Further, if you exclude the Scheduled Castes and Scheduled Tribes from the Hindu population, what will be the percentage of Hindus in these states. Kerala, with 56.20 per cent, is also a case in point. If you exclude Scheduled Castes and Scheduled Tribes (22 per cent approx), what is the percentage of the Hindu "majority" in that state? Also, can this "majority" be seen as the oppressor of the Muslim "minority" (24.70 per cent) or the Christian "minority" (19 per cent).

Apart from generating communal strife and pitting religious minorities against the majority in every state and union territory, the Bill incorporates some extremely dangerous provisions which seek to re-impose the “dadagiri” of the Centre on the states and even promote insubordination in the administration in the states.

There is also an attempt to introduce some mischievous provisions to classify crimes on communal lines.

As stated earlier, this Bill ab initio treats members of a religious minority as “victims” and members of a religious majority as “culprits” in every instance of communal violence. The other insidious aspect of the proposed law is the attempt to use communal violence as a pretext to usurp the states’ rights to maintain law and order and to signal to bureaucrats and policemen in states that the big brother in Delhi is watching you.

It is obviously a cunning attempt to re-acquire the unbridled powers which the Centre had exercised under Article 356 of the Constitution before the Supreme Court’s verdict in the Bommai Case.

The Bommai Judgement and After

Prior to the Bommai Case, the Union Government imposed Article 356 with reckless abandon. The Congress Party, which was ill at ease with the growth of regional parties, used this provision regularly to sack duly elected governments and to impose President’s Rule in the states. For example from 1950,

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when the Constitution came into being, to 1994, when the Supreme Court pronounced its judgement in the Bommai Case, Article 356 was used by the Centre on 102 occasions. On most of these occasions (77) the Congress Party was in power at the Centre and just one Prime Minister – Indira

Gandhi – used this provision 50 times. The Supreme Court stopped such misuse of Article 356 via the Bommai Case. The court declared that henceforth the proclamation issued under Article 356 would be judicially reviewable and the court would examine whether the proclamation was issued for malafide reasons. It said the court would retain the power to reverse the actions taken by the President if they were found to be malafide. This judgement virtually put an end to misuse of Article 356. The Communal Violence Bill now offers scope for mischief via a backdoor entry of Article 356 as it stood prior to the Bommai Case in the guise of ensuring minority rights.

Initially the proponents of the Bill wanted organised communal violence in a state to be classified as “internal disturbance”. Article 355 imposes a duty on the Union Government “to protect every state against external aggression and internal disturbance”. Therefore, this was a clever move to snatch away the basic constitutional right of every state to manage Law and Order and to impose central rule. However, following public protests, the NAC

has recently announced that this provision has been deleted from the Draft Bill.

However, the threat to the independence of state governments is not over because of certain other provisions in the Bill like Sections 9, 13, 14 and 16 pertaining to the bureaucracy and the police in the states and Section 15, which directly targets office-bearers of political parties. Section 13 pertains to dereliction of duty and is so worded that every public servant working in the district or state administration (with some responsibility in regard to maintenance of law and order) can be hauled up in the event of a communal flare-up. Officials can also be accused of helping or harbouring culprits belonging to the majority community. Section 14 deals with public servants for breach of command responsibility meaning their failure to control the men in their command. In other words, police officers can be prosecuted if men under their control commit an offence or are accused of committing an offence against a religious minority. The law proceeds on the assumption that the officer ought to have known that persons under his

command would commit an offence.

Encouraging Insubordination in the States

But the worst provision is Section 16, which is directly aimed at promoting insubordination in the Police and para military forces deployed in a troubled state. It says “Where an offence has been committed under this Act, the fact that it was committed by a person pursuant to an order of a superior shall not relieve that person of criminal responsibility.....”.

In other words, it encourages every

But the worst provision is Section 16, which is directly aimed at promoting insubordination in the Police and para military forces deployed in a troubled state. It says “Where an offence has been committed under this Act, the fact that it was committed by a person pursuant to an order of a superior shall not relieve that person of criminal responsibility.....”.

policeman to question or challenge his superior right up the line of command and to, if he so believes, disobey his superior. Every policeman will need to worry about how the Union Government (and not the state government) will view his actions. It is difficult to find a more irresponsible

The law proposes for the establishment of a National Authority for Communal Harmony, Justice and Reparation and similar authorities in the states. It empowers the national authority to enter any building and seize any documents, which means it has the authority to intrude into state government offices and even the chambers of chief ministers. Several other provisions also hit at the root of federalism and weaken the states.

Equally disgusting is the communal colour that this Bill gives to every major offence.

Though the Indian Penal Code deals with all such crimes, this law draws a distinction between rape of a “minority” woman and a “majority” woman and assault of a “minority” person and a “majority” person. The victim acquires an exalted status if he or she belongs to a “minority”. Nowhere in the

democratic world does one get to see such communalization of crimes.

Finally, politicians belonging to political parties which are not part of the political dispensation at the Centre had better watch out. Section 15, which talks of offences committed by “other superiors” says “Whoever, being any non-state actor or superior or office-bearer of any association.....” The implication of this is that office-bearers of political parties and associations and organisations affiliated to political parties which

are ruling a state can be hauled up under this law. This is obviously a provision to enable the Centre to haul up political opponents and their affiliates in the states.

The net result is that this Bill will destroy communal harmony, weaken the federal structure and encourage authoritarian trends at the Centre. It must be rejected lock, stock and barrel.

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Japanese Prime Minister's State Visit to India

- *Satish Chandra*

The state visit to India of Japanese Prime Minister Noda for the annual Prime Ministerial Summit on December 27-28, 2011 has placed India-Japan ties on a firm upward spiral. Following the dip in relations as a result of adverse Japanese reactions to our nuclear tests in 1998 there has in the last decade been a steady improvement in links. This has been the result of a number of factors such as apprehensions of China, closer India-US relations, the absence of any bilateral disputes between the two countries, a common interest in maintaining the security of the sea lanes of communication, a shared recognition that the complementarities of the economies of the two countries provide huge opportunities for mutually beneficial economic cooperation and, ofcourse, a common commitment to the universal values of democracy, the rule of law, human rights and preservation of regional and international peace and security.

The steady consolidation of India-Japan links has been facilitated by the regular annual exchange of Prime Ministerial visits since April 2005. While the Japanese Prime Ministers visited India in 2005, 2007, 2009 and in 2011, Dr Manmohan Singh visited Japan in 2006, 2008 and 2010. The

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establishment of a Strategic and Global Partnership between the two countries during Dr Manmohan Singh's visit to Tokyo in 2006 set the framework for taking the relationship to a higher level as it envisaged Political, Defence and Security Cooperation; Comprehensive Economic Partnership; Science & Technology Initiative; People-to-People exchanges and cooperation in Regional/Multilateral fora. It fostered regular multifaceted exchanges between the two countries at the Ministerial and official levels. The most notable of the latter is the 2+2 dialogue of the defence and foreign secretaries of the two countries the first meeting of which was held in New Delhi in July 2010. It is also significant that on the eve of Prime Minister Noda's visit the first India-US-Japan trilateral took place with a focus on maritime security, counter terrorism, counter proliferation,

disaster relief and humanitarian assistance. The second meeting of the trilateral is scheduled for next year in Tokyo. The three countries are already participating in the joint naval Malabar exercises since 2007.

India is today the largest recipient of Japanese overseas development assistance which over the last four years has been of the order of about \$2.5 billion annually. This has naturally provided a fillip to the engagement between the two countries. Trade though only around \$13 billion in 2008 has grown over three fold since 2001. Japan is today India's third largest foreign investor and there are already over 800 Japanese companies working in India. The Delhi metro, the dedicated freight corridor, the Delhi-Mumbai industrial corridor, the spate of auto manufacturing facilities etc are only a few of the project on hand with Japanese

The Delhi metro, the dedicated freight corridor, the Delhi-Mumbai industrial corridor, the spate of auto manufacturing facilities etc are only a few of the project on hand with Japanese support. This engagement will acquire vastly greater traction with the conclusion of the Comprehensive Economic Partnership Agreement in August 2011 which extends not only to trade but also to services, investments etc.

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An analysis of the 35 para Noda-Manmohan Singh joint communiqué of December 28th reveals the range and depth that India-Japan ties are on course to assume.

On the economic front the communiqué inter alia indicates that agreement was reached on the following:

1. Japanese loan of \$1.75 billion for Delhi metro phase III and West Bengal Forest and Biodiversity Conservation Project;
2. The launch of a \$9 billion India-Japan facility for the Delhi Mumbai Industrial Corridor (DMIC) with Japan committed to provide \$4.5 billion through public private finance over 5 years. The DMIC project is set to redefine the character of infrastructure growth in India through Japanese

advanced technology and green growth. The active involvement of Japanese companies and agencies in the DMIC would be given an enormous impetus as Japan would participate in the DMIC Development Corporation through equity, technical expertise and board members;

3. With a view to similarly upgrading infrastructure in the Chennai-Bengaluru section Japan will extend technical and financial support to develop a Comprehensive Integrated Master Plan for the same;
4. A feasibility study would be completed by 2012 for upgradation of speed of passenger trains in the Delhi-Mumbai sector. In addition, use of Japanese technology and assistance is under consideration for development of a high speed railway system in India;
5. Enterprises of the two countries would jointly undertake industrial activities to produce and export rare earths;
6. Maintaining a dialogue to maximize the potential of

- high technology trade;
7. Commitment to further progress already achieved in the S&T relationship as reflected in joint R&D projects being implemented in molecular sciences, advanced materials, biotechnology, space sciences etc. In this context, it was agreed to further enhance business tie ups and explore opportunities for Japanese industries in electronics systems design and manufacturing in India;
 8. Enhancement of bilateral currency swap agreement from \$3 billion to \$15 billion.
 9. Strengthening cooperation in creative industries ranging from design, apparel, fashion, food, music, movies, animation and manga etc.

On the strategic front the Communique inter alia makes the following points of significance:

1. Expansion of cooperation in maritime security, including safety and freedom of navigation and anti piracy activities, by promoting bilateral and multilateral exercises, and through

information sharing, as well as dialogues. An exercise of the Indian and Japanese Coast Guard is scheduled for January 2012.

2. Cooperating on Africa in areas such as development and peace keeping operations.
3. A commitment to continuing assistance to Afghanistan so that it becomes a stable democratic and pluralistic state free from extremism and terrorism. Exploration of opportunities for consultation on their respective assistance projects.
4. A condemnation of terrorism “in all its forms and manifestations, committed by whomever, wherever and for whatever purpose.” Agreement to develop greater cooperation in combating terrorism both bilaterally and through cooperation in multilateral fora. A recognition of the urgent need to finalise and adopt the Comprehensive Convention on International Terrorism in the UN which had been sponsored by India. In addition PM Noda

“strongly condemned” the terrorist attacks in Mumbai in July 2011 and in Delhi in September 2011.

5. A decision for enhanced cooperation in nuclear disarmament and non proliferation through bilateral dialogues and in the Conference on Disarmament. In this context, the joint commitment for immediate commencement and early conclusion of negotiations for a non discriminatory, multilateral and internationally and effectively verifiable Fissile Material Cut Off Treaty (FMCT) was underlined.
6. A resolve to reform the UN Security Council including its expansion both in the permanent and non permanent categories.
7. A reaffirmation of support to the East Asia Summit as a forum for dialogue on broad strategic, political and economic issues of common interest and concern with the aim of promoting peace, stability and economic prosperity in East Asia. Support was also expressed for the EAS as a leaders led

forum with ASEAN as the driving force.

8. A reaffirmation of the role of the G20 as the premier forum for international economic cooperation.

The one area in which the visit came up short was on civil nuclear cooperation. Japan has had long standing objections to engage in such cooperation with countries which are not signatories to the NPT. It had, however, been hoped in India that in view of the India-US nuclear deal, Japan would give up its reluctance for engaging in civil nuclear cooperation with India. Bilateral discussions between India and Japan have obviously not so far resolved this issue. The communiqué while recognizing the importance of civil nuclear cooperation envisages further talks. These talks will have to on the one hand get around India’s inability to sign the NPT and on the other hand address the Japanese position which makes it impossible to cooperate with a non signatory to the NPT. While this may appear difficult the issue could perhaps be finessed by grounding the cooperation on India’s impeccable record on non proliferation and its

commitment to the same which has been better than that of many signatories of the NPT. To this may be added our moratorium on testing and our commitment to immediate negotiations on the FMCT and its early conclusion. Japan on its part would have, ofcourse, much to gain from such cooperation in economic and commercial terms.

Interestingly China finds no mention in the communique. It was certainly on the minds of the two sides but the anxiety to give no offence to that emerging Asian hegemon perhaps impelled the two sides from omitting any reference to it. Indeed, even China's surrogates notably Pakistan and North Korea which certainly must have been the subject of some discussion find no mention. While

the non articulation of the concerns aroused by these countries publicly is not a big issue it is to be hoped that these were discussed and broad understandings arrived at on the manner in which they should be addressed.

To conclude, therefore, there can be no denying that India-Japan ties are today well anchored and have assumed a multifaceted dimension. Given the commonalities and complementarities between the two countries relations between them are set to flourish and have the potential to transform India.

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Plight of Hindus in Bangladesh: Some Recent Trends

- *Anirban Ganguly*

All is not well with the minorities in Bangladesh, especially the Hindus. One of the major election planks of the Awami League (AL) during the last general elections of 2008 was its assurance of securing the rights of the minorities of Bangladesh and of ensuring their safety. Such an election promise offered hope to the Hindus after a long period of persecution and discrimination under the BNP-Jamaat regime and they voted en-masse for the Awami League and in certain areas even actively worked for its victory. But ever since its landslide victory of December 2008, the promises made to the minorities appear to have been

When the Bangladesh Nationalist Party (BNP) ruled the roost it appropriated 45% of the VPA land and when its arch-rival the secular AL was in power its politicians grabbed 44% of the VPA spoils. Land grabbing under the VPA in Bangladesh continues to be the easiest way of chasing out Hindus and other minorities from the country.

ignored by the AL. At least that is what recent trends in that country appear to indicate. A recent spate of grabbing land of minorities by local politicians of the ruling party and of thefts in their temples has given rise to a serious sense of insecurity among them.

This is not to point fingers at one political formation and absolve the other of any wrongdoing, in fact when it comes to their lands the minorities in Bangladesh, it

seems, can expect practically no redress from any political group. Studies of the discriminatory Vested Property Act (VPA) conducted between 1996 and 2008 have revealed that when it came to sharing the spoils under the

* *Anirban Ganguly - Research Associate, VIF*

VPA all major political parties behaved uniformly. When the Bangladesh Nationalist Party (BNP) ruled the roost it appropriated 45% of the VPA land and when its arch-rival the secular AL was in power its politicians grabbed 44% of the VPA spoils. Land grabbing under the VPA in Bangladesh continues to be the easiest way of chasing out Hindus and other minorities from the country.

Incidents of land grabbing, temple attack and theft have never really ceased to occur in Bangladesh. The anti-minority attacks during the BNP-Jamaat rule in the past received some coverage from the international media but the recent series of incidents have largely gone unreported except in a few Bangladeshi dailies. The Indian media has repeatedly ignored these. The seriousness of the minority situation was brought to the fore last year (2010) when the Bangladesh based human rights and minorities watch organisation the Hindu-Buddhist-Christian Unity Council released its report on the status of minorities in Bangladesh. Though the report did not receive wide publicity it nevertheless provided an alarming

status update on Hindus in Bangladesh. It talked of the religious minorities in Bangladesh being subjected to repression by the ruling quarters which appeared to be in a spree of grabbing their lands. The organisation recorded 150 incidents of repression of minority people all over the country in the first six months of 2010 itself with people being killed and large number of houses being burnt and families driven out of their homesteads. The incidents saw assailants carry out attacks, loot valuables and drive away families to take control of the lands. The report described a large number of families as being under constant threats by influential people and observed that politically powerful quarters were believed to be involved in most of the acts of repression and the administration appeared to be indifferent on this count. "We have been witnessing repression on minority communities for a long time. During the previous regime, it was a minority cleansing and now we see ruling party activists in a land grabbing spree", lamented Rana Dasgupta, eminent human right activist and now one of the prosecutors for the International

Crimes Tribunal (ICT), while presenting the report. Most of the land grab incidents were reported from Natore, Pirojpur, Chittagong, Narsingdi, Bagerhat, Barisal, Manikganj, Tangail, Satkhira, Pabna, Manikganj and Munshiganj. Even land belonging to the national temple of Bangladesh – Dhakeshwari – at Dhaka has not been spared with giant corporates occupying parts of it for erecting multistoried complexes.

To the spate of land grabbing has now been added incidents of temple thefts and desecration across the country. The issue erupted nationally when ornaments of the deity and a large amount of cash money (Tk. 4.5.lakhs) was stolen from the Dhakeshwari national temple on 9th January this year. Though there were arrests made later, practically nothing could be recovered. The minorities were badly shaken. From around

To the spate of land grabbing has now been added incidents of temple thefts and desecration across the country. The issue erupted nationally when ornaments of the deity and a large amount of cash money (Tk. 4.5.lakhs) was stolen from the Dhakeshwari national temple on 9th January this year. Though there were arrests made later, practically nothing could be recovered.

September 2010 reports of temple desecration and thefts across the country began appearing intermittently. Since most old temples in Bangladesh have large tracts of land attached, desecration of temples, attacks on serving priests and worshippers have become effective methods for land grabbing. On 11th September a group of youth led by a local muscleman vandalized the widely revered Hindu temple of Gosaildanga in the port city of Chittagong. The vandals destroyed the idols, beat up the helpless priest and threatened to occupy the temple premises. This was followed by a series of theft in temples situated at the national capital, first at the Barodeshwari Kali Mandir on December 11th and then at Joy Kali Mandir on December 22nd. The theft at the Dhakeshwari national temple brought out the seriousness of the situation. The administration was slow to act and its repeated

assurances of action could not prevent more such incidents from taking place. On February 2nd, the Kali –O – Shib Mandir in Dhaka's Sutrapur area was robbed and on April 2nd the Sylhet based 500 years old Laskhmi Narayan and Shiva Temple of Acharya Shribas Thakur, one of the foremost disciples of Sri Chaitanya, was attacked, vandalized and copies of the Gita snatched from the temple were defiled and burnt in the local market square. A ruling party affiliated local land shark was seen leading the group. On April 4th men belonging to the AL front organisations vandalized a temple and house belonging to a Hindu family at Manikganj in central Bangladesh. The family had been living on the land for the past eight decades. Within days of this, on April 12th a 200 years old Kali temple was vandalized at Lalmonirhat in northern Bangladesh. The trend seems to continue and most of the incidents go largely unreported.

The incidents appear to have been engineered with the motive of creating a severe dent in the minds of the Bangladeshi Hindus.

The government has been projecting these as cases of simple burglaries and has refused so far to look at the deeper implications of the whole issue. It seems to ignore the fact that such attacks and thefts can have far reaching effects on the Hindu community in Bangladesh by giving rise to a feeling of insecurity among them and by making them lose faith in the administration of the day. Delay in taking visible action could in fact disturb the balance of religious co-existence in the country and could invite external forces to subtly intervene and further marginalize the minorities. Securing the rights of minorities and ensuring their constitutional guarantees should have easily come to the AL; traditionally it is the one to have reaped the huge dividends of unstinted minority support.

India on her part must express concern over these developments in Bangladesh, after all as a republic professing secular values she must be concerned about the fate of minorities in any country, especially if they happen to be in her neighbourhood.

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Pakistan Monthly Brief

The sudden departure of President Asif Zardari to Dubai for a health check-up gave rise to rumours that he was all set to quit office. Also doing the rounds was talk of a 'soft coup' in which the military establishment, judiciary and the political opposition were all on the same page to remove the President if not the entire PPP-led coalition. Lending credence to these speculations was the constant reference of Prime Minister Yusuf Raza Gilani to conspiracies against the civilian government, with the controversial 'memo' being held out as a prime example. Reacting strongly to an affidavit submitted by the defence secretary before the Supreme Court in the 'memogate' case in which it was said that the army and ISI were not under the operational control of the government, Prime Minister Gilani said that no state within a state can be permitted. The

defence secretary's affidavit followed the statements of the army and ISI chiefs that seemed to go counter to the position taken by the civilian government in the 'memogate' case – the former maintained that there was a need to get to the bottom of the entire 'memo' affair because of its implications for national security while the latter was of the view that the 'memo' was 'a pack of lies' and not worth paying any attention to.

The statements filed before the Supreme Court by the civilian government and the military brass were in response to notices issued by the Court after it admitted PMLN chief Nawaz Sharif's petition for investigating the memo and who initiated it and authorised it. In an unusual move, the Court appointed a one-man commission to investigate the affair without hearing the views of either the government or the

central character in the whole affair, former ambassador to US, Hussain Haqqani. But the one-man commission remained a non-starter after the man appointed to head the commission excused himself on account of prior commitments. The PPP had also cast doubts on the neutrality of the Court appointee since his one brother was chief secretary of PMLN-ruled Punjab, another brother was a Supreme Court judge and his father-in-law was on the bench that sentenced Zulfikar Ali Bhutto to death.

The conflicting replies by the civilian government and the military establishment to the Court notices seemed to push the government and the army on a collision course, more so after Prime Minister Gilani took a dig at the army by raising questions on Osama bin Laden's presence in Pakistan and the interior secretary filing an affidavit in which the ISI chief was said to have violated norms and procedures by reporting on his investigations on the memo to the

army chief and not to the Prime Minister. The ISI chief also faced a lot of flak over the disclosure that he allegedly toured some Arab states after the Abbottabad incident to drum up support for a possible military coup in Pakistan. Reports that the government was thinking of sacking both the army and ISI chiefs seemed to push matters to the edge of the precipice. But all protagonists pulled back from the brink – the Prime Minister denied any plans to replace the army and ISI chiefs, the Chief Justice declared that the Supreme Court would never validate any unconstitutional takeover and the army chief reiterated his commitment to his constitutional obligations (but also insisted that there could be no compromise on national security).

President Asif Zardari meanwhile confounded all his detractors by returning to Pakistan after spending around two weeks in Dubai. There were reports that he was very angry with the US for not backing him in the memo crisis. In his telephonic

conversations with some journalists he even accused the US of destabilising the civilian government through Mansoor Ijaz, the man who is the other central character in the 'memogate' scandal and who first made public the existence of the controversial memo. In a much-anticipated speech on the occasion of Benazir Bhutto's death anniversary, Zardari made it quite clear that he had no intention of throwing in the towel.

With the political crisis caused by the memo issue raising once again the spectre of an extra-constitutional ouster of the government and there were reports and analysis that the PMLN, judiciary and army were working in tandem against the government, the PMLN chief Nawaz Sharif came out openly against any imposition of martial law. The political grapevine is that Nawaz Sharif is willing to go along with the army only to the extent that fresh elections will be called after the ouster of the current dispensation. But there were also

reports that some sort of a backroom understanding had been reached between the PPP and PMLN wherein the government would call for early elections after the conclusion of the Senate polls in March next.

The PMLN cannot afford to wait for elections to be held according to schedule in February/March 2013 for the simple reason that it is seeing its support base eroding at an alarming rate in favour of Imran Khan. A major blow to the PMLN was the defection to Pakistan Tehrik-e-Insaaf of party stalwart Javed Hashmi. A number of other PMLN leaders who are feeling sidelined in the party are believed to be gravitating towards the PTI. While some have already jumped ship, others are on the verge of doing so. Other parties like PPP, ANP, PMLQ and JUIF have also seen an exit of some high profile figures, including two former foreign ministers Khurshid Kasuri and Sardar Assef Ali, and other former cabinet ministers like Jehangir Tareen, Khwaja Hoti, Azam Swati to name a few, to the

PTI. The Imran 'tsunami' that is threatening to sweep through Pakistan, or at the very least emerge as a potent third force in Pakistani politics was apparent in the huge rally organised by the party in Karachi. After Lahore, the success of the Karachi rally has effectively catapulted Imran Khan to the centre stage of Pakistani politics.

At Karachi, Imran Khan laid out his vision of transforming Pakistan into an 'Islamic welfare state' which he said would be modelled after the Scandinavian countries. But given the perilous state of the Pakistani economy, garnering resources for such a welfare state is easier said than done. The annual report of the State Bank of Pakistan has highlighted the serious crisis confronting the Pakistani economy which is close to bankruptcy. According to the SBP, fiscal deficit is expected to touch the 6.5% mark this fiscal. Even more worrying is the steep fall in investment which is now only around 13%. Growth is likely to hover around the 3.5%

mark and fears have expressed about the balance of payments position in the months ahead.

While reports of negotiations between the Pakistani Taliban and the state authorities have been doing the rounds for some time now, they received further credence after Interior Minister Rehman Malik thanked the Taliban for an incident free Muharram. The TTP commander in Bajaur, Maulvi Faqir Mohammed confirmed that a dialogue had been started with the government and said that if successful, the model would be replicated in other parts of the restive Pashtun belt. But Faqir's statement was repudiated by the TTP spokesman and other militant commanders. There were also reports of a rift in the TTP ranks between those who wanted to hold talks with the Pakistani authorities and those opposed to any negotiations with the government. The former are believed to be led by Waliur Rehman and the latter by the TTP

chief, Hakimullah Mehsud.

Amidst a continuing standoff between the US and Pakistan after the bombing of two Pakistan army posts in Salala, Mohmand agency, the Chinese State Councillor Dai Bingguo visited Pakistan. Six agreements, including one on currency swap arrangement, were signed between the two countries. On conclusion of the visit, the Chinese foreign office issued a statement in which it said that regardless of the changes in the international situation, China's policy to continue to develop strategic relations with Pakistan will not change. Meanwhile, relations with the US remained on hold with Pakistan blocking the NATO supply routes (Prime Minister Gilani even hinted at denying over-flight rights to the US and NATO), denying the Americans use of the Shamsi airbase, and letting it being known that air defences along the Afghan border had been beefed up and henceforth any unauthorised incursion would be retaliated against.

Diplomatically, Pakistan boycotted the Bonn conference despite requests by the US, Germany and other countries to reconsider its decision not to attend the conference. Towards the end of the month, the Pentagon completed its probe into the Salala bombing incident. The report blamed both Pakistan and US forces for the incident, the former for firing first and the latter for breakdown in communications and procedures. Although the US officials assured that corrective measures would be put in place to ensure that such an incident would not be repeated, they were not willing to give any guarantees on this. Quite expectedly, Pakistan rejected the report as being short on facts. What was more galling for the Pakistanis was not only that no action was taken against officials responsible for the incident but also the refusal of the US to offer any sort of formal apology.

The downturn in US-Pakistan relations was also reflected in the recommendations made in the Envoy's conference which advised

the government to desist from breaking relations with the US but also insisted on a renegotiation of the terms of engagement between the two sides with proper codification of agreements on cooperation in the War on Terror. The conference also suggested withdrawal of blanket over-flight and landing rights given to the US. Meanwhile, despite statements by the US administration calling for putting the relationship back on track, the US Congress passed a bill freezing \$ 700 million in military assistance until the Defence Secretary certified that Pakistan was cooperating in the curbing of manufacture of IEDs. Riders were also put regarding Pakistan's cooperation in the War on Terror. In a speech, the US Chairman Joint Chiefs of Staff Gen Dempsey called for ending of Pakistan's influence in Afghanistan and shutting down of terror safe havens inside Pakistan. But the standoff between US and Pakistan does seem to have affected US operations against terrorist

sanctuaries inside Pakistan. There has not been a single drone strike since the Salala incident and there are reports that drone campaign has been put on hold for now.

The US Congress' insistence on shutting down of terror sanctuaries is however water off a duck's back at least when it comes to terror groups like Jamaatud Dawa which function as proxies of the Pakistan army. The JuD organised a massive rally in Lahore in which almost all right-wing, reactionary and extremist parties participated. Open calls for jihad against India and the US were made in the rally, and speaker after speaker wanted a complete severance of ties with the US and ending all cooperation in the War on Terror. Clearly, such a rally could not have been possible without the complete support of the Pakistani establishment.

As far as India was concerned, while jihadists were threatening to wage jihad against India, there was some movement forward in the 26/11 terror attack case after

the Pakistanis finally formed the judicial commission that will visit India to interview officials and gather evidence for prosecuting the masterminds of the terror strikes in Mumbai. The two countries also concluded the fourth round of talks on nuclear and conventional CBMs. Though there was no major breakthrough, the two sides decided to extend for five years two existing CBMs, the first relating to prior intimation of missile tests and the other

relating to nuclear accidents risk reduction. Meanwhile, there were reports that Pakistan had decided to approach the International Court of Arbitration in the Nimmo-Bazgo hydroelectric power project built by India on river Indus in Jammu and Kashmir.

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Nepal Monthly Brief

Internal Political Developments

Some Rays of Hope in the Statute Drafting Process; But Suspicions over Completion of Peace-process on Time: In a dramatic manner, the Dispute Resolution Sub-Committee (DRSC) under the Constitutional Committee (CC) of the Constituent Assembly (CA) has said on December 30, 2011 that the committee, in principle, settled almost all contentious issues in the new Constitution, including forms of governance. It is said that the sub-committee had endorsed a report prepared by the taskforce formed under it, and decided to forward the report to the CC meeting. According to CC Chairman Nilambar Acharya if

the parties maintain the current pace, it is possible to promulgate the new Constitution in the remaining five months of the CA.

However, the hard-line faction of the United Communist Party of Nepal-Maoist (UCPN-M), led by Vice-chairman Mohan Baidya, has once again vowed to overturn all the decisions made by the DRSC. According to Baidya, Dahal has worked against the party's ideology in the name of agreements, and that is why, "all the decisions made by the subcommittee would be invalidated". People's revolution is the party's basic ideology, so how can there be unlimited ownership of property?" Baidya questioned. Claiming that the Constitution would be promulgated by the CA

rather than the subcommittee, Baidya stated that the agreements would be scrapped in the CA anyway.

In the meantime, Nepali Congress (NC) reiterated that the new draft of the Constitution is impossible before the conclusion of the peace process. Addressing a program organised by Press Union Udayapur on January 1, 2012, Central member Shekhar Koirala said “If the Constitution is not possible now then let it be. The Maoists are trying to promulgate the Constitution without concluding the peace process and again win the election with arms”. NC leader’s statement came at a time when the prime minister-led Army Integration Special Committee repeatedly failed to endorse a time-bound calendar for

vacating cantonment sites on December 16, 2011, and people started suspecting the major parties about their commitment to abide by the 7-point deal and complete the on-going peace-process as per the agreements.

The Special Committee failed to reach a consensus on the operational plan presented by Special Committee Secretariat coordinator, Balananda Sharma in a meeting held in Baluwatar, Kathmandu. It seems that the political parties are yet to reach consensus on some core issues of integration such as ranks and bridge courses to be provided to combatants after their integration into the national army under the to-be-formed directorate. Commanders have put pressure on party Chairman Dahal in order to

get some posts in the proposed NA directorate reserved for PLA officers.

The PLA commanders have warned that all combatants would go for voluntary retirement if the party leadership fails to reserve some top posts for the ex-guerrillas in the directorate headquarters. The Maoist party has reservations also about bridge courses which the integrated combatants will have to undergo. According to reports, Prime Minister Dr. Baburam Bhattarai and Maoist representative in the committee Barsha Man Pun were of the view that they could only commit to complete the process within 15 days of the commencement of farewell ceremonies, whereas the NC and the Communist Party of Nepal-

United Marxist and Leninist (CPN-UML) proposed that the government bid farewell to combatants opting for voluntary retirement by December 30, 2011. “The Maoists stressed that the number of combatants opting for integration during regrouping will be reduced once the integration process is agreed upon. We could not reach an agreement after they insisted that those switching their interests and those opting for voluntary retirement be released from cantonments together,” media quotes Nepali Congress leader and Special Committee member Ram Sharan Mahat.

In fact, on December 11, 2011 it was the Special Committee which asked the Secretariat led by Sharma to recommend the operational plan for implementing

both army integration and voluntary retirement processes within five days. However, the Secretariat was able to provide suggestions only on the action plan to implement voluntary retirement process during the meeting. The secretariat had proposed to conduct farewell ceremonies in all the 28 cantonments and completing the programme within 12 days of the commencement of the release process. It has also suggested that the Special Committee conduct a special programme in one of the main cantonment sites that will be attended by major party leaders and representatives of the diplomatic community and the media to mark the beginning of the farewell process. It also suggested using the Nepal Army (NA) battalion as the “integration

centre” for screening and selecting eligible combatants.

Supreme Court Issued an Interim Order to Stay the Government Decision to Recruit Madhesis Youths in Nepal Army: Recent Cabinet decision to recruit Madhesi youths into the NA has generated further controversy once again after the Supreme Court (SC) of Nepal has issued an interim order to stay the decision on December 26, 2011. In accordance with the 4-point agreement among the Madhesi parties and the UCPN-M, the Cabinet on December 20, 2011 had decided to recruit 3000 Madhesis in the NA in the name of making the national army inclusive. However, single bench of the apex court led by Justice Baijanath Upadhyay had held that the

decision did not conform to the existing provisions in the Interim Constitution, 2007.

Once it was decided by the cabinet, Chief of Army Staff (CoAS) Chhatra Man Singh Gurung had also expressed his dissatisfaction with the government's decision to recruit Madhesi youths in a separate battalion of the NA. The CoAS Gurung had even called on President Dr Ram Baran Yadav at the latter's residence in Shital Niwas on November 22, 2011 and submitted his dissatisfaction over the decision.

Supreme Court Bags Mixed Reactions as It Refuses to Register Government Petition on Constituent Assembly Term Review: The SC's refusal to review its ruling on term extension of the

Constituent Assembly has generated mixed reactions from the legal and the political fraternities. It was the SC, which refused to register the petitions separately filed by the Legislature-Parliament and the Cabinet on December 27, 2011, seeking a review on the November 26, 2011 verdict of the SC that put a cap on the extension of the CA term, which expires on May 28, 2011. According to the November 26 judgment, the SC had ruled that the CA term would be automatically dissolved after the end of the 'final' extension even if the parties failed to draft a new Constitution within the extended period.

Dahal Admits Party's Attempt to Capture 'State Powers' through a Revolt even after the Government

was Formed under His leadership: Amidst increasing demand by the hardliners to revive the line of revolt adopted by the Palungtar plenum, the UCPN-M Chairman Pushpa Kamal Dahal, for the first time in the party's official document, has admitted that his party had failed to capture 'state powers' through a revolt.

He also acknowledged that the Party had attempted it repeatedly in the past. "After the government was formed under our leadership following the CA elections, we tried to capture the state powers and to exploit the political crisis for revolution. But despite repeated attempts, we failed to make any progress", political document presented by Maoist Chairperson Dahal at the party's Central Committee (CC) meeting

on December 25, 2011 reads. Explaining as to why the party establishment had discarded the 'revolt' option, Dahal, however, has categorically taken a different line saying that there are no options with the party other than working towards concluding the peace and Constitution-writing process. Dahal has acknowledged some shortcomings on the issue of Bilateral Investment Promotion and Protection Agreement (BIPPA) signed with India and said "there was a communication gap between the party leadership and the prime minister while signing the deal".

It is said that Maoist Chairman Dahal tried to address some demands raised by hardliner faction through the document. However, it seems that the

proposal failed to impress them. After Dahal tabled the document for discussion, Maoist Vice-Chairperson and leader of the hardliner faction Mohan Baidya presented a counter document in the meeting.

Foreign Relations

Relations with India

Nepal-India Agreed to Reinstate the Highest-Level Joint Commission: Nepal and India, after a decade-long hiatus, have agreed to hold a meeting of the Joint Commission in early March, 2012. It is the meeting of highest-level bilateral mechanism formed in February 1991, during the Nepal visit of the then Indian Prime Minister Chandra Shekhar, and the first meeting of which was held in Delhi in the year of 1991

itself. The purpose of forming such a high-level task force was to prepare a programme of cooperation between the two countries.

It is reported that the Indian side made separate requests to the Prime Minister's Office and the Ministry of Foreign Affairs last week about convening the meeting in mid-February. Citing inadequacy of preparations, Nepal had proposed that the meet be deferred by one month. It is said that the meeting is expected to review the entire gamut of bilateral relations and also pave the way for the visit of Indian Prime Minister Manmohan Singh to Nepal in near future. Also, the meeting is expected to discuss the status of bilateral issues of economic cooperation, trade,

transit, industries, water resources and any other concern of mutual interest. More so, the committee is expected to finalise the terms of reference of the proposed Eminent Persons' Group to look into the totality of India-Nepal relations, seek modalities of working on a new Nepal-India Peace and Friendship Treaty, and finalise and sign the boundary maps, among others issues.

Before that Indo-Nepal commerce secretary-level Intergovernmental Committee (IGC) meeting, India has agreed to scrap the Duty Refund Procedure (DRP) as envisioned by the revised Nepal-India Trade Treaty signed in 2009. The two-day IGC meeting was held in New Delhi on December 6-7, 2011. After scrapping this mechanism, Nepal will get rid of

the time-consuming process of claiming back the amount which the Indian government charges on imports from India as central excise duty.

Also, Nepal and India have signed an agreement to strengthen bilateral power exchange agreement at Power Exchange Committee (PEC) meeting held in New Delhi on December 14-15, 2011. The meeting also agreed to speed up the necessary reinforcement of transmission lines to supply power as sought by the Nepali side. Just a few days before the meeting of the PEC began in New Delhi, the Nepal Electricity Authority (NEA) and Indian Power Trading Corporation (PTC), on behalf of two of the neighbours, had signed two bilateral accords—Implementation

of Transmission Services Agreement (ITSA) and Power Sales Agreement (PSA)—paving the way for importing 150MW power from India in next 25 years.

Relations with China

China is 'Positive' about Wen's Nepal Visit: It is said that the Chinese side has expressed its willingness to convene the stalled visit of Premier Wen Jiabao to Kathmandu in near future. The message was conveyed to the visiting Deputy Prime Minister and Minister for Home Affairs Bijaya Kumar Gachhadar who returned back from his five-day visit to Beijing on December 30, 2011. In fact, Home Minister Gachhadar was in Beijing to lay the groundwork of Wen's visit which was postponed in early December.

Home Minister Gachhadar had been highly criticised after Chinese President Wen Jiabao cancelled his Nepal visit earlier this month. He was accused of taking Jiabao's visit too lightly and not having enough preparations for the same. It is said that Gachhadar, was supposed to assure Beijing that Kathmandu was committed to provide fool-proof security to Wen during his visit to Nepal, had reportedly turned down the Chinese request to visit China ahead of the Chinese PM's visit. Earlier, the ruling Maoist Party's Secretary CP Gajurel had demanded the Prime Minister to inform the parliament about the sudden cancellation of Chinese Premier's visit to Nepal accusing that Wen's visit was cancelled due to Home Minister Bijaya Kumar

Gachhadar's refusal to visit China and failure to assure the Chinese side about security situation.

According to reports, Wen's Nepal visit, which was cancelled a few days back, will take place once the Chinese side is fully convinced of the security arrangements in Kathmandu. It is said that the Home Minister, during his China visit, held talks with State Councillor and Minister for Public Security Meng Jianzhu. On the prospect of the visit, Zhou responded positively and said it was delayed due to China's own internal reasons. In the meeting with Meng, the two sides reviewed the works of the security apparatus in their collaborative efforts to maintain security and stability in the border region and

to take necessary measures against crimes of cross-border nature, and also agreed to further strengthen mutual cooperation and exchange to that end. Following the talks, the two leaders also signed Minutes of Talks between the Ministry of Home Affairs of the Government of Nepal and Ministry of Public Security of the People's Republic of China, in which the two sides agreed to promote mutual visits and exchanges between the law enforcement agencies as well as to enhance cooperation in preventing and combating trans-national crimes of various natures.

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