



## Himalayan divide

India must fix its lines of communication with Nepal and arrest the drift in ties

Despite several attempts at a reset, ties between India and Nepal continue to be a cause for concern. The disconnect between the two governments was most visible at the seven-nation Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation military exercises that concluded on Sunday. After confirming its participation in the exercises in June, the Nepalese Army was made to withdraw its contingent due to a “political decision”; it sent only an observer mission at the last hour. Officials in Prime Minister K.P. Oli’s office said that they were upset with Prime Minister Narendra Modi’s “unilateral” announcement of the multilateral exercises during the BIMSTEC summit on August 30-31, without having formally proposed it to the hosts. India’s explanation that it had broached the issue with BIMSTEC members directly did not cut much ice with Kathmandu; even the contingent from Thailand did not join the counter-terror exercises because of lack of adequate notice. Nepal’s decision to join China for a 12-day Mt Everest Friendship Exercise in Sichuan province, also focussed on anti-terrorism drills, drives the wedge in further. New Delhi and Kathmandu must put an end to the unseemly controversy by renewing diplomatic efforts over the issue. India and Nepal don’t just share an open border; they have shared the deepest military links, with both countries traditionally awarding each other’s Army chiefs the honorary rank of General. Such unique ties must not be undermined due to lack of communication.

The larger geopolitical context of the discord over the military exercises must not be ignored. In his current term as Nepal’s Prime Minister, since February, Mr. Oli has said he will not be guided by India on several matters. Despite New Delhi signalling its discomfiture with the volume of Chinese investment in hydropower and infrastructure and transport projects, Nepal went ahead recently and finalised an ambitious connectivity proposal that will eventually link Kathmandu to Shigatse by rail; this will give Nepali goods access to Chinese sea-ports at Tianjin, Shenzhen, Lianyungang and Zhanjiang, and land ports in Lanzhou, Lhasa and Shigatse. Much of Mr. Oli’s rancour draws from the past. India is still blamed for the 2015 economic blockade against Nepal. It is also held responsible for attempts to destabilise Mr. Oli’s previous tenure as Prime Minister during 2015-2016. New Delhi cannot turn a blind eye to the rebuffs, and must address them. At such a time, the Army chief, General Bipin Rawat’s statement on BIMSTEC, that “geography” will ensure that countries like Bhutan and Nepal “cannot delink themselves” from India, could have been avoided; such comments unnerv India’s smaller neighbours and are misleading. Modern technology and connectivity projects could well take away geography’s role as a guarantor of good relations.

## Saving rivers

As a first step, the capacity of treatment plants along all rivers must be urgently expanded

The finding of the Central Pollution Control Board that the number of critically polluted segments of India’s rivers has risen to 351 from 302 two years ago is a strong indictment of the departments responsible for environmental protection. The data show that the plethora of laws enacted to regulate waste management and protect water quality are simply not working. The study also underscores the failure of many national programmes run by the Centre for river conservation, preservation of wetlands, and water quality monitoring. Tests of Ganga water indicate it has fared better in Uttar Pradesh; but then, the clean-up plan for the river has received dedicated Central funding of ₹3,696 crore over three and a half years, compared to ₹351 crore given to 14 States to conserve 32 rivers. The failed efforts to control pollution are all too evident in Maharashtra, Gujarat and Assam, which account for a third of the degraded river segments. Their problems are worsened by the poor infrastructure available in a large number of cities and towns located near rivers. It is notable that these results come from a CPCB audit that was carried out at the instance of the National Green Tribunal. Ideally, the Board should be reporting more frequently on pollution, and carrying out intensive measures through State Pollution Control Boards to eliminate pollutants, starting with sewage and industrial effluents.

Managing sewage requires steady funding of treatment plants for all urban agglomerations that discharge their waste into rivers, and also reliable power supply. The deficit between sewerage available and the volume generated along the polluted stretches was estimated by the CPCB last year at 13,196 million litres a day. Rapid urbanisation is widening the gap, since infrastructure planning is not keeping pace with growth in housing. Moreover, with low priority accorded to enforcement of laws by the SPCBs and Pollution Control Committees – something that is unlikely to change quickly – the immediate plan should be to expand the supply of treatment plants. Sustained civil society pressure on governments is vital to ensure that this is done in a time-bound manner. On the industrial side, the plan to bring all liquid effluent discharge from textile units and tanneries to zero has to be pursued vigorously, giving industries the assistance to help them choose the best technologies for the recovery of waste water for reuse. These measures are urgently needed to revive India’s many dying rivers, protect its agriculture, and prevent serious harm to public health from contaminated water. A 2013 World Bank study estimated that environmental degradation is costing India at least \$80 billion a year, of which losses to rivers form a significant part. This is indeed a problem of catastrophic dimensions.

# 2+2 is less than the sum of its parts?

India risks going down the ‘slippery slope’ of becoming a U.S. acolyte in conflicts not of its choosing



M.K. NARAYANAN

The much heralded 2+2 Dialogue between the U.S. and India finally fruited on September 6. The 2+2 format, involving the Defence and Foreign Ministers of the two countries, unconventional though it may be from an Indian standpoint, is a familiar tactic employed by the U.S., intended to align the military, strategic and diplomatic policies of the involved countries. It is often intended to signify a ‘special relationship’ between the U.S. and the concerned nation, even as it seeks to underscore the U.S. dictated ‘rules-based global order’.

In the past, India was chary of endorsing the 2+2 formula, considering it alien to traditional diplomatic and strategic intercourse between nations. However, the U.S. has been persistent, and exploiting the current state of ‘special relations’ between the U.S. and India, it succeeded in overcoming the inhibitions of India’s political, diplomatic and strategic community. It went out of its way to assuage many of India’s concerns in the run-up to the talks and there was, hence, a great deal of expectation about possible outcomes.

### Top-sided outcome

Some forward movement has taken place, but it would seem that the U.S. has been the main beneficiary. With this Dialogue, the U.S. also seems to have succeeded in co-opting India into the U.S. strategic framework aimed at the containment of China. The moot question for India is whether in the 21st century it wishes to play such a role, notwithstanding the obvious advantages stemming from access to state-of-the-art U.S. defence and

security technologies.

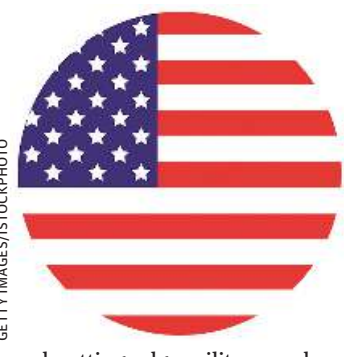
The principal takeaway from the 2+2 Dialogue was the signing of the Communications, Compatibility and Security Agreement (COMCASA) that is expected to facilitate India’s access to advanced U.S. defence systems, and “enable India to optimally utilise existing U.S. origin platforms”. It is also expected to help the armed forces of both countries to enhance interoperability.

COMCASA is part of four foundational agreements the U.S. believes are critical to establish a foolproof security relationship. It has for years persisted in its efforts to get India to sign the four agreements. So far, it has succeeded in getting India to accede to three. The General Security of Military Information Agreement (GSOMIA) was signed in 2002. The Logistic Exchange Memorandum of Agreement (LEMOA) was signed in 2016. COMCASA has now been finalised, and the deal has been sweetened by the U.S. offering to transfer specialised equipment for encrypted communications for U.S. origin platforms like C-17, C-130 and P-8I aircraft.

### COMCASA tipping point

Far more than the other two foundational agreements, COMCASA entails greater integration with the U.S. military. The implications of this can be far-reaching. Having been earlier accorded the status of a major defence partner, and with COMCASA now affording access to advanced defence systems and U.S. origin platforms – that involve obligations to share operational intelligence in real time – India risks going down the ‘slippery slope’ of becoming a U.S. acolyte in conflicts not of its choosing.

Among the more important advanced defence systems and platforms that India hopes to secure are: state-of-the-art items such as the Weaponised Sea Guardian (a high altitude long endurance Drone), the Armed Predator-B,



and cutting edge military and encrypted communication technologies. These can be expected to tie India firmly into the U.S.-driven military-security-intelligence grid.

As part of the exercise to integrate India with its objectives, the U.S. once again reiterated the importance and significance of India as a ‘strategic partner and a major and independent stakeholder in world affairs’. This is further sweetened by implicit references to the role of Pakistan as an incubator of terrorism. There is also a mention of further expansion of bilateral India-U.S. counter-terrorism cooperation. A new offer on display is of facilitating closer relations between the U.S.’s Defence Innovation Unit and India’s Defence Innovation Organisation, intended to progress joint projects for co-production and co-development under the aegis of the Defence Technology and Trade Initiative.

It is not clear at this time whether all this would earn India a reprieve from U.S. sanctions directed at countries trading with Russia and Iran. India is interpreting U.S. affirmations that it would not be sanctioned for its ‘legacy platforms’, to mean that the purchase of the S-400 Missile Defence Systems from Russia would not be affected. New purchases would, however, come under the purview of the Countering America’s Adversaries Through Sanctions Act (CAATSA). *Vis-à-vis* Iran, there are even less signs of a ‘give’ in the U.S. stance. Meanwhile, it is certain that India will come under further

pressure from the U.S. to sign the fourth foundational agreement – Basic Exchange and Cooperation Agreement for Geo-Spatial Cooperation (BECA).

What benefit does India derive from this 2+2 exercise? By its offer of a string of state-of-the-art defence items under ‘controlled conditions’, the U.S. is seeking to reinforce its claims to becoming the principal defence supplier to India, and in the process displace Russia from this perch. This is hardly an unmixed blessing. Russia has been steadfast in its defence commitments to India, and is not likely to take kindly to its displacement as India’s No.1 defence supplier. Any counter moves by Russia, such as seeking out Pakistan as an outlet for its defence items, will not be to India’s benefit.

Our tilt towards the U.S. is also taking place at a time when the world sees the U.S. as a ‘declining power’. This is not 1991, when the Soviet Union had collapsed, China was not a dominant economic power, the U.S. had just demonstrated its unassailable military strength in Iraq, etc. Exhausted by a succession of past interventions, the U.S. is currently seen, in Asia at least, as largely in retreat.

On the other hand, the world today confronts a post-Cold War situation. This features China as the second biggest world power and possibly among the biggest military powers. Considerable parts of Asia are already tilting in its favour. There is also the phenomenon of the re-emergence of Russia. At the same time, everything points to a weakened Europe.

The U.S. image in Asia further stands tarnished thanks to some of its ‘strategic retreats’ in the recent period, viz., the failure of the ‘pivot to Asia’ and U.S. President Donald Trump’s ‘America First’ policy. The U.S. threat to use force to impose its diktats has again lost much of its meaning due to its inability to rein in China’s aggressive

postures in the East and South China Seas. It has also been unable to effectively contain China’s ambitions to emerge as a key naval entity in the Indo-Pacific region. At this time, for India to be tagged with the label of an U.S. acolyte is hardly the best, or the next best, option.

### Strategic integrity

India has struggled for long to maintain its strategic integrity, apart from its strategic autonomy and independence. There were several occasions in the past for it to be strategically aligned with the U.S., but India was not willing to accept the terms of such alignment. China is a matter of concern, but not an imminent threat as far as India is concerned. The entire 2+2 Dialogue, on the other hand, seemed to centre on the threat posed by China and the need to contain Chinese aggression through force, or display of force, under a U.S. umbrella. Pakistan is the more immediate threat for India, and not solely on account of incubating terrorism. We have real concerns about Pakistan’s emergence as a nuclear threat, engaged in increasing the numbers of its nuclear warheads, developing several new delivery systems, creating new plutonium production and uranium enrichment facilities, etc. Pakistan’s threat to build new short-range nuclear capable weapon systems is again a real danger. None of this seems to fall within U.S. purview at present.

U.S. blandishments should not, hence, blind us to current realities. There has to be a limit to what we seek from other nations in terms of arms. In any case, there can never be any compromise with our strategic autonomy or the strategic direction that we have chosen to follow all these years.

M.K. Narayanan, is a former National Security Adviser and a former Governor of West Bengal

# The progressive way

Enacting just laws is more desirable than tinkering with personal laws for the sake of ‘uniformity’



FAIZAN MUSTAFA

In a consultation paper released recently, the Law Commission of India has boldly said that a uniform civil code (UCC) is neither feasible nor necessary at this stage.

The response must come as a shock to those in support of a “one nation, one law” tagline. The divide between the socialists and liberals is clearly visible. ‘Legal pluralism’ and ‘radical libertarianism’ are well-recognised scholarly traditions. There is a consensus that the state is not the only source of law. History has many instances of pluralistic legal systems where multiple sources of law existed.

Therefore, the Law Commission has rightly recognised the plurality of diverse personal laws and proposed internal reforms in personal laws to make them compatible with the constitutional provisions of equality and non-discrimination.

One hopes that religious communities in general and Muslims in particular will now as a first step

initiate meaningful dialogue on internal reforms in personal laws.

### Some pronouncements

The Supreme Court has been advocating the enactment of a UCC, perhaps without fully appreciating the ground realities. For instance, Justice Vikramajit Sen in *ABC v. State* (2015) observed: “Our Directive Principles envision the existence of a uniform civil code, but this remains an unaddressed constitutional expectation.” Here, the court was not dealing with some religious or personal law but with a statutory provision of the Guardians and Wards Act, 1890. Thus the reference to a UCC was unwarranted. In *Sarla Mudgal* (2015), the Supreme Court made observations that those who stayed back after Partition knew that India believes in one nation and therefore no community can claim separate religious laws. Loyalty to the nation and uniformity in laws are not related to each other.

Even in the Constituent Assembly, there was division on the issue of putting a UCC in the fundamental rights chapter. The subcommittee on this was so sharply divided that the matter was eventually settled by vote. It finally held that the provision was outside the scope of fundamental rights and thus non-justiciable. We



need to appreciate the distinction between justiciable and non-justiciable rights. B.R. Ambedkar explicitly said in the Assembly, “No government can use its provisions in a way that would force the Muslims to revolt. If a government acts thus [imposing a common civil code], such a government would be insane in my opinion.”

### Preserving legal diversity

We need to appreciate that in Article 44, the framers of the Constitution have used the term ‘uniform’ and not ‘common’ because ‘common’ means one and same in all circumstances whatsoever and ‘uniform’ means ‘same in similar conditions’. It is an erroneous perception that we have different personal laws because of religious diversity. As a matter of fact, the law differs from region to region. It seems the framers of the Constitu-

tion did not intend total uniformity in the sense of one law for the whole country because ‘personal laws’ were included in the Concurrent List, with power to legislate being given to Parliament and State Assemblies. Preservation of legal diversity seems to be the reason of inclusion of Personal Law in the Concurrent list. The Law Commission has given due weightage to this diversity.

It is a myth that we have uniform criminal laws. States have made amendments to the Indian Penal Code (IPC), 1860, and the Code of Criminal Procedure, 1973. For example, Punjab recently introduced Section 295AA to the IPC – life term in all sacrilege cases.

Another myth is that Hindus are governed by one homogenous law after the enactment of the Hindu Code Bill. It is also true of Muslims and Christians. The Constitution itself protects the local customs of Nagaland. It is repeatedly mentioned that Goa already has a uniform code. But Hindus there are still governed by the Portuguese Family and Succession Laws. The reformed Hindu Law of 1955-56 is still not applicable to them. In the case of Muslims, the Shariat Act 1937 has not been extended to Goa. Thus they are governed by Portuguese and Shastric Hindu law, and not by Muslim personal

law. The Special Marriage Act (a progressive civil code) has not been extended to Goa. Even in Jammu and Kashmir, local Hindu law statutes do differ with the Central enactments. The Shariat Act is also not applicable and Muslims continue to be governed by customary law which is at variance with the Muslim personal law in the rest of the country.

### Forgotten issues

It is distressing that no one talks about the non-implementation of other Directive Principles which are far more important than the enactment of a uniform code. What about the right to work, living wages, distribution of community resources to sub-serve the common good, avoidance of concentration of wealth in few hands and the protection of monuments?

Amendments to a community’s personal law with a view to bringing about changes for its betterment is one thing; but to tinker with the enactment with the sole purpose of introducing ‘uniformity’ is quite another. Just laws are far more important than uniform law. Piecemeal reforms should be the way forward.

Faizan Mustafa is Vice-Chancellor, NALSAR University of Law, Hyderabad. The views expressed are personal

## LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

### Snuffed out in sewers

The fact is that numerous deaths occur across India as a result of manual scavenging. They are scarcely reported. Urban civic bodies do have sanitary gear equipment which includes tank cleaning lorries. But, in practice, most are in a state of disrepair and sanitary workers are compelled to do the jobs manually. The civic administration needs to ensure that all equipment is maintained and cleaning work carried out under proper supervision (Editorial, “Lethal filth”, September 17).

S. NALLASIVAN,  
Tirunelveli, Tamil Nadu

■ There cannot be change unless a sustainable mechanised process is implemented at the ground

level. In this the roles of technological entrepreneurs and State research institutions are crucial. Prominent examples are the sewer cleaning robot, ‘Bandicoot’, devised by a start-up in Kerala, and ‘Sewer Croc’. There is also a device that can be attached to a manhole to record the level of poisonous gases. Wide publicity needs to be given to such inventions.

AKASH SINGH,  
Lucknow

■ It is a shame that much after Independence, people from the lowest strata of the society are forced to take up manual scavenging for a livelihood. The Central government needs to make budgetary allocations to alleviate the sufferings of the poor and marginalised who are forced into such life-threatening

jobs rather than pouring crores into bullet train projects and giant offshore statues. The highest court of the country should take *suo motu* cognisance of this issue and send strictures to the Centre and States.

G.B. SIVANANDAM,  
Coimbatore

■ It is ironic that in a country where PILs are filed over mere winking, film titles and lyrics, the numerous deaths of innocent sanitary workers are being ignored. It is a complete shame and an embarrassment. A systematic approach has to be adopted to eliminate manual scavenging once and for all.

NAVEEN RATTU,  
Chandigarh

### Politics over convicts

The politics being played out, especially in Tamil Nadu, over those involved in

the assassination of former Prime Minister Rajiv Gandhi is shocking. There were others too who were affected in the bomb blast and I wonder whether those who are raising the demand now about releasing the convicts have thought about this. What about the sensitivities of the families of the other victims? The perpetrators cannot be unaware of the consequences of their diabolical plot.

DIMPLE GARG,  
Palwal, Haryana

■ It is a matter of regret that no one seems to have thought about the sacrifice of the 15 other people who died along with the former Prime Minister. The agony of their families must be factored in, as Anusuya Daisy Ernest, a retired police officer, and one of those affected during the blast has said (“Don’t

free Rajiv case convicts,” September 15). Those who support the convicts have no right to forget this.

C.A.C. MURUGAPPAN,  
Kothamangalam, Tamil Nadu

### Berlin marathon

Kenyan Eliud Kipchoge’s obliteration of the marathon world record should rank as the greatest sporting achievement of the year

### CORRECTIONS & CLARIFICATIONS:

In “India calling: 5G networks may be in place by 2020” (Sept. 17, 2018, Business Review page), the quote – “4G networks now serve more than 240 million subscribers in urban areas across the country; however, LTE coverage in rural areas remains a challenge” – should have been attributed to a report by a top panel set up by the Centre, and not Ericsson.

In the report headlined “Kerala nuns protest: fight will continue till Bishop Franco Mulakkal’s arrest” (Sept. 16, 2018), Missionaries of Jesus has been wrongly referred to as Missionaries of Justice, twice.

A quote in “The social value of religious and political dissent” (The Public Eye column, Sept. 16, 2018) said: “The sound of the conch does not return to the broken shelf, nor life to the broken body ... never, reborn.” It should have been broken shelf.

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