



INSIGHTS

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UNHRC



NEW DELHI'S COLOMBO DILEMMA

EXPERT INSIGHTS



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Standing trial

As Sri Lanka looks to India for support at the crucial vote in the UNHRC, persisting tensions in bilateral ties will be a niggling factor

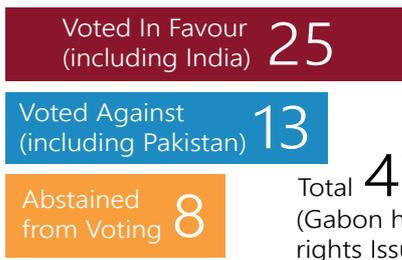


At the 46th session of the UN Human Rights Council (UNHRC) in Geneva, which is ongoing, Sri Lanka faces a public probe into its post-war reconciliation measures. This follows a highly controversial report by the UN High Commissioner for Human Rights, that had delivered a scathing indictment of accountability and truth-seeking mechanisms in the island-nation.

In the run-up to this trial by fire, Colombo has officially sought New Delhi's help. President Gotabaya Rajapaksa has written to Prime Minister Narendra Modi, expressing the hope that India would support its neighbour in defeating the resolution that challenges Sri Lanka's human rights record. In addition, the Media and Information Minister Keheliya Rambukwella, as well as Foreign Secretary Jayanath Colombage, have followed this up through unofficial channels.

This resolution comes at an inopportune time for Sri Lanka. Only recently, the country had made headline news by reneging on a 2019 tripartite agreement with India and Japan, that provided for the joint

TIME TO ACT NOW Voting at UN and its Impact



INDIA'S DEMANDS

Independent probe into allegations of human rights abuse	Sri Lanka should take forward measures to ensure accountability
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THE RESOLUTION

Implementation of all recommendations contained in Lessons Learnt Reconciliation (LLRC) Report	Should include report on missing persons, detainees, disappearances and abductions
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REDUCTION OF 'HIGH SECURITY ZONES'

Withdrawal of security forces from civilian areas in the Northern Province

SOURCE : THE ECONOMIC TIMES

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development of the East Container Terminal (ECT) at the Colombo Port. While opposition from domestic port workers' unions had been ostensibly cited as the reason, strategic analysts in New Delhi were suspicious of a possible Chinese hand.

In a bid to undo this damage, Colombo has now awarded a contract

to Adani Ports for developing the West Container terminal, making it the first Indian port company to operate in the island-nation. It remains to be seen whether the grant of this alternate project will be sufficient to prevent a visibly miffed Indian administration from flexing its muscles against Sri Lanka, at the approaching vote in the UNHRC.

A HISTORY OF UNHRC RESOLUTIONS

Over the last twelve years, Sri Lanka has faced at least seven resolutions on the question of human rights. New Delhi has been an active participant in these discussions, choosing to constructively engage with its 'close friend' across the Palk Strait.

However, in 2012, the US had brought in a substantial resolution (19/2) against Sri Lanka, which was approved by India for the first time. A year later, New Delhi also voted in favour of another resolution (22/1) against its neighbour. At the time, domestic Indian politics had played no small part in this decision. As can be recalled, Tamil Nadu's main oppo-



Ranjan Mathai was Former Foreign Secretary, Government of India, in March 2013 when India voted against Sri Lanka at the UNHRC. He shared his thoughts with Synergia Foundation.

“ The draft resolution at the UNHRC should be assessed politically as well as substantively. Experience shows that the earlier critical resolutions had negative, almost self-defeating results within Sri Lanka. The lobbies in some western countries pushing the resolution do not have interests in common with ours. I do not think we should vote in favor of the resolution. ”

sition party, Dravida Munnetra Kazhagam (DMK), had withdrawn from the ruling coalition at the Centre, alleging that India was not doing enough for the Sri Lankan Tamils.

Easing bilateral friction to a certain extent, India had abstained from the following Resolution (25/1) in 2014. According to it, it was important to acknowledge some of the key reconciliation measures that the Sri Lankan government had undertaken during the course of the year.

Fortunately for New Delhi, it was spared its annual dilemma in 2015, as Colombo voluntarily undertook to co-sponsor UNHRC Resolution 30/1. This was triggered by the defeat of Sri Lankan President Mahinda Rajapaksa in the Presidential elections, along with the subsequent loss of his political party at the country's Parliamentary polls. The victorious Maithripala Sirisena-Ranil Wickremesinghe government, which came to power on the promise of speeding up the ethnic reconciliation process, had agreed to partner the 2015 resolution.

This, however, proved to be extremely polarizing in the country, as it called for a domestic accountability mechanism, with the prospect of appointing international judges. During his Presidential campaign in 2019, Mr. Gotabaya Rajapaksa went on to make this an electoral plank by stating that his regime would never put military officers on trial. Upon

sweeping the polls later, his government unilaterally pulled out of this Resolution.

Now, with the freshly drafted 2021 resolution, the new Rajapaksa government will have to face its first-ever test at the UNHRC.

IN THE DOCK

The draft resolution has been submitted by a 'Core Group', consisting of the United Kingdom, Canada, Germany, Malawi, Montenegro and North Macedonia. It effectively responds to a condemnatory report by the UN High Commissioner of Human Rights, Michelle Bachelet, that accuses Sri Lanka of proactively obstructing investigations into past crimes. It also highlights the accelerating militarisation of civilian governmental functions, deployment of anti-terrorism laws, the reversal of important constitutional safeguards, intimidation of civil society, as well as exclusionary rhetoric to bolster this claim. As a punitive measure, the report has additionally called for targeted sanctions and International Criminal Court procedure against those responsible for rights violations.

Acknowledging the same, the newly drafted resolution urges the UNHRC to devise strategies that support "accountability processes" and "relevant judicial proceedings". It also advocates for the implementation of Resolution 30/1.

GEOPOLITICAL FISSURES

Sri Lanka has termed the persistent efforts of the UN and its human rights body as a "purely political move" and "unwanted interference by powerful countries." It has, in turn, lobbied with member states, especially those with which it enjoys close relations, in order to support its stand.

This is causing fault lines in its foreign relations to emerge along expected lines, with China and Pakistan defending Sri Lanka, while the EU and UK are demanding enhanced accountability.

In an apparent endorsement of human rights, the US has also supported this resolution. Underlying its decision, however, is the growing displeasure over Sri Lanka's 'cosying' up to China, which is perhaps incentivised by larger investments coming in from Beijing. Washington is keen to offset the latter's expanding economic footprint in South Asia through the Belt and Road Initiative, which it believes is a cover for geopolitical influence. However, much to its chagrin, Sri Lanka has rejected bilateral avenues for cooperation like the \$480 million U.S. grant, that seeks to facilitate transport development and land registration under the Millennium Challenge Corporation Compact.

In this fractious environment, India can make a difference in the upcoming vote at the UNHRC. Well aware of this, Sri Lanka has called on its neighbour to

exert significant diplomatic heft in opposing the draft resolution. In a conciliatory move, the island-nation has also cleared the joint development of the West Container Terminal with India and Japan, as an alternative to the ECT. However, stung by a series of affronts in the recent past, the Indian side has refused to reveal its cards, as yet.

Assessment

New Delhi has not outrightly dismissed the report prepared by the UN High Commissioner, an outcome that Sri Lanka would have desired. Naturally, this is triggering speculations about a possible 'cold shoulder' to Colombo in the upcoming Resolution at the UNHRC.

For India, a collapse of the ECT venture is not the only factor that figures in its strategic calculus. It is actively seeking to constrain Beijing's presence in the island-nation by pushing back against Chinese projects in areas like the Jaffna Peninsula, which is merely 50 km off Tamil Nadu's coast.

In India, the Sri Lankan Tamil issue will always be a talking point in Tamil Nadu politics. Owing to the upcoming Assembly polls, political parties are looking to capitalize on any issue that swings votes in their favour. In this regard, renewed emphasis may be placed on the implementation of the 13th Constitutional amendment in Sri Lanka, which stems from the 1987 Indo-Sri Lankan accord and aims to devolve power to the Tamil provinces.

Backing the (Cey)lone Lion

Economic interests and determination to challenge China are important factors in deciding vote



The sponsored resolution has become a kind of regular ritual at the UNHRC since 2009. It is driven by concerns, real and motivated, of alleged human rights violations during the final stages of the long civil war in Sri Lanka, featuring the Sri Lankan Government in Colombo and the Tamil Militant group, the LTTE.

The conflict, undoubtedly, involved grave human rights violations by both the Sri Lankan Government and the LTTE. It was, however, the grim scenes of atrocities committed by the Sri Lankan Government Forces in the final days of the warfare, that triggered an avalanche of protests across the globe, accompanied by demands for action against the Sri Lankan Government, and the individual members of the Sri Lankan Armed Forces.

For the better part of the past decade, 2010-2020, the issue has figured on a

regular basis at the UNHRC. At different times, Russia, China and India have acted in a manner that forestalled the UN from formally censoring the Sri Lankan Government of committing genocide. In 2013, India did, however, vote against Sri Lanka at the UNHRC.

The vote in the UNHRC this time, comes at a time when India-Sri Lanka relations are going through an extremely trying period. Whichever way India votes, there are certain to be consequences that India will have to deal with subsequently. Supporting Sri Lanka when the vote comes up in the UNHRC, is almost certain to raise the hackles of democrats worldwide, at a time when India is already beginning to be accused of abandoning many of its democratic credentials. Besides this, it could also put a crimp on India-US relations, even as a new Biden Administration takes charge in Washington. On the other hand, if India supports the US sponsored resolution, India-Sri Lanka relations could well become dam-

aged beyond repair. India may then find that there is no stopping the 'China surge' in Sri Lanka.

Colombo, no doubt, will be hoping that Delhi votes in its favour and discourages Washington from damning the Rajapaksa Government, and of according a treatment to the Sri Lankan President, on par with that of former Yugoslav President, Slobodan Milošević.

Sri Lanka, in the meantime, has made a bold flanking move by issuing a Letter of Intent to the Indian consortium, Adani Ports and Special Economic Zones Limited, to develop and operate the lucrative West Container Terminal in Colombo, an offer that India may find extremely difficult to refuse – both from India's domestic and external prescriptions. At one level, the offer could well turn out to be a successful long term economic engagement between India and Sri Lanka, coming at a time when India had been trying, not too successfully, to withstand the ongoing Chinese offensive to become the

sole provider of economic opportunities to Sri Lanka. Given the scale of the project, the offer again provides India a chance to become a stakeholder in the political stability of Sri Lanka – one that is favourably disposed towards India.

More to the point, India is now beginning to realise (given the ongoing and post pandemic situation) that increasingly, it is economics that finally triumphs over politics. The connectivity this project ensures between India and Sri Lanka, one that would significantly increase economic benefits for both countries, will far transcend any political benefit that may temporarily benefit from supporting the US sponsored resolution in the UNHRC. The choice before India is hence a stark one.

India does have the option of abstaining, but this would leave us in a kind of limbo that is generally reserved for nations that have no clear-cut vision of the consequences of such defeatist postures. Given India's determination to challenge China's attempts to overwhelm South Asian nations with its economic bounties, it is, hence, more likely that India would opt to vote against the US resolution, recognising that the US needs India as much as the latter needs the US at this juncture, to stem the Chinese tide across Asia.

'Boston Tea Party' online

The Milk Tea Alliance that has surged into an online transnational youth movement against authoritarian regimes in South-East Asia, must strategize and collaborate to be heard



SYNERGIA FOUNDATION
RESEARCH TEAM

The military junta in Myanmar grossly misread public sentiments this time around when they carried out their bloodless coup a month ago. As pro-democracy protesters openly defy martial law and rally against the house arrest of former State Counsellor Aung San Suu Kyi, the Tatmadaw has been steadily escalating its use of lethal force against them.

Undaunted by the

crackdown and shootings, thousands of demonstrators, especially the youth, continue to pour out onto the streets. By uniting under the banner of the 'Milk Tea Alliance' (MTA), many of them have formed transnational solidarities with activists in other Asian countries, including Thailand, Taiwan, and Hong Kong.

As this cross-border, online-based group makes its presence felt in Naypyidaw, the strategies adopted by it are worth studying. After all, popular movements that ultimately bring down mighty empires are often birthed in the cru-

cible of such seemingly insignificant political and social occurrences.

A RECIPE FOR RESISTANCE

Representing a loose coalition of young, tech-savvy democracy advocates, the MTA was formed in the wake of an online meme battle waged in Thailand and China. The re-tweeting of a photo montage by a Thai teen idol, which inadvertently identified Hong Kong as a separate country, was the original trigger for MTA. Although the celebrity in question later apologised, pro-Beijing

trolls on the internet were not appeased.

Sino nationalists continued to launch vicious attacks on social media platforms, which soon deteriorated into a full-blown virtual war, drawing in participants from Hong Kong and Taiwan. It eventually metamorphosed into a digital campaign by South-East Asian activists that targeted China for its perceived 'bullying' policies in the region.

Meanwhile, a popular meme that depicted citizens of Thailand, Taiwan, and Hong Kong holding up their respective milk-tea beverages, started to gain

traction as a beacon of resistance. This was intended to be a deliberate snub to the Chinese who prefer tea without dairy products. Over time, however, the MTA transcended its anti-China roots and became a larger existential struggle against authoritarianism worldwide.

Much like the regional variations in milk-tea drinks, members of this alliance came to be defined by their own disparate agendas. For instance, MTA members in Thailand emerged as an integral part of student protests that sought to curtail the monarchy's prerogatives and enact democratic reforms. Meanwhile, in Hong Kong, they strove to restore the city's political freedoms, which had come under attack from Beijing. Similarly, activists in Taipei pushed back against the Dragon's attempts to reunify their island with the Chinese mainland.

While the specific goals of these protests were indeed varied, they seemed to share a certain cultural affinity and ideological value that made the MTA a political force to reckon with.

FRIENDS SANS BORDERS

If recent events are any indication, young people from Myanmar are the latest to join this Milk Tea club. Ever since the coup d'état, images of the Burmese milk tea joining the MTA have been flooding the internet. Pro-democracy protesters have been



actively borrowing strategies from their fellow activists in South-East Asia. They have also galvanised support across national borders and deployed social media networks to devise, adapt, and share protest tactics.

For example, it is reported that Myanmar's youth are using Hong Kong-style flash mobs as well as Thai-inspired three-finger salutes in their demonstrations. Hundreds of people have also taken out rallies in Bangkok and Hong Kong, following a call for help from pro-democracy campaigners in Naypyidaw. Against this backdrop, it would be naïve to underestimate the political heft of the MTA and its 'friends in the ASEAN'.

READING THE TEA LEAVES

Of course, it is not uncommon for popular movements to derive inspiration from each other. In this case, however, intelligence-sharing between activists in Hong Kong, Taiwan, Thailand, and Myanmar has proceeded

at an unprecedented scale. Through digital platforms like Facebook, Twitter, WhatsApp and Telegram, the MTA has identified young demographic aspirations, channelled it towards socio-political causes and facilitated real-time communication in what is essentially an online coalition.

If such enthusiasm endures, protests like these can attract global attention and even accelerate the imposition of foreign sanctions against authoritarian regimes. To be able to shape such strategic policies, however, the MTA still has a long way to go.

At present, many dismiss it as an ad hoc grouping that has no real negotiating power or organisational structure. In Thailand, it has also failed to win over the older generation, many of whom are avowed royalists and conservative in their thinking.

Moreover, it must be noted that autocratic governments have access to the same digital tools that are currently touted to be the MTA's assets. Together with their deep pockets

and pliable security forces, they can effectively deploy them to establish surveillance networks. Just as democratic movements look to each other for inspiration, authoritarian regimes can also copy each other's playbooks.

Therefore, it is vital for the MTA to take these factors into account, as it looks to build upon transnational collaboration and usher in democratic reforms. Otherwise, it may inherit the dismal fate of the 'Arab Spring' movement.

Assessment

The MTA can emerge as a significant political force across Asia, if it enhances its leadership, coordination and organisational strategies. At the same time, it will be critical to retain the flexibility of its online platforms, which allow protesters to mobilise spontaneously and adopt their own tactics.

For China and the other regional powers, it is important to read the subtext of movements like the MTA. Along with a lack of political autonomy, young people are expressing their discontentment about rising inequalities and economic hardships, which have only been exacerbated by the COVID-19 pandemic.

For Beijing, the space ceded to MTA is also emblematic of a failure to nurture soft power in South-East Asian countries.

Shedding historical burden

By going against domestic public opinion, Seoul has not only jumpstarted a progressively deteriorating relationship with Japan but also strengthened Washington's hands in the Asia-Pacific region



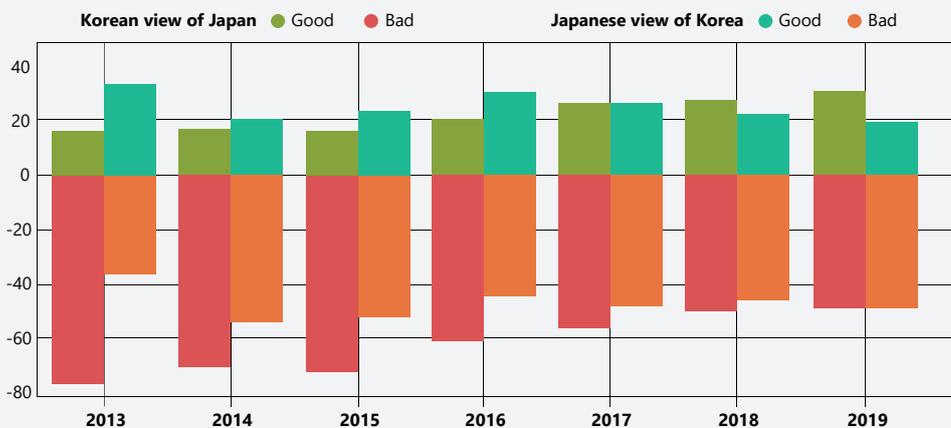
Spurred on by historical animosity and sovereignty disputes, along with a mutually damaging nationalist rhetoric, bilateral ties between Japan and South Korea have been on a downward trend.

In the latest turn of events, Tokyo has rekindled its claim on a contested island in the Sea of Japan, currently controlled by the South Korean government. It has also reacted strongly to a ruling by the Seoul Central District Court that has ordered the Japanese government to pay \$91,800 each to Korean 'comfort women', who had been allegedly abused by the Japanese military during the Second World War (WWII).

Even as these tensions continue to simmer, South Korean President Moon Jae-in recently issued a conciliatory statement, catching everyone by surprise. On March 1, while commemorating the 102nd anniversary of his country's independence protest against the Japanese occupation, he reached out to Tokyo in a widely televised

South Koreans' attitude to Japan is improving despite tensions

% of people who have a good/bad impression of the other country



Source : Genron NPO

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address. By adopting a patently pacifying tone, he signalled readiness to sit down and have talks with the Japanese government without the baggage of the past.

This change in stance seems to be reflective of a renewed appreciation in Seoul that Tokyo is critical for trade and investment, apart from being a useful ally in countering shared threats from North Korea, China, and Russia.

HAUNTED BY THE PAST

In the collective conscience of South Koreans, it is not easy to wipe off memories of Japan's brutal colonisation from 1910 to 1945. The latter's military had been particularly notorious for forcing thousands

of women into sexual slavery, apart from exploiting the Korean labour force to fuel Japan's war machinery. Even after the end of WWII, it had taken many years for the two countries to 'normalise' their relations.

Eventually, the Treaty on Basic Relations was signed in 1965, whereby the Japanese government officially recognised the Republic of Korea. It also provided \$300 million as compensation for the South Korean victims of Japanese imperial rule, besides extending an additional \$200 million credit to Seoul.

However, the already corrosive relationship between the two sides took a turn for the worse when several 'comfort women' survivors in South Korea

went public about their ordeals during the Japanese occupation. Although fresh demands were made on Tokyo to accept legal responsibility, it denied the same by arguing that all official compensation claims had been settled in 1965.

Finally, in a major breakthrough in 2015, Japan agreed to contribute ¥1bn towards a foundation that supported survivors and their families. This was, however, subsequently nullified by President Moon Jae-in, who contended that the agreement had not reflected the true wishes of the affected women. Further exacerbating the issue, there was a string of South Korean court rulings in 2019 that ordered Japanese companies to pay reparations to those who



S Assessment

With South Korea having blinked first, the onus is now on Japanese Prime Minister Suga Yoshihide to respond positively. It will be important for the two sides to delink their policies from an atmosphere of distrust and focus on the common adversities confronting them as they move forward.

In the U.S., the Biden administration is likely to distinguish itself from the Trump regime by assuming a more active role in mending relations between Tokyo and Seoul. It has already accorded high priority to their three-way talks, as any faltering would undermine American plans to bolster regional security networks in the Indo-Pacific.

This does not mean that it will be easy to counteract Chinese influence in this geostrategic pocket. After all, South Korea continues to be economically, geopolitically, and historically bound to China. Moreover, President Moon Jae-in considers Beijing as an important player in bringing Pyongyang to the negotiating table.

had been forced to work in their factories during WWII. Since then, this open wound has continued to fester.

FRAYING TIES

It is important to view the recent spike in tensions against this backdrop. Any new claim for war-time compensation is vehemently opposed by Japan, which views it as a violation of the international principle of sovereign immunity. According to it, all obligations had been finally and irrevocably settled under the 2015 agreement.

In fact, this historic friction has poisoned other aspects of their relationship as well, including economic and political ties. The conflicting claims over 'Liancourt Rocks', a group of small islets located between the Korean island of Ulleungdo and the Oki Islands of Japan, is a case in point. Furthermore, Tokyo has introduced a wide range of export restrictions on its neighbour, effectively causing bilateral

relations to hit a new low. Very often, these issues are also exploited for domestic gain. For instance, in 2019, when Mr. Moon Jae-in was plagued by political controversies back home, he had threatened to scrap an intelligence-sharing pact with Japan in a bid to redeem his plummeting approval ratings. In a significant departure from this trend, however, he has now extended an olive branch to the land of the rising sun.

STRATEGIC MOVE

Such a strategically consequential move would not have been undertaken without serious deliberation in Seoul. Many analysts believe that the immediate motivation is to use the Tokyo Olympics as a platform for resuming engagement with North Korea. The government is also keen to ensure that tensions with Tokyo do not impede Seoul's efforts at cooperating with Washington, as the latter charts its peace agenda in the Kore-

an peninsula.

Further, the two countries are members of the Regional Comprehensive Economic Partnership (RCEP) as well as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). In the near future, they are also expected to conclude a Free Trade Agreement (FTA) between them. Mr. Moon Jae-in has perhaps recognised that the benefits accruing from these mechanisms cannot be meaningfully leveraged if historical baggage continues to weigh down bilateral ties.

Regardless of the rationale underpinning his decision, the latest overture of rapprochement has come as a blessing in disguise for the new Biden administration in America. If guided by patient diplomacy, the Western power can galvanise trilateral cooperation with its East-Asian allies, in order to neutralise the effects of North Korea's nuclear arsenal and offset China's economic and military might in the region.

Immigrants biden-ing time

President Biden’s humane immigration Bill may face roadblocks in garnering bipartisan support as a fresh wave of asylum seekers crowd its borders and the pandemic refuses to die



On January 20th, the White House website hosted a press statement on the submission of the new U.S. Citizenship Act of 2021 to the Senate. The Bill, it claimed, “establishes a new system to responsibly manage and secure our border, keep our families and communities safe, and better manage migration across the Hemisphere.”

For millions of hopefuls in the U.S. and far beyond its borders, with dreams of American citizenship bright in their eyes, President Joe Biden’s move could not have come soon-

er, after his predecessor had wreaked havoc on the entire immigration policy.

Perhaps sensing the change in the attitude, an influx of South American migrants, spearheaded by children, is ready to flood across the Mexican border once again. This fresh human wave will only strengthen anti-migrant groups’ hands as President Biden’s well-intentioned bill undergoes public and legislative scrutiny.

PROMISES OF CHANGE

The White House says that the bill will “... restore humanity and American values to our immigration system [...] provide hard-working people who enrich our communities every day and who have lived here

for years, in some cases for decades, an opportunity to earn citizenship.” These words will be music to the ears of hundreds of thousands of Indian tech workers in the U.S. condemned to wait forever till they got their green cards.

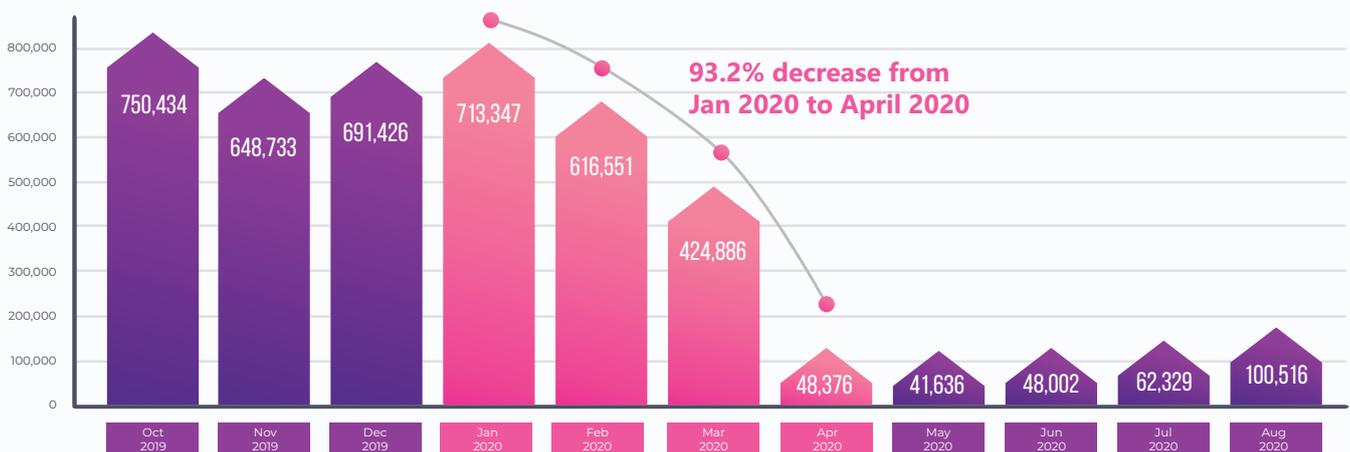
The bill provides a quicker path to citizenship for approximately 11 million undocumented immigrants. It looks to clear the pathway for more foreign workers by removing the decades-long backlog of employment-based green card applications (capped at 140,000 per year under current law).

Domestic support is crucial for the bill after the wave of xenophobia that has swept through the nation during the last four years. So far, labour

groups are supporting this approach. Businesses also view the proposal to increase their pool of coders and tech workers due to their ever-growing need for skilled professionals. Of course, this would benefit Indians the most.

Any increase in immigration does impact the domestic job market, more so when the pandemic is battering the economy. Mr Biden will have to remove these fears by carefully calibrating the immigration numbers and allowing the public to understand the benefits that highly educated migrants bring to revitalise the economy. In his election manifesto, Mr Biden had spoken of a caveat to reduce the number of employment-based green cards at times of

Decline in Immigrant Visas and Nonimmigrant Visas Issued During COVID-19



Source : <https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system>

high unemployment.

In the past, efforts to expand the workforce through increasing H-1B visas drew fire from unions and immigration opponents, because companies prefer cheaper foreigners over local talent which must be paid approved rates.

While the Democrats have enough votes in Congress, they do not have the 60 votes needed to stop the Senate Republicans from using a filibuster to prevent a vote from taking place on the bill.

Anti-migrant feelings still run high. The states of Florida, Arizona, and Montana are suing Mr. Biden's Administration over the new directives to halt detentions of some immigrants who have served time in prison. They believe that releasing and not deporting them could lead to more crimes.

UNDOING THE DAMAGE

Mr. Trump made the U.S. immigration system a whole new beast through executive action and regulatory change. In total, he is said to have made 400 to 1,000 changes to immigration policy. The Trump presidency sought to restrict legal and illegal migration, which then set firmly into the party's official stance.

A debate raging over the last decade has been whether U.S. tech companies need to import workers as there are plenty of graduates in the U.S. A literature review by the U.S.



Bureau of Labor Statistics shows that while the academic STEM market is generally oversupplied, the government and private sectors face a shortage. There is a consistent demand for employees in software development and high-growth areas such as mobile application development, data science, and petroleum engineering.

THE INDIAN PERSPECTIVE

Indian professionals make up a massive number of H-1B recipients. Stories of Indians working abroad and waiting for decades for a green card are not new. The new proposal would allow those who have been waiting for long to get permanent residency within a reasonable time. The plan would also exempt spouses and children of green-card holders from the annual quota.

Most often, however, it is not entirely the Indian companies that hire them.

Over the years, companies like Tata Consultancy Services, Infosys, and Wipro, have reduced dependence on H-1B. This shift began much before the visa programme was changed beyond recognition by the Trump administration.

While India does not have a special visa deal with the U.S., the E-2 visa (an individual can enter and work in the U.S. based on an investment they will be controlling) is beginning to emerge as a solid pathway for Indians.

A MORE HUMANE APPROACH?

Nearly 5,00,000 international students entered the U.S. every year before Mr. Trump's tenure, and that number decreased due to his strict migration policies. Students are required to apply for an extension after no more than four years in the country. One of the most pressing issues Mr. Biden faces right now, is whether he should allow temporary migrants, such

as students, easier access to visas. The proposed bill would allow more foreign STEM (science, technology, engineering, and maths) students and workers to enter by increasing the number of employment-based citizenships.

When it comes to refugee immigration policies, the waters remain murky. Biden's Administration has not yet withdrawn the court cases that the Trump administration was pursuing to keep immigrants out of the country.

Facilities to house immigrants at the border, are meant to be just a stop-over. Under the law, children should be moved to shelters run by the Health and Human Services Department. While Mr. Biden is still choosing to take a warmer approach than Mr. Trump by allowing vulnerable children into the country, this approach is already at risk due to the realities of migration patterns worldwide, which always sees an influx when there is space for entry.

The curse of the magic metal

Cobalt has become a blight for the people of the Democratic Republic of Congo as its spiralling demand leads to a rush for its exploitation with little regulation and regard for their rights



In the thick of the pandemic last year, TESLA used its much-hyped 'Battery Day' to make several announcements, the principal one being the introduction of a new battery technology, free of cobalt. This was underscored by Panasonic, their battery supplier, who claimed that they were on the verge of replacing existing Electrical Vehicle (EV) batteries with

cobalt-free ones. While these announcements brought some solace to activists fighting the unregulated cobalt mining in underdeveloped countries at a great human cost, the market itself showed no sign of abating. In the first few months of this year, cobalt prices have spiralled by over 55 per cent, indicative of galloping demands.

THE LURKING DARKNESS

When John Goodenough invented the lithium-ion

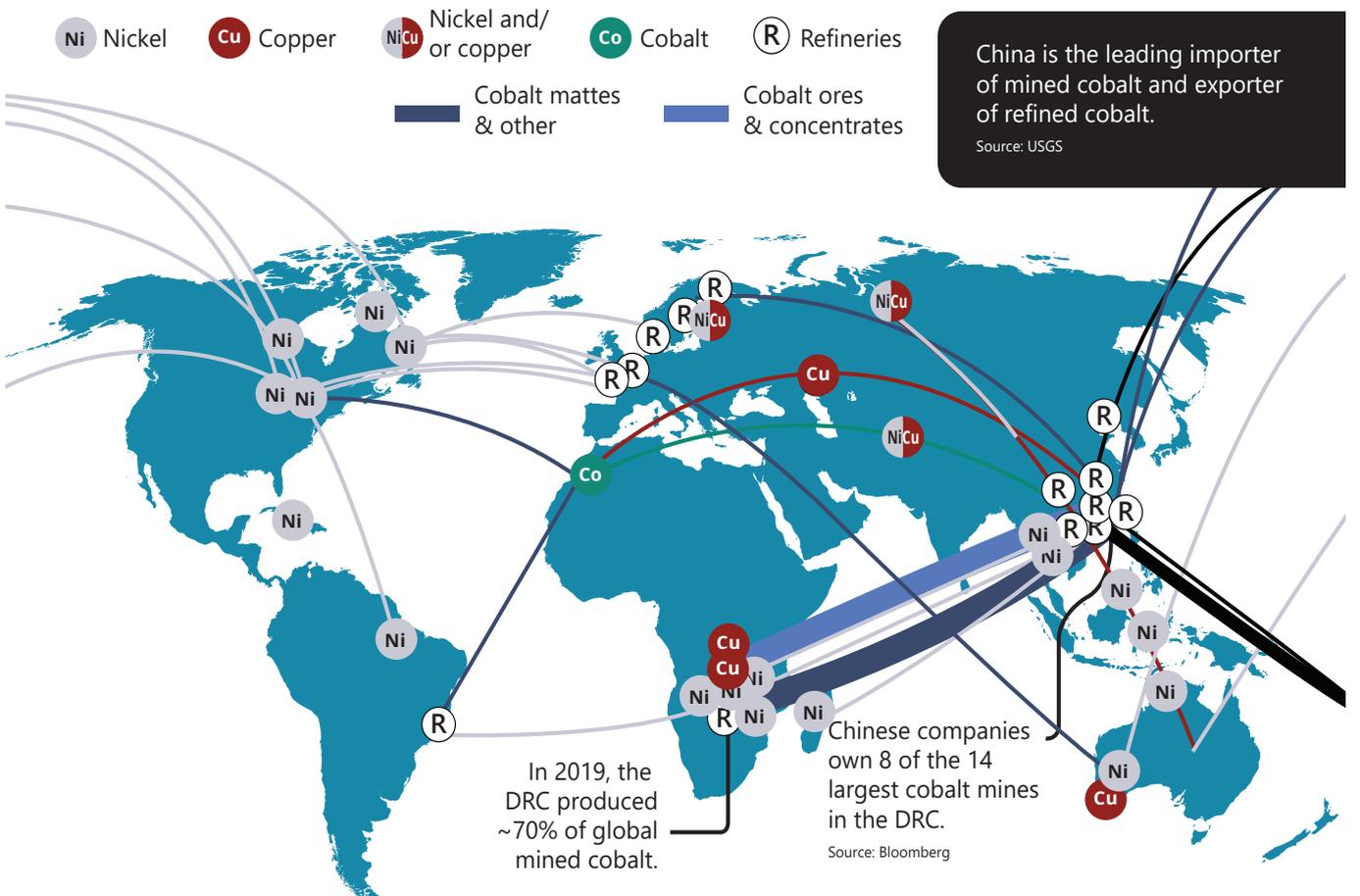
rechargeable battery in 1980, using cobalt made in his own laboratory, he never would have realised the geopolitical tremors he would trigger. An energy-dense metal, cobalt is an ideal ingredient in compact battery packs that produce a great deal of power in restricted spaces.

Unsurprisingly, over the last two years, the price of cobalt has quadrupled. The future holds even greater promise as once EVs become commonplace, towards the 2030s, they will

require nearly 1000 times more cobalt than smart-phones.

While cobalt can be produced in a lab from nickel and copper, it also exists naturally in the earth's crust. Democratic Republic of Congo (DRC), one of Africa's poorest country, produces over 60 per cent of the world's cobalt and has vast reserves.

But all this has come at a darker cost – human rights violations, exploitation of children and environmental degradation. It is the new "Blood Dia-



The Chemistry of Cathodes

Lithium isn't the only metal that is used in lithium-ion cells. There are many cathode types, and they all have different formulation Here are the metals in some of the major ones (excluding lithium).

NCA LiNiCoAlO_2



Example:
Tesla Model S



LCO LiCoO_2



Example:
Apple iPhone



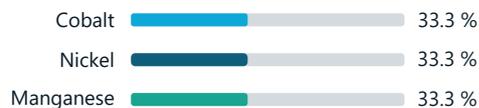
LMO LiMn_2O_4



Example:
Nissan Leaf



NMC LiNiMnCoO_2



Example:
Tesla Powerwall



Source : Brighten Solar

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mond" of Africa.

As early as 2016, Amnesty International had raised a report on the unethical mining practices that led to a new international mining code, raising royalties for cobalt in DRC from 2 to 10 per cent. Then in 2019, a landmark court case was filed against Apple, Google, Dell, Microsoft and Tesla in Washington DC by a human rights firm International Rights Advocate, on the behalf of Congolese families whose children have been forced into slave-like conditions in cobalt mines. These mines are an essential part of the supply chains of the Tech Giants. Plaintiffs named

Zhejiang Huayou Cobal, a major Chinese company, as the owner of the said mines.

Artisanry mining in which children work in narrow and deep tunnels, to bring back the bluish-green mineral is rampant. They risk their lives for as low as 2 USD a day, while thousands have been buried alive in roof collapses. A much larger number of women and children, who are employed to clean the mineral from copper and nickel, suffer from irreversible poisoning.

CAN'T IT BE REPLACED?

Cobalt gives a longer life

cycle to batteries. This is a critical factor for the success of EVs as the market standard for them stipulates an eight-year warranty to retain 80 per cent of the original capacity of the battery.

There is a safety issue involved too. It may be recalled that a few years ago, some models of Samsung Note were banned from flights as their batteries tended to ignite. Even today, power banks with lithium batteries cannot be put in checked-in baggage. To save cost, if manufacturers reduce cobalt in favour of nickel, the cells tend to overheat.

It is feasible to do away

with cobalt and use alternatives. However, these are expensive, and big corporations do not want to shell out big bucks, especially if they can get away with cheaper supplies at throwaway prices.

CHANGE IS INEVITABLE

However, pure business sense demands tech companies to avoid paying big bucks for cobalt and disassociate themselves from these atrocities that harm their brand name. Circumstances will ultimately force them to cut down on the amount of cobalt their batteries use.

A new line of research is



looking at manganese and iron as layers in batteries instead of cobalt. These are already in use in some devices but do not yet have the same energy density as nickel or cobalt.

Yet another option to bring down the demand for nickel and cobalt is via recycling. However, the long-life cycle of lithium-ion batteries means that by the time there is a demand for replacement of existing ones, after almost a decade, there will be recycled metals available.

Some researchers are looking at solid-state batteries, which, although they need lithium, can do without cobalt. Reportedly, BMW, Toyota and Honda are investing in this technology. However, it is unlikely to be made commercially available before 2025.

In a bid to erase the negative image of cobalt mining, Apple and Samsung are participating in the Responsible Cobalt Initiative, which pledges to deal comprehensively with

the environmental and social consequences of their cobalt supply chain. In fact, as per Apple, they have started buying cobalt directly from miners to ensure the workplace standards are met.

GEOPOLITICAL RIVALRY FOR RARE METALS

New technological applications have transformed rare earths and minerals into coveted inputs. Major powers like China see them as strategic assets and are investing in them accordingly. Cobalt and lithium, although not rare earths, are also mined in a few geographical locations, and are fast becoming indispensable for high tech manufacturing. This resource competition will only become more pronounced in years to come.

China dominates the world in this industry. In 2018, it had constituted a 35 member Union of Mining Companies bolstered by Chinese capital, and with the acquiescence of the DRC regime. China is

the leading supplier and consumer of cobalt and has 90 per cent of the global capacity to refine the metal.

In fact, Chinese companies have invested heavily in Congo and control over 40 per cent of the cobalt mining capacity in the African nation. An EU report projected that by the end of this year, lithium-ion battery manufacturing capacity would top 400 GWh, with China accounting for 70 per cent of the installed capacity. This means that China alone would require 80,000 tonnes of cobalt supply.

Also, electric vehicles themselves are only a part of the problem. Batteries used in other devices ranging from cell phones to laptops remain heavily dependent on cobalt. All this lends to projections that the demand for cobalt is estimated to grow four-fold in the next decade. Uses for cobalt are also not restricted to batteries, and the mineral in its radioactive form is even used in the treatment of cancer.

Assessment

There is a human cost of reducing the demand for cobalt as it would impact almost 85 per cent of Congolese exports, leaving a war-torn country further devastated. Artisanal miners, who lie at the bottom of the cobalt pile, already victims of power and tribal struggles, will only suffer even greater from unemployment.

This underlines the need for a multi-pronged strategy that addresses the issue of political stability, livelihood, and regulatory conditions for artisanal mining. It is equally important to address exploitative industrial mining and ensure that greed for the mineral does not have disastrous economic, environmental, and social conditions in the republic.

Ultimately, the humanitarian crisis is buried deep in the demand and supply dynamics for minerals, and this issue may not be restricted to cobalt or Congo. Given the global power dynamics involving China, bringing in a change to Congo and its cobalt realities may not be easy.

Lessons from the global vaccination drive

From distribution mechanisms to questions over some of the vaccines themselves, the global drive should constantly learn and evolve

DR GIFTY IMMANUEL
DIRECTOR, MEDICAL SERVICES

Up till 13th March, 355 million doses of COVID-19 vaccines have been administered the world over. The U.S. leads with 105 million vaccinated, followed by 49 million in the EU. In India, roughly 30 million have received the vaccine.

The Indian government aims to have 250 million priority people – those over 60 and those from 45-60 years with specific comorbidities – vaccinated by the end of July. However, the vaccination drive has been slow, due to hesitancy over vaccination. So far, India has faced no shortages of vaccines. The price of Covishield, developed by the Oxford University and AstraZeneca, is due to be reduced from Rs250 to Rs160 per dose (including taxes), as per revisions by the health ministry.

The Novavax vaccine, prepared by a U.S.-based biotechnology company, announced an efficacy of 96.4% in its phase 3 trial in the UK, something that Synergia Foundation had

At Current Rate, India's Covid-19 Vaccination To Take 12.6 Years

India has administered the first dose of COVID-19 vaccine to 2.14 crore people, till March 12, 2021. That's only 1.58% of 135.5 crore population. Both doses have been given to only 0.35%. At this rate, vaccinating 70% Indians-the herd immunity threshold-will take 12.6 years

Vaccinations on Mar 1
Vaccinations till Mar 12
Doses given in 11 days
Vaccinations rate per day

Metric	1st Dose	2nd Dose
Vaccinations on Mar 1	1,18,45,247	24,56,250
Vaccinations till Mar 12	2,14,35,841	47,29,079
Doses given in 11 days	8,71,872.2	22,72,829
Vaccinations rate per day	8,71,872.2	2,06,620.8

TO ATTAIN HERD IMMUNITY

3
12.6
Years required to vaccinate 70% population

4.3
18
Years required to vaccinate 100% of population

Source: India's population as per NSO's second advanced estimate for FY21, vaccination data from MoHFW till Mar 12, 7 AM
Note: Calculation is based on average vaccination between Mar 1 and Mar 12
Source: Business Today

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predicted earlier.

Now that the vaccination process is well underway, there are certain issues coming into focus more clearly, which, if fixed, could make the whole process a bigger success.

VACCINE HOARDING AND WASTAGE

The COVAX initiative aims to ensure that 92 middle and low-income countries also get equal access to the vaccines. Yet this process has been distinctly slow. Only ten countries have accounted for the COVID-19 vaccinations being given through

mid-February; a sure sign that the race to vaccinate the world is not on an even footing.

Issues of vaccine nationalism are still rife, with the lower-income countries still struggling to get their share. As a part of the COVAX initiative, the West African nations of Ghana and Cote d'Ivoire have become the first and second recipients respectively, to receive doses.

There is also the problem of the vaccine being wasted and disposed of, with most reports coming in from the U.S. The vaccines have a short shelf life, as they are stored at extremely low temperatures.

Once they are thawed out for use, they can't be re-frozen. Due to federal and state mandates, they cannot then be redistributed and therefore end up being disposed of. This validates the WHO advisory issued in 2005, that up to 50 per cent of the vaccines released each year globally, end up being discarded due to supply chain problems.

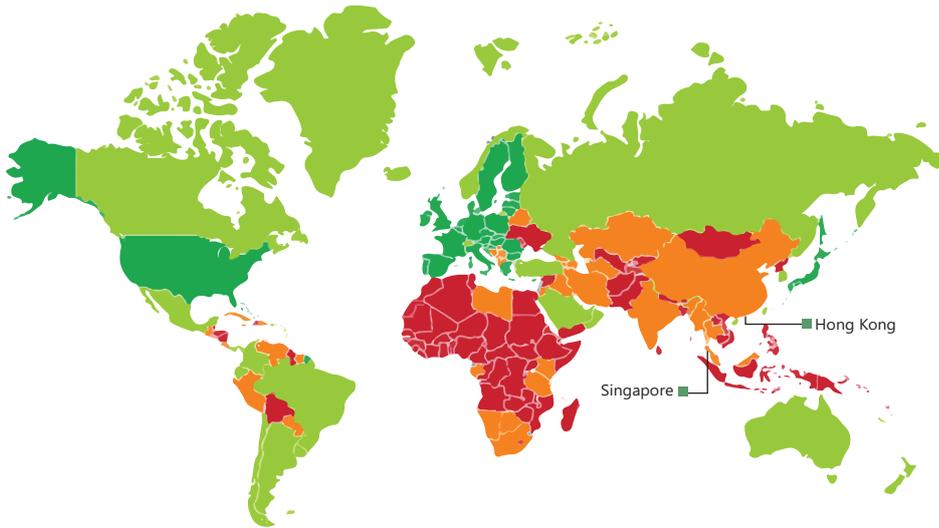
THE OXFORD-ASTRAZENECA'S CONTROVERSY

Oxford-AstraZeneca's vaccine has come under suspension by many EU countries due to reports of

ACCESS TO CORONAVIRUS VACCINES

When will widespread vaccination coverage be achieved?

■ By late 2021 ■ By mid 2022 ■ By late 2022 ■ From early 2023 onwards



Accurate as at January 22nd, 2021
Source : Economist Intelligence Unit

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thromboembolic events -- marked by the formation of blood clots -- appearing in those vaccinated. The situation heightened when Denmark decided to suspend the shots for two weeks, after a 60-year old woman formed a blood clot and died. AstraZeneca conveyed that the drug's safety had been extensively studied in trials, and that the vaccine was safe to be taken. Blood clots can occur naturally and are not

uncommon as a side-effect. In the UK, more than 11 million doses of the vaccine have been administered. The European Medicines Agency guesstimates that there have been 30 'thromboembolic events' among around 5 million people who have been given the vaccine.

Additionally, an interim analysis of four randomised controlled trials done in Brazil, South Africa, and the UK, suggest

that there is a higher efficacy of 90% in those who received a low dose, followed by a standard dose received 12 weeks apart, when compared to those who received two standard doses four weeks apart which resulted in a vaccine efficacy of only 62.1%. The UK had earlier decided to first inoculate everyone with one dose and then wait for 12 weeks, yet this same trend is not being followed elsewhere, with most places that administer the AstraZeneca vaccine giving it four weeks apart.

NEWER OPTIONS FOR PEOPLE

With the vaccination program coming into its full swing in many developed countries, newer vaccines

like the NovaVax (a U.S.-based biotechnology company) announced an efficacy of 96.4% against mild, moderate or severe disease caused by the original COVID strain amongst those who are 18-84 years of age, bringing to the fore a new option for people. Serum Institute of India has signed up with the company to make this vaccine as well, with India having brought a billion doses already.

NovaVax is a subunit vaccine; the template is a tried and true method for generating effective vaccines. It is in use in modern flu vaccines, HPV vaccines, and HepB vaccines. Since the vaccines make up two parts - the spike proteins and the adjuvant, they typically take longer to make than other vaccine types.

Assessment

Slowly but surely, countries are getting vaccinated, albeit at an uneven pace. Overall, after the older generation is vaccinated, the programmes could open up to the younger and actively working population.

In the future, it could turn into a booster dose, like a flu shot, updated for the new strains. The United States under President Joe Biden has joined the COVAX initiative and the WHO, thereby allowing for more of the vaccines to be sent to places in dire need of them.



Getting the online, in line

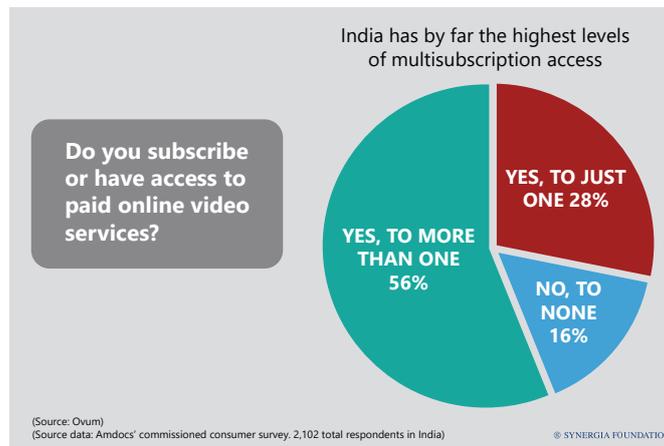
In a market as large and diverse as India, it is important to tailor regulatory requirements with great care if fair, equitable, and responsible behaviour is to be ensured in the digital ecosystem



In the latest thrust to moderate digital content in India, new guidelines have been notified under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Social media networks, messaging services, OTT platforms, and online news portals have been brought within the ambit of this regulatory framework. The rules also require foreign tech companies operating in India to comply with its provisions. As has been widely publicised by the Union Government, accountability and due diligence will be the two key norms that guide the implementation of these rules.

The timing of this notification has been hardly surprising. Only a short time ago, the Indian government had brought online news and audio-visual content within the purview of the Ministry of Information and Broadcasting, triggering speculations about impending changes in the existing regulatory structure. Furthermore, in the light of incidents like the Capitol

INDIANS PREFER ACCESS TO MULTIPLE PAID ONLINE VIDEO STREAMING SERVICES



Hill riot in Washington and the farmers' protests in New Delhi, the unfettered status of virtual platforms had been dominating global headlines over the past few months.

While guided by legitimate objectives such as combating hate speech, child abuse, misinformation, cyberbullying or violent propaganda on the internet, any push for government supervision is likely to rekindle the spectre of an Orwellian state. It would be important, therefore, to evaluate these regulations on the touchstone of fundamental rights like privacy and freedom of speech.

DISTINCT STANDARDS

The newly drafted IT framework distinguishes between different types of content services, including

intermediaries, publishers of news content, and curated content platforms. While Part II of the rules deals with the regulation of digital intermediaries, including social media networks, Part III elaborates on the rules governing online news media and OTT platforms. Accordingly, these two sections have been placed under the administrative authority of the Ministry of Electronics and Information Technology (Meity) and the Ministry of Information and Broadcasting (MIB), respectively.

As far as social media intermediaries are concerned, the rules make a distinction between 'ordinary' and 'significant' intermediaries. If the platform has a minimum of 50 lakh registered users, then it is classified as a 'significant social media intermedi-

ary', subject to maximum due-diligence compliances.

By explicitly recognising the diversity of entities operating in the digital space and stipulating different thresholds for regulatory compliance, the rules have adequately captured the reality of non-monolithic enterprises on the world wide web, which differ in terms of size, audiences, and impact. However, the overall upsurge in compliance costs may render it difficult for smaller companies to compete with tech behemoths like Facebook, effectively creating an entry barrier.

More broadly, the inclusion of online news portals within the ambit of the IT rules is legally murky. The IT Act, which is the parent legislation for these newly enacted rules, is primarily a framework that fixes the liabilities of digital intermediaries. In order to expand its scope to cover digital news agencies, legislative intervention is required. In other words, the Indian Parliament will have to approve these changes, something that has not been done in the instant case.

TAX IMPLICATIONS

According to the latest rules, significant intermediaries are required to es-

establish a physical contact address in India, which is published on their websites or mobile applications. They also need to appoint chief compliance officers, nodal contact persons, as well as resident grievance officers, all of whom must be Indian residents.

For many foreign companies, this would amount to a significant business presence in the country, potentially leading to tax obligations. In this context, they are unlikely to welcome a change in the status quo, as they have traditionally contested tax liabilities on the grounds that they have no presence in India. However, experts in the field envision that the absence of registration and mandatory licensing frameworks for digital media businesses will continue to incentivise foreign players in setting up domestic operations.

TRACING MECHANISMS

For messaging services, in particular, the rules mandate the identification of the first 'originator' of information if there is an order by the court or the government to that effect. In the event that the content has been generated on foreign soil, the person who has initially forwarded it in India will be deemed the first originator.

This proviso is particularly concerning for platforms like WhatsApp, Telegram or Signal, as it requires the retention of user texts, including metadata, which is usually deleted



as soon as the message is delivered. This, in turn, can compromise the integrity of end-to-end encryption in such applications, thereby altering the conventional ways in which these platforms have dealt with texts. Coupled with the fact that India has recently joined the Five Eyes alliance in seeking backdoor access to encrypted data for law enforcement agencies, critics are extremely wary of this proposition.

GRIEVANCE REDRESSAL

All online platforms covered by the new IT Rules, including intermediaries, OTT services, and digital news portals, will be subject to a three-tier grievance redressal system. While the first level consists of a grievance redressal officer that every publisher has to appoint in India, the second level calls for the institution of a self-regulatory body, chaired by a retired judge of the Supreme Court/High Court, or a person of eminence in the relevant field.

In cases where online content is detrimental to the sovereignty and integrity of India, public order, or friendly relations with foreign countries, the self-regulatory body can refer the matter to an In-

ter-Departmental Committee, consisting of representatives from the Ministries of Information and Broadcasting, Home Affairs, Information Technology, and External Affairs.

Under this oversight mechanism, a blocking order can be issued to the concerned publisher or platform in furtherance of Section 69 of the IT Act. While such a 'takedown' provision has always applied to intermediaries under the previous statutory regime, this is the first time that it has been extended to digital news publications and websites of traditional media houses.

This grievance redressal structure has been critiqued for not factoring in meaningful engagement by affected consumers. In the event of a complaint, it is unclear how the asymmetries of information between consumers and online platforms will be balanced at a time when, even established media houses are struggling to match the bargaining power of tech giants. The recent tussle between Facebook and news publishers in Australia is a case in point.

Furthermore, although the first two tiers are emblematic of a self-regulatory body, the entire system has been predicated on

the Inter-Departmental Committee at the third tier, which is purely an executive structure. It has the power to bypass judicial oversight and direct platforms to take down content. Phrases like sovereignty and public order may be easily misinterpreted to further vested interests and stifle political dissent. This certainly does not bode well for constitutional rights like freedom of speech and expression.

Assessment

In a world dominated by the knowledge economy, any framework that restricts access to information should be representative of diverse voices beyond that of the government. More participatory consultations will have to be conducted with relevant stakeholders before the IT Rules are effectively implemented.

Since provisions that mandate the identification of 'originators' can implicate fundamental rights such as privacy, the Indian government will have to notify its data protection law, which has been long overdue.

More broadly, it will have to align its regulatory structure with global best practices, as internet companies have porous territorial boundaries. In doing so, a balance must be struck between regulation and innovation.



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