



Shared values

India and the U.S. have a lot in common, but it is the differences that need attention.

Convergences and Divergences:

1. The visit, the third by a senior U.S. official of the Biden administration, was meant to prepare the way for more substantive meetings in Washington later this year, including the U.S.-India “2+2” of Foreign and Defence Ministers, the Quad summit of its leaders, and a bilateral meeting between Prime Minister Narendra Modi and U.S. President Joseph Biden.
2. Most of the conversations are focused on Quad cooperation in the Indo-Pacific, Afghanistan, and in discussing the state of democracy and rights.
3. On the Quad, they showed full convergence. On the Afghanistan issue, Mr Jaishankar said that there were “more convergences than divergences” on the common positions that there is no military solution to the conflict, and that neither country would recognise a Taliban regime that takes Kabul by force.
4. However, the divergences are more troubling for India, given that the fallout of the U.S. withdrawal will mean a less secure region. The U.S. continues to engage the Taliban in talks for a power-sharing arrangement, despite the Taliban leadership’s refusal to enforce a ceasefire, and stop attacks against civilians in areas they take over.
5. The militia is also trying to squeeze trade and financial supply chains to the Afghanistan government. Perhaps the greatest worry for India is the U.S.’s refusal to hold Pakistan to account for having given shelter to the Taliban, as this will only embolden Islamabad if the Taliban advance in Afghanistan.
6. New Delhi tiptoed around the U.S.’s announcement of a new “Quad” with Uzbekistan-Afghanistan-Pakistan on connectivity, but this is another cause for worry.

Civil society roundtable

1. On the subject of democratic freedoms, both sides maintained there were “shared values”. However, Mr Blinken began his meetings with a “civil society roundtable” wherein internal Indian issues such as minority rights,



religious freedoms and curbs on the media and dissent were discussed, making it clear that these were important areas for the Democratic administration.

2. In his rebuttal to a question about the “backslide” in India’s democracy, Mr. Jaishankar had a three-pronged response, reiterating that the same standards apply for the U.S. and India, that policies that have come in for international criticism such as the Citizenship (Amendment) Act, the Article 370 amendment, and anti-conversion laws were part of the Modi government’s attempt to “right historical wrongs”, and that freedoms cannot be equated with “lack of governance”.
3. Despite the attempt from both sides to paper over the cracks, this is an issue that they will grapple with in the future even as they build upon the strong “Comprehensive Global Strategic Partnership” that the world’s oldest and most populous democracies continue to share.

In the interest of the public

In *Registrar General v. the State of Meghalaya*, the Meghalaya High Court ruled that the State government’s order requiring shopkeepers, local taxi drivers and others to get the COVID-19 vaccines before they resume economic activities is violative of the right to privacy, life, personal liberty, and livelihood. In response to the court’s order, the State government released a new order stating that the requirement of vaccination was merely directory and not mandatory. The case raises important questions of how the government can overcome widespread vaccine hesitancy and bring the pandemic to an end.

Court’s reasoning

1. The court reasoned that forcing people to vaccinate themselves vitiates the “very fundamental purpose of the welfare attached to it”. It ruled that the government’s order intrudes upon one’s right to privacy and personal liberty as it deprives the individual of their bodily autonomy and bodily integrity, even though the intrusion is of minority intensity.
2. It ruled that the government’s order affects an individual’s right “significantly” more than affecting the general public. It found that the government’s order is not maintainable in law as there is no legal mandate for mandatory vaccination.



3. It relied on the Central government's frequently asked questions, which specify that COVID-19 vaccination is voluntary. The court concluded that the State, rather than adopting coercive steps, must persuade the people to get themselves inoculated.

Compulsory vaccination

1. Compulsory vaccination has often been deployed in India and abroad. The Vaccination Act, 1880, allowed the government to mandate smallpox vaccination among children in select areas.
2. Similarly, several State laws, which set up municipal corporations and councils, empower local authorities to enforce compulsory vaccination schemes.
3. Contrary to the High Court's opinion, compulsory vaccination has passed the muster of judicial review in several national and international courts abroad.
4. In a recent judgment in *Vavřička and Others v. the Czech Republic*, the European Court of Human Rights (ECtHR) said that the compulsory COVID-19 vaccination scheme is consistent with the right to privacy and religion.
5. The ECtHR cites case laws in France, Hungary, Italy, the U.K., among others to show that several constitutional courts have validated compulsory vaccination and ruled that it has an overriding public interest.

Right to life and privacy

1. The main bone of contention is that compulsory vaccination violates bodily integrity and takes away decisional autonomy from people, thereby violating their right to life and privacy.
2. It is a well-established principle that no right is absolute; rather rights are subject to reasonable restrictions. According to the order in *Justice Puttaswamy v. Union of India*, a restriction on privacy can be justified if it passes a three-prong test.

Three prong test:

1. First, the restriction must be provided in the law. State governments have the authority to mandate vaccines under the Epidemic Diseases Act, 1897, which allows them to prescribe regulations to prevent the spread of an epidemic disease.



2. Second, the restriction must have a legitimate aim. Compulsory vaccination pursues the legitimate aim of protecting the public from COVID-19.
3. Third, the restriction must be proportional to the object pursued. With more than four lakh reported deaths and a looming third wave, the current scenario counts as a pressing social need.
4. Violations of rights from mandatory administration of a vaccine cannot be termed so grave so as to override the health rationale underlying the government's order.
5. Nevertheless, the government could provide appropriate accommodation for persons based on genuine medical reasons. Even if the court felt that the consequences of non-compliance with the order (i.e., non-resumption of economic activities) was excessive, the government could have been ordered to replace it with less stringent consequences, such as a moderate fine.

The long road to winning the battle against trafficking

Anti-trafficking policy exists in India, but where the system is found lacking is in the implementation of the laws.

Trafficking in Persons

1. July 30 is United Nations World Day against Trafficking in Persons. It is also a time to reflect on India's human trafficking crisis. Between April 2020 and June 2021, an estimated 9,000 children have been rescued after being trafficked for labour, according to a child rights non-governmental organisation (NGO).
2. In other words, 21 children have been trafficked every day over nearly 15 months. The Childline India helpline received 44 lakh distress calls over 10 months. Over a year, 2,000 children have arrived at its shelter homes and 800 rescued from hazardous working conditions.

Increased vulnerability

1. Child marriages are also rampant — over 10,000 cases were tracked between April and August 2020. In Madhya Pradesh, about 391 child marriages were stopped in April-May 2021, while in Odisha, 726 child marriages were prevented between January-May 2021.



2. The [corona] virus has resulted in the loss of income and economic crisis, causing families' reduced capacity to care for children in the long term. It has also caused, in some instances, loss of parental care due to death, illness or separation, thereby placing children at heightened risk for violence, neglect or exploitation.
3. These factors are compounded by an erosion of some of the checks against child labour and child marriage provided by law, as well as the scrutiny of schools and society.
4. The increase in Internet access in current times has also led to cyber-trafficking.
5. A recent report by the United Nations Office on Drugs and Crime on the effects of the pandemic on trafficking echoes these findings.
6. It says traffickers are taking advantage of the loss of livelihoods and the increasing amount of time spent online to entrap victims, including by advertising false jobs on social media. In addition, there is an increased demand for child sexual exploitation material online due to lockdowns.

Weak Enforcement:

1. India is still classified by the U.S. Department of State as a Tier-2 country in its report on global human trafficking. This means that the Government does not fully meet the minimum standards under U.S. and international law for eliminating trafficking, but is making significant efforts to comply.
2. The lack of implementation is illustrated by the state of the Anti-Human Trafficking Units (AHTUs). AHTUs are specialised district task forces comprising police and government officials. In 2010, it was envisioned that 330 AHTUs would be set up. RTI responses in August 2020 showed that about 225 AHTUs had been set up, but only on paper.
3. If properly staffed and funded, AHTUs could provide crucial ground-level data on the methods and patterns of traffickers, which in turn can strengthen community-based awareness and vigilance activities.
4. Global practices such as in Nigeria, Africa, should be encouraged in India, in consonance with a larger framework to protect women and children by incentivising education and creating safe employment opportunities.



Draft Bill, judicial issues

1. With the focus now shifting to the new draft anti-trafficking Bill, the point to be highlighted is that there is no shortage of anti-trafficking policy in India. Where the system is found lacking is in the implementation of the laws.
2. Significant discussion is required on the provisions of the Bill, particularly with respect to bringing in the National Investigation Agency and increasing the punishment for offences, including the death penalty as an option in some cases. It is not proven that more stringent laws, particularly the death penalty, have any greater deterrent effect on crime.
3. The draft Bill also provides for AHTUs/committees at the national, state and district levels, but as noted, their effective functioning cannot be taken for granted. Legislating without the political will to implement and monitor effectiveness is futile.
4. Special attention must also be paid to the challenges prosecutors and judges face in trafficking cases. There were 140 acquittals and only 38 convictions in 2019, according to government data. This points to a failure of investigation and cannot be solved by the draft Bill's provision that accused traffickers must be presumed guilty unless they can prove the contrary.
5. Further, trials can drag on for years, with victims sometimes withdrawing their complaints after being intimidated by traffickers. Proper case management must be introduced to give meaning to the "fast track" courts.
6. Other problems include the low number of beneficiaries of monetary compensation and the lack of consistent access to psychological counselling. Parts of the draft Bill recognise the importance of rehabilitation, but implementation is key.

Most victims of trafficking are from low-income communities for whom the novel coronavirus pandemic and lockdowns have caused long-term financial distress. With schools continuing to be closed in much of India and no definite end to the pandemic in sight, it cannot be assumed that incidents of trafficking will decline with a return to "normalcy". That apart, the failure of existing institutional mechanisms to foresee the present crisis should spur the Government and other stakeholders to take preventive action now.