

## ***The Biden Presidency: Some Indian Concerns***

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With the election of Joe Biden as the 46th President of the United States, after four years of personalised foreign policy initiatives by the 45th President Donald Trump, speculations have broken out across the globe about how the US relations with various countries would evolve under President Biden.

Under normal circumstances, a change in the US administration, even if under a different party, would not have resulted in so much international scrutiny since the two major parties have, by and large, held similar views on international affairs, especially with regard to alliance partners, international organisations, and adherence to international obligations. However, President Trump's extremely personalised mode of conducting domestic and foreign policy - especially foreign policy - had caused considerable disquiet among US allies and the general international community.

President Trump did not care much for international norms and conventions. With his "America First" strategy, he alienated traditional US allies in Europe, Japan, Canada, South Korea, Australia, Mexico, and many others. He withdrew from JCPOA, which was negotiated by the USA, as well as the Paris Climate Agreement. He withdrew the USA from WHO and from the TPP (Trans Pacific Partnership) negotiations, and nearly crippled the functioning of WTO.

Notwithstanding the damage that President Trump caused to international norms and conventions, President Biden's victory was welcomed with relief in democracies in Western Europe and elsewhere. However, certain countries viewed his election with concern. The Indian reaction to the Biden victory, perhaps, fell in the latter category. Indeed, it is quite possible that some of the positive reactions to President Biden's victory may have been due to his choice of Vice-President, Kamala Harris - the daughter of an Indian immigrant to the US.

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*(This article was received from the author on February 25, 2021)*

Unlike many other countries that were adversely affected by President Trump's foreign policy actions, India did not feel any major negative impact during the Trump Presidency. It was not, therefore, surprising that international public opinion polls showed that Donald Trump had high favourable ratings in India. The last Pew Global survey on favourable ratings of Trump and other world leaders, carried out in 32 countries in early 2020, showed that while Trump had a global favourable rating of 29 percent, in India he had a favourable rating of 56 percent (the fifth highest, exceeded only in Israel, Kenya, Nigeria, and the Philippines). Indeed, many Indian analysts felt that a Biden Presidency may be less favourable towards India. And, among world leaders (Trump, Merkel, Macron, Putin, and Xi) President Trump had the highest favourable rating of 56 percent, followed by Putin at distant 42 percent. To what extent Trump's high favourable rating was due to right-wing Populist Party supporters (and by extension in countries with right-wing populist governments) is not clear.

The only commonality in the analysis of the advice of various countries to President Biden on how he should reset US foreign policy was about how it should be in line with that country's preferences for continuity, reformation, and new equilibria. India is no exception. A recent advice for US President Biden was: "... to actualise the unrealised potential of US-India ties, it would be prudent for the US to adapt its expectations to Indian predispositions over its prioritisation of defence ties, constraints on commercial avenues, and management of multiple strategic alignments."<sup>1</sup>

It must be realised that President Biden has long experience in foreign policy making processes, and has influenced American foreign policy initiatives from time to time. He entered the US Senate at the very young age of 29, becoming the sixth youngest senator in American history. He became a member of the Senate Foreign Relations Committee (SFRC) in 1975, becoming the ranking minority member in 1997 and remaining in SFRC as either ranking member or Chairman till January 2009, when he became the Vice President. He was the Chairman of SFRC during 2002-03 and 2007-09 when India and the US were resetting the relationship through implementation of the India-US NSSP (Next Steps in Strategic Partnership) and dialogues to promote the India-US Nuclear deal. And, of course, as Vice President he was intimately involved with the conduct of US foreign policy during the Obama Presidency during 2009-16.

The major areas of foreign policy are: (i) Defence and Security; (ii) Economy and Trade; and (iii) non-traditional areas, such as Human Rights, Climate Change, and democracy promotion in which the USA has been a

major global player. Through Executive Orders, President Biden has been able to repair some of the damage caused by his predecessor. The USA has re-joined WHO, the HRC, the Paris Climate Agreement, and also indicated its plan to re-join the JCPOA. However, President Biden faces a daunting task on the domestic front to undo the damage that President Trump had done during the four years of his Presidency, culminating in the attack on the Capitol on 6 January 2021.

Fortunately, President Trump had not taken any action of serious negative consequences for India, except for a few actions of minor consequences in the area of economy and trade. Since President Trump was not an advocate of such concepts as Climate Change, Human Rights, democracy, etc., his administration was quite inactive in these areas and, in some instances, to the advantage of India.

Given these facts, what are the future prospects for India-US relations under the new Biden Administration?

### **Defence and Security**

India-US defence and security relations have had bipartisan support in the US Congress during the past decade. As Secretary of State, Anthony Blinken remarked (during his senate confirmation hearing) that, "India has been a bipartisan success story of our successive administrations."<sup>2</sup> During the Trump Administration, India signed the two remaining foundational agreements among a total of four - COMCOSA and BECA. Following on the successive moves to relax technology exports by earlier administrations, the US elevated India to STA1 (Strategic Trade Authorisation) status, granting high technology access to India at par with those granted to its closest allies in Europe and Asia. Administratively, there is not much that needs to be done by the USA to allow India access to high technology exports controlled by the Commerce Department under the EAA (Export Administration Act). However, so far, India's use of the STA 1 privilege has been inadequate, and far from its potential use. There is little that the Biden Administration can do in this regard. It is entirely India's responsibility to take advantage of the STA 1 status. Therefore, one can expect the India-US defence and strategic relations to continue progressing, the pace being more dependent on India's desire to deepen its engagement with the USA on these issues.

However, there is one potential action by the USA that could seriously affect India-US defence and security relations. This is the imposition of sanctions on India under the provisions of CAATSA (Countering America's

Adversaries Through Sanctions Act) which permits the US President to sanction countries that engage in “significant transaction” with targeted Russian defence companies. The USA has so far imposed sanctions on China and Turkey for their import of S-400 system from Russia. India too has ordered the S-400 system, although it is yet to be delivered. While the CAATSA legislation had left it open for the President to determine what constitutes “significant transaction”, the recently passed legislation NDAA 2021 specifies that, (i) “The acquisition by the Government of Turkey of the S-400 air defence system from the Russian Federation, beginning on 12 July 2019, constitutes a significant transaction as described in section 231 of CAATSA”, and (ii) “Not later than 30 days after the date of the enactment of this Act, the President shall impose five or more of the sanctions described in section 235 of CAATSA with respect to each person that knowingly engaged in the acquisition of the S-400 air defense system” (Sec. 1241 of NDAA 2021).<sup>3</sup>

There is a certain degree of ambiguity here. It is not entirely clear whether the S-400 transaction is by itself a significant transaction, or whether it is significant because it may compromise the security of US military technology or because the purchase of S-400 by Turkey is fundamentally inconsistent with Turkey’s obligations as a NATO ally.

It is very unlikely that the Biden Administration would sanction India under CAATSA. The India-US caucus in the Congress is the biggest of such national caucuses. During the passage of the NDAA, the Congress debated CAATSA sanctions, and why and how India should be spared such sanctions. It also incorporated a CAATSA waiver clause to take care of such a contingency. While it is true that some of the CAATSA sanctions have the potential to completely halt the India-US defence and strategic relationship, there are a number of others that would allow the US Administration to continue such a relationship to its full possibilities even if it decides to impose CAATSA sanctions.

### **Economy and Trade**

President Trump started his administration by imposing additional duties on the imports of steel which affected steel exports from India. His approach to trade was purely transactional (He forced Canada and Mexico to renegotiate NAFTA). He took a number of additional measures to restrict imports from India.

In June 2019, he terminated preferential tariff benefits being granted to India under its Generalized System of Preferences (GSP) scheme. India had exported goods worth USD 6.3 billion (as per USTR data) to US under the

GSP programme during the calendar year 2018, which was 12.1 percent of India's total export to USA in that year. The GSP termination was alleged to be because of India's failure to provide the United States with assurances that it will provide equitable and reasonable access to its markets in numerous sectors.

In February 2020, the US designated India as a "developed country" and made India (along with Argentina, Brazil, Indonesia, and South Africa) ineligible for the 2 percent de minimis standard, notwithstanding that, based on the most recent World Bank data, each country had a per capita GNI below US\$ 12,375 (the World Bank's dividing line between developed and developing countries).

Under its countervailing duty (CVD) law, in order to conform to its obligations under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), the US gave special treatment to WTO Members that have not yet reached the status of a "developed country." They are entitled to special treatment for purposes of countervailing measures. Specifically, imports from such members are subject to different thresholds for purposes of determining whether countervailing subsidies are de minimis, and whether import volumes are negligible. India's designation as a "developed country" denies India the privileges allowed under the SCM Agreement.

President Trump had a phobia about Balance of Trade (BOT). The US has negative BOT in goods with many countries, and a huge negative BOT in goods in aggregate as well. However, it enjoys a surplus in BOT in services with almost all countries, and in aggregate as well. However, it has a negative BOT with India, both in goods and services.

This negative BOT in services is primarily on account of the deficit on computer services. In fact, India's surplus in services is only on account of the surplus of computer services. India accounts for nearly 40 percent of US global imports of computer services. In 2019, India's surplus on account of all services was US\$ 5.425 billion. The surplus on account of computer services was US\$ 13.174 billion! This surplus on account of computer services was primarily because of the huge number of H1-B and H-4 visas that Indians get each year. Indians account for more than 75 percent of all H-1B visas issued, and more than 85 percent of H-4 visas.

In April 2020, President Trump issued a proclamation "Suspending Entry of Immigrants Who Present Risk to the U.S. Labour Market During the Economic Recovery Following the COVID-19 Outbreak." This effectively suspended and limited the entry of any individual seeking entry pursuant to an

H-1B or H-2B visa, and any individual accompanying or following to join such individual. This proclamation was extended subsequently up to March 2021. The effect of this was dramatic. During April-December 2019, 1,10,582 H-1B visas were issued to Indians. During April-December 2020, this fell down to 5335! A similar drop was seen in the number of H-4 visas issued as well. These proclamations have been rescinded by the Biden Administration.

Trump's order limiting entry of H-1-B and H-4 was done under Executive Orders, orders which are presidential written directives to agencies on how to implement the laws. Executive orders are not the last word in policy. New presidents can as easily revoke previous orders as Biden did to remove Trump's executive orders. On the other hand, the rule by the Office of the United States Trade Representative (USTR) designating India as a "developed country" was done under a federal law that specifies certain differential treatment for imports from developing or least-developed countries and obligates USTR to update the designations periodically. While the issuance and entry of H-1-B and H-4 visas have been restored, it is not clear if President Biden, through simple executive orders, would be able to restore either the GSP privileges or rescind the designation of India as a "developed country."

### **Other Issues**

As stated earlier, President Trump had minimal or no interest on issues relating to Climate Change, Human Rights, democracy, etc. As a consequence of his indifference to such issues, some of the Indian government's actions, which may have invited attention from earlier Administrations, were ignored by President Trump - although not by some democratic members of the Congress. In early December 2019, Ms. Jayapal had introduced a resolution "recognizing the severity of challenges faced by India in J & K, the resolution urges India to employ certain measure to uphold human rights."<sup>4</sup> It was co-sponsored by 66 Democrats and 4 Republicans. When India's External Affairs Minister, Dr. S. Jaishankar, was scheduled to meet members of the House Foreign Affairs Committee in a closed-door meeting, he cancelled the meeting since Ms. Jayapal had been invited. At that time, the Leading Democratic presidential aspirants -Senators Bernie Sanders and Elizabeth Warren - and two other US lawmakers, including senator Kamala Harris, came out in support of Ms. Jayapal. "It's wrong for any foreign government to tell Congress what members are allowed in meetings on Capitol Hill," said Kamala Harris, who had dropped out of the Democratic presidential race at that time, and is now the Vice President of USA.

Unlike President Trump, President Biden has an entirely different approach to Human Rights. Antony Blinken, the current Secretary of State, appearing before the Senate Foreign Relations Committee reaffirmed President Biden's pledge to put the strengthening of democracy and the protection of Human Rights at the centre of US foreign policy. A recurring theme throughout Blinken's testimony was that Human Rights represent a compelling basis for US action. Blinken also affirmed the new Administration's commitment to strengthening the Global Magnitsky Sanction regime during his confirmation hearing. Blinken also lauded targeted Human Rights and anti-corruption sanctions, and committed to strengthening those efforts, saying, "We've gone from Magnitsky to global Magnitsky to different countries now adopting their own Magnitsky-like laws, and now just recently the European Union. So I think this has been a tremendous success story in actually bringing the democratic countries of the world together, and giving them an effective tool to actually push back against abuses of democracy and human rights."

The Global Magnitsky Human Rights Accountability Act authorises the President to impose economic sanctions, and deny entry into the US to any foreign person identified as engaging in Human Rights abuse or corruption. It includes any foreign person that the President determines is responsible for "gross violations of internationally recognized human rights", (as defined at 22 U.S.C. §2304(d(1)), which includes ... "prolonged detention without charges and trial of those persons working to obtain, exercise, defend, or promote human rights and freedoms, including rights to a fair trial and democratic elections."

In making sanctions determinations, the law requires the US President to consider information provided jointly by the Chairperson and ranking members of certain committees -Senate Banking and Foreign Relations, and House Financial Services, and Foreign Affairs - as well as credible information obtained by foreign countries and nongovernmental Human Rights organisations. A separate provision, Section 1263(d), requires the President to respond within 120 days to requests from the aforementioned committee leadership to determine whether a foreign person has engaged in sanctionable activity under the law, and whether or not the President intends to impose sanctions.

As of 21 January 2021, the USA has designated 112 foreign persons (individuals and entities) pursuant to the Global Magnitsky Act for serious Human Rights violations. In the current 117th Congress where the Democrats hold the majority, the Democratic Progressive Caucus, whose political ideology is centre-left to left and which Ms. Jayapal heads, is the largest democratic grouping, with more than 100 members. Ms. Karen Bass, a prominent member

of the Progressive Caucus, heads the House Foreign Affairs Sub-committee on Human Rights. Therefore, it is not unlikely that there will be hearings on the Global Magnitsky Act wherein alleged violations of Human Rights in India may be matter of discussion. Given the strong emphasis of President Biden on Human Rights, such discussions will have the approval of his Administration.

### **Conclusion**

Thus, there is a strong bi-partisan support for India in the US, and there is reason to believe that the India-US partnership will advance during the Biden Presidency. However, the negative perceptions of the Biden Presidency are, in addition to its stress on Human Rights, primarily on account of apprehensions about whether President Biden will be less aggressive towards China than was President Trump.

### **Notes:**

- <sup>1</sup> Kashish Parpiani, Sukanya Sen, “US-India Ties under Biden: Recognising New Delhi’s Predispositions”, at <https://www.orfonline.org/expert-speak/us-india-ties-under-biden-recognising-new-delhis-predispositions/>
- <sup>2</sup> “India a ‘bipartisan success story’ for US, the ties can be deepened in many ways– Blinken”, at <https://theprint.in/diplomacy/india-a-bipartisan-success-story-for-us-the-ties-can-be-deepened-in-many-ways-blinken/588757/>
- <sup>3</sup> See, <https://www.congress.gov/bill/116th-congress/house-bill/6395/text>
- <sup>4</sup> <https://thewire.in/diplomacy/resolution-tabled-in-us-congress-asks-india-to-end-internet-ban-free-detainees-in-kashmir>

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