

In the short term, stabilise the Line of Actual Control

For the last few years, the situation on the Line of Actual Control (LAC) has continued to remain extremely tense; it has just stopped short of a war, with the Doklam and Galwan crises. Every now and then, the media reports incidents of transgressions and stand-offs between Indian and Chinese troops at the LAC even as both countries incur a huge expenditure in ensuring defensive preparedness as well as better military infrastructure as they induct men, material and equipment close to the LAC.

Need for stability

After Galwan, we have seen one of the biggest mobilisations of Chinese forces into Tibet. There has also been an increase in rhetoric and jingoism in both countries, calling for more aggression. The seriousness of the matter can be gauged from the statement made recently by India's External Affairs Minister S. Jaishankar at a media group's meet – that "the situation along the LAC in Eastern Ladakh remains very fragile and quite dangerous in terms of military assessment". This state of affairs is not sustainable and can trigger a major conflict, thereby destabilising the entire region and adversely impacting the world, politically and economically. Therefore, it is in everyone's interest that the LAC is made stable and the two giant neighbours see a benign rise.

The complexity of the India-China border problem precludes a permanent solution on an immediate basis. Chinese territorial claims include the entire Arunachal Pradesh and the occupied Aksai Chin. No Chinese government, more so the present one under Xi Jinping, is likely to tone down the narrative that has been built over a long time, which claims Ladakh and Arunachal Pradesh as two of the five fingers that are attached to the Tibetan Palm.

Similarly, the Indian political establishment is not in a position to make any concessions to facilitate a mutually acceptable border settlement. Thus, it is better that both sides consider taking short-term but effective and



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Looking ahead, a more important step would be to convert the LAC into a Line of Control without prejudice to existing border claims

pragmatic steps to stabilise the LAC, reducing the possibilities of a conflict. For India, it is all the more important that LAC disputes do not escalate into full-fledged conflicts because despite the assurances made by the government, there is no surety that the results of war will be favourable to us.

Agreements and inadequacies

The India-China engagement got an impetus after the visit by then Indian Prime Minister to China in December 1988. Since then, four agreements have been signed between the two countries (in 1993, 1996, 2005 and 2013) to maintain peace along the LAC, laying the framework for dealing with the border issue and covering the spectrum of engagement from the highest levels of government to border personnel meetings in the field. For more than two decades, these arrangements have served their purpose well. However, the heightened tension on the LAC suggests that there are inadequacies in the agreements.

The agreements are based on the premise that the LAC is mostly defined and understood by both parties. However, this is not the case and there are large segments which lack clarity.

Article I of the 1993 Agreement stipulates the creation of joint mechanisms to verify and settle LAC-related disputes. After 19 years, the Working Mechanism for Consultation and Coordination on India-China Border Affairs (WMCC) was created in 2012. It meets twice in a year but has little to show in terms of results on the ground.

The 3,488 kilometre-long LAC has only four Border Personnel Meeting (BPM) points; the Lipulekh BPM Point which was proposed in the Article V of the 2005 Protocol has not been established till now. The paucity of BPM points precludes constructive engagement between the troops on the ground resulting in the escalation of disputes.

A mutually agreed reduction and redeployment of forces along the LAC, as in

Article II of the 1993 Agreement and Articles II and III of the 1996 Agreement, has not seen any progress.

The current mindset among the Indian security establishment is to be "unyielding" with China as it is felt that the "salami slicing tactics" of the Chinese must be halted. While firmness is essential, there is also a need to identify the reasons for rising clashes on the LAC and working on solutions. The opinion is that aggression is not the only reason for the rise in LAC incidents; the quantum jump in surveillance technology provides visibility of movement of opposing forces in areas that were blind spots earlier. This coupled with increased troop density, better roads, improved logistics and availability of aviation assets enhance the reaction capability, thereby increasing the face-offs and clashes.

Consider these steps

Whatever be the reasons, the situation needs to be brought under control and chances of a full-fledged conflict minimised. These steps are recommended to usher peace and stability on the LAC.

Convert the LAC into a Line of Control (LC) by delineating it on the map and on the ground without prejudice to border claims. This will reduce the urge among the forward troops to inch forward. This may seem difficult but can be implemented with a display of maturity by both sides and with the use of technology.

The disputed areas on the LAC can be treated as no entry zones; alternatively, both sides should be allowed to patrol these areas as per a mutually agreed frequency.

Joint patrolling of the disputed areas must also be explored as this can result in the maintenance of status quo and an increase in confidence.

Existing Confidence Building Measures and engagement mechanisms need to be strengthened by providing more teeth to the WMCC and establishing more BPM points so that local issues can be resolved quickly.

A word of advice to the Delhi police

The protest by India's medal winning wrestlers has been in the news for long. Two cases of sexual harassment were reportedly registered on April 28, 2023 by the Delhi police against the president of the Wrestling Federation of India (WFI), after the intervention of the Supreme Court of India, based on a petition filed by a few wrestlers. The cases were under the Protection of Children from Sexual Offences (POCSO) Act and the relevant sections of the Indian Penal Code (IPC) concerning the outraging of the modesty of a woman and sexual harassment, while the other was with respect to outraging the modesty of a woman under the IPC. While the investigation of these two cases is under way by the Delhi police, the complainant wrestlers are still consistent in their demand – the arrest of the accused. They too offered to undergo a narco-analysis test when the accused offered to undergo any such test to prove his innocence.

Some of the allegations date back to previous years, the implication being that there was a delay in lodging the complaint with the police. At the stage of the registration of the first information report (FIR), if a complaint has the ingredients of a cognisable offence, the mandate of the Supreme Court (given in *Lalita Kumari vs Govt. of Uttar Pradesh and others* (2014)) could not have been violated. The veracity of allegations (of a cognisable offence) cannot be inquired into before registering an FIR. In case the delay in reporting the matter is over three months, the reasons for the delay are to be explained satisfactorily. It is also a recognised principle of law that a mere delay in an FIR is no ground to discard the prosecution story, if the truthfulness and plausibility of the explanation for the delay are established to the satisfaction of the court. Otherwise, it may need corroboration with additional and credible evidence. Therefore, the insistence of the Delhi police on holding a preliminary inquiry and a delay in registering cases does not seem to be justified.

As far as conducting a narco-analysis test or any such similar scientific test is concerned, such tests are conducted either on a suspect or on a



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In the wrestlers' case, any delay in investigation will not only invite adverse consequences, as far as the law is concerned, but also affect confidence in the standing of the police

witness (but not on a victim) under conditions laid down in *Selvi vs State of Karnataka* (2010). The truthfulness of the allegations cannot be established with the aid of such tests. The credibility of the statement of the victim is tested through a thorough cross-examination which alone could be sufficient even to prove her case. Similarly, the statement recorded by a judicial magistrate under Section 164 of the Criminal Procedure Code (Cr.PC) will be useful only if the judicial magistrate is called by the trial court for examination. However, such tests administered on the accused may help in a further investigation if some information or material is discovered after such tests.

Arrest is conditional

On the issue of arrest, one needs to look at the substantive laws and sections applied. According to information available in the public domain, allegations that pertain to sexual assault at the workplace or otherwise which may attract Section 8 or/and Section 10 (punishment for aggravated sexual assault as the president of the WFI was in the position of authority) or/and Section 12 (sexual harassment) of the POCSO Act in the case of a minor victim and Section 354 (outraging modesty of a woman) or/and 354A (sexual harassment) of the IPC in case of other victims. In none of these sections, the punishment is more than seven years of imprisonment.

Therefore, according to Section 41 of the Code of Criminal Procedure, arrest is not mandatory unless there is material evidence to show (as mandated by the Supreme Court in *Armesh Kumar vs State of Bihar & Anr.* (2014)) the possibility of tampering of evidence or making any threat, or to prevent committing of any further offence or for proper investigation of the offence. Otherwise, issuing notice under Section 41A of the Cr.PC for appearance before the police would be sufficient. Since the accused is an influential person, these apprehensions mentioned above may not be ruled out; however, there need to be reasons and material to justify the arrest.

On the other hand, if there are multiple offences committed at multiple locations over a period of time, the police also need reasonable time to look for and collect evidence to build their case. Ultimately, it is the evidence which will be relevant to convict the culprit(s), and not the arrest only.

Complete the investigation quickly

Therefore, looking at the sensitivity of the cases, the best option available with the Delhi police is to complete the investigation quickly and have the final report in court. For offences punishable with imprisonment of less than 10 years, as in the present cases, investigation needs to be completed in 60 days after arrest to prevent the detainee from being released on bail. Since no arrest has been effected so far, this provision is not attracted in a strict sense in the given cases. However, it would be prudent to complete the investigations expeditiously in keeping with the provisions of the Cr.PC. For the minor victim, there is also a presumption in favour of prosecution under the POCSO Act and it will be for the accused to prove that he did not commit the offence. If the police do not find sufficient evidence to charge sheet the accused, it has to put up the final report in court. When the victims are insistent in their allegations and are protesting for justice, the allegations cannot be said to be false. However, the court may still frame charges and proceed with the trial. The ultimate decision to proceed with the trial or not to, and frame charges would be taken by the judicial magistrate after deliberations. Any delay in investigation will not only invite adverse consequences in the law but also shake public confidence in the Delhi police, which is the principal investigating unit in the capital of the country.

On the other hand, the victims, if not satisfied with the progress of the cases, may approach the Delhi High Court to issue directions to the Delhi police to put up the status report and complete the investigation in a given time frame.

The views expressed are personal