

India and the great power contest in West Asia

At the G-20 summit in New Delhi earlier this month, United States President Joe Biden and others unveiled a U.S.-backed infrastructure project to connect India, West Asia and Europe with shipping lanes, rail networks, pipelines and data cables. A week earlier, a high-level U.S. delegation had visited Saudi Arabia, chasing a normalisation agreement between the Sunni Kingdom and the Jewish state of Israel, two of America's allies in the region. These seemingly unrelated but geopolitically contiguous developments offer a broad framework of Mr. Biden's approach towards West Asia, a geostrategically important region where the U.S. had a domineering presence for decades, but which is now being challenged by multiple factors.

Two-part policy

Mr. Biden's West Asia strategy has two parts. One is the continuation of the Trump-era policy of bringing America's two pillars in the region – the Gulf Arabs and Israel – closer to meet their common geopolitical challenges such as Iran's rise. The Abraham Accords reached under Mr. Trump's tutelage set the stage for the transformation of Israel's ties with the United Arab Emirates. But the true potential of this policy would not be reached unless there is a deal between Israel and Saudi Arabia, arguably the most influential Arab country today. Mr. Biden, who as a candidate had vowed to make Saudi Arabia "the ***** that they are", has come a long way as President in reaching out to the Kingdom. The administration believes that a Saudi-Israel deal would transform Arab-Israel ties, strengthening the U.S.'s position in the region without further military commitments.

The second part of Mr. Biden's approach is to reassure America's friends and allies that the U.S. is not exiting West Asia. In 2012, leaders of India, Israel, the U.S. and the UAE held a virtual summit of what is now called the I2U2 minilateral. The idea behind I2U2 is to create a new platform that could expedite economic integration between West Asia and South Asia and offer economic and technological solutions to the problems faced by the Global South.

India's presence in a grouping of the Abraham Accords countries was seen as a legitimate recognition of India's presence in the region. The India-Middle East-Europe Corridor, announced at the G-20 summit (referred to in the first



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paragraph), enhances New Delhi's standing. It seeks to build an economic corridor from India's western coast, through the Gulf (the UAE and Saudi Arabia), Jordan and Israel, to the Mediterranean, bringing India and Europe closer. If this project takes off, the U.S. hopes that it could retain its channels of influence in West Asia, control the major shipping lanes and reassure its allies of its staying capacity.

The U.S. may not want to exit West Asia, but it has deprioritised the region in terms of its security commitments as its focus has shifted back to Eastern Europe and East Asia. But the U.S.'s deprioritisation of the region does not diminish the strategic value or potential of West Asia. As the U.S. is pivoting to East Asia, China, which is dependent on imports for over 70% of its oil requirements, is enhancing its focus on West Asia. China has not only emerged as the biggest trading partner of America's Gulf Arab allies and a major investor in the region but has also shown a willingness to play a bigger role as peacemaker, which was evident in the Iran-Saudi reconciliation agreement.

This poses a dilemma to the U.S. deprioritisation of the region is a strategic reality for Washington as it is now facing far bigger conventional challenges in Russia and China. But it cannot just exit West Asia because China would try to fill the vacuum. America's answer to this challenge is to forge closer ties between its allies in the region and strengthen the U.S. security architecture, and bring India in as a bigger, stable partner to write the new rules of economic engagement and integration, competing with China. India seems willing to take this bet.

New West Asia

But it is to be seen how far the Biden plan would help the U.S. retain or extend its influence in the region at a time when China is trying to do the same thing. Primarily, the Biden plan is dependent on a potential Saudi-Israeli deal. But let us say such a deal is not improbable – Saudi Crown Prince Mohammed bin Salman said in an interview recently that both sides are getting closer to each other every day. Even if a deal is materialised in the near future, there are other challenges.

The U.S. deprioritisation of the region has loosened its grip on its allies and left a security vacuum which have collectively prompted regional powers to autonomise their foreign

policies and take steps toward a more predictable engagement with both friends and foes. This was evident in the Saudi-UAE détente with Iran, the decision to end the Saudi-led blockade of Qatar and the Arab reconciliation with Syria's Bashar al-Assad. Saudi Arabia and the UAE are also trying to formulate policies independent of U.S. goals and strengthening ties with rising powers. Their decision to join the BRICS grouping (Brazil, Russia, India, China, South Africa) is a case in point. So, they might welcome America's diplomatic push or economic integration plan, but they may not remain client states, like they were during the Cold War and the unipolar world, any more.

Second, the Biden administration, despite its limited engagement, continues to see Iran as a hostile power. Also, the rivalry between Iran and Israel would remain the central geopolitical contradiction of West Asia. By reaching a détente with Iran, Gulf Arabs have made it clear that they would not like to get stuck in the Iran-Israel rivalry, which has the potential to spill over into a conflict. Such an outcome would destabilise the region again, derailing America's plan to stay as a benevolent great power.

Multiple avenues for India

For India, the U.S.-China competition in West Asia opens new avenues of engagement. The U.S. sees India, with its size, the size of its economy and the legacy of its historical engagement and cultural connect with the region, as an important partner in its bid to continue to shape West Asia's geopolitics. India should welcome the moment but should not look at it through the prism of another Cold War – or it should not put all its eggs in one basket as it did in Afghanistan. It is already part of the near-functional International North-South Transport Corridor that connects India to Russia through Iran and Central Asia. The 'Middle East Corridor' would open another economic channel. India's overall policy towards the region should stay anchored in this idea of multi-engagement – not in appeasing or containing any great power. With or without the U.S., or irrespective of China's presence in the region, India should strive to play a major geopolitical role in West Asia, its extended neighbourhood, without upsetting its traditional balance.

The U.S.-China competition in the region gives New Delhi new opportunities for multi-engagement

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A clear message to industry on dispute resolution

Any conversation about the Indian litigation system eventually veers toward the term Alternative Dispute Resolution (ADR). ADR refers to a bouquet of mechanisms that enables disputing parties to resolve their differences amicably, without the intervention of courts. Given the delays in Indian court proceedings and increasing cost of litigation, the significance of ADR in India cannot be understated. Until recently, these discussions largely focussed on arbitration or conciliation of disputes under the Arbitration and Conciliation Act, 1996 (A&C Act). But mediation of disputes is finally getting its due.

In the recent monsoon session of Parliament, both Houses passed The Mediation Bill, 2023, and upon receiving the assent of the President of India, is referred to as the Mediation Act, 2023 ("the Act"). The Indian legal framework already encourages courts to refer the disputing parties to ADR procedures, including mediation, if there were elements of settlement which the parties may accept. The Act will take this encouragement a step forward. Irrespective of a prior mediation agreement, it will obligate each party to take steps to settle their dispute through pre-litigation mediation before approaching an Indian court. To facilitate this process, the Act will also require courts and relevant institutions to maintain a panel of mediators.

Many benefits

The potential benefits are several. This requirement is expected to reduce the filing of frivolous claims before Indian courts. Owing to the confidentiality of a mediation, it may also mitigate the risk of deterioration of the parties' relationship due to a publicly fought dispute. Yet, at the same time, concerns are raised about the feasibility of a mediation conducted under the



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The Mediation Act, 2023 aims to foster a link between the mediation and the arbitration of commercial disputes, thus reducing the burden on Indian courts

sword of an obligation as opposed to a sincere desire to arrive at an amicable resolution. In the latter scenario, this may empower a recalcitrant defendant to delay a genuine claim. Fortunately, the Act will provide some safeguards against these concerns. On the one hand, it will require the mediation to ordinarily be conducted by an empanelled mediator, who must always be neutral and have uncompromising expertise.

Subject to an extension by the parties, they must also complete the mediation within 180 days from the parties' first appearance. On the other hand, the Act will not remove the refuge of Indian courts entirely. A party may, in exceptional circumstances, seek urgent interim reliefs from a court before the commencement or during the continuation of a mediation. These provisions prioritise expertise and efficiency, while ensuring that the obligation of pre-litigation mediation is not weaponised. The aim is to create a balanced framework which encourages the parties to focus more on their commercial dealings and less on their disputes.

The aspect of mediation and arbitration

In these discussions, however, one aspect has gone unnoticed. The Act will effectively position mediation similar to commercial arbitration in India. The similarities between their respective supporting pieces of legislation are obvious. Both pieces of legislation impose stringent timelines for the conduct of proceedings, mandate confidentiality, obligate Indian courts to refer the parties to mediation or arbitration, provide a default mechanism for the appointment of a mediator or arbitrator, and prescribe the procedure for the termination of their mandate. Likewise, both ensure the enforceability of a mediated settlement agreement and an arbitral award, respectively. The establishment of a

Mediation Council of India equally mirrors the proposal in 2019 to establish an Arbitration Council of India (that is yet to be implemented). Mediation and commercial arbitration are thus made allies, albeit at different stages of the same journey.

Parliament's message to Indian industry is clear – in commercial matters, courts must no longer be the default venue for dispute resolution. Parties are expected to resolve their dispute amicably through mediation, and, alternatively, through commercial arbitration. While the doors of Indian courts are open if required, this access must be perceived as a matter of last resort. To this extent, the Act will foster camaraderie between the mediation and arbitration of commercial disputes, and reduce the burden on Indian courts.

Service providers

In this context, a final key parallel emerges. Similar to how the recent amendments to the A&C Act prioritised institutional arbitration of disputes, the Act also places emphasis on institutional mediation in India. It envisages "mediation service providers" to provide not only the services of a mediator but also all the facilities, secretarial assistance, and infrastructure for the efficient conduct of mediation. A mediation service provider is synonymous with arbitration institutions. India is already home to experienced arbitration institutions, some of which provide mediation services that are on a par with global best practices. These institutions are, therefore, expected to play a meaningful role in India's mediation journey. Only then would India become a global hub not only for arbitration but also for all aspects of commercial dispute resolution.