

## Gaza, a new pointer to India's changed world view

India's tortuous stand on the ongoing Israel-Gaza conflict reveals a fascinating portrait of the recent evolution of its foreign policy. For decades after

Independence, India's approach to the world was guided by its historical experience of western colonialism. After 200 years of a foreign country speaking for it on the world stage, newly-independent Indians, led by the fiercely anti-colonial Jawaharlal Nehru, were not willing to surrender their freedom to make their own decisions by joining either alliance in the Cold War. "Strategic autonomy" thus became an obsession, leading to the birth of "non-alignment", or equidistance between the superpowers.

It was a complicated stance. As a leading voice for decolonisation, Indian moralism against imperialism and apartheid often manifested itself as anti-westernism, and indeed on such matters it often found itself ranged alongside the USSR and against the West, even while the country's steadfast adherence to democracy and diversity at home endeared it to liberals in the West.

When the United Nations voted in 1947 to partition the former British Mandate Territory of Palestine into two states, Israel and Palestine, India voted against. As the victim of a British-driven partition of its own territory to favour a religious minority (when Pakistan was carved out of India's stooped shoulders by the departing imperial power), it had no desire to acquiesce in another partition to create a Jewish state. India argued for a single secular state for both Jews and Arabs in Palestine, much like the state it had established for itself. It was, however, outvoted on the matter.

When Israel was indeed established, India duly extended recognition, but kept relations at consular level for more than four decades. In the meantime, it became the first non-Arab country to recognise the Palestine Liberation Organisation (PLO) in 1974, and to formally extend recognition to the Palestinian state in 1988. It was only in 1992 that relations with Israel were also upgraded to Ambassadorial level.

### The turning point

The onset of Pakistan-enabled Islamic militancy against India, however, prompted New Delhi to see greater merit in warmer relations with Tel Aviv. With both countries sharing similar enemies in Islamist extremists, and both enduring terrorist attacks from self-declared holy warriors, security and intelligence co-operation between the two countries began to grow. Gradually, political and diplomatic relations blossomed.

At the same time, successive Indian governments, conscious of the sympathies of India's own substantial Muslim population,



**Shashi Tharoor**  
a third-term member of the Lok Sabha (Congress), representing Thiruvananthapuram, is a former Under-Secretary-General of the United Nations, former Minister of State for External Affairs, and former Chairman of the Parliamentary Standing Committee on External Affairs. He has written extensively on international relations and foreign policy

Despite many areas of continuity, India's foreign policy has begun to change in key areas under the Narendra Modi government

continued to extend support to the PLO. When Yasser Arafat abandoned the gun for a peaceful solution to the long-simmering conflict, India too became a votary of the two-state solution, calling for Palestinians and Israelis to live in security and dignity behind recognised borders in their own lands. Today, India is one of a handful of countries to maintain Ambassadors in both Tel Aviv and Ramallah.

The India-Israel relationship has appreciably strengthened in recent years, with Israel becoming a vital source of defence equipment, intelligence co-operation and, reports allege, of surveillance software for use by Prime Minister Narendra Modi's increasingly autocratic government against its own domestic opponents and critics. The personal warmth exhibited by Prime Ministers Benjamin Netanyahu and Narendra Modi in their meetings symbolises the extent of their closeness. Mr. Modi became the first Indian Prime Minister to visit Israel and Mr. Netanyahu has twice travelled the other way.

So when terror struck Israel on October 7 with the killings of 1,400 and the abductions of 200 more of its citizens, Mr. Modi was swift to respond, tweeting that India stood in "solidarity with Israel in this difficult hour". A second tweet soon followed, in similar vein, as did a telephone call of support to Mr. Netanyahu. The Israeli retribution was loudly cheered on by supporters of Mr. Modi's ruling Bharatiya Janata Party, whose antipathy to India's Muslims is no secret.

### The erosion of India's one-sidedness

The mounting death toll in Gaza from Israeli bombardment and the relentless media coverage of the destruction of neighbourhoods, hospitals and places of worship, however, began to erode the one-sidedness of India's stand. After some days, the country's External Affairs Ministry put out a statement voicing support for the "resumption of direct negotiations towards establishing a sovereign, independent and viable state of Palestine, living within secure and recognised borders, side by side at peace with Israel".

But the Prime Minister's Twitter-finger was not so quickly deployed. A call to Palestinian President Mahmoud Abbas, to convey his condolences for the loss of innocent lives as a result of the bombing of the al-Ahli Arab Hospital, was all he managed to do to express sympathy for the victims of Israeli retribution in Gaza. Though Mr. Abbas is in Ramallah and has no control over Gaza, since he heads the Fatah faction of the PLO to which Hamas is unalterably opposed, Mr. Modi no doubt believed this would redress the balance that had been disturbed by his uncritical support for Israel.

India then announced that Mr. Modi had

"reiterated India's long-standing principled position on the Israel-Palestine issue".

And yet, when the United Nations General Assembly voted by an overwhelming majority to call for an "immediate, durable and sustainable humanitarian truce", India chose to abstain, on the grounds that the resolution had failed to condemn the terror attacks of October 7. But several other countries, including France – historically an ally of Israel – had voted for the resolution while, in a speech explaining their vote, deploring its failure to condemn terrorism. India's stand was, in other words, more pro-Israeli than France's – and France, unlike India, was historically an ally of Israel.

It struck many as odd, to put it mildly, that the land of Mahatma Gandhi did not vote for peace, and that a country which calls itself the voice of the Global South took a stand that isolated it from the rest of the Global South. Though a corrective occurred at the United Nations General Assembly this week, when India finally joined the overwhelming majority (153 to 10, with 23 abstentions) to vote, for the first time, in favour of a resolution in the UN General Assembly that demanded an immediate humanitarian ceasefire in the conflict, the echoes of the previous vote have not died down.

### China's rise, an American affinity

Despite many areas of continuity, India's foreign policy has begun to change in important areas under Mr. Modi, arguably beyond recognition on the Israel issue, and more subtly in other areas. The rise of China has already prompted a greater affinity to the United States and its strategic concerns about Beijing's intentions, concerns which New Delhi has good reason to share after the killing of 20 soldiers in Galwan in June 2020.

It was not surprising, therefore, that, in keeping with its new receptivity to U.S. strategic thinking, India associated itself with the reorientation of the geopolitics of the Middle East following the Abraham Accords, joining a quadrilateral dialogue dubbed the "E2U2" (India, Israel, the United Arab Emirates and the United States). The G-20 summit in New Delhi announced IMEC (India-Middle East-Europe-Economic Corridor), an India-Middle Eastern Economic Co-operation initiative whose trade route would go from India through Saudi Arabia to the Israeli port of Haifa.

Though that scheme now lies in ruins along with most of Gaza, the intentions are clear. With Russia a decreasingly useful partner in global geopolitics, and China nibbling away at India's disputed frontier with it, the makings of a fundamental reorientation have become apparent. Gaza is the latest manifestation of a perceptible change in India's view of the world.

EVASTALIN

## Article 370 judgment is a case of constitutional monism

More than four years after the abrogation of Article 370, the Supreme Court of India, on Monday, unanimously upheld the actions of the Indian government. While much of the discourse around the judgment has focused on the question of statehood, it is important to remember that the special status of Jammu and Kashmir (J&K) was really at the heart of the matter.

To arrive at its conclusions, the Court employs a historical, textual, and structural interpretation of the Constitution of India, and all three approaches are deeply informed by constitutional monism. Here are three sites where the Court employs a monist reading of the Constitution, and why this sets a dangerous precedent for federalism in India.

### Federalism and constitutional sovereignty

The monism that is reflected in the judgment imagines the Union Constitution as the sole bearer of internal and external sovereignty. While this may be true, Article 370 laid down an elaborate framework for the distribution of powers and authority between the Union and the State governments. This was affirmed by the J&K Constituent Assembly and not just as an interim measure pending total integration. Its Basic Principles committee's report, based on which the State Constitution was drafted, stated: 'The sovereignty of the State resides in the people thereof and shall except in regard to matters specifically entrusted to the Union be exercised on their behalf by the various organs of the State...the State's legislature will have powers to make laws for the State in respect of all matters falling within the sphere of its residuary sovereignty'.

By focusing more on the particular concept of sovereignty 'which requires no subordination to another body', the Court ends up refusing to recognise the shared sovereignty model of Article



**Zaid Deva**  
is a lawyer based  
in Srinagar

Such a judicial reading in a context that defies monism also affects federalism and constitutional democracy

370. After all, sovereignty in federal constitutions is not a binary concept restricted to a simple 'is' or 'isn't' classification. Rather, it encompasses various dimensions and exists along a spectrum of degrees.

### The contingency of the presidential power

Another site where the Court's monism operates is in its reading of Clause 3 of Article 370. The Court rejects the argument that Article 370 had gained permanence after the dissolution of the Constituent Assembly as this 'is premised on the understanding that the constitutional body had unbridled power to alter the constitutional integration of the State with the Union'. The Court also relies on Clause 3 to hold that Clause 1 could be operated without the concurrence of the State government since 'the effect of applying all the provisions of the Constitution to Jammu and Kashmir through the exercise of power under Article 370(1)(d) is the same as issuing a notification under Article 370(3)'.  
In a constitutional democracy, no body or institution has unbridled powers. Further, Clause 3 of Article 370 is primarily concerned with the relationship of two powers and not just the status or the relationship of the power-bearing entities. The proviso to Clause 3 makes it clear that the presidential power to abrogate Article 370 was contingent on the recommendation of the Constituent Assembly.

As it is in the nature of the presidential powers under Clause 3 to be contingent on the Constituent Assembly, this limitation does not die with the dissolution of the Assembly. The relation of powers here does not mean that the President becomes 'subordinate' to the Constituent Assembly but that power as a federal arrangement has been distributed across multiple axes under Article 370. The interpretation of Clause 1 that the Court offers is based on syllogistic reasoning but one that collapses the

question of the nature of powers into the question of the effect of powers.

Holding that the President has the untrammelled power to abrogate Article 370 and order a total application of the Indian Constitution to the State to the effect that the State's Constitution becomes inoperative is an 'unbridled power' that defies the logic of federalism and constitutional democracy.

### State's views on its future

The judgment's monism imagines popular sovereignty as a monolith where since the views of an individual State for the purposes of reorganisation are not binding on Parliament, Parliament, therefore, is well placed to speak for the state. Justice Sanjay Kaul holds that 'views are to be taken from the entire nation via the Parliament, as the issue leading to the reorganisation affects the nation as a whole'.

There are many sites within the Constitution where a recommendatory power is vested in a body. Merely because that power may not be binding does not mean that the power can be taken over by another body or that power need not be exercised because at its heart lies the question of agency. The inevitable conclusion that one arrives at is that the popular sovereignty of a State's people vis-à-vis the State becomes subordinate to the popular sovereignty of the entire nation vis-à-vis the Union as well as the States. This is particularly worrying in the context of J&K where the threshold for reorganising the State was historically much higher compared to the other States.

By relying on a monist reading of the Constitution, in a context that defies monism, the Court has not only upheld the abrogation of Article 370 but has also put its stamp of approval on the silencing, and rendering inconsequential, of the voice of the people of the former State of J&K.

EVA STALIN IAS