

CENJOWS

NEPAL-INDIA BORDER DISPUTE, GENESIS, PERSPECTIVE AND RECOMMENDATIONS



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Introduction

1. Border is demarcated to designate a territory united by a common political and legal system. Border issues mean disputes between two countries about the imaginative boundaries line. The main reason behind the border disputes can be the possession of natural resources such as rivers, mineralsand fertile land other causes of border issues are the rapidly increasing population, political reasons, culture, religion and many more. From ancient times Nepal is regarded as a sovereign country India surrounds Nepal on three sides-West, South and East.The India–Nepal border is an open international border running between India and Nepal which includes the Himalayan territories as well as Indo-Gangetic Plain. The current border was delimited after the Sugauli treaty of 1816 between Nepal and the British Raj.

2. The brief covers the Nepal-Indiaborder disputes, genesis, perspective and recommendations.

Areas of Border Dispute

3. The areas of border dispute are enumerated below:-

(a) <u>Kalapani Region</u>. It shows two areas, dark brown representing 62 sq km area and a lighter one with 335 sq km. Before 1990, the boundary debate was about the smaller 62 sq km area. The larger one emerged after 1990 when Maoists came into power¹.

¹<u>https://thedarjeelingchronicle.com/india-nepal-border-controversy</u> written by Nepali historian Professor Ramesh Kumar Dhungel



Kalapani. Kalapani is a region located in the easternmost corner of (i) Uttarakhand's Pithoragarh district. It is a small stretch on the trijunction of India, Nepal and China. On the north, Kalapani shares a border with the Tibet Autonomous Region of China and with Nepal in the east and south. The region is wedged in between Limpiyadhura, Lipulekh and Kalapani. The region is under India's control but Nepal claims it is part of its territory because for historical and cartographic reasons². The Nepal government claims that Kalapani province lies in Darchula district, Sudurpaschim Pradesh. The region is the largest territorial dispute between India and Nepal consisting of an area of at least 37,000 hectares of land in the high Himalayas.

(ii) <u>Lipulekh Pass</u>. The Kalapani region juts into the Himalayas and is connected to the other side of the Himalayan mountain range through the Lipulekh pass. The Lipulekh pass has been historically used by Hindu and Buddhist pilgrims and tourists on their way to Kailash Mansarovar. The Lipulekh is strategically located and is nearest to India's National Capital Region which could be a concern in case of an armed conflict with China.See the figure below:-



²https://www.insightsonindia.com/2021/10/12/kalapani-dispute/

(b) <u>Susta Region</u>. Susta territory is an area under Nepal province and it is near Nichlaul, Uttar Pradesh, India. It is claimed by Nepal as part of Susta rural municipality, under West Nawalparasi District in Lumbini Province. The disputed territory is located on the eastern side of the Gandak river (Narayani River in Nepal).GandakRiverhas changed its course and now the area of Susta is in India. This area under dispute totals over 140 km² and is being controlled by the Indian Government³.It is administered by India as part of the West Champaran district of Bihar.

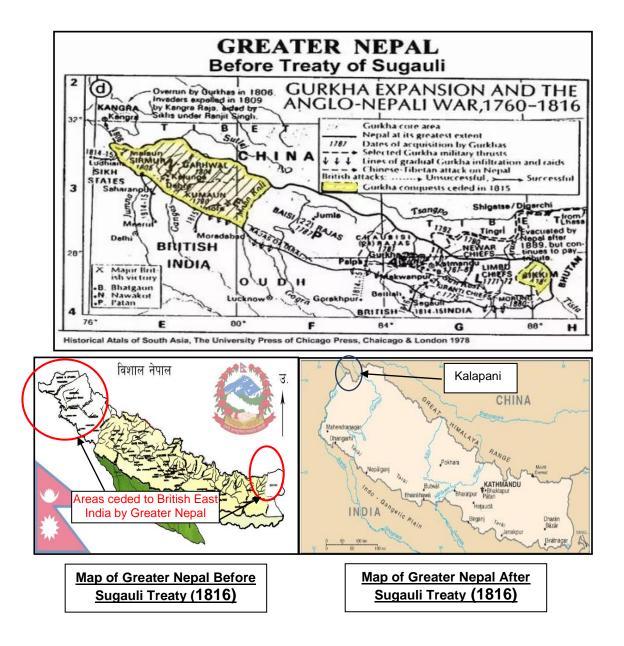


Genesis of Border Dispute

- 4. The causes are enumeratedbelow:-
 - (a) Kalapani Dispute.

(i) **Treaty of Sugauli**. Nepal (Gurkha rulers of Kathmandu) and the British East India Company in 1816 signed the Treaty of Sugauli to end the Gurkha War/ Anglo-Nepal war (1814-16). The treaty demarcated Uttarakhand's Kumaon with River Kali as a boundary between India and Nepal. According toArticle 5 of the Treaty⁴, the British rulers recognized Nepal's right to the region that fell to the east of the Kali river. Map 1 shows Greater Nepal before the Treaty of Sugauli⁵ and Map 2 shows the area ceded to British East India by Greater Nepal and Map 3shows Greater Nepal post-Treaty of Sugauli⁶. The area highlighted by the blue circle is the source of conflict. India follows the map demarcated by the British after **the Sugauli treaty which doesn't include Kalapani, Limpiyadhura and Lipulekh regions as claimed by Nepal**.

 ³https://www.inventiva.co.in/stories/what-is-behind-the-india-nepal-border-dispute/
⁴<u>https://www.historyjournal.net/article/42/2-2-17-612.treaty</u>ofsugauli.pdf
⁵https://www.southasiatime.com/2019/01/12/sugauli-treaty-greater-nepal-campaign/
⁶<u>https://www.google.com/maps</u>ofnepalbeforesugaulitreatyandafterthesugaulitreaty

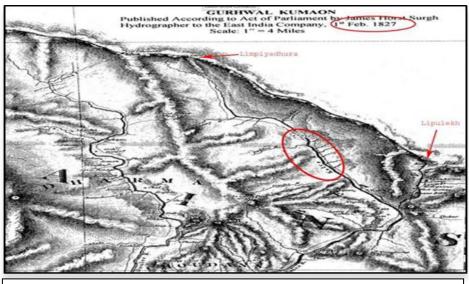


(ii) The name Kalapani is derived from the river Kali that flows in the region. **The place of the origin of the river is not known**. India claims that the river origins from the streams of Kalapani and Nepal claim that the river originates from its Kuthi-Yanktistream.

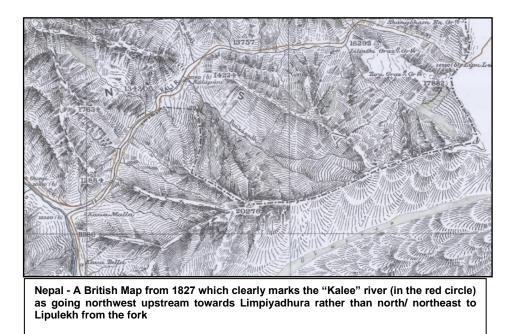
(iii) Nepal claims that a landmass that falls to the east of the Kaliriver, starting from **Limpiyadhura to Gunji** is its territory. Gunji village is the gateway for Mansarovar Yatra. India has stressed that the border begins at Kalapani which is where the river Kali begins⁷.

(iv) The Kalapani dispute is mainly due to the varying interpretation of the origin of the Kali river and its various tributaries that pass through the mountains. Maps below show the varying interpretation of Nepal and India.

⁷<u>https://thedarjeelingchronicle.com/india-nepal-border-controversy</u> written by Nepali historian Professor Ramesh Kumar Dhungel



India - Present Boundary Map is based on Survey General of India 1879 Map. See this 1924 British map of the area, it's same as 1879. And show Kalapani and Lipulekh Passas parts of Indian territory.



(b) Susta Region Dispute.

(i) The Treaty of Sagauli defined Gandak (Article 3 of the treaty)⁸as the international boundary between India and Nepal. When the treaty was signed, Susta was on the right bank of the river Gandak/ Kalyani River which falls underNepal's territorial control. But, in due course of time, the river has changed its course and Susta now falls on the left bank of the Gandak, which is controlled by India.

(ii) The Susta territorial dispute has arisen as a **result of the shifting of the course of the Gandak/ Kalyani river**.

⁸https://www.historyjournal.net/article/42/2-2-17-612.treatyofsugauli.pdf

Nepal's Perspective

5. Kalapani Dispute.

(a) British maps of the area from 1816 to 1856 show Kuti-Yankti river as Kali River. Kuthi-Yankti river is the main Kali river and originates at Limpiyadhura pass on the present Indo-Tibet border and flows till Gunji village. As per the Treaty of Sugauli the area east of this river belongs to Nepal. Hence, the Indian-Nepal border should be from Gunji to Limpiyadhura pass. The entire area east of this, including Kalapani, India-Nepal-Tibet tri-junction, and Lipulekh Pass is a part of Nepal.⁹

(b) Nepal demands the withdrawal of the Indian border forces in the Kalapani area because they are claiming that Kalapani belongs to them. Nepal affirms that the southern side of the Lipulekh pass, called Kalapani territory (which is controlled by India), belongs to Nepal.

(c) Nepal Researchers claim that the letter of the Acting Chief Secretary of the Government of Indiain March 1817 to the Commissioner of Kumaon ruled that the six villages (Budhi, Garbyang, Gunji, Nabi, Rokuti and Kuti) in the east of the Kali River categorically belonged to Nepal.¹⁰Nepal researchers claim the Surveyor-General of the Government of India categorically identifies the river originating from the Limpiyadhura range as the Kalee (Kali) River. British map showed the river originating from Limpiyadhura as Kuthi-Yankti. The border of Nepalwas depictednot along the so-called Kali River to the Lipulekh Pass as stipulated by the Sugauli treaty, but for strategic purposes diverted south then east following the watershed ridge to Omparbat.

(d) The control of the ageless Lipulekh Pass to Kailash/ Manasarovar as the trade route to western Tibet was uppermost in British rulers' minds. As this was only 'cartographic aggression, for the Rana rulers of Nepal ignorance was bliss. The census of the 'Nepalese inhabitants' living east of the Kuthi-Yankti River was undertaken by the Government of Nepal in July 1961. India had no problems with that. But the Sino-Indian border clash of October 1962 led to India's 'physical aggression' of Nepalese territories east of Kuthi-Yankti in early 1963.¹¹

(e) <u>Problem Created by British</u>. After Sugauli Treaty, without any consultation with Nepal, then the British surveyor had drawn a new political map of British India, where they showed the entire Kalapani region within the British India territory.¹² Thus, it should not be an exaggeration to say that the seed of the present border crisis between India and Nepal has been sown by none other than the British who had never handed over these regions to Nepal even after the Sugauli Treaty. The British had always kept Kalapani, Lipulekh and Limpiyadhura under their control and it continued after India's independence.

⁹<u>https://thedarjeelingchronicle.com/india-nepal-border-controversy</u> written by Nepali historian Professor Ramesh Kumar Dhungel

¹⁰<u>https://www.academia.edu/49316582/Nepal_India_Border_Issues</u> written by Rabi Shrestha, Mukesh Thapa, Bipod Tamang, Narayan Thapa of Kathmandu University

¹¹ibid ¹²ibid

(f) Videos of Nepal "Mero Desh Nepal" by Nepali researchers which gives out the boundary of Nepal. The boundary shown by them is the sameas India claims and it does not include the Limpiyadhura, Kalapani and Lipulekh.¹³ The video is evidence that the Nepali perspective is divided and this points to the fact that disputes are new and are due to a politically motivated shift in perspective.

6. <u>Susta Region Dispute</u>. In Nepal, the issue has become a tool for arousing strong public sentiment against India. Therefore, resolving the issue may not be in the best interest of Nepal's domestic politics.

India's Perspective

7. Kalapani Dispute.

(a) Indian claim based on historical maps from 1879 and administrative records of Pithoragarh district from 1830 shows that Kalapani is the starting point of the Kali river. That is how the river gets its name. Kuti-Yankti is a tributary of the Kali river but NOT the Kali river. Kali River flows from Kalapani till Gunji, where it meets the Kuti-Yanktiriver and from there, the combined river, still known as the Kali river, flows southwards. From Kalapani downwards, the India-Nepal boundary is divided along the center of the Kali riverwhich is the present alignment of the boundary.

(b) Sugauli Treaty refers to areas west and east of the river and hence, Lipulekh Pass does not come under the definition.Administrative records from 1830 show areas beyond Kalapani, including Lipulekh pass being administered as part of the Pithoragarh District.

(c) <u>No Objection was Raised Earlier by Nepal</u>. India and Nepal entered into a treaty in 1950, it was called the Peace and Friendship Treaty. This is a truth that until 1950, Nepal did not register any strong protest against India for its control over the Kalapani region. India increased its security presence when China forcefully occupied Tibet in 1951 to stop encroachment by the Chinese. In 1950, the Nepal government had agreed to establish 17 Army Posts along with India in the Kalapani region. At that time Nepal had no objection to the occupation by India.

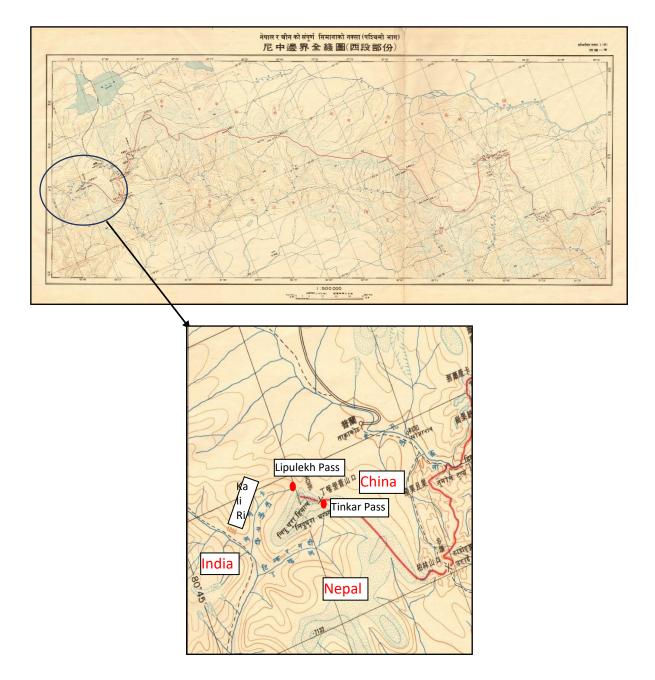
(d) Kalapani has been controlled by India's Indo-Tibetan border security forces since 1962.

(e) India and China have repeatedly reaffirmed that Lipulekh lies on the border of India and China in agreements between the two nations in 1954, 1991, 1992 and 2015.¹⁴ In 1961 Border Agreement between China and Nepal does not recognize Lipulekh as a border pass between the two countries. The Sino-Nepal border commences at the Tinkar Pass, a few km southeast of Lipulekh.¹⁵ It can be seen in the map (prepared by China) during theboundary

¹³https://merodeshnepal22/videos/history-of-nepal-history-of-sugauli-sandhi-that-established-the-boundary-line-of/1127851394240061/

¹⁴Nihar R Nayak, "Controversy over Lipulekh Pass: Is Nepal's Stance Politically Motivated?", IDSA Comment, 09 Jun 2015

agreement between China and Nepal at the time of 1961, that the River Kali starts from Lipulekh Pass and not from Limpiyadhura Pass as currently stated by Nepal.



(f) India has bestowed borders as they obtained in British India in 1947. **India** has made no changes to maps issued by the Government of India in this sector since 1947. That continues to be the case till today.

8. <u>Susta Region Dispute</u>. Since the change of course of River Gandak, has been gradual, India claimed Susta as part of their territory as per international laws. On several occasions, India has tried to resolve the issue through friendly and peaceful negotiations, but the Nepali leadership has always shown hesitation in resolving the issue.

How the Events have Unfolded

9. In November 2019, the Kalapani dispute was revived when India published a revised political map showing the newly created Union Territories of Jammu and Kashmir and Ladakh. The **map showed Kalapani as part of the Pithoragarh district of Uttarakhand as did all maps since Independence**. Nepal protested and drew attention to the issue. Nepal asked India to "refrain from carrying out any activity inside the territory of Nepal". **The Kailash Mansarovar road goes astride Kali River**. Nepal would increase the number of security outposts and deploy more armed personnel on the border with India. Nepal expected India to avoid any unilateral measures in the Kalapani region and remain committed to the 'fixed border' principle.

10. On May 8, 2020, the border dispute was triggered when a new 80 km-long road in the Himalayas, connecting to the border with China, was inaugurated by Defence Minister Rajnath Singh at the Lipulekh Pass for Indian pilgrims going to Kailash Mansarovar. Lipulekh pass was mainly launched for the wellness of pilgrims, as there are no other proper means of road transport present for the pilgrims to reach Kailash¹⁶. The new road is now the quickest link between Delhi and the Tibetan plateau in China. Hence, the road serves pilgrims to reach Kailash and Manasarovar with ease. Nepal had neither objected to the road when the road construction was going on nor kept it as an Agenda point in the meeting between India and Nepal. On May 13, 2020, Nepal's Prime Minister K.P. Sharma Oli said that Nepal can allow India to use the link road to the Lipulekh pass as part of an agreement, but will not surrender the Kalapani territory on which India has been carrying on construction. On May 19, the government of Nepal endorsed a new political map showing Lipulekh, Kalapani and Limpiyadhura under Nepal's territory¹⁷. On June 13, 2020, the Lower House of Nepal's Parliament unanimously voted for the Second Constitution Amendment Bill, which guarantees legal status for the new political map of Nepal that includes part of Indian territory in Uttarakhand.



¹⁶https://www.isas.nus.edu.sg/wp-content/uploads/2020/06/325-1.pdf

¹⁷https://kathmandupost.com/national/2020/05/21/with-release-of-new-map-nepal-and-india-enter-a-state-of-cartographic-war-experts-say

11. Indo-Nepal relations have reached a flashpoint over the Kalapani territorial dispute which could threaten the very basis of their special relationship – with open borders and free movement of people. The Lipulekh pass has always been part of the road to Tibet, and was also mentioned as one of the border passes for trade in the 1954 India-China agreement. It was also affirmed in the 2015 India-China trade agreement. The Lipulekh pass was re-opened by China in 1981 for the Kailash Mansarovar pilgrimage, since then it has been used by Indians to walk into Tibet.

12. India and Nepal have established mechanisms to deal with all boundary matters. The boundary delineation exercise with Nepal is ongoing. India is committed to resolving outstanding boundary issues through diplomatic dialogue and in the spirit of our close and friendly bilateral relations with Nepal.Nepal's new official map is "artificial" and unacceptable to India.This unilateral action is not based on historical facts and evidence. It is contrary to the bilateral understanding to resolve the outstanding boundary issues through diplomatic dialogue. Such artificial, enlargement of territorial claims will not be accepted by India.

Recommendations

13. Nepal over the years has witnessed chronic political instability, including a 10-year violent insurgency, damaging Nepal's development and economy. There is an anti-India feeling among certain ethnic groups in Nepal which emanates from the perception that India indulges too much in Nepal and tinkers with their political sovereignty. The establishment of diplomatic relations between Nepal and China and its growing influence in Nepal has resulted in the declining traditional leverage of India in Nepal.¹⁸

14. Nepal and India are very closely related to each other, whether it is language, history, religion, or geography. The border issue between Nepal and India started when the Maoist government came to the power. China is trying to give Nepal the money they require to build the infrastructure etc and pressuring the Nepal government to raise the border issue with India. China has been increasing its presence among India's neighbours to encircle India through its Belt and Road Initiative. India and its neighbourhood have been a subset of China's larger designs. Because India is one of the countries that China sees as a challenge to its Belt and Road Initiative project. India on its part needs a combination of strategic, economic and diplomatic means to resolve these issues. Also, India needs to plan in the long term to reset the situation in its favour. India needs to work towards the development of Nepal in terms of building the infrastructure ie hydropower projects, giving employment opportunities, or in the form of soft power.

15. India should not take border issues with Nepal for granted. If India prolongs the matter, it might get even more complicated. For a permanent solution to the problem, both India and Nepal should be ready to make some compromises.

16. Near the **Gandak River an enclave has been formed** ie Susta Village. It covers an area of 140 sq km. The inhabitants of this village have to be administered by Nepal. It will be difficult for Nepal to administer them because of the administrative difficulties posed by the Gandak River. As regards the Kalapani, Limpiyadhura and Lipulekh are concerned India has **revenue records to prove that this area belonged to the**

¹⁸https://www.drishtiias.com/to-the-points/Paper2/india-nepal-relations

Pithoragarh districtof Kumaon since the 1830s. Hence, the issue must be resolved bilaterally using diplomacy.

17. A committee similar to Nepal – India Joint Technical Level Boundary Committee (JTBC) which was constituted in 1981 (Dissolved in 2008) needs to be constituted. A committee (headed by a diplomat both from India and Nepal) must be formed to resolve the border issues with Nepal.It must also have a military official on this committee. Certain recommendations are given below:-

(a) **Diplomatic**.

(i) Nepal and India should bring historical documents and cartographic maps to claim the region.British records may also be sought.

(ii) Suggestions should be taken from experts and researchers should do research work on the border issues of the Nation.

(iii) India should **maintain a policy of keeping away from the internal affairs of Nepal**, while at the same time, in the spirit of friendship, India should guide the nation towards a more inclusive democracy.

(iv) Since the free movement of people is permitted across the border, Nepal enjoys immense strategic relevance from India's national security point of view, as terrorists often use Nepal to enter India.Therefore, stable and friendly relations with Nepal are one of the prerequisites which India can't afford to overlook.

(v) India should also try to convey to Nepal's leadership about the congenial and friendly environment that 6 to 8 million Nepali citizens living in India enjoy. Therefore, any thoughtless erosion of this centuriesold togetherness may prove difficult for both countries.¹⁹The Gorkha Regiments of the Indian Army were raised partly by recruitment from hill districts of Nepal.

(vi) The existing bilateral treaties between India and Nepal have not considered the shifting of Himalayan rivers. A primary reason for this is the lack of an approach where ecological concerns and the needs of rivers are often dismissed. Therefore, India and Nepal should try to resolve the boundary dispute by taking into account all shared environmental characteristics.

(vii) The nation should be ready to ask for the help of the United National Organization. **If the problem cannot be solved, we may need to go to the International Court of Justice.**²⁰The preconditions for arbitration are that both parties need to be willing to participate in the judicial process. A precedent exists in the Indo-Bangladesh maritime dispute.

¹⁹https://www.drishtiias.com/daily-updates/daily-news-analysis/india-nepal-border-dispute

²⁰<u>https://www.academia.edu/49316582/Nepal_India_Border_Issues</u> written by Rabi Shrestha, Mukesh Thapa, Bipod Tamang, Narayan Thapa of Kathmandu University

(viii) **Diplomats and higher authorities of both countries must be careful of rabble-rousing**. A case of PM KP Oli commenting on India's national emblem and openly declaring that the Corona Virus coming from India was more dangerous that the Coronavirus which came to Nepal from other countries including China. This was an insult to a nation and its people.

(b) Information.

(i) The measurement of the territory should be based on the Global Positioning System and/or using the images of the control points captured by using a UAV. From time to time, monitoring and surveying must be doneon border sites.Most important is the Kali river, where such usage has started ie Limpiyadhura or some other place.

(ii) Archival data can be checked by using satellite imagery which helps to identify the shift in the movement of the river. Hence, we can get the exact location of the river during the treaty.

(iii) The people of these regions ie Kalapani and Sustaregions must be asked about the language they speak, do they consider themselves a part of Nepal or India, do they have an Aadhar card/ any other documents to show they are a part of Nepal or India, do they participate in the election of Nepal or India, etc has to be checked. The main focus is on taking into account longstanding people-to-people ties and cultural connections.

(iv) The media should not target Nepal and its people and Indian and Nepali media must also refrain from such practices.

(c) <u>Military</u>. Security forcesmust maintain the strict elimination of residents in the no man's land areas.

(d) **<u>Economic</u>**. India's Nepal policy has already been influenced by the growing salience of the economic factor and the challenge of development.

(i) Nepal offers India a huge source of meeting its expanding energy requirements, India also offers Nepal a huge market for trade along with a promising and dependable source of investments and technology. The two countries have started exploring these mutual advantages to build viable structures of interdependence.

(ii) India needs to develop the area of Limpiyadhura, Kalapani and Lipulekh in terms of getting road connectivity, electricity etc. The main focusison the creation of infrastructure at the grass-root level.

(iii) India's accommodation of Nepal on the issues of trade and transit and the slow but hopeful implementation of the Mahakali Treaty between the two countries- this process will have to be sustained with greater momentum as there are persisting political stigmas and

lingering suspicions²¹. With the growth of interdependence, the political atmosphere between the two countries will also improve. India in the past had not been able to make proper and effective use of economic factors, but in the future, this challenge will have to be met.

(iv) Around a century later, this "**open border**" between India and Nepal remains. Some analysts say that this "open border" makes the relationship between the two countries "special".In the case of Nepal, the open border acts as a "safety valve" for the country vis-a-vis income generation and employment promotion from its bigger neighbour, India²².

(v) Water has been a contentious issue between the two countries because of the controversies surrounding the water treaties such as Kosi, Gandak and Mahakali. As a result, Indian investors in the hydropower sector in Nepal face problems on several counts. There is a sentiment in Nepal that India has cheated Nepal in those treaties and Nepali's natural resources have been sold out without taking into account its interests. All these doubts in the Nepal people must be clarified by the committee. The topography would continue to favour India, where all the Nepalese rivers flow.

18. The **Joint Committee must resolve the issue in a timebound manner**. A report must be given to both Governments **half-yearly**till the time the border issues have not been resolved.

Looking into the Future

19. If India fails to resolve border issues with Nepal, then a wrong message will go to theInternational community. Having friendly relations with Nepal, India and Nepal should be able to resolve the border dispute amicably, in a manner, similar to the resolution of boundaries with Bangladesh.

20. From India's perspective, while the possibility of threat from the North cannot be ignored in the long run, no matter how remote and insignificant it looks at the moment, the emerging possibilities of Nepal being used as a conduit by India's adversaries to support terrorism, insurgency and disruption in India need to be curbed and eliminated. The relevance and status of the treaty of 1950 are important in this regard because this treaty provides the basis for mutual understanding in security matters and multifaceted cooperation in social and economic fields. The Nepali side has been asking for a review of the treaty, perhaps to dilute its mutual security content and obligations regarding the treatment of Indian nationals in Nepal to their disadvantage. Informally, but at a very high level of political leadership in Nepal, objections have been raised against the provisions in the treaty restricting the import of arms by Nepal from third countries.

21. The "Gujral Doctrine" of 1997 of improving relations with the neighbours, without insisting on reciprocity, clearly underlines that India's security cannot be compromised. Any such compromise will also adversely affect India's security concerns in the subcontinent as a whole. Therefore, a review or revision of the 1950 treaty may be

²¹https://www.researchgate.net/publication/298195869_Mahakali_Impasse_and_Indo-Nepal_water_conflict ²²ORF IssueBrief 356 India-Nepal-Kalapani.pdf

carried out to update and streamline its provisions and accommodate Nepal's activities.²³ But this should not be done at the cost of eroding India's security interests in Nepal. Similarly, the problem of border management from the security perspective may be looked into, but options for undoing the open border arrangement are expensive, cumbersome and impracticable. For ensuring a peaceful and friendly border, the two countries will also have to cooperate in dealing with the spillover of socio-political turmoil in their respective countries. Vested political interests cannot be allowed to vitiate the prospects of such cooperation.

22. Nepal and India are very closely related to each other, whether it is language, history, religion or geography both of the countries enjoy a special relationship that no other countries in the world do have. Nepal and India must live on the term of mutual respect and work together for the development and prosperity of their people.

CERTIFICATE

The paper is author's individual scholastic articulation. The author certifies that the article is original in content, unpublished and it has not been submitted for publication/ web upload elsewhere and that the facts and figures quoted are duly referenced, as needed and are believed to be correct.

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