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## Implications of China's Land Boundary Laws



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### Introduction

The new land border law, introduced by the People's Republic of China (PRC) during the 31<sup>st</sup> meeting of the Standing Committee of the 13<sup>th</sup> National People's Congress on 23 October 2021<sup>1</sup>, is the latest attempt by China to unilaterally delineate and demarcate territorial boundaries with India and Bhutan. The law, which empowers both the People's Liberation Army (PLA) and the People's Armed Police (PAP) to undertake offensive actions against "invasion, cannibalization, infiltration and provocation"<sup>2</sup>, leads the PRC on a 'self-restrictive spiral path' that deliberately discards political and diplomatic measures. This law has huge implications for India and therefore, the policymaker's needs to take appropriate measures as soon as possible.

### Key Points

- China has turned 'territorial dispute' into 'sovereignty dispute' by adopting Land Border Law.
- China is likely to negotiate from a 'maximalist position' as it has done while settling border dispute with its other 12 neighbours.
- China has adopted 'lawfare' to change the ground status.
- With increased settling of civil population that too Han Chinese, it will bring greater difficulty to settle the border dispute on favourable terms.
- Appropriate response is needed as part of a 'whole of Government's approach'.

This problem requires a whole-of-nation solution more than a purely military solution. However, one thing is clear. By bringing in such a law, and in conjunction with accelerated

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construction of 624 “Xiaokong” villages<sup>3</sup> along and inside the disputed land boundaries with India, the Chinese Communist Party (CCP) has created conditions for a ‘militarised solution’ to the boundary issue. Leveraging its coercive and financial capabilities, the CCP has cleared Tibetan population from the area and pumped in money (close to \$ 7 billion over a period of five years)<sup>4</sup> and an acquiescent population closer to the border with India. As per the land boundary law, similar to the National Security Law passed with respect to Hong Kong<sup>5</sup>, China will get extra-territorial legal precedence with respect to its land boundaries. Just as the National Security Law aims to punish anyone (globally) for instigating rebellion against the CCP in Hong Kong, the Land Boundary Law also aims to punish anyone that trespasses the unilaterally decided, delineated and demarcated boundaries of China. As a result, the ‘hybrid/ unconventional warfare methodology’, applied so far for taking over illegal control of sovereign spaces of other states, gets converted into a ‘legalistic nation-building exercise’ which brooks no opposition.

This law was first proposed in March 2021 when the border dispute between India and China had manifested itself not only in Eastern Ladakh, but also along the entire Line of Actual Control (LAC) and the McMahon Line. With 62 clauses in seven chapters<sup>6</sup>, the law provides a legal and coercive framework for China’s entire security, legal and administrative state apparatus to assert itself using all elements of its Comprehensive National Power. The declaration of this law, along with the rapid build-up of China’s military infrastructure, will have serious implications for India, apart from other countries especially Bhutan.

### **Genesis of the Dispute**

Though India-China relations could be traced back to centuries, however for the purpose of the paper and to highlight the implications of the land boundary law, focus will only be on the disputed areas and how the situation reached its present state.

Tibet, which formed a buffer between India and China, and which had a ‘nominal suzerain relationship’ with China was conquered and absorbed in the 1950s, bringing China to India’s backyard for the first time. India, in 1954, signed the Panchsheel Treaty whose basic tenets were mutual respect for each other’s territorial integrity, sovereignty, mutual non-aggression and mutual non-interference in each other’s’ internal affairs.<sup>7</sup> For this harmless and a mostly



UN based language, China extracted its 'own pound of flesh' by getting India to officially accept China's sovereignty over Tibet. Soon after, China, taking the cause of Tibet, started building roads through Aksai Chin— a disputed territory between India and China. India came to know of it only in 1957 and that too, a month before it was due to be opened for public use.<sup>8</sup> India then responded with a series of measures which the Chinese attributes as the cause of war in 1962.<sup>9</sup>

The root cause of conflict lies in an ill-defined, 3,440 km long border. The Johnson line shows Aksai Chin as a part of Ladakh, which is India's territory, whereas McDonald Line places it under China's control. India considers the Johnson Line as a rightful national border with China, while on the other hand, China considers the McDonald Line as the correct border with India.<sup>10</sup> The different claims and perceptions of the LAC have led to an overlapping area; within this area lies a small zone which both the sides patrol and is characterised by clashes between the Indian and the Chinese Army.

In the middle sector, India shares about 625km border with China which is least disputed. The boundary line in the Eastern sector is called McMahon Line which runs from the eastern limit of Bhutan to a point near the Talu Pass at the tri-junction of Tibet, India, and Myanmar.<sup>11</sup> The majority of the territory of Arunachal Pradesh is claimed by China as part of Southern Tibet. China considers the McMahon line illegal.<sup>12</sup> McMahon proposed the line in the Simla Accord in 1914 to settle the boundary dispute between Tibet and India, and Tibet and China. Though the Chinese representatives at the meeting initially accepted the agreement, however, later they started questioning its legality and refused the line.

### ***Borders: Formation and Sovereignty Markers***

Borders are geographic boundaries, imposed either by geographic features such as oceans, or by arbitrary groupings of political entities such as governments, sovereign states, and other subnational entities.<sup>13</sup> A number of factors such as tax collection records, natural boundaries, academic papers and journals and finally physical possession dictates the alignment of borders between states. In India's case, as the successor state of British India, there is ample evidence of tax collection records, map based agreements and physical outposts in Aksai Chin of the 19<sup>th</sup> centuries.<sup>14</sup>

### ***China's Boundary Disputes with other Countries***

China, at one time was involved in border/boundary disputes with almost all the 14 countries at its periphery. China claimed territories in line with a maximalist position that discounted the sovereignties of other countries. Using a 'mix of coercion and cajolery', China has been able to resolve twelve out of fourteen of its disputes. Some have been resolved on its own terms while some have been legalised due to the necessity of protecting the territorial as well as religious sanctity of Xinjiang, its Achilles heel, a region plagued by Uighur separatism and an abject failure of Chinese law and order. The only border disputes remaining are with India and Bhutan— both having Indian stakes.

### ***Pertinent Lessons from China's "Resolved" Border Disputes***

A short summary of resolved border disputes with 12 countries brings out interesting conclusions, which if modulated into policy positions, will help both the Indian Military and consequently, the Indian Government to take steps to counter the challenge posed by the future manifestations of the law.<sup>15</sup>The important conclusions are:-

- Surreptitious claiming of land through construction activities, settling civilians and use of militias. Disputes with Russia over the Zhenbao islands,<sup>16</sup> hijacking of islands in the South China Sea<sup>17</sup> and the current impasse with India are all symptoms of a geographical creep.
- Territorial claims are also reinvigorated when there is internal instability in China. This behaviour was observed during China's border clashes with Russia, India and Vietnam. Only Russian aggressive reaction in 1969 forced China to look towards a boundary settlement that was in accordance to Russia's terms.<sup>18</sup> The motives behind Chinese actions in Eastern Ladakh from April 2020 onwards, have still not been clearly spelled out by their 'wolf warriors' and only speculations have been formed by the Indian and world strategic community, with fingers being pointed towards India's actions in Kashmir or India's proximity to the US or Indian infrastructure development in the border areas. China, unsurprisingly has gone 'scot free'.
- All the border disputes with China have taken decades to get resolved and that too at China's terms and conditions. China has leveraged the so-called 'century of humiliation' to shame the international community into usurping sovereign territories

of other states in the name of historicity. The names of Treaty of Argun (1858) and Treaty of Peking (1860) have been recalled to expand the modern Chinese empire.<sup>19</sup> The Nine Dash Line is another example of weaponising history to grab land.<sup>20</sup> One may grant China that it takes the aphorism —“never bargain from a position of weakness”, very seriously. This is the reason why China has taken such a long time to resolve its border disputes with its neighbours. The only anomalies have been found were in cases where China’s own security interests or economic interests was the prime concern. In fact, it compromises with its neighbours when its internal stability is threatened. Case in point, is the boundary dispute with Kazakhstan which, though pending for 36 years, was resolved in a matter of months when the US Central Command conducted a multilateral exercise called “Centrazbat” in 1997 which featured the longest non – stop flight to a drop zone in history— from the Continental United States directly to Kazakhstan.<sup>21</sup>

### ***Iterations of the India-China Boundary Resolution Mechanism***

China had offered India the option of settling their border disputes in the form of a letter written by Zhou Enlai in 1959, where the idea of the LAC was first mooted. Formal round of talks between China and India on the border issue was initiated with Zhou Enlai’s visit to India from 19–25 April 1960. Following this, there were a series of talks that culminated in the 'Report of the Officials on the Boundary Question.'<sup>22</sup> The content of the boundary discussions include tactical, strategic and geopolitical issues. Localised disputes and related events such as de-engagement and de-escalation, and wider issues like package settlement deals, sector wise delineation and demarcation, clarification of the LAC and the McMahon Line and exchange of maps—all formed part of the talks.

China came up with a package deal in 1960 wherein, it would accept India’s interpretation of the McMahon alignment in the Eastern sector on India’s acceptance of Aksai Chin as China’s inalienable part, with minor differences in Central sector to be sorted out later.<sup>23</sup> Post India-China war of 1962, this proposal was shelved, to be tabled again from 1980-85. However, this time, there were significant changes in the proposal. India would have to make significant concessions in the Eastern sector, while China would make corresponding but undefined concessions in the Western sector. China also stoked up Tawang as a disputed



territory in these discussions— a position it rigidly held on to at least till 2015.<sup>24</sup> Moreover, China insisted on insulating the contentious border relationship with India, to focus on other aspects such as trade and technology.

There has been number of mechanisms between the two countries, over the years to deal with the border disputes. While some progress can be said to have been made, especially in chalking out and laying down some basic rules, the events of 2020-21 have made it clear that these are all subject to the aggressor's point of view. On the diplomatic level, there were eight rounds of official border talks between India and China between 1981 and 1987. In 1988, these talks were formalised as the 'India-China Joint Working Group on the Boundary Question' (JWG), through a joint communique.<sup>25</sup> The JWG met 15 times and the last meeting was held in 2005. A Special Representatives Mechanism (SRM) was created in 2003, and founded on the basis of the 'Declaration on Principles for Relations and Comprehensive Cooperation'.<sup>26</sup>

Apart from these, number of bilateral agreements were signed between the two countries that aimed to prevent any major armed conflict. These confidence building measures (CBMs) were Border Peace and Tranquility Agreement (1993), Agreement on Military Confidence Building Measures (1996) and Protocol for the Implementation of Military Confidence Building Measures (2005). These were supplemented by political measures such as Declaration on Principles for Relations and Comprehensive Cooperation (2003) and Agreement on the Political Parameters and Guiding Principles for the Settlement of the India-China Boundary Question (2005). Later, two more agreements vis. 'India-China Agreement on the Establishment of a Working Mechanism for Consultation' and 'Coordination on India-China Border Affairs' were signed on 17 January 2012. In addition, Agreement between the Government of the Republic of India and the Government of the People's Republic of China on Border Defence Cooperation, signed on 23 October 2013, paved the way for the resolution of the conflict through the application of the respective countries' laws.

These agreements of 2012 and 2013 disallowed patrols in areas lacking common understanding, prevented use of force between the two countries and established working



mechanisms at the Joint Secretary level, apart from the pre-existing special representative mechanisms. Since these are the latest agreements between the two countries, they conventionally override the tenets of the previous agreements on those issues that have been recently agreed upon. China's formulation of the border laws may have a serious implication as these same agreements can be recalled to justify a possibly new form of 'lawfare based territorial aggression'.

Despite these, number of confrontations and unarmed physical fights broke out intermittently between the Armed Forces of the two countries in places where there were 'difference in perceptions' of the LAC. The Wuhan and Mamallaparam Directives, informal understandings between the highest political leadership of the two countries, also sought to constrain their respective Armed Forces to apply a more restrained outlook towards the boundary dispute.<sup>27</sup> Of these five Border Personnel Meetings (BPM), two are in the Indian Union Territory of Ladakh or India's western (northern) sector corresponding to China's Southern Xinxiang Military District, one in Sikkim and two in Arunachal Pradesh in India's Central and Eastern sectors corresponding to China's Tibet Military District. Hotlines have finally been established, after a lot of dithering by the Chinese on protocol issues. As of date, six hotlines are functional — two each in Sikkim, Arunachal Pradesh and Ladakh. The unfortunate incidents of 2020-21 led to the formalisation of the Corps Commander Level talks between the Indian Army and the PLA. 13 rounds have so far been held which have led to major de-escalation around the Pangong Tso areas but the overall de-escalation is still awaited.

### ***China's Land Boundary Law: What has Changed?***

China's declared intention of formalising its 'covert and creeping claims' on sovereign Indian territory has been made clear with the ratification of the Land Boundary law, which will come into effect from 01 January 2022. Though most provisions of the law are heavily cloaked in legalese, it emphasises the responsibilities of China's provinces, government departments and civilians to play a coordinated role to tackle various national challenges, be it terrorism, transgression, customs or host of other activities. There is, however, no doubt that China, through the enactment of this legislation, intends to provide legal cover for its likely actions in Eastern Ladakh, Bhutan and possibly Taiwan. This is not the first time that China has attempted to unilaterally impose a domestic law onto international 'subjects'.



The National Security Law imposed on Hong Kong provides ample evidence of this extra-territoriality. The national security law criminalises any act of secession (breaking away from the country), subversion (undermining the power or authority of the central government), terrorism (using violence or intimidation against people) and collusion with foreign or external forces. On the face of it, the law resembles any ordinary national security law prevalent in countries across the globe. It is when one goes deeper into the wordings of its 66 articles, that the entire import of the law becomes clear. The law is applicable for any individual, within or outside the jurisdiction of the Chinese constitution, who is liable to be arrested by Chinese authorities anywhere in the world. Similarly, the land boundary law aims to make all of China's territorial claims valid with the stroke of a pen, notwithstanding the complicated and give-and-take scenarios understood to be the hallmark of successful boundary negotiations. China's illegal claims on the entire state of Arunachal Pradesh, which it sees as a part of South Tibet, will be made 'legal' and 'tenable' once this law comes into action, enabling China to use the full might of its military machine and state apparatus to justify an audacious land grab, reminiscent of colonial times.

The law emphasises the role of Chinese citizens and civilian institutions in supporting the PLA and the People's Armed Police (PAP) — most likely a hangover from the pre-existing military-civil fusion (MCF) strategy. The concept of 'mass defence groups' has been enunciated. These will support border defence missions. Most likely, this will mean the enlisting of Chinese citizens in information collection, maintain law and order and assist in territorial defence.

China has already made a start by constructing 'Xiaokong' or model villages in the upper Subansiri valley, a disputed region between India and China but in China's possession since 1959.<sup>28</sup> Once constructed, number of Han Chinese from China interior will be settled in these villages, whose security will then be the responsibility of the China's border guards and PLA. In fact, this boundary law is the physical manifestation of a long-standing Chinese ploy of using 'lawfare' for gaining territorial concessions. By creating facts on the ground, such as the artificial islands in the South China Sea and now along the India- China border, China is daring countries to displace these realities and initiate a conflict. Making a big swipe

at other countries' territory under the garb of a 'law', enables the entire Chinese Comprehensive National Power (CNP) to be brought to bear on the country whose territory it covets. The justification of 'throwing out the infiltrators' can be used for legalising its imperialist act.

Similarly, the law contains paragraphs on the principles governing water resources of cross-border rivers. This is a significant cause of concern for India being the lower riparian. The water wars, are likely to become a reality in the coming years, with climate change induced droughts, deluges and famines becoming a reality in major parts of the world.

### ***Reasons for Making this Law***

Many factors seemed to have spurred the formulation of this law. China's land border dispute, especially after the incidents of 2020-21 seem to have created doubts in the mind of its military planners regarding the capability of its newly transformed Armed Forces to resolve national security issues quickly and decisively in its favour. Counter mobilisation by India seemed to have dented the morale of the Chinese troops. This law is an attempt by China to renew its focus from the maritime domain towards the land front, which it had considered solved. The free flow of Covid-19 virus across borders may have hardened attitudes towards 'concretising' the somewhat porous frontier regions in China. Xi Jinping's signature move of 'forced ethnic assimilation' through words such as 'Sinicisation of Buddhism', 'Fortress Tibet' and "forging a consciousness of the common identity of the Chinese Nation" will be given an impetus through the passage of this law.

### ***Implications for India***

Ostensibly meant to act as a framework for its border areas all across, the boundary law is most likely to be a fallout of what happened in Eastern Ladakh and the counter mobilisation by India. There are few implications of what this law might mean for India:-

- Despite the existence of a number of CBMs, hotlines and BPMs, there exists some sort of mutual distrust between the military personnel of the two countries. Given China's claim over a significant amount of Indian territory as its own, and the law specifically stating that "The Chinese PLA and the Chinese PAP, in accordance with their respective tasks" will "resist armed aggression....stop and cross illegal border

crossings”, it remains to be seen as to how this law will change (or not) the PLA’s perception of Indian Forces in Arunachal Pradesh, Eastern Ladakh and Tawang, to say the least. The wordings of the law clearly states that armed action will be undertaken to evict the intruders. Distrust coupled with ambiguous and aggressive statements are a potent mix likely to cause armed conflicts in the future.

- The law prohibits the construction of permanent facilities ‘near’ China’s border without permission from Chinese authorities. The vague wording could be interpreted to include both sides of the border, creating the potential for additional friction. Though China have had a head start in rapidly creating infrastructure in the border areas, India is also fast catching up. A series of India-China border roads (ICBRs), opening up of the Atal tunnel and number of tunnels, bridges and overpasses, have ensured that even the Indian Armed Forces have the potential to mobilise faster as compared to yesteryears. In fact, the rapid construction of infrastructure by India is alluded to (unofficially) by China watchers as one of the reasons for China’s attempted land grab in 2020. Further construction by India may be used as a ruse by a belligerent PLA to create incidents on the border with potential to spill-over into an armed conflict.<sup>29</sup>
- Emphasising on the development of border towns and the role of civilians, the law may raise questions about whether Beijing intends to expand or accelerate civilian settlement in areas bordering India, Nepal and Bhutan. This is a part of the salami slicing tactics used by China in the maritime domain, especially in the South China Sea.
- With the stroke of a pen, China has ‘turned a border dispute into a sovereignty dispute’, rendering it more intractable. With the border dispute active, it was comparatively pragmatic to parcel it so that the countries could focus on other aspects. Also, a border dispute sustained hopes of a give-and-take in the future. Turning this into a sovereignty dispute has also brought in the dynamics of ultra-nationalism and polarisation. The very core of the Westphalian nation-state i.e. sovereignty is something which can neither be diluted nor bartered away implying that remaining aspects of the India-China relationship are now forever made impervious to confidence building measures (CBMs).

- Article VII of the 2005 Agreement between the Governments of India and China, on the boundary question, explicitly mentions safeguarding of “due interests” of settled populations in the border areas. By utilising the land boundary law, China can continue with the creeping ‘Gaza-fication’ of disputed land and later claim these for the population. There has been a huge drain of people from the interiors of China, and the 2005 agreement has been used by China as a context for solidifying its claims. That is what it means when it refers to Article 19 of the Land Boundary Law where “consultation” is mentioned in reference to a neighbouring country.<sup>30</sup>
- On an average, between 1993 and 2013, there were five agreements in 20 years i.e. one agreement signed every four years. However, post 2013, there has been no agreements between the two countries, apart from the two ‘strategic directives’ that is applied to their respective troops. Ultrnationalism that trends both in India and China, may prevent “horse-trading” or “give and take of territories”. A possibility of force v/s force engagements cannot be ignored.

### ***Recommendations***

Some recommendations for the Indian government are:

- Written agreements related to mutually agreed settlements, ratified by the Parliaments of both countries, needs to supersede any other law related to borders.
- Continuous engagement with China with an aim to resolve the standoff peacefully.
- Enhanced engagement with neighbouring countries so that geographic creep by China can be curtailed.
- More involvement in QUAD like groupings and focus on security calculus to be a part of such groupings.
- Enhanced engagement with Russia to secure India-Russia bilateral relationship.
- Development of infrastructural connectivities in mission mode in all border areas— be it road, rail, water or air. In addition to axial connectivities, more focus on lateral connectivities needs to be given. This is most urgently needed to come out of valley based restrictions on deployment of forces and resources.
- Speeding up of theaterisation albeit in revised format as against current land centric approach.



- Speeding up of modernisation program to leverage technology especially in those areas which enhances surveillance, firepower and force projection. Investment in drones, counter-drones, swarms, long range air defence (AD) systems, light artillery systems, enhancement of long range missiles and rocket forces, could be some of the areas besides others.
- Development of dual-use infrastructure.
- Restrict civilian population migration from border areas to urban centres by combined approach of development and incentives.
- Develop civil infrastructure in forward areas beginning with tourism followed by settlement of civilian population on permanent basis.
- Enactment of central law wherein state based law prohibiting buying and selling of state land by those belonging to other states be prevented. A geographic extent can be delineated for such security requirements so that national security concerns along with concerns of natives of the state can be addressed simultaneously.
- Undertake mountaineering expeditions with increased frequency along with granting permission to foreign nationals, academic research related to border areas and all such other actions, which cement our claim on our borders, needs to be expedited.
- Outsourcing of all logistical responsibilities to the civilian setup, where these have been developed, so that we can utilise the available manpower for combat roles.

There are many more recommendations which can contribute to the enhancement of the security capacity of the nation to not only face the current challenges but also those which may emerge in the future. A separate study by professionals may pave the way.

### **Conclusion**

China's land boundary law brings in a new dynamic into India- China relations. By creating a self-fulfilling prophecy that is most likely to spiral into an armed conflict and by enlarging the theatre of conflict to the entire Arunachal Pradesh, an area which until very recently was outside the ambit of the boundary discussions, China has destroyed all aspects of peaceful co-existence with India permanently. There can be now no aspects of segregating different aspects of the relationship — economic and diplomatic, from the military and geo-political one. India, on the other hand, has received the 'rude shock' that it required to get its

theaterisation and modernisation program into higher gear. On similar lines, India also needs to take a 'leaf out of the Chinese playbook' by weaponising erstwhile considered purely civilian matters such as expeditions, academia and habitation. Efforts have already started in requisite areas but these needs to be expanded and fast-tracked. China's boundary law, on the whole, has shifted the relationship from constrained cooperation to competition to now confrontation and India needs to be prepared to deal with it.

## End Notes

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