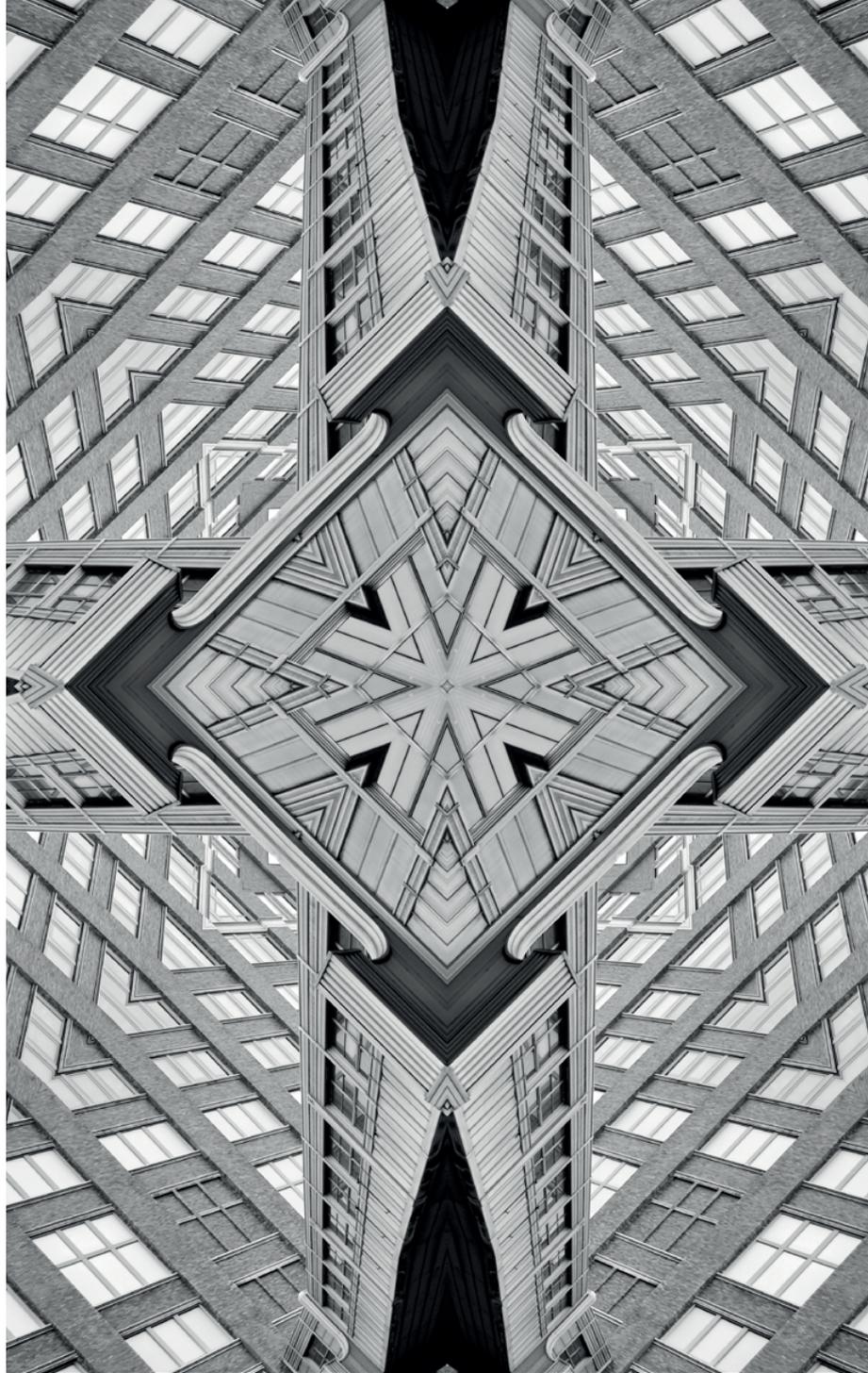


Issue

Brief

ISSUE NO. 462
APRIL 2021



Human Rights and US Foreign Policy: Implications for India and China

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Abstract

Human rights issues have been a cornerstone of US foreign policy since the end of the Cold War. This paper examines Washington's human rights focus on India and China under former President Donald Trump, and identifies trends under the current Joe Biden administration. The paper notes an emergent US bipartisan approach to refocus on Beijing's human rights record following a period of policy dissonance owing to concerns to protect its economic interests. It outlines a parallel renewed focus on India's Kashmir policy. The paper makes recommendations for India's engagement with the US given Washington's human rights concerns, and underlines New Delhi's own position on China's human rights record.

An enduring tenet of US foreign policy in the post-Cold War era has been promoting liberal Wilsonian values in terms of championing democratic systems and being a bulwark for civil liberties around the world. Human rights have had a central role in the US policy on China and India, most evident during the Bill Clinton administration.

China figured prominently in the 1992 US presidential election, with the Democratic candidate Clinton deriding then-US President George HW Bush's ambivalence on Beijing's handling of the 1989 protests at the Tiananmen Square.¹ The subsequent Clinton administration even interlinked China's progress on human rights to the US, continuing to accord it with the Most Favoured Nation status.² However, amid a rising bipartisan consensus for the US to prioritise economic engagement with China, the Clinton administration established 'Permanent Normal Trade Relations'^a and cleared the way for Beijing's accession to the World Trade Organization under US President George W Bush.³ Over time, as China engaged unfairly in trade and sustained a stringent control on the flow of information despite the emergence of a globalised world, US focus on China's human rights record waned. This was apparent in the ostensible reduction in Washington's political appetite to call out Beijing's transgressions, evidenced by the short-lived imposition of anti-dumping duties on China by the Clinton, junior Bush and Barack Obama administrations. Far from being held accountable on human rights issues, China perfected a 'realpolitik approach'⁴ of evading US pressures to oversee liberal economic reforms by using American companies' access to its lucrative market as an effective bargaining chip. Thus, the Obama administration's efforts to continue the Clintonsque "finger wagging" on China's record bore little success.

For India, Clinton's momentous visit in 2000 represented a thaw in bilateral relations following differences over New Delhi's nuclear ambitions. This rapprochement also stemmed from the US president being "drawn to India owing to its unlikely success as the largest democracy and its potential as a major emerging economy that embraced globalisation."⁵ The thaw came after a period of serious consternation in US-India ties, particularly with respect to US apprehensions over India's civil liberties record in Kashmir. Notably, Clinton's Assistant Secretary of State for South Asia Robin Raphel was at the forefront of American antagonism towards India and even advocated for a referendum in Kashmir, in line with Pakistan's stance on the matter.⁶ The subsequent reset in bilateral ties was also in line with Clinton's grand strategy of "enlargement"—

a Permanent Normal Trade Relations ended the 20-year-old ritual of an annual review by the US of China's trade status. It also guaranteed Chinese goods low-tariff access to the American market, as with products from every other US trading partner.

bolstering US security “by protecting, consolidating and enlarging the community of free market democracies.”⁷ The Bush administration also continued to strengthen bilateral ties with India, citing common experiences on terrorism and the two nations’ distinction as the world’s oldest and largest democracies. However, as the Obama administration built on Bush’s record on accord a strategic dimension to US-India ties, the foundational focus on “shared values” decreased and effectively became a rhetoric touchstone in times of momentary frictions. This was evident in the Obama administration’s efforts to troubleshoot diplomatic fallouts, like that over the Devyani Khobragade incident⁸ and US citizen David Headley’s involvement in the 2008 Mumbai attacks.⁹

In recent times, even as partisanship has eroded the bipartisan fervour around US foreign policy, a focus on Indian and Chinese human rights record has reemerged. The Trump administration’s idea of “divorcing” values from foreign policy¹⁰ spurred the Democrats to double down on their traditionally strong emphasis (compared to Republicans) on the relevance of values in US foreign policy, even towards strategic partners like India. As for China, Trump’s agenda of sustained confrontation with Beijing across domains like trade, technology and maritime posture was complemented with a renewed attention to that country’s human rights record.

“Human rights have had a central role in the US’s policy on China and India in the post-Cold War era.”

From Trump to Biden: Continued Scrutiny of China's Human Rights Record

China's human rights record first garnered international attention during the Great Leap Forward (1958-1962) and the Cultural Revolution (1966-1976). These events posed serious challenges to the domestic mandate of the Chinese Communist Party (CCP) and affected its international standing for having engaged in rampant human rights violations. Although China joined the United Nations (UN) in 1971, discussions on its human rights record were mostly avoided.¹¹ Under the leadership of Deng Xiaoping, however, China became momentarily amenable to international scrutiny and adopted a constructive approach towards existing international norms on human rights, by even joining the UN Commission on Human Rights (UNCHR) in 1982. But eventually, Beijing readopted an unyielding stance on human rights,¹² most apparent in its aloofness to international scrutiny of its handling of the 1989 Tiananmen Square protests, in which about 10,000 lives were lost.¹³ Subsequently, under Hu Jintao, Beijing used harsh measures against the ethnic minorities of Tibet and Xinjiang after the revolts of 2008 and 2009. However, his approach differed slightly as coercion was decentralised, allowing local governments considerable discretion to deploy whatever control tactics they saw fit.¹⁴ This approach of repression has been consolidated under President Xi Jinping's regime.

Given China's continued under-prioritisation of international scrutiny, Xi has advocated to use the "weapons of the people's democratic dictatorship" without "any hesitation or wavering" to unleash a spree of human rights violations against the Uyghur Muslims in Xinjiang.¹⁵ Another example of Chinese highhandedness is the CCP's consolidation of power via the contentious national security law in Hong Kong, which will significantly alter the special administrative region's political autonomy—subverting the 'one country, two systems' framework—and curtail a host of sociopolitical civil liberties.¹⁶

This Chinese penchant for pursuing domestic security interests at the cost of its citizens' fundamental rights coincided with the emergence of strong anti-China sentiments in the US, particularly under Trump. In Trump's attempt to end US foreign policy dissonance over engaging with and containing China, Washington once again began to raise human rights issues with Beijing explicitly. Although Trump primarily focused on the 'America First' approach to address the US's massive trade deficit with China, a shift occurred in American political consensus to confront China on a host of issues.

To address the US-China trade imbalance—which swelled from US\$315.1 billion in 2012 to US\$418.9 billion in 2018¹⁷—the Trump administration adopted a protectionist strategy and imposed tariffs on Chinese imports, sparking a protracted bilateral trade war. This eventually culminated with the US imposing tariffs on US\$360-billion worth of Chinese goods¹⁸ and a 'Phase One' bilateral

From Trump to Biden: Continued Scrutiny of China's Human Rights Record

trade agreement, under which China committed to raising imports of US goods by US\$200 billion over the next two years to narrow the trade imbalance.¹⁹ In exchange, the US gave up its plans to increase tariffs on US\$250-billion worth of Chinese goods to 30 percent.²⁰ This confrontationist trade policy was complemented with the Trump administration's campaign against China's propositions in the telecommunications space and a comprehensive timeline of US freedom of navigation operations in the East China and South China seas.

Table 1
Overview of major American legislative actions against China

Sr. No.	Year	House/ Senate Resolution	Key call to action
1	2020	S.3744 - Uyghur Human Rights Policy Act of 2020	Directed US sanctions against officials responsible for gross violations of human rights, by the People's Republic of China through the mass surveillance and internment of over 1,000,000 Uyghurs, ethnic Kazakhs, Kyrgyz, and members of other Muslim minority groups in Xinjiang Uyghur Autonomous Region
2	2020	H.R 8428 - Hong Kong People's Freedom and Choice Act of 2020	Mandated treatment of Hong Kong as separate from China for various numerical limitations on immigrant visas
3	2020	H.R.2510 - Hong Kong Autonomy Act	Directed imposition of sanctions against foreign persons involved in the erosion of obligations of China with respect to Hong Kong
4	2020	H.Res.697 - Affirming the significance of' the advocacy for genuine autonomy for Tibetans	Recognised the cultural and religious significance of an autonomous Tibet and called on the executive to increase support for Tibet in several areas, including the succession of the Dalai Lama and environmental policy.

Source: Compiled from open records available at the Library of Congress²¹

From Trump to Biden: Continued Scrutiny of China's Human Rights Record

However, on confronting China over its human rights record, Trump was often criticised for being soft, in line with his policy of “divorcing” values from foreign policy. Former US National Security Adviser John Bolton even accused Trump of supporting Xi’s gross human rights violations: “At the opening dinner of the Osaka G-20 meeting in June 2019, with only interpreters’ present, Xi had explained to Trump why he was basically building concentration camps in Xinjiang. According to our interpreter, Trump said that Xi should go ahead with building the camps, which Trump thought was exactly the right thing to do. The National Security Council’s top Asia staffer, Matthew Pottinger, told me that Trump said something very similar during his November 2017 trip to China”.²²

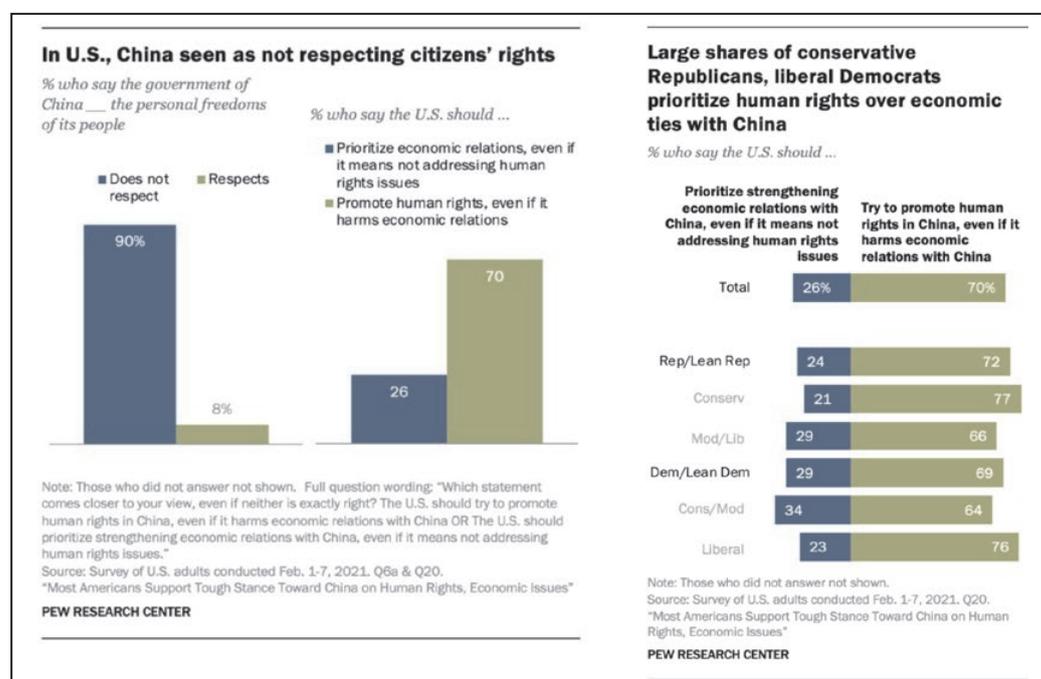
Bolton’s revelations came in mid-2020, by when Democrats in the US Congress had already clamoured for greater Congressional intervention in the US’s policy towards Chinese human rights violations. With Democrats in control of the US House of Representatives and the COVID-19 pandemic only further aligning Congressional Republican and Democrat appetite for adopting a hardline on China, the US Congress focused on China’s suppression of Uyghur Muslims in Xinjiang and minorities in Tibet, and the curtailment of freedoms in Hong Kong. The US Congress complemented the Trump administration’s confrontational policy by informing its stance on China’s human rights record (see Table 1). Ahead of the ‘Phase One’ deal, realpolitik seemingly dictated the Trump administration’s policy of keeping scrutiny of Beijing’s human rights record to a minimum. However, amid reports of China slow-walking its side of the bargain on the ‘Phase One’ deal, the fast-brewing anti-China sentiments due to the pandemic, and continued Chinese transgressions towards its neighbours (even as they dealt with the repercussions of the pandemic), the Trump administration followed the US Congress’s lead. As a result, in 2020, a series of actions were enacted by the Trump administration at the initiative of the US Congress, including the imposition of broad and targeted economic sanctions against senior CCP officials. In January 2021, the Trump administration also offered the strongest denunciation by any government of China’s actions against Uyghur Muslims. The State Department declared Beijing to be committing a “genocide” through its repressive policies against Uyghurs and other ethnic minorities.²³

Many bills and resolutions against China have been passed or remain to be brought forward from the 116th Congress to the current 117th Congress, some of which include action against Beijing’s ‘whole of society’ effort to engage in international espionage and penalising Chinese companies for their less-than-satisfactory compliance with US auditing rules. Additional actions also include linking economic prospects with US apprehensions over Chinese human rights violations. For instance, the State Department’s 2020 Xinjiang Supply Chain Business Advisory²⁴ highlighted the risks for US businesses with supply chain

From Trump to Biden: Continued Scrutiny of China's Human Rights Record

links to entities complicit in forced labour and other human rights abuses in Xinjiang. The advisory also categorically recognised Chinese production processes as being complicit in forced labour, announced a detention order on cotton products produced by the Xinjiang Production and Construction Corps, and blacklisted several other Chinese manufacturers.²⁵

Figure 1 Overview of American attitudes towards China



Source: Pew Research Center²⁶

Going forward, given the converging sentiments between Republicans and Democrats on calling out China for its human rights abuses, continued US scrutiny is extremely likely. The public echoes similar sentiments—90 percent of American adults across all age groups say the Chinese government does not respect the personal freedoms of its people, and 70 percent say addressing human rights issues is necessary, even if it were to potentially harm economic relations with China.²⁷

From Trump to Biden: Continued Scrutiny of China's Human Rights Record

During the 2020 presidential campaign, Joe Biden was fairly vocal on China's human rights abuses, especially against Uyghur Muslims, saying "Human rights must be at the core—not periphery—of our engagement in the world".²⁸ In his first phone call with Xi since assuming the US presidency, Biden reportedly reiterated this stance and discussed China's actions in Hong Kong, following which he said, "There will be repercussions for China, and he (Xi) knows that."²⁹ Biden's Secretary of State Antony Blinken has also signalled continuity by reaffirming the events in Xinjiang constitute a "genocide" and has committed to work towards banning "exports to China that its authoritarian government can use in its repression of the Uyghurs and banning imports from China that are made with forced labor from the Uyghur population".³⁰

“The Biden administration will likely heighten its scrutiny of China's human rights record — a sentiment that is largely echoed by the American public.”

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

Under Trump, US-India strategic ties peaked. His administration prioritised convergence-based institutionalisation to insulate strategic ties from trade tensions; India was recognised as a central player in the Indo-Pacific strategy through the renaming of the US Pacific Command; the US's conception of the Indo-Pacific was aligned with India's focus on the Northwest Indian Ocean and East Africa regions; operational dependence on Pakistan in the US's security calculus in South Asia was reduced; and US defence trade with India was elevated under the 'Buy American' arms export policy.³¹

This multi-pronged approach to bolster strategic ties reduced Trump's focus on the much-touted foundational commitment to democratic values in US-India relations, even though Obama (during his final visit to India) had cautioned against majoritarianism threatening to erode India's constitutionalist ethos that guarantees religious freedom for all.³² Moreover, the Trump administration actualised its policy of "divorcing" values in the US's relations with India. This was underpinned with the seemingly strong chemistry between the two nations' top political leadership, and both sides often steering clear of engaging in political commentary of each other's "internal matters".

The latter was particularly evident during Trump's visit to New Delhi in February 2020 amid violent protests and communal clashes in the capital over the contentious Citizenship Amendment Act (CAA). During a press conference, Trump acknowledged that he spoke with Indian Prime Minister Narendra Modi "about religious freedom" but stopped short of commenting on the violent clashes in the capital.³³ When asked for his position on the CAA, Trump ducked: "I don't want to discuss that. I want to leave that up to India."³⁴ Such instances of the Trump administration's seeming ambivalence towards India's purported "democratic backslide"³⁵ was met with criticism back home. On the communal clashes in New Delhi, Senator Bernie Sanders tweeted, "Over 200 million Muslims call India home. Widespread anti-Muslim mob violence has killed at least 27 and injured many more. Trump responds by saying, 'That's up to India'. This is a failure of leadership on human rights."³⁶ The clashes in New Delhi also invited a bipartisan rebuke, with co-chairs of the Senate India Caucus saying in a joint statement: "We are alarmed by the recent violence in New Delhi. We continue to support an open dialogue on issues of significant concern in order to advance our vital long-term relationship."³⁷

The Trump administration also witnessed the momentary buckling of US bipartisanship on India. Consider the US response to the Modi government's abrogation of Article 370 in Kashmir. The Trump administration maintained the longstanding US policy of recognising India's stance against internationalising the Kashmir matter.³⁸ Moreover, to dampen the fallout over Trump's earlier

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

offer to mediate between India and Pakistan over Kashmir, his administration exercised almost no scrutiny over the communications blockade and detentions that followed the passage of the Jammu and Kashmir Reorganisation Act in August 2019. This spurred Democrats to clamour for greater Congressional intervention in the US policy on India's human rights record, on the back of broader shifts in the American political landscape (earlier that year, the 116th US Congress was sworn in with the Democrats taking control of the US House of Representatives). The Democrats focused on underscoring an American foreign policy centred on values³⁹ instead of Trump's 'America First' approach (under which the US jettisoned stewardship on human rights causes) since no other major foreign policy realm could be influenced substantially with the Senate still under Republican control even after the 'blue wave' of the 2018 midterms. The focus on human rights also stemmed from the rising political currency of "progressives" in the Democratic Party who decried the use of advocacy on human rights as a foreign policy tool instead of a guiding principle for ties with friends and foes alike.⁴⁰ As a result, Congressional Democrats' increased scrutiny into the human rights record of US allies like Saudi Arabia (over the Jamal Khashoggi incident⁴¹) and Israel (over the Benjamin Netanyahu dispensation's violations of Palestinian human rights⁴²). India also faced increased scrutiny over its actions in Kashmir, despite its increasing relevance in the US's Indo-Pacific calculus.

Following the abrogation of Article 370, the Democrat-led House organised two hearings—one by the House Foreign Affairs Committee (HFAC) on 22 October 2019 (meant to cover several human rights issues in South Asia but focused mainly on Kashmir), and the other by the Tom Lantos Human Rights Commission on 14 November 2019.⁴³ The hearings also assumed a partisan fervour, with Democrats deeming the matter to be an instance of Trump taking "US foreign policy away from a focus on human rights, away from a focus on democratic principles, away from a focus on American values."⁴⁴ In contrast, Republicans sought to make a case against the traditionally "high standards" placed on human rights,⁴⁵ in line with the Trump administration's focus on "divorcing" values and foreign policy.⁴⁶ Some progressives on the Left even adopted a simplistic understanding of the issue, to ridicule the untoward role of cross-border militants in fomenting tensions in Kashmir.⁴⁷ This was followed by the tabling of two resolutions on the matter, which were critical of the Trump administration's handling of the issue and the Modi government's actions in Kashmir (see Table 2).

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

Table 2
Comparison of tabled resolutions on India's abrogation of Article 370 in Kashmir

House Resolution	H.Res.724	H.Res.745
Title	Condemning the human rights violations taking place in Jammu and Kashmir and supporting Kashmiri self-determination	Urging the Republic of India to end the restrictions on communications and mass detentions in Jammu and Kashmir as swiftly as possible and preserve religious freedom for all residents
Sponsor	Representative Rashida Tlaib	Representative Pramila Jayapal
Current state	21/11/2019 - Introduced in House 21/11/2019 - Referred to the House Committee on Foreign Affairs 06/12/2019 - Referred to the Subcommittee on Asia, the Pacific and Nonproliferation	06/12/2019 - Introduced in House 06/12/2019 - Referred to the House Committee on Foreign Affairs
Bipartisan support	-	Cosponsor: Rep. Steve Watkins (R-KS-2)
Stance on the legality of India's abrogation of Article 370	Deems the Government of India to have "unilaterally changed the status of Jammu and Kashmir without a direct consultation or the consent of the Kashmiri people"	-

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

Key call to action	Calls on Congress to support Kashmiri “self-determination” via affirming that “any changes to the status of Jammu and Kashmir must be made with the direct consultation of the Kashmiri people, who must play a central role in the determination of their future”	Urges Government of India to “ensure that any actions taken in pursuit of legitimate security priorities respect the human rights of all people and adhere to international human rights law” and calls to “lift the remaining restrictions on communication and to restore internet access across all of Jammu and Kashmir as swiftly as possible”
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Source: Observer Research Foundation⁴⁸

The resolution by Rashida Tlaib (H.Res 724) went beyond US foreign policy precedents of encouraging dialogue but not taking sides by always insisting the “pace, scope, and character” of any negotiation to be determined bilaterally between India and Pakistan.⁴⁹ Tlaib’s resolution notably called on the US to support “Kashmiri self-determination”.⁵⁰ In contrast, the resolution tabled by Pramila Jayapal (H.Res 745) did not comment on the legality of the Modi government’s abrogation of Article 370, and even invoked the February 2019 Pulwama attacks to note “the dire security challenges faced by the Government and India in Jammu and Kashmir and continuing threat of state-supported cross-border terrorism.”⁵¹ However, it criticised India for detentions, forbidding the travel of journalists, the derailment of health services for civilians, and called for lifting of “remaining restrictions on communication and to restore internet access across all of Jammu and Kashmir as swiftly as possible”.⁵²

Although neither resolution passed, the resurgent attention to India’s human rights record, particularly over Kashmir, spelt caution for New Delhi. Several other resolutions on Kashmir have been introduced in the US Congress in the post-Cold War era (see Table 3). While most of these never came up for a vote or gathered steam in terms of spurring broad bipartisan support, they give a sense of the evolution of the US Congress’s position on the issue over the decades.

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

Table 3
Major Congressional resolutions on Kashmir in the post-Cold War era

Sr. no	Year introduced (+ year reintroduced)	House/Senate Resolution	Key call to action
1	1991 (+ 1993)	H.Res.87 - Freedom for Kashmir Resolution	Expressed the sense of the Senate against “the excessive use of force and violence by the security forces of the Government of India” and reaffirmed “the question of the future status of the state must be decided through a free and impartial plebiscite”
2	1991	S.Res.91 - A resolution expressing the sense of the Senate regarding human rights violations against the people of Kashmir, and calling for direct negotiations among Pakistan, India and Kashmir	Expressed the sense of the Senate against “the use of force against civilians in Kashmir”
3	1991	H.R.2510 - To deny nondiscriminatory (most-favored-nation) trade treatment to the products of India	Called for conditioning the “most-favored-nation treatment for products from India” on “the human rights situation” in Kashmir
4	1992 (+ 1993)	H.R.5234 - Justice in India Act	Called for terminating “all development assistance for India under the Foreign Assistance Act of 1961” in view of “certain special and preventive detention laws” in Kashmir

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

5	1994	H.Res.477 - To declare that July 12, 1994, be recognized as "Kashmir World Action Day"	Called on "both India and Pakistan to respond to the call for self-determination of the people of Kashmir and to reactivate the role of the United Nations in this process which should include full participation of the Kashmiri people"
6	1994	S.Res.251 - A resolution expressing the sense of the Senate regarding human rights violations in Kashmir and calling for a negotiated settlement to the Kashmir conflict, including India, Pakistan and the people of Kashmir	Called on the executive branch to "work with the United Nations and the international community to facilitate a peaceful negotiation for the final settlement of the Kashmir crisis"
7	1995	H.Res.123 - Relating to the conflict in Kashmir	Called on the executive branch to "work with the United Nations and the international community to facilitate a peaceful negotiation for the final settlement of the Kashmir crisis"
8	1995 (+ 1997)	H.R.1425 - Human Rights in India Act	Called for prohibiting "development assistance for India" unless India eliminates "the practice of torture by the military and police forces" in Kashmir, and "permits human rights organizations and television, film, and print media full access"

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

9	1995	S.Res.138 - A resolution relating to the conflict in Kashmir	Urged “both Governments to enter into negotiations with legitimate representatives of the people of Jammu and Kashmir to resolve the conflict peacefully” and called on the executive to “work to facilitate negotiations for a peaceful settlement of the conflict in Kashmir”
10	1998	S.Res.252 - A resolution expressing the sense of the Senate regarding a resolution to the Kashmir dispute	Called on the U.S. Permanent Representative to the UN to “propose to the UN Security Council a meeting with UN representatives from India and Pakistan to discuss the security situation in South Asia” <i>and</i> “raise the issue of the Jammu and Kashmir dispute with the Security Council and promote the establishment of an UN-sponsored mediator for the conflict”
11	1999	H.Res.212 - Expressing hope for a peaceful resolution to the situation in Kashmir	Expressed the sense of the House that “all intruding forces from across the Line of Control should withdraw from the Indian side” and “the letter and spirit of the Lahore Declaration should be respected by all parties, namely that both governments shall refrain from intervention and interference in each other's internal affairs and reaffirm their condemnation of terrorism and their determination to combat this menace.”

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

12	1999	H.Res.227 - Expressing the sense of the Congress in opposition to the Government of Pakistan's support for armed incursion into Jammu and Kashmir, India	Expressed the sense of the House that it should be US policy to “oppose the Government of Pakistan's support for armed incursion into Jammu and Kashmir, India; support the immediate withdrawal of forces supported by Pakistan from the Indian side of the Line of Control, urge the reestablishment of and future respect for the Line of Control, and encourage all sides to end the fighting and exercise restraint; and encourage both India and Pakistan to adhere to the principles of the Lahore Declaration.”
13	2004 (+ 2005)	H.Res.839 - Urging a peaceful resolution of the conflict over Kashmir, and for other purposes.	Urged “all parties involved to peacefully resolve the Kashmir conflict”
14	2006	H.Res.911 - Condemning in the strongest possible terms the July 11, 2006, terrorist attacks in India and expressing condolences to the families of the victims and sympathy to the people of India	Condemned in “the strongest possible terms the July 11, 2006, terrorist attacks in Mumbai and Srinagar”

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

15	2006 (+ 2007)	H.Con.Res.388 - Recognizing that the plight of Kashmiri Pandits has been an ongoing concern since 1989 and that their physical, political, and economic security should be safeguarded by the Government of India and the state government of Jammu and Kashmir	Condemned the “human rights violations committed against Kashmiri Pandits” <i>and</i> urged “the government of the Islamic Republic of Pakistan to end cross-border terrorism by dismantling the terrorist infrastructure on territory under its control, so that all Kashmiris can live, work, and worship in peace”
16	2010 (+ 2011)	H.Res.1601 - Recognizing that the religious freedom and human rights violations of Kashmiri Pandits has been ongoing since 1989	Condemned the “extremist violence, lack of religious freedom, and human rights violations committed against Kashmiri Pandits”
17	2012	H.R.5734 - Pakistan Terrorism Accountability Act of 2012	Urged a shift in US policy to “limit U.S. foreign assistance to Pakistan if Pakistan's military or intelligence services continue to support or provide assistance to organizations that target U.S. citizens” and recognised its use of “militant Islamic networks... to secure its strategic position and expand its sphere of influence, not only in Afghanistan, but also in Kashmir and against India”

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

18	2019	H.Res.408 - Condemning the terrorist attack in India that tragically killed 41 Indian Central Reserve Police	Condemned the terrorist attack in Pulwama, Jammu and Kashmir that killed 41 police personnel. The resolution reaffirmed “solidarity with the Indian people,” and reiterated “support for the strong U.S.-India strategic partnership”
19	2019	H.Res.724 - Condemning the human rights violations taking place in Jammu and Kashmir and supporting Kashmiri self-determination	Urged support for Kashmiri “self-determination” by affirming that “any changes to the status of Jammu and Kashmir must be made with the direct consultation of the Kashmiri people, who must play a central role in the determination of their future”
20	2019	H.Res.745 - Urging the Republic of India to end the restrictions on communications and mass detentions in Jammu and Kashmir as swiftly as possible and preserve religious freedom for all residents.	Urged India to “ensure that any actions taken in pursuit of legitimate security priorities respect the human rights of all people and adhere to international human rights law” <i>and</i> called to “lift the remaining restrictions on communication and to restore internet access across all of Jammu and Kashmir as swiftly as possible”

Source: Compiled from open records available at the Library of Congress⁵³

Over the past 30 years, there has been a gradual tempering in the US Congress’s position on Kashmir, in line with India’s stance on the issue. In the early post-Cold War years, Congressional positions on the matter were highly critical—with resolutions that called for “Kashmiri freedom”, negotiations “between Pakistan, India *and* Kashmir”, and US and/or UN mediation. Subsequently, Congressional positions on the matter tempered with hopes for a “peaceful resolution”; the unequivocal opposition to Pakistan’s “support for armed incursion”; an expression of solidarity with India over terror attacks; and even some condemnations of the “extremist violence, lack of religious freedom, and human rights violations committed against Kashmiri Pandits.” This transition

Capitol Hill's Advocacy on US-India Ties: Devolution of Three Decades Of Progress

in the US Congress's position on Kashmir did not occur overnight, but over decades as India and the US normalised relations, overcame the hurdle posed by India's nuclear programme, recognised convergences on security matters, harnessed the potential of people-to-people and business linkages, and developed a multidimensional strategic partnership in the twenty-first century.

This was also the result of a gradual evolution in the views of some US Congressmen who were noted critics of India. Dana Rohrabacher, for instance,⁵⁴ had notably tabled a resolution criticising the “use of excessive force and terrorism by Indian paramilitary forces” in Kashmir and had even urged the Clinton administration to invite “the United Nations and the international community to facilitate a peaceful negotiation for a settlement of the Kashmir conflict” (see entry no. 7 in Table 3). Rohrabacher had also been a critic of the US's courtship of India with the civil nuclear agreement.⁵⁵ Subsequently, however, Rohrabacher adopted a nuanced understanding of the Kashmir conflict, introducing a resolution that recognised the untoward role played by Pakistan's military and intelligence services in fomenting tensions (see entry no. 17 in Table 3).

Although the resolutions by Jayapal and Tlaib on Kashmir did not pass, in this broader context, their mere tabling signified the devolution of the considerable progress made by India on managing US apprehensions on Kashmir and making it amenable to its position against external interference or mediation.

“ As India-US ties normalised over the years, the US Congress has tempered its position on Kashmir, and today toes New Delhi's line.”

Given the US's resurgent focus on the human rights situation in India and China, New Delhi should adopt a two-pronged approach on partnering with the US and cultivating its own position on Chinese human rights violations. First, it must recognise the US Congress's contemporary role as the primary shaper of American human rights policy and address US apprehensions through rigorous engagement with varied Congressional stakeholders. Second, India must gradually emulate the US's approach towards Chinese human rights violations by conditioning bilateral economic ties as per Beijing's record.

Formulate comprehensive strategy to engage with 117th US Congress

The US's focus on India's human rights record could increase during the Biden presidency since the Democrats now also control the US Senate, albeit narrowly and with Vice President Kamala Harris as the tie breaker. This was apparent ahead of US Secretary of Defense Lloyd Austin's visit to India, with Robert Menendez (chairman of the Senate Foreign Relations Committee) issuing a public letter to urge him to raise the "deteriorating situation of democracy" with Indian officials.⁵⁶

Furthermore, what started as a Democrat-led corrective measure under Trump seems to have gathered a bipartisan fervour. In August 2020, Elliot Engel (Democratic chair of the HFAC) and Michael McCaul (Republican ranking member of the HFAC) penned a joint letter to Indian External Affairs Minister S. Jaishankar to mark the one-year anniversary of India's abrogation of Article 370. They said, "It is because of our support for the bilateral relationship that we note with concern that conditions in Jammu and Kashmir have not normalized one year after India's repeal of Article 370 and the establishment of Jammu and Kashmir as a Union Territory."⁵⁷

“India must engage with the US Congress more closely to address concerns over its human rights record.”

Going forward, it will be prudent for India to re-strategise its outreach to the 117th US Congress. With Democrats in control of both chambers of the Congress, the rising currency of progressives in the Democratic Party, and Republicans seemingly returning to the pre-Trump standard on emphasising human rights, New Delhi must engage with a broad spectrum of American

legislators, particularly beyond the India caucuses in the Senate and the House of Representatives. Additionally, though the main bone of contention—the communication blockade—appears resolved following the restoration of internet services in Kashmir in February 2021,⁵⁸ engagement with US legislators is advisable given the US Congress’s longstanding focus on Kashmir (see Table 3).

Proactive policy with Western world on China’s human rights violations

The US scrutiny of China’s human rights record is certain to increase in the months ahead given the consolidation of political and citizen support to confront China on multiple fronts. Moreover, under its push for multilateralism, the Biden administration will urge US allies and partner nations to become increasingly vocal about China’s record. According to a survey, 80.9 percent of American thought leaders, 44.7 percent of the American public, and 73.6 percent of US allies and partners agree on increased collaboration to deal with China and its hegemonic behaviour.⁵⁹ Hence, while New Delhi should adopt a more proactive policy of engagement to shape the US discourse on human rights in India, it should also seek closer alignment with the US approach towards China on its adverse record. While such an alignment may not include India emulating the US position of sanctioning Chinese individuals and entities, New Delhi can incrementally adopt the approach of conditioning economic ties over its apprehensions on Beijing’s civil liberties record. During the recent India-China standoff along the Line of Actual Control, New Delhi did invoke the economic lever (by banning Chinese apps and holding off on Chinese investments) to respond to Chinese aggression. Similarly, India can emulate the US approach of decrying Chinese imports made with forced labour.

Conclusion

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The US is determined to return to the UNCHR (after leaving the organisation in 2018), and the Biden administration is expected to work harder to reclaim the country's mantle as the world's vanguard of human rights. In the context of rising US bipartisanship on confronting China, the Biden administration will likely not need Congressional prodding, as Trump did, on addressing China's human rights violations. However, one point of continuity with Trump is the Biden administration's seeming intent to gradually raise the spectre of interlinking bilateral economic prospects with US scrutiny of China's human rights record.

For India, the US's renewed focus on human rights in Kashmir could be a cause for concern. However, in the broader context of post-Cold War Congressional positions on the matter, the recent uptick in US attention is relatively less critical or interventionist. Yet at the same time, despite a sense of normalcy returning to Kashmir, increased US scrutiny may not dissipate owing to other concerns—including the CAA and the ongoing farmers' protests—over India's overall “democratic backslide”. [ORF](#)

“The US is determined to reclaim its position as global vanguard of human rights, which will almost certainly result in increased scrutiny of India's and China's rights records.”

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Endnotes



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