



# NATIONAL SECURITY MANAGEMENT IN FEDERAL STRUCTURES:

PERSPECTIVES FROM INDIA AND THE UNITED STATES



CPPR-Centre for Strategic Studies

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CPPR-Centre for Strategic Studies  
Kochi, India

## The CPPR-Centre for Strategic Studies

**T**he Centre for Public Policy Research (CPPR), an independent, non-profit think-tank established in 2004, is working towards a socially just and democratic secular society. Since its inception, CPPR has been in the forefront of collecting and analyzing ground data from regional and global perspectives reflecting socio-cultural milieus rich in diversity and pluralism.

In keeping with these traditions, CPPR launched its focus study centre, the CPPR-Centre for Strategic Studies in August 2013. The CSS is an interdisciplinary academic study centre focusing on strategic positioning and policy making in the South Asian region. Special attention is given to the relationship between politics, geography and natural resources, economics, military power, and the role of intelligence, diplomacy, international cooperation for security and defence.

Important fields of research include energy and maritime security, strategy, terrorism, inter-state and inter-country cooperation and extremism. Developing resources and building expertise on matters relating to national security, Centre-State relations and responsibilities, surveillance and security systems are also key areas of focus.

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## Abbreviations

AFSPA	Armed Forces Special Powers Act
AIADMK	All India Anna Dravida Munnetra Kazhagam
AP	Andhra Pradesh
ARC	Administrative Reforms Commission
ATS	Anti-Terrorism Squad
AQIM	Al-Qaeda in the Islamic Maghreb
BOO	Build, Own and Operate
BOT	Build, Operate and Transfer
CARE	Care, Aid and Relief for Elders
CBI	Central Bureau of Investigation
CHOGM	Commonwealth Heads of Government Meeting
CIA	Central Intelligence Agency
CTC	Counter-Terrorism Centre
CISF	Central Industrial Security Force
CooP	Crafts of Opportunity
CPI	Communist Party of India
CPPR	Centre for Public Policy Research
CrPC	Criminal Procedure Code
DGP	Director General of Police
DHS	Department of Homeland Security
DIB	Director of the Intelligence Bureau
DMK	Dravida Munnetra Kazhagam
EEZ	Exclusive Economic Zone
ELINT	Electronic Intelligence
FARC	Revolutionary Armed Forces of Colombia
FDI	Foreign Direct Investment
FEMA	Federal Emergency Management Agency
GoM	Group of Ministers
GWOT	Global War on Terrorism
HUMINT	Human Intelligence
IDSA	Institute for Defence Studies and Analyses
IPC	Indian Penal Code
ISI	Inter-Services Intelligence
IWG	International Working Group
IPKF	Indian Peace Keeping Force
JMS	Janamaithri Suraksha Scheme ( People Friendly Security Scheme)
JTAC	Joint Terrorism Analysis Centre
KSCFFD	Kerala State Co-operative Federation for Fisheries Development
LeT	Lashkar-e-Tayyiba
LEM	Left Extremist Movement
LIMO	Low Intensity Maritime Operation
LYF	Liberal Youth Forum

## Abbreviations


MAC	Multi Agency Centre
MEA	Ministry of External Affairs
MHA	Ministry of Home Affairs
MOS	Migrants from Other States
NCRL	National Commission of Rural Labour
NCTC	National Counter Terrorism Centre
NDA	National Democratic Alliance
NGO	Non-Governmental Organisations
NIA	National Investigation Agency
NMDC	National Mineral Development Corporation
NMSP-WOT	National Military Strategic Plan for the War on Terrorism
NPGP	National Preparedness Grant Program
NSA	National Security Advisor
NSAB	National Security Advisory Board
NSC	National Security Council
NSCS	National Security Council Secretariat
NSG	National Security Guard
NSSO	National Sample Survey Office
PMF	Private Military Firm
PUCL	Peoples Union for Civil Liberties
PWG	Peoples War Group
RAW	Research and Analysis Wing
SIGINT	Signals Intelligence
SMAC	Subsidiary Multi-Agency Centres
SPG	Strategic Policy Group
S3I&M	Stealth, Surprise, Speed, Initiative and Maneuver
UAE	United Arab Emirates
UNCLOS	United Nations Convention on the Law of the Seas
UNHRC	United Nations Human Rights Council
UPA	United Progressive Alliance
VNSA	Violent Non-State Actor

## Foreword

**B**eliefs about security are based on threat perceptions in the environment. Assessing security is a cognitive process based on the repertoire of beliefs that make up a person's subjective view of reality. The issue of security can therefore be considered in political, societal, and economic terms. Changing security beliefs are based on global trajectories and the realignment of transnational environments.

For the last two decades, the international community has been concerned by the emergence of non-state actors waging war against the state in ways hitherto unknown in conventional warfare. Widespread transnational terrorism and other anti-national movements have spurred the need to reconcile national security concepts and perspectives, in order to enable domestic development, growth and harmony.

India has been a victim of various kinds of security threats, both internal and external. The United States of America has also faced major security threats, which reached new proportions with the terrorist attacks of 9/11. In strategic terms, international cooperation is vital to fight terrorism. India and the USA, being among the world's largest democracies with strong federal structures, have great potential to work together and collaborate effectively to combat such threats.

With these considerations in mind, the CPPR-Centre for Strategic Studies decided to conduct its first international conference on “National Security Management in Federal Structures: Perspectives from India and the United States.” The focus was on the federal framework of the two countries and the best way forward to tackle security issues in the emerging political and economic scenarios at the federal level. The themes and deliberations of this conference highlighted the significance of national security in federal structures. The participants examined current Indo-US policies and threw light on new security dimensions, both from an academic as well as a practitioner's perspective. 

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## Introductory Remarks

In his inaugural address on March 4, 1801, US President Thomas Jefferson pledged the fledgling democracy to, “peace, commerce, and honest friendship with all nations -- entangling alliances with none.” His succinct foreign policy statement seems to gain new relevance in the context of defining and safeguarding 'national security' in this flat, globalized world of the 21st century.


In the 20th century, two disastrous world wars were followed by wars for fuel and ethnic supremacy, against the backdrop of a bipolar thrust for ideological dominance. The contours of these conflicts were shaped by rival Cold War alliances and impacted by developments in technology, with enhanced tactics and strategies for control of the air, land and sea. The collapse of the Berlin Wall ushered in a new era in geopolitics. Institutional frameworks such as the World Trade Organization (WTO) opened another chapter in global interdependence, which obliquely gave rise to fresh security challenges. Global financing, technology platforms and asymmetric warfare facilitated non-state actors to spread their tentacles across the globe. The ensuing risk to the security of individual citizens remains a major concern in current security parleys. While 9/11 redefined the concept of security, global recession has posed critical questions on the capricious nature of financial and energy security and the resulting challenges for the international community.

In the Indian context, Non-alignment, as Prime Minister Jawaharlal Nehru himself explained to the Parliament, was a strategy based on considerations of India's national interest, “to derive out of the world balance of forces, the maximum cover for India's security.” In the 21st century, with the liberalization of the Indian economy and opening of markets, the nation has been trying to revive its superpower aspirations amidst mounting socio-economic disarray. This has been triggered by boiling resentment between rich and poor, an ethnic-conflict situation in which the tribes, non-tribes and even state authorities feel too insecure to administer effectively, thus heightening national insecurity. Rapid urbanization has turned major cities into growth engines, prompting migration and labor unrest while mega-cities and states are competing with their counterparts to attract foreign investors. The emergence of regional parties and their insistence on a greater voice in New Delhi repudiates the caution of the conservatives as well as the wisdom of the pundits. For better or for worse, the interest of the states is increasingly influencing foreign policy today. India's maritime boundaries, with its rich historical narrative in commerce and trade, are finally gaining prominence in military and political parleys. With a population characterized by extraordinary ethnic, cultural, religious and linguistic diversity, the concept of an Indian secular national identity is under unprecedented threat. Parochialism and factionalism have reached alarming levels and political opportunism is creating a recipe for social unrest and disintegration.

## Introductory Remarks

An agenda must be set to quantify systemic risk and to provide empirical constructs to understand the linkages between financial markets and national security. The Centre for Public Policy Research (CPPR) is working towards a socially just and democratic secular society. Since its inception, CPPR has been in the forefront of collecting and analyzing the ground data from regional and global perspectives reflecting socio-cultural milieus rich in diversity and pluralism. In keeping with such traditions, the Centre launched its focus study centre, the CPPR-Centre for Strategic Studies in August 2013. The Centre is proud to have hosted this conference just a few months after that launch with themes that are well set in local, regional and global contexts. The two-day deliberations examined federal institutions and structures and studied a range of socio-economic issues: inclusive development, regional security dynamics and police reforms among others.

Recent global and national developments either indirectly influenced or directly featured in the conference discussions: the P5+1 agreement with Iran and its regional impact, the Commonwealth Heads of Government Meeting (CHOGM) in Colombo and the impact of Tamil Nadu politics on Delhi's stand, developing and acquiring shale gas assets and its impact on Indian energy security and the concerns of Keralites in the Middle East, among others.

Benjamin Franklin once remarked, "Distrust and caution are the parents of security". The deliberations of this two-day conference certainly underscored the truth of this statement, while scrutinizing the underpinnings of national security in all its dimensions. 

## Keynote Address

India has been at the receiving end of attacks by organised terror groups and fundamentalist organisations from the 1980s onwards. However, increased public awareness about terrorism and its potential impact on the socio-economic fabric of the nation has dawned slowly. The early 1980s witnessed terrorist attacks in support of specific causes related to Khalistan/Sikh fundamentalist elements and organisations in the north-east, but towards the late 1980s, terrorist attacks commenced in Jammu and Kashmir as well. The first major co-ordinated terrorist attack on an Indian city was carried out in Mumbai in February 1993, which took the form of a serial blasts using electronically operated devices that resulted in death and mutilation on a large scale. Mumbai was also the venue of serial blasts in subsequent years. The last major terrorist incident in Mumbai was the sea-borne attack on November 26<sup>th</sup>, 2008, during which iconic structures such as the Taj Mahal Hotel and prominent establishments in and around South Mumbai were targeted causing death, mutilation and destruction on a large scale.


The United States of America faced one major concerted terrorist attack on September 11, 2001. The damage to life and property caused by well-planned attacks on the World Trade Centre and the Pentagon shocked not only the US establishment but people all over the world. The manner in which the United States reacted to the attack internally, by streamlining and tightening its systems, was appreciated by many countries. However, India, despite being targeted by many such attacks before and after 9/11 incident, has been unable to respond in a similar manner, and has failed to bring about any internal structural changes to curb the menace of terrorism.

When the 9/11 attacks happened, Mr. George W. Bush had been the US President for less than a year and it was no secret that he was not as popular nor as commanding as many of his predecessors. Yet, when the crisis developed, the entire nation supported and rallied around him. This helped the President and the US administration to implement sweeping institutional changes which were imperative to tackle the critical situation in which the nation found itself. These included the formation of the all-encompassing Department of Homeland Security which brought under one huge umbrella the various state organs connected with internal security. The Customs Department, which traditionally handles the import and export of goods and cargo, was functioning under the Department of Finance before 9/11. However as goods form an important conduit for movement of terror-related material into and outside the country, the Customs Department was detached from the Finance Ministry and merged with Immigration to form the Department of Customs and Border Protection (CBP) which presently monitors the movement of goods and people into and outside the United States. This has resulted in better co-ordination between monitoring the movement of goods and people in and out of the country. The United States also took the lead in a Container Security

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Initiative (CSI) in which CBP officers posted at ports from which cargo is shipped to the United States ensured that no such cargo could be loaded onto vessels, unless vetted by them. They also undertook the scanning of containers arriving in the United States and made it mandatory for all countries to file an Advance Cargo Manifest before loading any cargo bound for the United States onto any vessel. Co-operation was also sought from the private sector, trade and other stake holders to promote the integrity of the supply chain through the Customs Trade Partnership Against Terrorism (CTPAT).

In India, despite many terrorist attacks, there has not been any structural changes in the functioning of the Government agencies working in the field of internal security. The general reluctance to share intelligence and information has resulted in lack of co-ordination between various intelligence agencies. The National Investigative Agency (NIA) was formed in the aftermath of the 26/11 incident, but was opposed by many State Governments which feared that this new agency would curtail the powers traditionally enjoyed by the states in the maintenance of law and order and the conduct of investigations. The Union Government has not been able to assuage the concerns of the State Governments in this regard nor were they able to project the NIA as being different from other intelligence agencies and investigative bodies working under the Union Government. In short, the NIA has been relegated to becoming just one more agency entrusted with safeguarding internal security.

There are several avenues for India and the United States to co-operate in tackling terrorism and fundamentalism. Besides enhancing co-operation and co-ordination at the cutting edge level to improve mutual trust and confidence, there is a crying need to share their best practices with each other. This would be mutually beneficial as the core problem (threat from fundamentalist elements) is the same for both nations. Both India and the United States are vibrant democracies in which the state enjoys considerable powers under the Constitution. Hence the sharing of experiences, experiments and endeavours in tackling a common menace that threatens the essential fabric of these states is bound to benefit both nations and their peoples. 

## The National Counter Terrorism Centre and the Critical Response of States in the Indian Federal System

**F**ederalism is a novel concept ensuring and maximizing diversity, accommodation, participation and democracy at multiple levels. According to John Kincaid and David Elezar, federal states provide the fruits of shared government. Federalism is also an attempt to provide maximum services to the people of a country from a variety of governments. Historically, the federal system enabled division of powers and institutionalized national and state governments. A.V. Dicey describes the federal system as a political contrivance in which several governments are interconnected. It has also been likened to an arch dam with both centripetal and centrifugal forces operating on a rational basis. Therefore, the pressures of devolution, de-concentration and de-centralization of powers are manifested in federal states at varying levels.

Conventionally, most confederal states represent a loose alliance of states with a weak centre, although in an ideal set-up, there should be balance of powers and cooperation between federal and provincial governments. However, in practice, this may not be the case. As a matter of fact, the specific characteristics of federal systems vary from country to country, depending on the historical, political and socio-cultural contexts in which they were conceived and nurtured. For instance, after the War of Independence, prior to independence, the United States was a confederation of thirteen independent states. Since 1789, the states have dominated the American Union for about 75 years, although the Federalists won the debate in the Constituent Assembly for creating a balanced federal state. Since the Civil War, the United States has undergone a major transformation in federal experiments.

In contrast to the US experience, after the Partition of India, nobody in the Indian Constituent Assembly talked seriously about a Confederation. A strong Centre with substantial powers to the Union Parliament, in addition to residuary powers and early access to the Concurrent List made the Indian federal set up quasi-federal in nature, with some unitary features. Perhaps the Australian and Canadian systems come closer to the parliamentary-federal set up of the Indian system. The Presidential system with the classical influence of “state dominated or created federal set up” made the American system unique among modern federal states. The weak party system, historical background of the states, capitalism, liberalism, pluralism and multiculturalism made the American states more competitive, leaving limited space for the national government. The federal-state competition continued in areas such as federal grants, health and social security policies. However, September 11, 2001 made a world of difference in the quality and content of US federalism. This difference is especially evident in the matter of internal security. The launching of the Department of Homeland Security became a watershed in the trajectory of American federalism.

Notwithstanding its huge population and despite its deeply entrenched multi-cultural setting tradition and social diversity, India had to move in a centripetal direction for several reasons. Economic planning, national integration efforts, All India Services, constitutional division of powers between Union and States, position of the Upper House (Rajya Sabha) in law making, dominance of the Congress party at the national and state level for the first three decades since independence were aspects that facilitated the predominance of the central government in administrative and

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political matters. However, it had its side effects in the form of rising regional and sub-regional aspirations and the uneven march of development in the country. The rise of coalition politics, especially since 1989, weakened the position of the national government. Regional leaders began to dictate national policies, mostly favoring economic development of their own regions. Political dimensions changed in bodies like the Inter State Council and National Development Council, compelling the Planning Commission and Finance Commission to review developmental priorities, mostly favoring states that are strongly represented (through regional parties) in the coalition government at the Centre. However, the growth of domestic terrorism since 1984 and cross border terrorism since 1989 demanded more focus on national security. These developments came at a time when state governments asserted themselves in national politics and the ruling coalition at the Centre became a confederation of political parties. Political pressure from the regions dominated the federal dynamics of the country.

### **The Problem**

The National Counter Terrorism Centre (NCTC) was created by the Government of India in June 2013 through the NCTC Draft Executive (organizations, functions, powers and duties) Order 2013. This was a sequel to the demands raised for creating a strong governmental anti-terror body following the 26/11 terrorist attacks in Mumbai. Earlier, the Unlawful Activities (Prevention) Act was passed by Parliament in 2004 and amended in 2008, in the wake of the Mumbai attacks, which were carried out by Pakistan-based terrorists. While recognizing that terrorism could be curbed through the joint efforts of Centre and States, the initiative for the same came from the Union Government. Five years had passed since terrorist outfits from Pakistan dared to cross over to India by sea and inflicted heavy wounds on India's liberal polity by mounting attacks on Mumbai. The relevance of the NCTC has to be assessed in this context.

Originally intended to support the National Investigation Agency and expected to function under the Intelligence Bureau and report to the Home Ministry, the structure and status of NCTC has changed now. It is headed by a Director who will directly report to the Ministry of Home Affairs (MHA). Besides the Director (a DGP rank officer), there will be three Joint Directors, and a Standing Council comprising nominees from the Research and Analysis Wing (RAW), Intelligence Bureau, National Intelligence Agency, Naval Intelligence, Military Intelligence and the DGPs of seven states who will be selected every two years on a rotation basis<sup>i</sup>. However, the very idea of the NCTC drew strong opposition from many state governments, which alleged that the creation of such a body was an affront to the idea and practice of Indian federalism. Law and order is an item under the State List and therefore, according to the Chief Ministers who raised objections, the National Counter Terrorism Centre is a violation of federal principles and an encroachment on the jurisdiction of the states. Unlike US federalism, law and order is not a federal subject in India.

Apart from the non-Congress-ruled states, two Congress Chief Ministers who objected to the creation of NCTC were from Maharashtra and Karnataka. In addition, the states ruled by non-Congress parties that raised objections were Uttar Pradesh, West Bengal, Gujarat, Odisha,

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Tripura, Punjab and Tamil Nadu. There were also mixed responses from the North Eastern States. According to Tripura Chief Minister Manik Sarkar, the “creation of NCTC has serious implication on federalism,” since it is a clear encroachment upon the rights of the states. According to BJP leader Arun Jaitley, the “centre's anti-terror body is against the federal structure of the country. Law and order is a state subject and states should be involved by the centre in dealing with terrorist activities.” The fight against terrorism must coexist with federalism. Jaitley observed, “Both must coexist; you cannot sacrifice federalism while combating with terrorism.” The Chief Minister of Uttar Pradesh, Akhilesh Yadav pointed out that the existing Anti-Terrorism Squad (ATS) in his state was working perfectly and therefore the NCTC was not at all required.

The then Home Minister P. Chidambaram, representing the Union Government, tried to clarify the position and stated that the “NCTC is not a single point of control and co-ordination. Now the agency will act as an apex body for coordinating all resources and officials for countering terrorism.” Unlike the earlier plan when the NCTC was expected to report to the Intelligence Bureau, it was brought directly under the Ministry of Home Affairs.

Earlier, the NCTC was meant to serve as a single and effective point of control and coordination of all counter-terrorism measures but was modified in response to mounting pressures from the states. It is expected that the NCTC will operate, collate and disseminate data on terrorism and also create a database of terrorists and their associates including their families<sup>ii</sup>. Some critics compared this initiative to the promulgation of the controversial Armed Forces Special Powers Act which was misused extensively and led to human rights abuses in the North East and in Kashmir.

### Is the NCTC Weak?

The idea of the NCTC originally came from the United States. In 2004, the US established the National Counter terrorism Centre based in Virginia as a powerful body for protecting national security. The United Kingdom has a similar structure for joint operations in combating terrorism. The Indian version is a new one modeled as a Multi Agency Centre (MAC). The Standing Council of the NCTC, which includes representatives from the states, will serve as its governing body. The NCTC would merely facilitate operations through or in conjunction with the state police and therefore it cannot be a strong body<sup>iii</sup>. In this context, the comment from IDSA scholar Gurmeet Kanwal is worth mentioning. “India's counter terrorism policies are mired in systematic weaknesses.” Such weaknesses include:

- ◆ There is an apparent gross disconnect between centre and state governments in their views on counter terrorism.
- ◆ The position of law and order as an item in the State List is an issue today with major dimensions. Hence, law and order should be shifted to the Union List to help counter externally sponsored terrorism.
- ◆ The need for creating a separate ministry to confront the problem of terrorism (like the Department of Homeland Security in the United States.) Therefore it is imperative to bifurcate the internal security function from the Home Ministry and create a separate ministry headed by a Cabinet Minister.

## The National Counter Terrorism Centre and the Critical Response of States in the Indian Federal System

- ◆ Comprehensive planning and better management are necessary to tackle terrorism.
- ◆ The counter-terrorism policy must be enlarged to include covert operations and eliminate the problem at its roots<sup>iv</sup>.

The NCTC Draft Executive Order (2013) provides that in operations where the services of the Specialized Forces are required to assist the state police, the NCTC has the power to request for the same. Legally, this would prevent a conflict with state government while carrying out the central forces operation<sup>v</sup>. But the political dimensions of this clause and operations are beyond our simple imagination. Given the complexity of the multi-party system and ad hoc coalition politics at the national level, a centre-state political conflict cannot be ruled out. In the long run, these issues are beyond the simple game of party politics and controversies regarding parliamentary majority or the political stability of governments.

A similar case may not arise in United States, despite the competition and rivalry between the two major parties. In a Presidential system, an adverse vote in the Union or State Congress will not affect the office or the continuity in power of the national political executive. Moreover, media hype will ensure a strong consensus for strengthening national security (this became very evident after September 11). In other words, on issues like national security and combating terrorism, young and complex parliamentary-federal systems are more vulnerable to domestic politics than the presidential-federal system. Conflicting postures of state, regional and national parties pose more challenges to national security issues. This is directly reflected in the current Indian political system and a federal debate on this matter is very important in this context.

Ashutosh Varshney, a noted political scientist and expert on federalism, highlights the fact that the growth of cross-border terrorism has become a new problem for Indian federalism. "Unlike the US, 'federal crime' is not a concept in Indian law, and it cannot be introduced unless the Constitution is amended<sup>vi</sup>." He points out that in 1999, when the Indian Airlines flight was hijacked from Kathmandu to Kandahar, the case could not be even registered as a federal crime. It was registered as a Delhi-based or state-based crime. He also pointed out the following drawbacks in the Indian federal system which has a direct bearing on national security issues.

- ◆ The National Security Guards (NSG) cannot function without the cooperation of state government and state police. This situation entails both legal and logistical problems.
- ◆ India's intelligence system is deeply fractured, both vertically and horizontally. Unlike the US Federal Bureau of Investigation, which combines intelligence and investigative functions, India's Central Bureau of Investigation (CBI) depends primarily on state police and secondarily on Delhi's Intelligence Bureau<sup>vii</sup>.
- ◆ The CBI's jurisdiction is mainly in Delhi and the Union Territories. To investigate it must receive state consent or be ordered to do so by the Supreme Court or a High Court. In fact, the State Governments have the constitutional right to deny permission for a CBI investigation<sup>viii</sup>.




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- ◆ Coalition politics has further complicated the CBI's involvement in state affairs. Varshney concludes that “the rise of a coalitional era might have made Indian politics much more democratic and competitive, but it is possible to argue that the national security has suffered as a consequence”<sup>ix</sup>.
- ◆ Most of the matters pertaining to internal security, barring defense, are entirely under state jurisdiction. This is a major problem for security governance.

In an era of coalition politics, the evolution of a solid organizational structure to deal with cross-border terrorism is not very easy<sup>x</sup>. Therefore, it is no wonder that the NCTC encountered troubled waters in the complex landscape of Indian federalism.

### Conclusion

The controversy over the launching of the NCTC exposes some emerging issues in Indian federalism and its linkages with national security management. The idea of federalism has always remained dynamic. Federal systems are undergoing major changes universally, and the parameters of the 20th century are rapidly becoming unsuitable to the present-day world. Some of the conventional wisdom associated with traditional nation-states is no longer valid today. In fact, one must take into account the role being played by non-state actors in domestic and global politics. National security is a prime concern for any state in the 21st century. Indeed, both state and national governments must cooperate and redouble their efforts to curb terrorism. Since India's national security is a primary duty of the Union Government, it was natural that the move to set up the NCTC came from the Union rather than the states. Nevertheless, in the context of emerging terrorism threats, the issue of retaining 'law and order' in the State List needs serious reconsideration. The states cannot claim their technical hold over it in emergency situations like 26/11. A review of the federal features of the Constitution in the light of the above developments is imperative. 

#### Endnotes

- i NCTC emerges a toothless wonder, Indian Express, June 5, 2013
- ii NDTV, May 4, 2012.
- iii According to the Indian Express, the NCTC emerged finally as a “toothless wonder.” June 05, 2013
- iv [www.idsa.in/isdacomments/](http://www.idsa.in/isdacomments/) India's counter terrorism policies are mired in systematic weakness, accessed on November 29, 2013.
- v Indian Express, June 5, 2013
- vi Ashutosh Varshney, How has Indian Federalism Done? Studies in Indian Politics, Vol. L, No.1., June 2013, CSDS, New Delhi, p.59
- vii Ibid.
- viii Ibid.
- ix Ibid., p.60
- x Ibid., p.60-61

## The Federal Dynamics of Indian Foreign Policy: Issues, Concerns And Trends

**F**oreign policy as a multi-layered and multi-faceted phenomenon is formulated and implemented in complex domestic, regional and international environments. Currently, India has a wide range of interests which are anchored in diverse parts of the world. To understand contemporary Indian foreign policymaking and implementation more fully, it is important to analyze the obvious influence of domestic politics. Federal dynamics has been a powerful force in shaping India's foreign policy. States are experiencing challenges and transformations both internal and external. As security threats become increasingly globalised and transnational in nature, foreign policy has become more multi-dimensional and cooperative in nature.

Former Foreign Secretary Ms. Nirupama Rao has stated explicitly that the 'foremost task of India's foreign policy is to enable the domestic transformation of India'. This implies the transformation of India's economy as well as its society. This objective requires India to work towards building a supportive external environment, which could, in turn, help India to focus on domestic growth and development<sup>i</sup>.

Indian federalism stands at the crossroads. The role of the states in India's foreign policy making and implementation is the subject of growing discussion and debate. Gone are the days when the Centre could go ahead with agreements with neighbouring countries as it did in handing over Katchatheevu Island to Sri Lanka, without taking into account the sentiments of the people of Tamil Nadu<sup>ii</sup>.

The conduct of India's foreign policy is no longer the exclusive domain of its federal government. The Indian constitution provides for a strong centre, yet there is a growing consensus that the states are increasingly involved in foreign policy advocacy. The era of coalition governments has increased the 'scope' for such advocacy. Coalitions are susceptible to sectional or party pressures. The crucial question is to what extent states can undermine national security or the government's stated foreign policy. Further, the 'influence' and 'reach' of the states have increased given the realities of globalisation, liberalisation and economic reform. This situation propels the states to accommodate both supranational and sub-national forces.

The participation of regional governments in foreign policy is a global phenomenon, which has been described as 'constituent diplomacy' by John Kincaid. He attributes the phenomenon to a cocktail of factors like globalisation, economic liberalisation, diffusion of technology and the decentralisation of political power<sup>iii</sup>.

### Coalition Governments and Foreign Policy Making

With the decline of single party dominance, the relevance of regional political parties cannot be ignored. Coalition governments have become the norm in Indian politics. Small regional parties with a handful of MPs are able to get crucial cabinet posts and also take advantage of the electoral calculus. At times they have even held the government to ransom.

Coalitions tend to become vulnerable to party or sectional interests. The coalition government's dependence on regional parties has resulted in a subtle power shift when it comes to foreign policy

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prioritisation and perceptions. Such 'federal coalitions' increasingly shape not only domestic policy but also foreign policy. States are now even bringing foreign and security issues to the bargaining table. Coalition politics has presented the regional parties with a range of participatory opportunities, even in the field of foreign policy. Many of the regional parties thus tend to have a disproportionate influence over the formulation and implementation of Indian foreign policy.

The share of these regional parties in Parliament has been growing over the years. The political scene is so fragmented that parties are forced to enter into coalitions and share power to make policy. Hence, most foreign policy decisions very often reflect a struggle among various coalition partners, who must get along with each other in order to keep the coalition together. In the run-up to the general elections of 2014, competitive populism seemed to be ruling the roost<sup>iv</sup>.

From a more positive perspective, coalitions have provided options for alternative world views in the realm of India's foreign policy. Genuine non-alignment and the Gujral Doctrine are distinct examples of this. However two fundamental questions need to be asked in this context:

- ◆ Does an unstable coalition limit the country's ability to develop a credible foreign policy?
- ◆ Does a weak coalition mean that regional adversaries will exploit the perceived weakness in the political process?

It will be recalled that Rajiv Gandhi's government authorised the despatch of the Indian Peacekeeping Force (IPKF) to Sri Lanka in 1987. VP Singh, soon after becoming Prime Minister ordered the immediate withdrawal of the IPKF. In this context, the pressures brought to bear on the VP Singh government by both the DMK and AIADMK parties in Tamilnadu was certainly a contributory factor.

Many governments have also been pro-active in their engagement with foreign governments. Some state governments such as Gujarat have even initiated foreign summits. The visit of US Secretary of State Hillary Clinton to West Bengal in May 2012 is worth citing. She met with Chief Minister Mamata Banerjee to discuss the possibility of US investment in West Bengal.

### **Globalisation, Liberalisation, Economic Dynamics**

Economic interdependence has consequences both within and outside state boundaries. India is witnessing the increased flow of capital, technology, ideas and innovation. The country's growing integration with the global economy is a fact of life. This process of integration poses its own challenges as well as throws up others. As is evident in the phenomenon of regional economic integration, Globalisation connects more economies in worldwide financial and trading markets. The larger issue to be addressed is how states are coping with globalisation and the pressures for greater liberalisation. Globalisation has introduced powerful new sources of economic vulnerability. The question is whether India's views on globalisation have evolved in tandem with its quest for development, security and status. The most recent manifestation of this debate focused on the whole issue of foreign direct investment (FDI) in the retail sector. Under conditions of globalisation,

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there are no absolute winners or absolute losers. Hence India needs to manage globalisation proactively so as to maximise the benefits and minimise adverse effects.

The benefits of globalisation have been uneven and new challenges have arisen. These include growing inequalities within and between states, growing inequity, volatility of the financial markets and threats from non-state actors. There is a need to factor in the external challenges that emanate from the imperatives of economic globalisation<sup>v</sup>. India's economic growth requires deeper economic engagement at the level of trade, labour, technology and ideas.

Sridharan argues that states have gained influence in foreign affairs advocacy as a result of two trends: the increasing regionalisation of Indian politics and economic liberalisation. In the process, they seek foreign direct investment and trade promotion. In short, the states are keen to capitalise on global opportunities<sup>vi</sup>. As India's economy grows and its integration with the global economy increases, domestic pressures are bound to be reflected in the making and implementation of Indian foreign policy. State governments have become quite aggressive in pursuing economic diplomacy. These extraordinary changes have fundamentally transformed India's economy and society.

### SELECT ISSUES/CASE STUDIES

#### A: India-US Nuclear Deal and the Influence of Domestic Politics

The India-US nuclear deal has been the subject of intense debate and discussion among parliamentarians, policy makers, political parties, media, civil society, strategic experts and the scientific community of the two countries. The deal signalled an end to the isolation of the Indian nuclear industry and the tentative recognition of India as a responsible nuclear geostrategic power. The July 2005 "Joint Statement" on civilian nuclear cooperation represented the most decisive step by the United States, demonstrating its readiness to "treat India differently" In the US perception, India had made a significant shift from being a nuclear pariah to a strategic partner.

The US-India nuclear deal was frozen for more than a year due to the opposition of the leftist parties. In 2007, the CPM threatened to bring down the coalition government if the UPA government went through with the nuclear deal. The main opposition party (the BJP) also opposed the deal, given their crucial stake if the UPA government collapsed in the process. The Left finally pulled out of the coalition leading to the crisis in UPA-I in 2008.

#### B: India-Sri Lanka Relations: The Tamil Nadu Factor

Domestic politics in Tamil Nadu has clearly and strongly influenced India's Sri Lanka policy. Over the years, The Tamil community in Sri Lanka has drawn both logistical and moral support from Tamil Nadu.

The withdrawal of the Dravida Munnetra Kazhagam (DMK) party from the UPA government is a reflection of the rough and tumble of coalition politics. The controversy involved a resolution on Sri

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Lanka adopted by the United Nations Human Rights Council (UNHRC). Its recent history goes back to 2012 when Washington sponsored a resolution to press for greater accountability for the events that took place at the end of the civil war. India's 'yes' vote was more due to pressure from Tamil Nadu than pressure from the United States. This decision surprised many because it contradicted India's normal practice of not voting for country-specific resolutions.

The sequel to these events unfolded at the March 2013 meeting. On this occasion, Washington sponsored a much sharper resolution than in 2012. The DMK wanted the UPA government not only to vote for the resolution, but also to amend it tantamount to accusing Sri Lanka of war crimes and genocide<sup>vii</sup>. However, what really drove events was the rivalry between the DMK and the All India Anna Dravida Munnetra Kazhagam (AIADMK). These two parties have alternated in power not only in Tamil Nadu, but also in the federal government, being part of the United Progressive Alliance (UPA) and National Democratic Alliance (NDA) respectively. The Tamil factor in the Sri Lanka context tends to be a highly emotive issue with tremendous potential for political mileage. Being part of different coalitional arrangements, both parties have used their political leverage to exert pressure on the federal government.

In an effort to strike a deal with the DMK, India's UNHRC representative was summoned to New Delhi, with instructions to toughen the resolution. However this last minute effort went in vain. On March 21<sup>st</sup> 2013 the resolution was passed with 25 positive votes, 13 negative votes and 8 abstentions. India and Sri Lanka had once again overridden the normal distaste for country-specific resolutions, and subsequently both New Delhi and Colombo have much work to do to mend fences.

The Sri Lankan Tamil issue was used as a basis to withdraw from the UPA coalition as it was also politically expedient for the DMK to leave the coalition. The DMK even lobbied foreign embassies in New Delhi to toughen its stand. The Government of India cancelled an upcoming India-Sri Lanka defence dialogue. Not to be outdone by the DMK, Chief Minister Jayalalitha banned Sri Lankan players from participating in the IPL matches in Chennai. The events culminated with the decision of the Prime Minister to boycott the CHOGM Conference in Colombo.

### **C: Treatment of Indians Abroad and Federal Dynamics**

The way the Indian diaspora has been treated by foreign governments has often generated much discussion and debate in various states. For example, the United Arab Emirates (UAE) and West Asia have over four million Indian workers, about half of them from Kerala. Remittances from these workers are critical to Kerala's economy. Hence, perceived or genuine discrimination against Indian workers in West Asia, especially in Saudi Arabia and the UAE has prompted pressure from constituency MPs in Kerala on the federal government in New Delhi<sup>viii</sup>.

In recent times, the treatment of Indians in Australia has been a matter of contention. Repeated incidents of violence and crime against Indian students in Australia have resulted in community-level activism in some states, notably Punjab and Haryana. This has forced provincial legislators and parliamentarians to take notice and even put pressure on the Ministry of External Affairs (MEA). In recent times, allegations regarding the persecution of ethnic Indians in Malaysia led to the mobilisation of Tamil and Hindu political groups in India.

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## D: The Teesta River Issue

Prime Minister Manmohan Singh's visit to Bangladesh in September 2011 hit the headlines, This visit was also connected with a regional party and a former coalition partner in the federal government. Prior to the visit, India and Bangladesh worked out various agreements to be signed by the Prime Minister during his visit. This included the River Teesta water-sharing agreement. The Teesta originates in Sikkim and after traversing 172 km in the hilly reaches, flows for 97 km in the plains of India and continues for another 124 km in Bangladesh. The main dispute over the Teesta is concerned with the sharing of its waters during the lean period. Bangladesh expects to get 50% of its waters downstream.

Technically the state governments do not have a veto, but they can wield much influence, as is evident in the case of the Teesta River waters issue. West Bengal Chief Minister Mamata Banerjee decided to boycott the Prime Minister's visit to Bangladesh despite the best efforts by National Security Adviser Shivshankar Menon to build bridges with the Trinamool Congress leader. The Union government was eventually forced to call off the signing of the water-sharing pact with Bangladesh.

In exchange for the river waters treaty, Bangladesh had been expected to provide India with transit rights to its land-locked northeast. In retaliation for the unsigned pact, Bangladesh withheld the transit agreement. In future, getting the consent of the West Bengal government for both water and transit will prove increasingly difficult.

## E: The Sir Creek Issue

The Sir Creek is a 96 km water body that empties into the Arabian Sea from the Rann of Kutch. It involves a 100-150 sq km stretch of swamp which is flooded almost throughout the year. The dispute, which originally started between the ruler of Kutch and the British authorities in Sindh dates back to 1908. On the eve of the last Gujarat elections, Chief Minister Narendra Modi argued in a letter to the Prime Minister, that India should not hand over the Creek to Pakistan and in fact, should stop any dialogue with Islamabad on this issue. According to Modi, Gujarat should not be kept in the dark and if the Centre does so, the people of Gujarat would not forgive him.

Striking a rather emotional chord he contended that Sir Creek is not about elections, but it is “a part of our body and you cannot give away a part of our body.” Narendra Modi demanded a 'freeze' on the issue, and warned that any attempt to hand over Sir Creek would be a strategic blunder. In fact, a joint survey was taken up in 2007, which resulted in a joint map that was authenticated by both India and Pakistan. At the 2008 talks in Islamabad, copies of the joint map were also exchanged. Narendra Modi had even raised the matter in the Chief Minister's conference on internal security held in New Delhi on April 16, 2012. The former Indian High commissioner to Pakistan Mr. G. Parthasarathy, has opined that “It is no longer possible to settle land boundaries, river waters or maritime boundaries with our neighbours like Bangladesh, Myanmar, Sri Lanka or even Pakistan without keeping the states bordering them in the loop”<sup>xix</sup>. It may be noted that Kutch, Saurashtra and North Gujarat have the potential for oil and gas both onshore and offshore. The fact of the matter is that the maritime boundary on Sir Creek is yet to be finalised, and the perception that Sir Creek is about to be handed over to Pakistan is untrue.

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## F: Indian Border States and Foreign Policy

Many of the Indian states share borders with regional countries, which further complicates the scenario. Hence states like Mizoram, Manipur and Nagaland would have a say in India's Myanmar policy. This is also true of transnational groups such as Indian and Pakistani Punjabis, Indian and Sri Lankan Tamils and the Indian population bordering the Terai region of Nepal.

West Bengal's unique geographic location has provided it with a certain leverage in India-Bangladesh relations. The state shares a 2,200 km border with Bangladesh. A variety of situations that govern bilateral ties reflect scenarios such as the porous India-Bangladesh border, the massive illegal immigration flows and the pro-Pakistani elements in Bangladesh and their spill-over effect. Since the creation of Bangladesh, almost 15 million illegal migrants have entered India, both Muslim and Hindu. Some of the border districts of West Bengal such as the South 24 Parganas, North 24 Parganas and Malda have almost become extensions of Bangladesh. Given the mass illegal immigrations, the West Bengal government does influence the deportation policy of the country. This also helps prevent the possibility of bona fide Indian Bengalis being wrongfully accused and deported.

Movements in border areas are indeed problematic, as they have cross-border implications. The cross-border movement of secessionists further aggravates the scenario. Countries in the region that harbour intentions of destabilising India will try to take full advantage of the complications in the border situation.

Generally speaking, Punjab is keen to strengthen ties with Pakistan, Tripura with Bangladesh and Bihar with Nepal. All these aspirations tend to be reflected in the foreign policy outlook of the federal government. The role of border states in the formulation and conduct of Indian foreign policy is increasingly being recognised.

## Conclusion

On the one hand, India is witness to intermittent domestic turbulence but on the other hand, India's regional and global profile has been on the ascent. These two trends are not necessarily in conflict. Constituency-level pulls and pressures have now become routine in Indian domestic politics. In fact, domestic policies have the effect of influencing and even changing the interactions between states in the realm of foreign policy. Many policies have multiple targets to the extent that a single policy can be both domestic and foreign in its thrust.

Coalition governments have given regional parties the opportunity to influence foreign policy, especially those policies that are particularly relevant to their respective states. The states are slowly but surely putting their imprint on India's foreign policy. The fallout affects both politics and policy. Foreign policy making and implementation is no longer the exclusive domain of the federal government. Also, India's foreign policy institutions are beginning to maintain stronger state-level contacts. Two major inferences can be drawn from this trend:


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- State influence in foreign policy making need not always be perceived as negative or obstructionist.
- The role of the Indian states in foreign policy making does not necessarily translate into autonomy on foreign policy making. The states tend to influence India's foreign economic policy, but only within a limited framework.

A strong case is being made for institutionalising the process of deliberation, consultation and involvement of the states. There are clear indications that foreign policy institutions need to sustain closer ties with states such as West Bengal and Tamil Nadu. As Prime Minister Manmohan Singh remarked at a press conference, “provincial sentiments cannot be wished away.” The propensity has been for domestic politics to override the normal foreign policy process.

When Indian foreign policy acquires domestic dimensions the following implications are evident:

- Decisions and the follow up tend to become quite unpredictable.
- Coalition politics tends to intensify to the extent of even threatening the longevity of the coalition.
- The fallout affects both 'politics' and 'policy.'

India's faces a major foreign policy challenge stemming from its uncertain domestic politics. Perhaps Indian foreign policy needs to be insulated from narrow domestic political obsessions. Since coalitions are the order of the day, the management of foreign policy with some coherence and credibility becomes a national priority as well as a challenge. At the same time, 'principles' and 'genuine differences' need not be ignored. At any given time, domestic compulsions are bound to influence how states act and react to various foreign policy issues and events. 

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## Enhancing Homeland Security in a Federal System of Government: The National Preparedness Grant Program

The US federal government, through the Department of Homeland Security (DHS) provides funding to state and local governments to build capabilities and capacity to address threats emanating from terrorism and natural disasters. By leveraging the federal government's access to resources, state and local governments can significantly enhance their ability to respond to homeland security threats. Since its creation in 2002, DHS has overseen the distribution of over \$40 billion worth of grants for homeland security<sup>i</sup>. Given the budgetary constraints under which the US federal government functions, DHS will have to face the growing challenge of building and sustaining state and local government capabilities with declining fund levels.

During February 2012, DHS released the National Preparedness Grant Program (NPGP) Vision Document. DHS seeks to fundamentally alter how it administers grants to reflect a coordinated, risk-based approach. Previously, DHS had awarded grants through 16 independent programs<sup>ii</sup> funding manifold efforts to build a wide, often disparate, range of capabilities at the state and local level. Under the NPGP, DHS is attempting to consolidate the grant process into a single program to emphasize the building of core capabilities, closing gaps in capabilities, and developing institutional efficiencies. However, Congress did not approve the NPGP for the Fiscal Year 2013 budget. The White House has revised the NPGP for FY14<sup>iii</sup> budget cycle, but it has yet to secure Congressional approval.

What follows is a brief overview of the existing grant process, its reporting structures, and its issues; a discussion on the proposed NPGP process for FY14 and its potential strengths and weaknesses; while pinpointing the lessons learned about the NPGP and its applicability in other nations.

### Background of the DHS

In 2002, in the aftermath of the terrorist attacks of 9/11, the US Congress created the Department of Homeland Security. DHS integrated all or part of 22 different Federal departments or agencies into a unified, cabinet level agency. The heads of these departments and agencies, such as the US Coast Guard and the Federal Emergency Management Agency (FEMA), report directly to the Director of DHS, who reports to the President. DHS has been entrusted with a broad mission to protect the US homeland from a diverse range of man-made and natural threats. It has five core missions:

- ◆ Prevent terrorism and enhance security
- ◆ Secure and manage borders
- ◆ Enforce and administer immigration laws
- ◆ Safeguard and secure cyberspace
- ◆ Ensure resilience to disasters<sup>iv</sup>

To execute these missions, DHS and its component agencies work closely with state and local governments to enhance their capabilities and increase their capacity to respond to challenges. These challenges could range from terrorist attacks to hurricane disaster relief and these local

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organizations would be the critical first responders during incidents in the homeland. Whereas state and local organizations have a limited range and depth of resources, the US federal government has a much broader and more robust access to resources that it can employ to help bolster state and local governments. For DHS to fund these preparedness projects, Congress must first authorize the spending and appropriate the money to the Department to execute them. Currently, Congress has limited desire to increase discretionary spending, hence in future, DHS will likely have to accomplish its missions with constrained resources.

### **The Existing Preparedness Grant System**

In the aftermath of Hurricane Katrina, Congress passed legislation that placed most preparedness grants under the auspices of FEMA's Grant Program Directorate<sup>v</sup>. Despite this legislation, state and local governments could apply to 16 independent DHS Federal Preparedness Grant Programs to seek funding to build a wide-ranging set of capabilities to respond to the spectrum of homeland security threats. Under this system, state and local applicants would submit separate and often different requests to each grant program.

DHS has not always coordinated its preparedness efforts with previous, ongoing, or future preparedness efforts nor linked them to a national strategy to build key capabilities. This has led to a patchwork of preparedness capabilities throughout the country, uneven and insufficient protection against high-risk, high probability threats, and duplication of efforts by the federal government as well as by state and local governments. For example, in 2007, DHS awarded a grant to Albany County in New York to acquire an interoperable communications system to connect emergency responders on disparate systems within neighboring counties without knowing that the State of New York was trying to establish a state-wide communications system incompatible with the one sanctioned for Albany County<sup>vi</sup>.

### **National Preparedness Grant Program Overview**

In February 2012, DHS announced its attention to implement the NPGP during Fiscal Year 2013. Although Congress did not approve funding for the program, the administration is advocating the program again for FY14. In the new system, DHS would consolidate grant-funding streams into one process: states will submit one coordinated application, in which transit agencies, ports and urban areas can include additional proposals. The NPGP will prioritize funding efforts to develop and maintain core capabilities “that are readily deployable and cross-jurisdictional.”<sup>vii</sup> The grants will be awarded based on areas highlighted in the National Preparedness Report, comprehensive threat/risk assessments, and gap analyses.

### **Strengths and Weaknesses**

By establishing a single program, the Department hopes to reduce duplication of effort, foster unity of effort across different levels of government, and increase its return on investment. A single submission by a state, even if it includes additional proposals from local organizations, will force greater collaboration between state and local governments and sharply reduce the potential for

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redundancies. To augment this proposal, DHS is also seeking to provide state and local governments with greater flexibility to spend money from previous fiscal years, which should allow them to direct existing resources to developing core capabilities.

A risk-based model for improving grant decisions aligns costs with security. Using information about relative risk, DHS can allocate scarce resources towards developing capabilities most likely to be needed. For instance, in the new NPGP process, a major urban area is much more likely to need sophisticated rescue and communications equipment on a regular basis than a small, rural town, and so is more likely to receive funding for this capability. Decisions made along these criteria can potentially increase security, while reducing costs by directing resources to high risk, high likelihood areas.

While the NPGP has its own merits, it also reveals some shortcomings. Since they are inherently information and intelligence-dependent, risk-based models require large amounts of data and corresponding analysis to be effective. In order to make informed decisions about where risk is the greatest and to subsequently determine which preparedness projects should be funded, DHS will have to develop the institutional capability for robust metrics to measure risk and to assess the effectiveness of the projects selected for funding. Without strong evaluation criteria, DHS will have no means of determining the true impact of NPGP grants or choosing how to allocate future funding. In a budget-constrained environment with a politically charged Congress, DHS may struggle not only to develop, but also to justify its metrics, allocation, and funding evaluation.

Congressional interference represents one of the greatest challenges to the effective implementation of NPGP. Given their vested interest in sending homeland security grant dollars to their home districts, members of Congress may try to sway decisions on what grants are approved or influence the process of selection. Due to growing constraints on available funds, the NPGP simply cannot afford this type of interference.


### **Lessons Learned for Other Nations**

Although the NPGP process and bureaucratic battles are unique to the United States, the broader lessons of how to align state and local interests with national security priorities are applicable to other nations with federal systems.

- ◆ To efficiently allocate resources, federal governments must develop a strategy that establishes prioritized capabilities to address threats based on risk, likelihood of occurrence, and potential impact.
- ◆ The federal government should allocate funding to state and local governments to sustain and build these core capabilities. The federal government must also develop advanced metrics to evaluate not only risk, but also the effectiveness of the funded programs.
- ◆ In order to effectively centralize decision-making, the federal government must work with national politicians, with regional interests as well as with state and local officials to build consensus for placing national priorities over regional ones.

# Enhancing Homeland Security in a Federal System of Government: The National Preparedness Grant Program

## Summary

The United States, federal government uses its resources to build state and local governments' ability to respond to homeland security threats. The NPGP represents DHS' efforts to develop core capabilities across states and at various government levels to address threats based on risk-assessments. If approved by Congress and properly implemented by DHS, the NPGP should create institutional efficiencies and enhance security, while reducing costs. 

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## Notes

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## The National Counter-Terrorism Centre: The Concept and the Controversies

In the aftermath of the Mumbai terror attacks, Union Home Minister P. Chidambaram proposed setting up a National Counter-Terrorism Center (NCTC). However, the intended launch of the NCTC on March 1, 2012 had to be put on hold following the political heat it generated. The controversy stemmed mainly from the powers of search and arrest proposed to be vested in the new organization, which, in the view of several chief ministers, was an encroachment on the police powers of the state governments.

The issues debated in this context are highly relevant to any study of national security management in a federal set-up.

### Existing National Security Mechanism

Before going into the concept of the NCTC, it is vital to understand the current machinery that the Union Government relies upon to ensure national security.

It may be recalled that the Government of India had set up a revamped national security mechanism in 1999, based on the recommendations of a Special Task Force headed by K.C. Pant, which included Jaswant Singh as well as Jasjit Singh, the then Director of the Institute of Defence Studies and Analysis (IDSA). The task force had formulated these recommendations after studying the national security mechanisms prevalent in other countries. Such revamping was considered imperative in view of India's status as a nuclear power and its expected emergence as a major power in the region, if not the world. The main features of the new mechanism were as follows:

A National Security Council (NSC) chaired by the Prime Minister and consisting of a few cabinet members to discuss in-depth national security issues and take decisions.

A Strategic Policy Group (SPG) headed by the Cabinet Secretary and comprising the professional heads of the Ministries concerned with national security as well as the chiefs of the intelligence agencies and the Armed Forces to work out policy/decision options and submit them to the NSC for consideration.

A National Security Advisory Board (NSAB), consisting of non-governmental experts, to provide policy inputs to the National Security Council Secretariat (NSCS).

The National Security Council Secretariat (NSCS) to service the work of the NSAB, the SPG and NSC and to take over the role of assessing intelligence agencies, previously performed by the Joint Intelligence Committee (JIC), which ceased to have a separate and independent existence.

The creation of the post of National Security Advisor (NSA) to oversee the functioning of the new mechanism and to advise the PM and the NSC in national security matters<sup>1</sup>.

The Joint Intelligence Committee as a part of the National Security Council Secretariat was revived in 2006 under a Chairman and given the task of coordinating the intelligence inputs received from various intelligence agencies.

# The National Counter-Terrorism Centre: The Concept and the Controversies

## **Initiatives to boost intelligence agency functioning**

Several initiatives in recent years have focused on enhancing the functioning of the intelligence agencies. Most of these measures stemmed from the recommendations of the Group of Ministers (GoM) Committee, which reviewed the whole gamut of national security in the wake of the Kargil war, and also drew upon the reports of the Second Administrative Reforms Commission (ARC). The GoM had presented a set of very well-conceived recommendations. However, as the ARC report has pointed out, many recommendations remained unimplemented, despite their acceptance by the Government of India. Serious efforts were undertaken following the Mumbai terror attacks on 26.11.08 to speed up the implementation of the GoM recommendations, particularly on intelligence co-ordination and coastal security. Some of the vital ARC recommendations were accepted by the Government and incorporated into the anti-terrorism legislation introduced shortly after the Mumbai attacks.

Experts generally agree that the reforms required to improve the performance of intelligence agencies in India should focus primarily on three aspects: capacity-building, co-ordination and oversight. In this paper, the focus is primarily on coordination, an aspect which assumes the highest importance in a federal set-up.

Co-ordination is an extremely complex process and involves intelligence agencies and operational forces of the states and the Centre. Several central government ministries are consumers of intelligence reports and co-ordination among them is vital. Co-ordination has to be ensured both at the apex level and the functional level. Several steps have already been taken in this regard.

## **Co-ordination at the Apex Level**

At the apex level, the coordination kingpin is the National Security Advisor (NSA). The first co-ordination attempt was the establishment of the Joint Intelligence Committee way back in the 1960s. This proved inadequate and led to the institution of the National Security Advisor in 1998, based on the US model. However, the United States realized the inadequacies of its own system when the terror attacks took place on September 11, 2001.

The United States then created the post of Director of National Intelligence, to act as the national intelligence co-ordinator. There is a clear distinction between the responsibilities of the National Security Advisor and the Director of National Intelligence. The post of the NSA in the United States was set up under the National Security Act of 1947. The status of the NSA has varied from time to time, but there is clarity about his responsibilities. He assists the Chief Executive, the US President, in co-ordinating the work of all departments connected with national security, including Defence and State. This onerous responsibility left the NSA with hardly any time to co-ordinate the working of the multiple agencies responsible for generation of intelligence. Hence it became necessary to create the new post of Director of National Intelligence in the United States. Events in India since the

## The National Counter-Terrorism Centre: The Concept and the Controversies

appointment of the National Security Advisor, render it necessary to seriously consider creating the post of Director of National intelligence.

### **Co-ordination at the Functional Level**

The Group of Ministers Committee dealt with the issue of co-ordination at the functional level. This was meant to be achieved through a Multi Agency Centre (MAC) at the Centre and Subsidiary Multi-Agency Centres (SMAC) in the state capitals in which all agencies would be represented. There was also a provision to have a Joint Task Force on Intelligence (JTFI) in each State. This was intended to ensure the reverse flow of intelligence from the states to the Centre, though it was not quite clear how this purpose was to be achieved.

It is well known that after 9/11, the US government made a serious effort to step up co-ordination amongst intelligence agencies. The United States, like India, boasts a number of intelligence agencies. Until 9/11, the Central Intelligence Agency (CIA) had the pride of place. However, after 9/11, the whole system underwent a change. The new Director of National Intelligence virtually became the Intelligence Czar of the United States. He also headed the National Counter-Terrorism Centre, where all terrorism-related information is pooled (It may be noted that the CIA has another Counter-Terrorism Centre (CTC) with operational and analytical responsibilities).

The United Kingdom has a Joint Terrorism Analysis Centre (JTAC), in which representatives of all intelligence agencies are represented. Although functionally under the Chief of the Domestic Intelligence Agency, the MI5, the post of operational head is rotated every year among the various agencies represented in the JTAC. All members have access to the common pool of information in the JTAC databank. Individual members can check back with their own organization's databank to make sense out of the information available in the JTAC pool. This system seems to be working well. Australia and France have also established similar co-ordination mechanisms.

It was on the model of the JTAC and the CTC that the MAC was set up by the GoM. However the MAC and SMAC never really took off. The Intelligence Bureau, which was tasked with setting up the MAC, never got the additional staff it wanted until 26/11 occurred. The fate of the Joint Task Force on Terrorism (JTFI) was similar. Ideally, the MAC at the Centre and the SMAC in Mumbai should have met when intelligence inputs relating to possible terrorist attacks in November 2008 were received. It is not known whether such meetings actually took place. It was against this backdrop that P. Chidambaram, who took over as Union Home Minister after the Mumbai terror attacks, mooted the setting up of a National Counter-Terrorism Center (NCTC).

### **The NCTC Proposal**


In many ways, Chidambaram's initiative to establish an NCTC with adequate manpower and authority to collect intelligence, take preventive action, respond with armed might to a terrorist attack, arrest the accused, seize their weapons and other incriminating property, investigate the cases, prosecute the accused and get them punished, was a welcome step, viewed from a pure

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counter-terrorism perspective. After all, organisations under the Union Government, like the Narcotics Control Bureau already exercise powers of search or arrest all over India (admittedly in respect of special enactments) without stepping on the toes of the state police. Besides, the Director of the Intelligence Bureau (DIB) would, under the proposed scheme, in effect, become the Chief of Homeland Security, considerably easing the workload of the National Security Adviser. If the appointment of a Director of National Intelligence is not feasible, to ease the workload of the NSA, this is the next best solution.

However, the chief ministers of many states had differing perceptions, particularly with regard to the powers of arrest. None of the existing CTC models in other countries provides for powers of arrest. The obvious question was why would the NCTC in India require such powers when successful models elsewhere do not? And why have another 'designated authority' under the Centre when the National Investigation Agency (NIA) is already there. Another uncomfortable issue likely to crop up is whether Indian intelligence agencies, once they are vested with powers of arrest, can continue to be exempted from parliamentary oversight. Many in the intelligence community felt that the JTAC model, in which all agencies would take turns to supervise the CTC's day-to-day work under the overall direction of the DIB, would be a more satisfactory option.

A new issue that has arisen is a recent judgment of the Guwahati High Court questioning the validity of the Central Bureau of Investigation (CBI) as a legal entity. With this landmark judgment, it is debatable whether powers of search and arrest can be given to the NCTC without supporting legislation. The matter is now pending before the Supreme Court.

An informed debate based on expert studies, particularly those on which the government had relied before setting up the new mechanism would certainly be beneficial to enhance national security. 

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### End Notes

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## Is Socio-Economic Backwardness the Prime Reason for the Growth of the Left Extremist Movement in India?

Independent India has been living with insurgency movements from its early days. Almost all have had the objective of carving out a new territory or a separate nation state outside the Indian Union. The Left Extremist Movement (LEM), which is currently the largest insurgency movement in the country, also has a separatist agenda. However, the LEM distinguishes itself from other separatist movements in several ways. Firstly, it is the first pan Indian movement with armed combat members organized on military lines, supported by a large trained field cadres or 'jan militia' and influential front organizations in many states of the country. Secondly, it is the only movement which has as its primary goal the overthrow of the Indian state or the capture of power at the all-India level. It is also the only movement that simultaneously pursues a second best option of establishing a new liberated 'revolutionary state' stretching longitudinally from the Nepal border to Kerala, comprising the contiguous districts of Bihar, Uttar Pradesh, Orissa, West Bengal, Chhattisgarh, Madhya Pradesh, Maharashtra, Andhra Pradesh, Karnataka and Kerala. The envisaged new nation state would effectively split the Indian state through the middle, reducing it into two truncated stumps on either side. No other separatist movement in India has had a grander vision for the future.

The LEM also differs from other separatist movements in terms of its support base. Other insurgency movements have thrived on the support of communal or fundamentalist forces or particular ethnic groups. However, the LEM has had a pan-India appeal amongst people belonging to all communities, 'progressive' writers, human rights organizations, academics and students, in different parts of the country. This has been achieved by carefully building up the image of the organisation as a crusader against the state for the liberation of socially and economically oppressed sections of Indian society. Other separatist movements have also made occasionally less-than-convincing cases to justify their espousal of violence by highlighting the relative neglect or socio-economic backwardness of particular geographical areas, communities or ethnic groups. (One possible exception is the Khalistan Movement, which would have found it difficult to point to relative economic backwardness as a reason for resorting to arms for the liberation of Punjab from the Indian Union).

### Rise of the Left Extremist Movement

The origins of the LEM in India go back to the late 1960s when the landless peasants of Naxalbari revolted against their landlords and the government, protesting the denial of tenancy rights. Though this spontaneous movement petered out in the face of strong police action, it became the launch pad for the first truly left extremist party in India or the CPI (ML). Under the leadership of the charismatic Charu Majumdar, the movement inspired a whole generation of intellectuals, youth and students to take up arms in support of the cause and indulge in sabotage, attacks on police forces or other terrorist acts. Undoubtedly, the time was ripe for propounding revolutionary ideas in the country, with the writings of Che Guevara, Frantz Fanon, Regis Debray and indeed Mao's Red Book keeping the young generation in their spell. Apart from West Bengal,

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Kerala emerged as a major battleground for a Naxalbari model agitation. However the numbing violence unleashed by the movement could not gain broader support from mainstream political parties or the public at large. The war with Pakistan in 1971 diverted everyone's attention to the external enemy and the state governments in West Bengal and Kerala soon succeeded in crushing the armed struggle with superior firepower.

The movement reappeared in Andhra Pradesh (AP) in the 1990s, with the People's War Group taking on the landlords and the police in the feudal rural belt of the Telengana region. As violence escalated, successive state governments of Andhra Pradesh built up specially trained armed police battalions to deal with the problem and after much bloodshed, succeeded in suppressing the movement. Many leaders and middle level cadres fled to the adjoining states like Chhattisgarh and Orissa and over the next few years built a much larger and better organized armed movement in these states. The Bastar region in particular became not only the main battlefield with governmental forces but also the capital of the Left Extremist Movement (LEM) for the entire country. The LEM has since then grown in strength not only in Chhattisgarh but also in Odisha, Jharkhand, West Bengal, Bihar and eastern districts of Maharashtra.

### **Why Bastar?**

The question of why and how Bastar or South Bastar in particular has become the heart of the LEM has been the subject of many discussions and debates. Many observers and researchers have conveniently explained this development as a clear demonstration that socio-economic backwardness and exploitation of tribal communities are responsible for the growth of the LEM in the country. They point to the socio-economic and health indicators of Bastar district and Chhattisgarh to show how an armed revolution was inevitable in such areas. It is not very difficult to establish a causal relationship between socio-economic backwardness of many regions in the country and the presence or growth of the LEM, although no authentic studies are available yet to show a direct correlation between worsening backwardness and the growth of insurgency movements.

Chhattisgarh, the new state carved out of Madhya Pradesh in November 2000, was one of the most backward regions of the country at the time of its formation, and continues to be relatively backward in comparison to most other states. Even if we ignore the origins of backwardness of the region in the pre-independence days, it is clear that its relative backwardness has been continuing even after six decades of independence and democracy. The Chhattisgarh region was historically one of the most forested areas of the country. Even today, over 50% of the land area qualifies as forest under the Forest Conservation Act, 1980. Thirty two per cent of the population belongs to scheduled tribes and about 12% to scheduled castes. It is difficult to say if the Scheduled Castes are less poor or less backward in socio-economic terms compared with Scheduled Tribes but while the former are dispersed all over the state, the latter are found in large concentrations in the heavily forested southern and northern districts of the state.

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The relative backwardness of these forested districts and its people who have preferred to live in small hamlets tucked away in remote hill slopes and forest clearings is visible to any outsider. Most members of tribal communities traditionally eked out a living by gathering minor forest produce or agriculture. They walked to the larger villages or small towns only on market days. However, by the second half of the 1990s it was clear that the isolation of these tribal communities could no longer be sustained. Even if government departments were slow to move into the interior areas, other players particularly traders, money-lenders and Non-governmental Organizations (NGOs) with varying objectives had begun to move into the tribal areas. And the advent of a new player, known in Chhattisgarh as the 'Naxal', on the scene, dramatically changed their hitherto uneventful lives forever.

The total tribal population, in terms of percentage, is highest in Chhattisgarh compared to other states of mainland India. However, in absolute terms, states on the western side like Madhya Pradesh and even Rajasthan and Gujarat had more persons belonging to Scheduled Tribes. Yet, while Chhattisgarh, Orissa and Jharkhand have become major areas of Naxalite influence, central and western Madhya Pradesh, eastern Rajasthan and Gujarat with larger tribal populations but similar socio-economic profiles have been untouched by the movement. Within Chhattisgarh or for that matter in Bihar, UP or Madhya Pradesh, many rural areas are either as much or even more backward in socio-economic terms as compared to tribal villages elsewhere in the state. It is also true that the literacy level of tribal communities in Chhattisgarh is higher than that of Gujarat. Also, within Chhattisgarh, there are less landless and homeless families in tribal areas compared to areas with a majority of Scheduled Caste or even Backward Class persons. Naxalite ideology has not yet gained an entry into these areas.

Let us also look at the specific region of Bastar in Chhattisgarh which has often been described as the epicenter of Naxalite violence in the country. Is Bastar the darkest corner of India inhabited by the poorest, most exploited people in the country? Is it true that mining projects of large corporates and multinational companies are taking away the lands belonging to the tribals, thereby impoverishing them further? Certainly, there have been many reports of the exploitation of the tribal population by government employees and forest contractors as well as traders (who bought valuable minor forest produce from them at low prices or in exchange for cheap trinkets or even salt). Yet, it is also true that large areas of Bastar had remained inaccessible to the outside world, minimizing the chances for exploitation of the tribal population. The Abhujmad area of Bastar, covering 4000 sq. kms, until very recently was not open for visits even by employees of government departments. No survey or settlement operations by the revenue or forest departments have ever been undertaken in this area. It was a conscious decision taken from the 1950s to restrict entry of outsiders into the area and it was beyond the control of revenue or forest officials. The first major thrust by the then government of Madhya Pradesh to bring about socio-economic development in Abhujmad and link the people to the outside world was in 1980, when it actively supported the setting up of the Ramakrishna Mission school and hospital in the village of Narayanpur, the gateway to the region.

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Over the years many schools, hostels, anganwadis, public distribution system shops, Panchayat offices, check dams and hand-pumps have emerged in the periphery of Abhujmad. Currently however, it has become almost impossible to make any developmental efforts in the interior, as most of the villages are controlled by Naxalites. Yet, some services reach these areas too. The public distribution system operating in tribal areas of Chhattisgarh has been acclaimed by even impartial observers as the most robust in the country. The majority of the tribal population gets 35 kg rice @Rs.1 per kg and 2 kg of black channa @Rs.5 per kg every month. Two packets of salt are also distributed free along with the rice every month. Thousands of men and women belonging to Scheduled Tribes work on projects under the Mahatma Gandhi National Rural Employment Guarantee Scheme. More than 2 lakh families in Chhattisgarh received forest rights over land occupied by them when the Forests Rights Act was implemented. Naxalite documents too have admitted that there are no landless peasants in the region, though they have given credit for this to the efforts of Naxalite cadres at the village level.

Many documents of the Communist Party of India, the CPI (Maoist), their front organizations as well as the reports of some journalists and casual visitors to tribal belts have given an impression to the outside world that large areas inhabited by tribal population in Chhattisgarh are being given away to mining companies. In reality the only large mining operations anywhere in Bastar region is undertaken by the Government of India-owned National Mineral Development Corporation (NMDC) which started work on the iron ore mines in Bailadilla of South Bastar during the 1960s. This region even today has very low population density, and displacement of the tribal population due to the project has been minimal. The only other projects proposed to be undertaken were for setting up steel plants by the TATAs and ESSAR group sometime during 2004-2005. These projects could not take off, not on account of any large displacement of tribal population but because of threats of violence from the Naxalite groups and their front organizations, who know that these projects would lead to major changes in the demographic and socio-economic profile of the region. No multi-national companies have been awarded any mining rights in these areas.

Some of the above facts should point to the real reasons for Bastar and in particular Abhujmad area emerging as the centre of CPI (Maoist) movement in the country. Some of these could be enumerated below:

- ◆ Bastar has contiguous land area with those areas of Andhra Pradesh which were earlier the strongholds of the Peoples War Group (PWG). The leadership as well as second rung of the LEM CPI (Maoist) group in Chhattisgarh are dominated by erstwhile members or cadres of the Peoples War Group of Andhra Pradesh. It was important for them to find safe hideouts and move seamlessly among the forested tribal areas of AP, Maharashtra, Chhattisgarh and Odisha, to strengthen the movement. The police crackdown in Andhra Pradesh had made it impossible to continue their activities there. Bastar, with its good forest cover provided their best possible option.
- ◆ For decades, the Bastar region has remained one of the least policed areas of the country. The

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police stations were never known to have had any firearms and there was no regular police patrolling of the areas under their jurisdiction.

- ◆ The Bastar area has some of the largest concentrations of tribal population, no doubt, dispersed over many villages and hamlets. This provided the right setting for adding new recruits to the LEM movement. Young men (and later, women) with at least primary level education were absorbed into the fighting cadres of the movement. It was also convenient to train the recruits in firearms and use of explosive materials at camps set up in the interior villages of Abhujmad, far from the eyes of the police. Moreover, because of their familiarity with the local terrain and forest pathways, the leaders could depend on them to find their way around.

In short, Bastar emerged as the Headquarters of LEM in the country, not because this was one of the most backward regions of the country but because of the logistic convenience it provided. Local support was built up by systematically integrating the villages into their liberated zones with the use of brute force wherever necessary. With minimal police presence there was also ample time to plant land mines in all routes leading to their hideouts or strategic positions. Local villagers could act as local eyes and ears to pass on information on the movement of outsiders or police into the sensitive areas.


It is also apparent that for the LEM, the interests and lives of the tribal population are important only as long as it serves the growth of the party. It has been most brutal in dealing with resistance or dissent from any tribal groups. More ordinary tribals than policemen have been killed in the last eight years by the Naxalites, often in a gruesome manner, either because they were considered police informers or because they were unwilling to cooperate with Naxalite plans. Also ordinary tribals (often women and children) are used as human shields when surprised by police or paramilitary forces in villages. In the strategy of the Movement, high priority is given to suppressing dissent or nipping in the bud any revolt from within the tribal society.

It is important to understand the deeper implications of a theory which asserts that economic backwardness and poverty are the real reasons for the rise of the LEM. If such discussions help the central and state governments to give greater attention and priority to the problems of backward regions and tribal communities, surely it would do a world of good. However, such an idea has been used as a propaganda weapon by the LEM to justify continuing violence against civilians and the police. It is also used for creating disaffection in impressionable young minds against the government of the day and also against all democratic structures in the country. And most importantly, LEM leaders have realized that stopping socio-economic development in the tribal areas and perpetuating backwardness would further their cause. In fact, obstruction of development efforts by governmental agencies has become an LEM priority. Infrastructural projects are specially targeted since road connectivity and power lines in tribal areas would bring in greater development, with teachers, nurses, doctors and engineers moving into interior areas. Details regarding the destruction of infrastructural projects and even school buildings are now widely known. Moreover, carefully orchestrated propaganda is unleashed against any proposed

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project whether large or small, as being inimical to the interests of the tribal population. In the early days of the LEM or the Naxalbari agitation, people's enemies or class enemies like feudal landlords, and money lenders were targeted and often eliminated to establish the credibility of the movement with the cadres. However, the current LEM leadership follows a different strategy. While middlemen, traders, contractors and corrupt government officials are tolerated (in fact they constitute a prime source for funds and information) honest government officials are targeted, being seen as obstacles to the growth of the movement. The kidnapping of the young hardworking collectors of Malkangiri in Odisha and Sukhma in Chhattisgarh were prompted by the realization that the work of such officers would improve the life of the people and make it difficult for the movement to grow. Just as communal or fundamentalist organizations stoke disaffection and fear amongst their followers and the public, it has become important for the LEM to continuously build fear and distrust in the minds of the local people against the Indian state and to perpetuate underdevelopment in the tribal areas.

### Conclusion

While it cannot be disputed that economic backwardness and exploitation of vulnerable sections of the society would create disaffection against governments of the day or the prevailing political system, the Left Extremist Movement in India has found it a convenient reason to garner wider support for their objective of carving out a new independent nation state and ultimately overthrowing the Indian State. It has therefore become a priority for the Movement to stop socio-economic development in rural/tribal areas. Both existing and proposed infrastructural projects which could facilitate developmental and welfare activities in remote areas are targeted and destroyed. Honest government officials with a commitment to development and democratically elected local leaders have become the new class enemies of the LEM. Perpetuation of backwardness has become a vested interest for the movement. 

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## Workers without Borders: Security Concerns

Migrants are often viewed as shadowy, invisible people, sliding in and out of the public vision. However, they are now capturing the attention of all sections of the community. Being far from home, and remote from their native state, where they were integrated into the systems of administration and justice, they tend to remain strangers in their state of residence. Kerala has been witnessing a large inflow of migrant labor from different parts of the country over the last two decades. These laborers hail not only from the neighboring states of Tamil Nadu and Karnataka but also from states in East India (West Bengal and Orissa), North India (Bihar, Uttar Pradesh and Uttarakhand) as well as Northeast India (Assam and Manipur).

### Interstate Migrants

According to the Census of 2001, 1.3 per cent of the population of Kerala comprises migrants from other states (as determined by place of birth) and 49.1 per cent of the migrants from other states (MOS) are female migrants. As per the National Sample Survey estimates for 2007-08, the number of migrants from other states in Kerala is about one million. In a memorandum to the Chief Minister and the Labour Minister, The People's Union for Civil Liberties (PUCL) said that there were over three million migrant workers in Kerala in 2012. This figure is viewed as an overestimation and disputed by many researchers. However, it has been pointed out by experts that the number of migrants from other states was to the extent of 1.3 million in 2013. In this context it is worth noting that 1.85 million Keralites have migrated to other countries and 0.97 million people to other parts of India (NSSO 2011). Thus, the inflow to Kerala exceeded outflow to other parts of the country though not to other countries.

Table 1.0  
Distribution of Migrants from Other States in the Districts of Kerala

Districts	No. of in migrants	Share of in migrants
Ernakulam	55977	13.56
Idukki	53056	12.85
Thiruvananthapuram	48575	11.77
Palakkad	47955	11.62
Kasargod	31884	7.72
Kannur	28115	6.81
Thrissur	25358	6.14
Kozhikode	23118	5.60
Malappuram	22092	5.35
Wayanad	18710	4.53
Kollam	16797	4.07
Kottayam	16349	3.96
Pathanamthitta	13683	3.31
Alleppey	11180	2.71
Total	412849	100.00

Source: Compiled from Census of India 2001- D Series.

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It is shown in a study (Patrick, 2012) that 7.37 per cent of the migrant population in Ernakulam district has migrated from other states in 2011. Since MOS amount to 3.11 per cent of the population in Ernakulam district, their number can be estimated as 102003 in the entire district (the population of Ernakulam district as per the 2011 census is 32,79,860).

### Inferences Based on a Primary Survey

The inferences made in a study (Patrick, 2012) based on Ernakulam district are very relevant in the context of the state economy. While discussing the destination of the in-migrants to Ernakulam in general between 1991 and 2001, it was pointed out that the majority went to rural areas. This is reflected in the survey data. However, inter-state migrants preferred to stay in urban areas. Apart from the Kochi city area, urban areas like Aluva, Edappally, Perumbavoor and Kalamassery, as well as the BOC junction in Muvattupuzha are major destinations for the MOS. The other major inferences of the study are as follows:

### Modes of Recruitment

There are four modes of labour recruitment:

- ◆ Direct recruitment of workers by contractor
- ◆ Recruitment from rural areas by labour contractors
- ◆ Recruitment from city slums by labour contractors
- ◆ Recruitment from the marketplace (naka, chowk) by principal employers or mistries.

Migrants have entered the labour market largely through subcontractors, who in the labour arena function as “labour agents,” known by various terms such as the mistry, mukadam or jamadar. Their job is to employ and provide labour for the site, and they find suitable workers in slums and other backward areas. This contractor serves as the link between the principal employer and the worker although he basically represents the contractor's interests.

### Specialisation Among Workers

There often seems to be an inherent specialisation among labourers according to their place of origin, resulting in region and task-specific movements. For example, road workers originate from the Panchmahals, quarry workers from Bharauach, and rice mill workers from the Jalan district of Rajasthan. These location-specific 'skills' however often are inconsequential for unskilled jobs with high content of physical labour. They are nevertheless perpetuated as a justification among employers to hire outstation labour.

### Cluster Formation of Families



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The migrant workers, single as well as families, are engaged in skilled, semi-skilled and unskilled jobs, whether in the agriculture, industry or service sectors. A small percentage of MOS (about 5%) arrive with their families. There was a shift of Christian families from the district of Khandamal in Orissa very recently. This shift was triggered by a local pressure factor, stemming from religious discrimination. In certain locations, there is a cluster formation of families of MOS. One such location is at Vattackattupady in Rayamangalam panchayat. A similar trend was observed at Manapattiparampu near Kaloor in Kochi city (now vacated) and Vazhakkala in Thrikkakara panchayat. Among these, the first case involved immigrants from Orissa.

### Sector-specific migration

There is a heavy concentration of inter-state migrant workers in the construction sector. Though initially recruited in infrastructure projects such as the port, harbour and railways, they are now being recruited in traditional occupations, as agricultural labourers and helpers, masons, carpenters, electricians, plumbers as well as hotel and domestic workers. Plywood and rice mills units are absorbing inter-state migrants to a large extent. The occupational shift from agricultural to non-agricultural activity in Ernakulam has been evident since the mid-1980s, a trend that has reached a staggering rate in the last few years. In order to meet the gap arising from this shift, the remaining cultivators have to depend largely on the migrant agricultural labourers. The emergence of new clusters of firms in the service industry, including retail and large shopping centres, facilitates increased domestic employment that absorbs even the semi-literate population and hence leads to a shift from the agricultural to the non-agricultural sector. This shift is evident in many parts of the district.

In respect of the construction sector<sup>2</sup>, no accurate figures exist on the number of migrants employed, since it comprises activities ranging from building small houses to mega dams and bridges, roads and railways. It is estimated that there are some 60,000 migrant workers in the construction sector in the Kochi area. On large sites, contractors either recruit labour themselves or arrange for labour contractors to bring groups of workers from distant rural areas. Even when regular work is available on large sites for long stretches of time, workers are kept on a temporary status and are not given any of the facilities due to permanent workers. The market for labour in the construction sector is different from the market in other services sectors, because demand is not anticipated and supply created to meet it. Rather, both demand and supply are inconsistent and fluctuate greatly. As the market is unstable, it permits speculation and causes labour to “float” more. Therefore, information asymmetries occur to a large extent in localized labour markets. When the rural poor migrate to the city, they work as unskilled labour, and fall into a bracket where wages are paid on a daily or hourly basis. Obviously, in such an economic situation, the individual labourer is at a disadvantage and the construction firm, its subcontractor or labour agent are at a distinct advantage. Therefore, construction firms exploit the situation by recruiting from a large and unskilled labour pool.

The construction sector is witnessing rapid change in the post-liberalisation phase of the

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economy. The private sector is being urged to play a leading role in infrastructure development, as the lack of it is being seen as a hurdle to rapid economic growth. Private sector and foreign investment are being encouraged in this sphere. Several major projects are already being executed by the private sector through the Build, Own and Operate (BOO) route or the Build, Operate and Transfer (BOT) method. Joint ventures with partners of multi-country origin are being encouraged in the field of infrastructure projects. The workers in the construction sector are creating the base of the new economy but they themselves live in a time warp, trapped in low skilled, low paid, insecure working conditions, bound by feudal working relationships, often literally in bondage. About one-third of these workers are women and children.

The service sector is not an exception, as migrant workers are found working in trade and other services. The emergence of business centres in the district and its elevation to a key urban agglomerate in the state results in the flourishing of private sector activities which is capable of absorbing its educated and skilled population within the district itself. Since 2000, it has observed that the intake of arts and science graduates by the private sector in Kerala has witnessed an increase, especially in urban business centres such as Ernakulam city.

### **Shift from Tamil Workers to North-Eastern Workers**

The first phase of interstate in-migration occurred during the 1980s, especially from Tamil Nadu. According to Census 2001, among the districts, Ernakulam district recorded the highest inflow of migrants (55977) from other states. More than 50 per cent of the migrants from other states in Ernakulam district came from the neighboring state of Tamil Nadu. There was migration of men and women as well as families. They were recruited in fields where native Malayalees hesitated to work.

Unskilled Tamil workers are broadly of two types: those working on contract basis and those seeking work on a day-to-day basis. While the former category works under a contractor or an agent for a fixed period of time, the latter waits for prospective employers every day in some centres in Kochi, which have become literally "labour markets". Some of these labour centres are: Vathuruthy, Kadavanthra Junction, Kaloore Junction, Market Junction in Banerjee Road, and Edappally and Thrikakkara (Vazhakkala). A spatial concentration of migrants' dwelling places can be seen in certain neighbourhoods, including Vathuruthy, Vazhakkala, Edappally and Thrikakkara.

The second phase of inter-state migration started during the late 1990s. Even in the early 1990s the highest percentage of migrant labourers was from Tamil Nadu, followed by West Bengal and Orissa. Workers from North Indian and North Eastern states also came for work. Now there are workers from almost all states including Manipur. Consequently, there is an increasing replacement of 'annachis' (Tamilians) to 'bhais' (North Indians). Young, single male, rural and backward communities dominate the migrant folk, especially from North Eastern India. One of the leading centres of these migrant workers in the district is Perumbavoor. It is learnt that as far as the industrial sector is concerned, MOS are mainly concentrated in industries such as plywood (mainly Vattakkattupady and Pulluvazhy in Perumbavoor), plastic (Kodanad), rice mill (Kalady, Kuvappady

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and Okkal), metal crushing units (in Malayattoor, Mulamkuzhi, Ayyampuzha and Chulli), and quarries (Vengala) and saloons, hotels and shops in Perumbavoor, furniture shops (Nellikuzhy in Kothamangalam) and construction throughout the whole district. Workers from Orissa are engaged in the plastic industry and gardening. In Angamaly, the migrants are concentrated in small scale manufacturing units near TELC and in the construction sector.

### Long Term to Short/Medium-term Migration

One major problem of the household survey is that it does not properly capture short-term migration (for three to four months) and those who reside at the workplace itself. As a result, there would be under-reporting of these migrants in the study. Discussions held with government officials, trade union leaders, social activists and experts help to draw inferences about short-term migration. To that extent, inter-state migration is under-reported in the study. In fact activists and others have pointed out that there are about 50,000 inter-state migrant workers depending on employment in saw mills, plywood and rice mills in Perumbavoor alone. Based on such observations made by experts, it is expected that the number of inter-state migrant workers may reach two lakh workers in Ernakulam district.

According to the NCRL (National Commission of Rural Labour), there were approximately 10 million seasonal/circular migrants in the rural areas alone in 1999-2000. This includes an estimated 4.5 million inter-state migrants. There were large numbers of migrants in agriculture and plantations, brick kilns, quarries, construction sites and fish processing industries.

Short term migration is significant among men, especially from neighbouring states. This kind of migration is more relevant in the trade and construction sectors than any others. The short term workers are either circulatory or seasonal migrants. Circulatory migrants are those who work for a short period and go back to their villages, returning after a few months to rejoin work. Seasonal workers head back to their villages at the start of the busy agricultural season. Their permanent interest lies in their villages. Workers from Tamil Nadu and Karnataka dominate the circulatory migrant category. In a study (Surabhi K.S. and Ajith Kumar N, 2007) it was shown that half of the male migrant workers worked for less than eight months in Kochi. Women migrant workers stay for longer periods than male workers. This may be attributed to the fact that most of the female migrant workers have come along with their husbands while many male migrants are not accompanied by their spouses. Moreover, some workers who were engaged in agriculture before migration, leave Kochi during the cropping season.

### Inadequate Intervention

The state government introduced a welfare scheme for migrant workers on May Day 2010. Though Kerala is the first state to implement such a scheme it has to travel miles for its effective implementation. Under the 'Inter State Migrant Workers Welfare Scheme,' a membership card is issued to each migrant worker who gets enrolled. Each registered worker would get up to Rs.

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25,000 as healthcare assistance for in-patient care in empanelled hospitals in case of accidents or chronic diseases. However, the worker is eligible to get only Rs. 100 per day and the maximum limit fixed per episode of disease is Rs. 2000.

### Background Issues to Security Concerns

The major problem with regard to migrant workers is poor working conditions and long working hours. A 12-hour work cycle is the norm for migrant workers in many sectors, especially in the industrial sector. The working time for the MOS in plywood units is 12 hours and in certain rice mills there is no wage payment if a worker operates less than 12 hours a day. Workers have also complained about doing overtime work with less remuneration and the absence of job and social security measures. Lack of facilities in worksites is another problematic aspect of their working conditions. Those employing over 50 persons are required to provide them with a canteen and accommodation as well as facilities for sanitation and healthcare. No employer provides such facilities. In certain sectors, such as quarrying and building construction, while they got high wages, workplace safety was very low. Minimum wages have not been enforced. In a study about migrant labourers (Ajith & Surabhi, 2007), it was found that they get much higher monetary wages than in their native places. However, they work for longer hours and their real wages may be lower as they have to incur a higher cost of living in Kerala on food, shelter and transport. Discussions with some of the employers and contractors indicate that there is a preference for migrant workers over local labour because of the former's willingness to work for longer hours. There is also a feeling among the contractors and employers that the migrant workers are more obedient and non-complaining than their Malayalee counterparts.

Death and accidents of MOS is a serious issue. High accident rates in a hazard-prone occupation are under-reported. Safety provisions are rarely observed. The first aid facilities available at sites are of little use. Many accidents result in fatalities and contractors and employers usually try to cover up fatal accidents lest they be held liable. Payment of compensation for disability or death is extremely rare. In the event of accidents, the workers are sent back home with a paltry sum for their treatment. Paying off the worker's family with a small sum of money and/or quickly sending off the body to the workers' native place are common practices. Normally, deaths do not get reported and the next of kin of the victims seldom get compensation. They enjoy very limited protection under the labour laws. Most contractors do not bother to pay for medical treatment of an accident victim, even if the injuries render the worker unable to earn for a long stretch of time. The issue of accidents and accident compensation was raised by workers at all the public hearings. Although accidents are common, there are no insurance schemes for workers, particularly in the construction sector. The only time that workers get any kind of accident compensation is when there is a union present to pressurize the contractor or principal employer. However, unions are rare in this unorganized industry.

Living conditions pose a threat to the lives of migrants workers as well as to their society. They live in shanty houses/rooms in slum like localities often on a sharing basis. A few of them live on the

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verandas of shops. They have limited access to sanitation facilities and safe water. In a recent study (Ajith 2011) it is reported that migrants are vulnerable because of crowded and unhygienic living conditions and inadequate provisions for their safety at the work site. There are reports of many human rights violations. However, it is a relief that certain ISO-certified companies provide good accommodation to all MOS (for example, Samsons Plywood, Pulluvazhy). Small firms do not lag behind large firms in discrimination against MOS.

Waste disposal and consequent problems are another problem raised by the migrants. Their practices of waste disposal pose problems for public health and environment. Their working and living conditions as well as habits make them prone to a number of diseases. There are limitations in accessing health care due to language barriers, lack of time and lack of knowledge about the public healthcare provisions which exacerbates their vulnerability. The children of migrant workers usually stay back in their home villages. The large majority of the new migrants from distant states are young and unmarried. For the children staying in Kerala, the language barrier poses problems in availing educational facilities here.

Wage discrimination is another problem to be considered. Highly skilled migrant workers reportedly earn between Rs.2,000 and Rs.8,000 per month. The less skilled earn little. It may be true that in terms of wages, migrant labourers were far better off than in other states as they get many times more than the national minimum wage of Rs. 66 a day. Many workers in states like Bihar were paid only around Rs. 20 a day, while in Kerala they get wages eight or ten times more. Hence they are paid fluid wages, lower than local workers. That means they are engaged in hard labour in poor working conditions without any minimum wage or security. Unskilled migrant labourers get Rs. 300-350 for a day's work as against 400—500 for a local worker. There is wage discrimination against the MOS, which is an unfortunate practice.

Different forms of exploitation by employers and contractors is another grave problem for migrant workers. Employers try to exploit them by paying lower wages than that of local workers for the same type of work. Contractors often charge a commission from their wages.

Owing to limitations in mobility, interaction and portability of entitlements, the inter-state migrants are not able to enjoy some of the entitlements/benefits from central and state governments that they had enjoyed before migration. They are not able to move beyond their work settings due to long working hours and unable to interact with the host community due to the language barrier. There should be better coordination between the host state (Kerala) and the states of origin to ensure that the inter-state migrant workers' rights are transferred from their state of origin to the destination state. The Central Government also should consider 'migration' as a criterion for allocation of resources to different states.

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### Implications & Security Concerns

One major impact of migration on human development is with regard to public health. Their practices of waste disposal pose problems of public health and environment. The achievements in the public health arena of the state would be challenged, especially from the perspective of communicable diseases. The inflow of migrants from barely vaccinated regions and the return of migrants from such under-developed regions in the country could alter the almost complete vaccination situation achieved by Kerala state. Fever and chicken pox are the diseases commonly found among them. In certain circumstances it was noted that they were carriers of diseases such as malaria from their native places to Kerala. It is a fact that MOS are bringing in malaria to Ernakulam, which was eradicated in the state. The increase in the number of malaria cases should be reviewed in this regard. Many locals consider that MOS tend to have diseases like AIDS and leprosy and many are drunkards due to their immoral life and ignorance about the impact of such a lifestyle. According to the field workers of Suraksha (a governmental agency working among migrant workers to raise awareness about sex diseases) almost all the owners are careful in providing necessary facilities to the workers. The use of tobacco consumption is prevalent among the immigrants from north India.

Usage of drugs, tobacco and alcohol are common even among youngsters in their group. Drug abuse is common among the workers. The migrant workers are reluctant about consulting doctors in the case of illness; they have a tendency to take medicines from the pharmacies without any prescription from the doctor. There are about 25 unnatural deaths per year among the migrant workers. All these above-mentioned habits and the tough work in the workplace may account for these deaths. These factors have a major role in the crimes committed by migrants in Kerala. Mobile phone use, as well as abuse, is high among the migrant workers. In such conditions, structured district development planning is required to ensure social and civic discipline.

In several states, migrant workers face the antipathy of locals as they are perceived as taking over local jobs. This hostility makes their situation even more vulnerable. Migrants are sometimes branded as 'unreliable outsiders' and criminals by some local people in the district. Sometimes MOS are perceived as criminals for offences committed by the locals. Certain drug sellers conceal drugs in the rooms of the MOS for which the latter have had to undergo legal procedures. The police also have helped to foster this branding. Certain MOS return to their native places due to local harassment. No doubt, there are migrants from other states in the Criminal List published in the website of the Police Department.

The other side of the picture is the social integration of migrants with locals in Kerala. There is cultural resistance and differences in lifestyle. The workers, while providing cheap and abundant

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labour, also bring a rush of social, cultural and health problems. In Ernakulam, there is a cluster formation of families of MOS in certain areas. One such case is at Vattackattupady in Rayamangalam panchayat. A similar trend was observed at Manapattiparampu, Kaloor in Kochi city and is now observed at Vazhakkala in Thrikkakara panchayat. There were social tensions between locals and migrants in most of these cluster-based regions. The demand for various resources including land, water and electricity is becoming an issue. It is imperative to note that in migration history, the in-migrants hardly own the migrated land, especially when it is a movement based on optimizing opportunities.

It is significant that there are large numbers of seasonal and circulatory migrant workers. They are largely employed at brick kilns and various types of quarries. They may be criminals to a certain extent and thereby pose a threat to the national security. It has been reported that criminal Bangladeshis enter the Kerala labour market in the guise of Bengalis. Though it needs to be substantiated with evidence, a group of interstate migrants poses continuous problems to state law and order.

Another implication of the influx of interstate migrant workers is on the child labour category, which is reported as the lowest in Kerala among the Indian states. Nowadays child labour can be noticed in hotels, construction sector and so on. Most of them are North Indian migrant labourers. The active and efficient intervention of the Kerala Police department has controlled child labour to a large extent. Still, it will be a great challenge in the coming years unless it is checked through proper punishment. Crime among child labourers is not uncommon. This will be reflected in the society and hence threaten security.


The language barrier is another problem for inter-state migrant workers. Of the children staying in Kerala, language barriers pose problems in availing educational facilities here. The migrant workers speaking Oriya or Bengali have started learning Hindi after coming to Kerala. Some of them also have started picking up Malayalam words. Films in the Oriya language are shown in the migrant cluster areas. The advertisements of such films are also in the Oriya language. Shops in such areas also sell Video CDs of Oriya, Bengali and Hindi films and film songs. The restaurants in these areas display menu in several languages to cater to the needs of migrants from different states. The lack of communication due to the language barrier results in clashes between locals and migrants at least in certain unusual situations.

### Conclusion

The in-migration pattern of Ernakulam is providing quite a different perspective to the migration discourse as the purpose of migration is increasingly diverse across different strata of the population. With the possibility of a much larger influx in view of the large scale expansion of economic activities in the state, the migrants can put heavy pressure on urban infrastructure, environment and public services. They may also pose many challenges in governance particularly of urban areas. The major challenge to the civic authorities is to manage the diverse set of demands for public services and facilities. While migrated labourers complain about the difficulty in staying in

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a dilapidated rented house provided by the employers, authorities have to deal with problems like beggary and anti-social activities created by a group of migrants. It should be seen that MOS are provided with proper accommodation, sanitation and wages as stipulated in the related labour law. There should be proper implementation of the social welfare provisions meant for the MOS. There should be a linkage between the labor departments of the various states and proper control and placement of the MOS, otherwise there is the possibility of the in-migration of criminals.

In order to maintain the harmonious life of the district in terms of health and sanitation, the civic authority needs to understand an intensive and long-term planning in sewage, drainage and solid waste management. While addressing the concerns of the in-migrants, the district civic authorities need implementable strategies that ensure both the growth of the district as well sustainable living for its inhabitants. To sum up, the Government has to give priority to not only their welfare and living conditions but also to the socio-cultural impact of migrant labour on the society so as to reduce the security concerns relating to inter-state migrants. 

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- 1 The paper is the outcome of a study conducted for Kerala Labour Movement, Ernakulam
  - 2 The construction industry includes in its scope the processes that produce roads, power plants, petrochemical complexes and of course residential buildings, moving from individual houses to large infrastructure projects.



## Violent Non-State Actors: Paradigmatic Lessons Learned

National security in the first decade and a half of the twenty-first century has been defined predominantly by the US-led “war on terror,” and thus by the struggle between states and certain violent non-state actors (VNSAs)—in particular, the al-Qaeda network and associated movements. Questions are currently being raised about how much longer these specific groups will be regarded as the predominant national-security challenge by many of the world's most powerful states. Some analysts argue that al-Qaeda's senior leadership has lost control of the broader organization, and that the jihadist group has become largely or entirely decentralized<sup>1</sup>. Others argue that an “80 percent solution” has been attained in the fight against al-Qaeda, and that it can be considered strategically defeated<sup>2</sup>. There are reasons to be cautious about these assessments. As the eminent scholar of terrorism Bruce Hoffman has demonstrated, analysts have consistently tended to underestimate the resiliency of al-Qaeda's core leadership<sup>3</sup>. Regardless of the future prospects of al-Qaeda specifically, the phenomenon of VNSAs will continue to pose a fundamental challenge to even powerful nation-states. There are simply too many structural factors that make VNSAs an important part of the national-security environment.

Two major trends will drive the continuing relevance of VNSAs: nation-states are becoming increasingly vulnerable, while technological advances are helping to level the playing field in the competition between states and VNSAs.

One primary factor weakening the nation-state is environmental constraints. The past two decades have seen unprecedented global growth, especially in China and India, which has strained the world's resources. Further, climate change and other environmental factors are likely to weaken the nation-state while making sub-state conflict more likely<sup>4</sup>. An example of how resource scarcity can strain governments is Pakistan, which has long been beset by unrest. While many factors contribute to Pakistan's precarious situation, it is made much worse by the fact that the country faces food price inflation and an ongoing energy crisis. David Steven of New York University's Center on International Cooperation has noted the destabilizing effect of citizens' unmet basic needs<sup>5</sup>. Further, Pakistan's militant groups see opportunity in scarcity. “In 2005, production from the Sui gas field, which accounts for 45 percent of national production, was halted for more than a week due to sabotage,” Steven writes. “Attacks on gas pipelines and electricity grids have continued with depressing regularity ever since.”<sup>6</sup>

Pakistan is not alone in watching militant groups benefit from ecological challenges. Yemen, which faces powerful VNSAs such as Al-Qaeda in the Arabian Peninsula, is also beset by environmental and resource catastrophes. As the respected regional analyst Gregory Johnsen wrote, “The country's water table is nearly depleted from years of agricultural malpractice, and its oil reserves are rapidly dwindling. This comes just when unemployment is soaring and an explosive birth rate promises only more young, jobless citizens in the coming years.”<sup>7</sup> Food prices have spiraled upward in such already deprived countries as Afghanistan, Chad, Mozambique, Sudan, and Uganda, while multiple regions have been gripped by drought.<sup>8</sup>

Even as nation-states grow increasingly fragile, technological advances have been empowering non-state actors relative to the state. Technology played a clear role in the Arab Spring revolts, allowing revolutionaries to organize and disseminate their message, even though there is ongoing

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debate amongst academics about how powerful a contribution technology actually made<sup>9</sup>. Though the intentions and aspirations of the Arab Spring protesters are widely regarded as noble, good intentions do not necessarily guarantee positive results, as attested by the deaths of over 160,000 in the Syrian civil war. Further, technology is not the exclusive domain of the virtuous: bad actors can be, and frequently are, extraordinarily adept at using technology.

It should be noted that more advanced technology will not uniformly empower non-state actors at the expense of the nation-state. A study by Jacob Shapiro and Nils Weidmann systematically analyzing the effect of cellular communications on political violence during the Iraq war found that the expansion of cell phone networks reduced insurgent violence rather than increased it, largely because this expansion allowed more information to reach counter-insurgents<sup>10</sup>. Similarly, revelations about the US National Security Agency show that, although technological developments allowed terrorist organizations to maintain more rapid communications, they also allowed intelligence agencies to penetrate these communications. So some states might benefit from particular technological developments, as compared to their VNSA competitors. Others, already weak states in particular, will find that technology narrows their power advantage over VNSAs.

The study of VNSAs will thus likely grow in importance even if al-Qaeda becomes yesterday's news. However, academic and paradigmatic approaches to understanding VNSAs remain underdeveloped. As Klejda Mulaj noted in 2010, "VNSAs have only recently received sustained interest amongst academic and policy studies."<sup>11</sup> This paper outlines various typologies of VNSAs, and methods for analyzing these entities. It does not attempt to comprehensively treat the subject—but it should serve as a competent paradigmatic introduction.

### VNSA Typologies

Mulaj defines VNSAs as "non-state armed groups that resort to organized violence as a tool to achieve their goals."<sup>12</sup> VNSAs are neither inherently good or evil, nor are they inherently opposed to the state. Some groups, such as private military firms (PMFs) and counter-opposition VNSAs, more frequently find themselves on the same side of conflicts as the state, fighting against other VNSAs. One reason for studying VNSAs as a whole, rather than concentrating only on those perpetrating specific types of violence (such as terrorism or insurgency) is that understanding the commonalities and differences among various VNSAs can produce a better understanding of the phenomenon. These are the major VNSA categories that are most relevant to researchers and practitioners:

Terrorist groups and insurgencies. Terrorism and insurgency are two ends of the same spectrum. Terrorist groups are defined by the kind of violence that they undertake. Although there is no consensus definition of terrorism<sup>13</sup>, Hoffman has been able to distinguish a few characteristics of terrorism that are widely agreed upon throughout the literature:

- ◆ ineluctably political in aims and motives;
- ◆ violent—or, equally important, threatens violence;
- ◆ designed to have far-reaching psychological repercussions beyond the immediate victim or target;

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- ◆ conducted either by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia) or by individuals or a small collection of individuals directly influenced, motivated, or inspired by the ideological aims or example of some existent terrorist movement and/or its leaders;
- ◆ perpetrated by a sub-national group or non-state entity<sup>14</sup>.

Groups that depend on terrorism as a tactic tend to be weak, and generally want to develop into broader-based movements. Often they depend upon the state's overreaction to their terrorist acts to help them grow. As Clark McCauley and Sophia Moskalenko write, the state response following an attack may do “for the terrorists what they cannot do for themselves.” Dubbing this dynamic “jijitsu politics,” McCauley and Moskalenko state that the state's response may “mobilize those who sympathize with terrorist goals,” and “move passive terrorist sympathizers into active terrorist supporters.”<sup>15</sup>

In contrast to terrorist groups that are struggling to grow, the US Army/Marine Corps counter-insurgency field manual defines insurgency as “an organized movement aimed at the overthrow of a constituted government through the use of subversion and armed conflict.”<sup>16</sup> Insurgency can be distinguished from terrorism in two ways. First, the kinds of violence in which they engage is somewhat different. Rather than primarily employing terrorism, insurgencies engage in broader modes of violence: they may utilize terrorism, but are not as dependent on that singular form of political violence. Second, the field manual uses the word “movement” to describe insurgencies. While terrorist groups also are often an outgrowth of a movement, those groups tend to be smaller and lack the popular support of insurgencies.

That being said, terrorist groups and insurgencies are part of the same spectrum, so it is often difficult to discern precisely where one ends and the other begins. Most terrorist groups aspire to grow into insurgencies, and those that remain terrorist groups likely failed either to mobilize the public around their cause or to maintain group cohesion.

Gangs, smugglers and cartels can also be found on the same spectrum as one another. While terrorist groups and insurgencies are often driven by an ideology or overarching cause, gangs, smugglers and cartels generally see profit as one of their highest purposes. Not all gangs and smugglers aspire to be cartels, but those that are highly successful may begin to undertake a broader scale of activity and ultimately evolve into a cartel.

VNSAs as a means of self-protection. One reason it is wrong to view VNSAs as inherently immoral is because the propriety of joining a VNSA may be highly dependent on context. Does the state provide an adequate level of security? Has the rule of law collapsed? VNSAs that are organized around principles of self-protection can be frequently found in states where the government no longer enjoys a monopoly on violence. For example, one can find a wide variety of VNSAs in Somalia, and for many Somalis, joining a VNSA is an inherently rational decision when other means of self-protection do not exist. Some VNSAs focused on self-protection or community defense can even be found in the United States, the Guardian Angels being one example.

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Private military firms (PMFs) have been defined by P.W. Singer as “business providers of professional services intricately linked to warfare.”<sup>17</sup> Though PMFs emerged as an industry around the beginning of the 1990s, they are not a wholly new phenomenon. Privateers, for example, have a centuries-long history. PMFs played prominent roles in the US wars in Afghanistan and Iraq, and at present various PMFs are expected to play a role in helping various African nations deal with VNSAs that challenge their stability. Though PMFs have sometimes been heavily criticized, they seem likely to remain part of the national-security landscape.

Counter-opposition VNSAs emerge in the context of a particular conflict, and are generally organized with a specific adversary in mind. Though not part of the state's military, counter-opposition VNSAs fight the state's enemies. Recent examples of counter-opposition VNSAs include the Sahwa (Awakening) movement in Iraq, and Ahlu Sunnah wal Jammah in Somalia.

Iraq's Sahwa movement went public in September 2006, issuing an eleven-point communiqué. Most points in the communiqué were regarded fondly by American forces, although one problematic point suggested that the Sahwa would have to kill the governor of Anbar province<sup>18</sup>. When the Sahwa helped tribes and former insurgents turn toward cooperation with coalition forces, this made a significant difference on the ground in Iraq's Anbar province. Ultimately the program was expanded countrywide in a campaign designed to create more counter-opposition VNSAs in Iraq, known as the “Sons of Iraq.”

General David Petraeus and Ambassador Ryan Crocker presented the changes on the ground in Iraq to the US Congress in two separate sets of testimony, in September 2007 and April 2008. By the initial testimony in September 2007, the Awakening movement had already helped to significantly improve Anbar, transforming it from the dark days when al-Qaeda was the province's dominant actor. General Petraeus said that Anbar had become “a model of what happens when local leaders and citizens decide to oppose al-Qaeda and reject its Taliban-like ideology.”<sup>19</sup>

Although the Iraq war illustrates some of the promise of counter-opposition VNSAs, it also illustrates related pitfalls. Though Iraq's government promised to incorporate Sahwa members into the security forces or bureaucracy, that process was slow, and Sahwa members ended up with complaints about pay, and the feeling that the government did not uphold its promises. As the US drew down from Iraq, insurgents—particularly al-Qaeda—targeted Sahwa members with a “carrot-and-stick” strategy<sup>20</sup>. On the one hand, many Sahwa members were killed. But on the other, as Sahwa members grew increasingly frustrated with the government, al-Qaeda also targeted them for recruitment. As a former Salahuddin Province-based leader of the Sahwa, Nathum al-Jubouri, said, “The Awakening is like a database for al-Qaeda that can be used to target places that had been out of reach before.”<sup>21</sup>

Cyber VNSAs. It is unclear whether any groups operating primarily in the cyber realm can be classified as VNSAs at present. After all, describing a group as “violent” when it has not killed anybody is questionable.

However, acts undertaken solely in cyberspace can obviously be threatening. For example, by publishing identifying information about people who spoke to or were cooperating with the United States, Wikileaks directly endangered them. It is not clear from open-source information whether

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the Wikileaks disclosures have caused a loss of life, though some analysts believe that the documents were used by VNSAs for targeting purposes. The question of when disclosures of secret information become a violent act is likely to become increasingly relevant. Further, cyber-terrorism remains a concern for policymakers, even if it has not yet been manifested in actual loss of life. It is likely that, if none of the organizations operating primarily in the cyber domain can yet be defined as VNSAs, they will eventually emerge as such.

### Analyzing VNSAs

In analyzing VNSAs, a number of factors are worthy of consideration:

**Leadership.** Is the group centralized or decentralized? Scholars universally agree that prior to 9/11, al-Qaeda was an archetypal centralized organization, with a supreme leader (Osama bin Laden), a consultation (shura) council, various committees, and a cadre of lieutenants in charge of regions or cells<sup>22</sup>. At the other end of the spectrum, some groups, such as the Animal Liberation Front and Earth Liberation Front, are radically decentralized. US-based white separatist groups have also experimented with a “leaderless resistance” model<sup>23</sup>.

There are distinct disadvantages to leaderless resistance in comparison to a pyramidal leadership model. A more diffuse model makes it difficult to attain major strategic objectives due to lack of coordination. However, leaderless resistance also offers advantages. Bureaucratic law enforcement and intelligence agencies may have more trouble keeping up with cells that are disconnected and on the move. A leaderless resistance model can help members avoid arrest, and also maintain their eligibility for military service or other sensitive jobs. Leaderless resistance also makes civil lawsuits and organized crime prosecutions more difficult; such hurdles significantly hampered US-based white supremacists.

**Ideology.** What is the group's central cause and worldview? Is there a chance that the organization might shift from being ideologically driven to being more focused on making a profit? The Revolutionary Armed Forces of Colombia (FARC) is an example of an organization that seemingly underwent this transition.

However, commentators have at times gone beyond the evidence in arguing that other outfits have similarly transitioned from ideologically-driven to profit-driven. Mokhtar Belmokhtar, a longtime Al-Qaeda in the Islamic Maghreb (AQIM) leader who eventually split from the organization, has long been described by some commentators as being a common criminal more than a dedicated jihadist<sup>24</sup>. This contention is massively oversold, and also misinterprets the available evidence. Though Belmokhtar has been deeply involved in profitable North African smuggling networks, there was always reason to question the idea that he was motivated only, or primarily, by criminality. North Africa specialist Andrew Lebovich, writing in late 2011 after examining an Arabic-language interview that Belmokhtar had given, concluded that the interview provided evidence undercutting the notion that he was primarily a criminal. The interview, Lebovich concluded, demonstrated that Belmokhtar had made “at least a rhetorical commitment to al-Qaeda and the tenets of global jihad.” Though there are questions about how much credence should be given to militants' explanations of their own motives, Lebovich also detailed Belmokhtar's history of

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prolonged involvement in jihadist militancy, harkening back to his time in Afghanistan in the early 1990s and continuing thereafter. Thus, Lebovich wrote that “we cannot dismiss the possibility that Belmokhtar really does mean what he says.”<sup>25</sup>

When Belmokhtar split from AQIM the following year, many observers inferred that Belmokhtar was no longer as committed to whatever jihadist sentiments he may have once held. These arguments ignored what Belmokhtar actually said when he left AQIM to form a “guerilla battalion” known as al-Muwaqqi'un bil-Dima. His explanation for the split was jihadist in tone, beginning with religious proclamations and touching upon such themes as the battle between Islam and disbelief, the need for the implementation of Islamic law, and Azawad (the breakaway area in northern Mali) being an “Islamic project.” Sometimes, militant groups do indeed transition from being ideologically focused to becoming profit-oriented, but analysts also sometimes err when asserting that this has occurred.

**Goals.** Does the group in question seek systemic change (as is the case for anarchist and Communist groups, and al-Qaeda), independence within the existing state system (as is generally the case for nationalist groups), reform (as is the case for single-issue terrorist groups, such as those that target abortion providers), or profit (as PMFs and cartels do)?

**Strategy.** One of the biggest mistakes the US made in its fight against al-Qaeda is overlooking the group's strategy. This oversight can be discerned from several early strategic documents that the US produced. For example, the National Military Strategic Plan for the War on Terrorism (NMSP-WOT), published by the Chairman of the Joint Chiefs of Staff, Richard B. Myers, in February 2006, accurately billed itself as “the comprehensive military plan to prosecute the Global War on Terrorism (GWOT) for the Armed Forces of the United States.”<sup>26</sup> Although the NMSP-WOT outlined America's ends, ways, and means, it did not perform the same analysis for al-Qaeda—which is striking, because understanding an enemy's ends, ways, and means is fundamental to formulating military strategy. Indeed, the NMSP-WOT displays a laser-like focus on a single tactic—terrorism—without asking deeper questions about this tactic. What objectives does the enemy hope to accomplish through the use of terrorism?

The White House's National Strategy for Combating Terrorism, published in September 2006, did more to explain the common goals of America's jihadist foes. It noted that although the transnational jihadist movement is not monolithic and is not controlled by a single leader, “what unites the movement is a common vision, a common set of ideas about the nature and destiny of the world, and a common goal of ushering in totalitarian rule.” The document continued by noting that these groups “seek to expel Western power and influence from the Muslim world and establish regimes that rule according to a violent and intolerant distortion of Islam.”<sup>27</sup>

Even though the National Strategy for Combating Terrorism discusses the end state that these groups desire, it made no effort to assess how they intended to get there. Do they have an envisioned path to victory that seeks to exploit certain US vulnerabilities? Or have they embraced the tactic of terrorism and the goal of creating totalitarian religious regimes without any conception of how the tactic might connect to the goal? Even the 9/11 Commission Report failed to provide any kind of strategic assessment of bin Laden and al-Qaeda<sup>28</sup>.

## Violent Non-State Actors: Paradigmatic Lessons Learned

This early failure to examine al-Qaeda's strategy made the US more prone to strategic blunder<sup>29</sup>. States should be very hesitant to assume they have the luxury of ignoring VNSAs' overarching strategy.

Organizational structure. How is the group structured? Those studying a VNSA should attempt to map the group's leadership as comprehensively as possible and also understand the functional purpose served by the organization's structure.

One example of the importance of a group's organizational structure can be seen in al-Qaeda. As previously noted, analysts have rather consistently overestimated the impact of the damage that the US had inflicted on al-Qaeda's core leadership. Why? In a study entitled "Understanding the Form, Function, and Logic of Clandestine Insurgent and Terrorist Networks", Lt. Col. Derek Jones argues that the reason can be found in al-Qaeda's organizational structure<sup>30</sup>. Jones notes the well-worn adage that, by slowly eroding the opponent's will, a guerrilla network "wins by not losing." He contends that al-Qaeda and many other militant VNSAs long ago understood how to lessen their organizational signature. Jones argues that al-Qaeda and similar groups are clandestine cellular networks: clandestine in that they are designed to be out of sight, and cellular in that they are compartmentalized to minimize damage when the enemy neutralizes some portion of the network. Compartmentalization takes two forms. First, at a cell level, a minimum of personal information is known about other cell members. Second, there is strategic compartmentalization between different elements within the organization. Counter-insurgents can capture one person in a cell without destroying the cell; and where cell members must interact directly, structural compartmentalization attempts to ensure that the cell cannot be exploited to target other cells or leaders.


One implication of Jones's study is that al-Qaeda's organizational structure allowed it to recover from past attrition, and likely positions the core leadership to recover from more recent losses. As Jones argues, the form, function, and logic of this organization are designed to maximize its chances of survival, and thus "the removal of single individuals, regardless of function, is well within the tolerance of this type of organizational structure and thus has little long-term effect."<sup>31</sup> Though this contention may be overstated as applied to very effective figures like bin Laden or Anwar al-Awlaki, the point remains that the logic of organizations like al-Qaeda is such that their ability to recover from leadership and other losses is maximized. This is just one example of why it is useful to understand both the structure of a VNSA and also the logic of the structure.

Recruiting. What are the main paths that people take to join an organization? For relatively small terrorist groups, concepts like radicalization may be important to explaining the recruiting process<sup>32</sup>. Conversely, in war zones, other concerns may be more powerful: VNSAs can offer monetary incentives that out-bid those provided by the state, and they may be attractive for personal-protection reasons.

Financial support. From where does the VNSA secure access to financial resources? Does it engage in criminal activities as a method of raising funds? Does it receive support from outside states?

# Violent Non-State Actors: Paradigmatic Lessons Learned

## Conclusion

The foregoing discussion provides a starting framework for defining and analyzing various types of VNSAs. This subject has undergone tremendous transformation over the past decade as VNSAs have massively increased both in importance and also in the priority afforded them by governments. This not only drew many new scholars to the subject, but also challenged many previously dominant assumptions in political science about VNSAs. Nonetheless, the field remains underdeveloped and prone to certain analytic errors<sup>33</sup>. The field of study is thus likely to continue to undergo a transformation. 

## End Notes

1. Arguments holding that al-Qaeda has become primarily decentralized, or surpassed by other jihadist challenges include Clint Watts, "Treating America's al-Qaeda Addiction," Foreign Policy Research Institute, February 17, 2014; Clint Watts, "What if There is No al-Qaeda?: Preparing for Future Terrorism," Foreign Policy Research Institute, July 2012; William McCants, "How Zawahiri Lost al-Qaeda," Foreign Affairs, November 19, 2013; Ben Hubbard, "The Franchising of al-Qaeda," New York Times, January 25, 2014.
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3. Bruce Hoffman, "Al-Qaeda's Uncertain Future," *Studies in Conflict & Terrorism* 36 (2013), pp. 635-53; see also Jenna Jordan, "Attacking the Leader, Missing the Mark: Why Terrorist Groups Survive Decapitation Strikes," *International Security* 38:4 (2014), pp. 7-38.
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11. Klejda Mulaj, "Violent Non-State Actors: Exploring their State Relations, Legitimation, and Operationality," in Klejda Mulaj ed., *Violent Non-State Actors in World Politics* (New York: Columbia University Press, 2010), p. 1.
12. *Ibid.* p. 3.
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  17. P.W. Singer, "Private Military Firms: The Profit Side of VNSAs," in Klejda Mulaj ed., *Violent Non-State Actors in World Politics* (New York: Columbia University Press, 2010), p. 414.
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## Maritime and Littoral Security in India: Nexus and Consequences

India faces a critical security scenario with a vast array of challenges, threats and perils in its littoral-maritime space. This area spans around 7516 km of its maritime boundary line with an Exclusive Economic Zone domain of 2,013,410 sq km and an expansive continental shelf extending to almost 2.9 million sq km, equaling the landmass of India. This space confers India with sovereign rights and entitlements over sea-bed resources of 150,000sq km in the high seas.

Securing India's maritime-littoral space is a colossal, daunting task, which cannot be achieved merely by technological implements, operational rigor, constitutional provisions or institutional frameworks alone. None of these constitute stand-alone responses to secure and safeguard this space. However, a comprehensive effort to enhance human security, would involve investment in human development, covering the civic, political, social and economic realms of India's citizenry that would create empowered first respondents to deal with any kind of symmetric and asymmetric threat.

India has had to contend with several critical deficits for a long time. The following are some of the main factors that expose the fault lines of the Indian system:

- ◆ Deficits in its security apparatus: India suffers from two serious deficits in its security apparatus that is now emblematic of its security and strategic culture. One deficit is its amateurish approach and response to strategic and diplomatic issues and its open exhibition of inter-services rivalry, inter-ministerial conflicts and the trading of accusations in the aftermath of a national tragedy. The second deficit is the reluctance of the strategic elite, both civilian and military, to conduct an in-depth strategic review and initiate the process of a strategic defence review, which is warranted not only for the armed forces but more importantly, for the overall national strategic assessment. India trudges along with ad hoc defence spending hikes that often represent a meaningless knee-jerk reaction to a terrorist incident. There is no policy planning perspective or a white paper and worst still, there is complete forfeiture of the need for an informed parliamentary debate on the nuances of India's national security policy.
- ◆ No defined paradigms of strategic policy: India is an interesting case study of how its strategic practitioners pay lip service and pontificate on the need for a rational strategic culture in podiums and plenary sessions but are in denial when it comes to their praxis. Scholarship in academic and policy analysis has often pointed out that India has been a power adrift with no defined paradigms of defence policy, or a strategic culture and vision that recognizes the enormity of the threats and the plethora of complex challenges it faces.
- ◆ Long-standing neglect of the Navy: India's maritime domain and its navy had been viewed as its "Cinderella service" for too long, constrained by neglect and ignorance. Matters changed when globalization and maritime trade catalyzed the economy and resources poured in for the Navy, which had long been neglected because of the nation's obsession with land borders and boundaries. Periodic spurts of Indian defence spending had resulted in the haphazard growth of platforms without any defined doctrinal attribution, until 2004 when the Indian Maritime Doctrine INBR 8 was released followed by other doctrinal articulation.

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- ◆ Absence of maritime strategic thinking: India's greatest deficit is perhaps the absence of maritime strategic thinking as a dimension of Indian strategic thinking. The reality is that both aspects are completely absent and successive governments, civil servants and the higher defence command found it easier to work on the basis of ad hoc preferences rather than undertake the painful process of creating and nurturing a paradigm and process that would provide a clear and objective understanding of India's grave and complex security challenges. An institutional macro-strategic response calls for maritime strategic and security thinking and processes as a means by which the architecture of challenges, threats, responses as well as policy-strategic-resources issues can be meaningfully addressed.

In the context of securing India's maritime-littoral threat matrix, it is imperative to understand the complexities of the challenges and perils that stem from India's long maritime boundary and coastline.

While addressing a complex profile of threats and challenges in India's maritime-littoral continuum, there is a need to examine the 'comprehensiveness of the littoral:

- ◆ the littoral connotes a continuum of the territorial maritime boundary that has its seamless interface with the sea
- ◆ the littoral also denotes the matrices of how the density of human demographics and the maritime-territorial geography are configured
- ◆ the littoral is the fulcrum of how governance, maritime domain awareness and the operations of the agencies converge, determining the security calculus and the development index of the region.

A definition of littoral security could be the sum total of how littoral governance and littoral social economic development is harmonized with national development.

The critical gravity of India's maritime-littoral matrix lies in its huge maritime territorial entitlements and assets, covering 2.9 million sq.km, an area equal to the land mass of the country. The critical issues in this assessment may be understood from the following questions:

- ◆ What should be the framework of an India-centric maritime domain awareness strategy and how would India contend with the threat matrices in this framework?
- ◆ What are the continuing operational lacunae and deficits, what lessons have been learned and can India develop a good learning curve capacity from past incidents?
- ◆ What is the capacities-responses framework India has gained with regard to its maritime low intensity conflicts, based on its maritime theatre operational experiences?
- ◆ What kind of future awaits India based on the maritime security praxis that is likely to emerge from the synergies of its institutional framework, doctrinal evolution and operational realities?

### The maritime-littoral domain matrices

In the context of globalization and post-globalization economic growth, the maritime-littoral domains have emerged as development and transportation hubs linking the seas with the hinterland. In its conceptual definition, the “maritime” refers to the “brown waters” or “green waters” from the coastal shelf. The “littoral” refers to the coastal strip of land 100 km from the shore into the hinterland, which hosts 60% of world's population. While the next 350km hosts 75% of the world's population; cities with population exceeding 1 million are all littoral cities and 50% of global cities with populations exceeding 500,000 are all littoral cities (ports). The global maritime supply chains are the “principal drivers” of maritime-based economic interdependence. However, while the maritime domain constitutes access to sea and trade for maritime nations, it is also an emerging arena of opportunity for acts of violence both at sea and on shore.

Globalization has not only spawned the growth of ports, but also the development of “critical maritime infrastructure” both on-shore and offshore, that are crucial links to the state economy and constitute vital pillars of the nation's economic growth. It is these critical assets that are now being targeted from within and without the state by a host of low intensity maritime operations (LIMO) conducted by asymmetric non-state actors viz pirates, terrorist groups and other groups with maritime attack capabilities. Securing the sea and its expanses is a formidable challenge, as the capabilities are disproportionate to the tasks at hand.

The challenges evident in the maritime-littoral domain are not easily explained due to the collective impact of several complex factors. It prompted a new definition termed “chaos in the littorals” that is defined by the following aspects:

Porous territory is characteristic of the littorals in the developing world. The span of the territory is long and it is thickly populated by sea-faring communities. The stretch of the territory is usually porous owing to easy access to shore by various sea users and the freedom of usage of the coastal waters. The task of securing this territory usually lies with the local communities who have better territorial and domain awareness. However with the onset of various asymmetric challenges and threats, the porous scope of this territory is being exploited by various actors who have a clandestine social and economic agenda of subversion.

Decreasing effect of governance is a concomitant consequence of the porous nature of the territory. Until the impact of maritime asymmetric conflicts was felt, the need for constant surveillance and reconnaissance was unknown, as the seas were a commonwealth for all its users, both benign and mala fide. Governance of the maritime-littorals was more informal and voluntary since the threat was more of crime conflation than the orchestrated dimensions of maritime terrorism. However, with the onset of varied asymmetric maritime challenges and threats, these complexities have increased.

Cumulative social & civic conflicts have been festering in the littoral domains over a long time with spates of communal, caste and ethnic conflicts and tensions that have often erupted into crises. These tensions have often affected governance and social chaos has often been prevalent in the littorals.

## Maritime and Littoral Security in India: Nexus and Consequences

Continued smuggling and infiltration of light weapons and narcotics has been a phenomenon of the littoral regions. Smugglers, pirates, terrorists and insurgents have always been able to operate seamlessly in these regions. In earlier periods, smugglers and insurgents had thrived due to the heightened activities of pirates, who have used the littorals and the sea to exploit maritime trade and shipping. In the present context, new confluences of piracy and terrorism are evident, with smugglers of humans, weapons and narcotics having close operational links with terrorists and pirates. Piracy and terrorism has been able to thrive on a political economy of smuggling. The 1998 Mumbai blasts and numerous instances of infiltration have all relied on these illegitimate vehicles and felonies.

Armed gangs and crime syndicates creating anarchy in the littorals have been the persistent trends even with the greater span of state governance in the regions. Even as the state battles piracy and maritime terrorism and groups with maritime capabilities, there remains the “unholy nexus” between corrupt politicians, crime syndicates and their activities. Empirical evidence shows that linkages between the criminals and politicians have increased with strong economic support to party candidates during elections in return for the “blind eye” towards their nefarious activities. The “reign of anarchy” has been ably supported by the active connivance of several shady political and social elites with highly polemical involvement.

Littorals are thus the loci of porous territory; decreasing effect of governance; cumulative social & civic conflicts and the continued smuggling of narcotics and infiltration of light weapons, and penetration by armed gangs and crime syndicates. The oft-argued factor of “violence at sea” has always had an inevitable littoral access that made it possible. Therefore the cumulative violence of piracy, maritime terrorism, insurgency and smuggling that could all be regarded as maritime low intensity conflicts have their onshore access and established networks, which exploit the maritime commons for violent means.

While various conceptual and operational frameworks on counterterrorism have been proposed to combat and contain “violence at sea”, there has been no rationale of using these to address the littoral interface in this critical challenge and peril. Critical to the issue of combating and containing “violence at sea” is the imperative for a viable and robust “maritime domain awareness” and “awareness of the craft/container” – both material and human contents of ships calling to ports and those in continuous transit or those who employ crafts of opportunity (CooP) to infiltrate and beach in the coastal areas. Maintaining sustained domain awareness is complex, given the opacity of the seas, the vastness of the terrain and the immense difficulties faced by the defenders to spot intruders. An iron-clad regime of maritime counter-asymmetric operations is a hugely complex task. Such operations would hamper the freedom of the seas as well as the freedom of trade.

It is evident that the economic opportunity of trade in the globalization and post-globalization phases in the developing world has produced polarized sections of littoral populations comprising the affluent and the desperately poor. Social and economic human development profiles in the littorals have been either the nouveau-rich or the poorest, suffering from severe deprivation. It is this huge disparity that has been exploited by criminal syndicates and by gangs that have used social and economic discontent to their advantage.

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The solution lies in investing in the littoral populations who constitute the primary stakeholders of the littoral-maritime commons.

The primary argument highlights the critical need to secure the maritime-littoral from threats and challenges. It could be better addressed when the contradictions of social and economic disparity are minimized and are directly proportionate to the level of social-economic development. Since littoral regions lack human security and human development, the development of these capacities could lead to better governance. Better governance is thus the prerequisite for better securing of the littorals.

The objective of good governance is as vital as the comprehensive development of human security, which results from human rights, human dignity and human development. A comprehensive approach to tackle asymmetric challenges and perils of the maritime-littoral regions could come from investing in human development. Winning the hearts and minds of the littoral populations will go a long way to tackle perilous threats and challenges.

### **The Imperative for India-centric maritime domain awareness**

Developing India-centric maritime domain awareness is the crucial investment that the country must make prior to investing in more resources and capabilities. What needs to be secured? What would be the benchmarks of maritime asymmetric challenges? What are likely to be the dynamically evolving patterns of maritime asymmetric threats? Understanding and analyzing India's maritime security needs a "comprehensive" operational definition and parameters. India's vast profile is evident from the fact that the sub-continental geographic maritime boundaries are extensive and covers an area equal to its landmass.

The post-colonial evolution of India's governance and security culture had always discounted the maritime boundaries, given its focus on the management of contentious land borders/boundaries. Traditional sources of adversity had always given India an inward land-approach outlook with a clear lack of comprehensive land-maritime border/boundary management. Perhaps the only comprehensive strategic review that was attempted was the Kargil Review Committee Report 2001 which made a salutary mention of the importance of border management. Nevertheless, it is disappointing that there has been neither any substantive plan of action, nor any developments in the follow-up reports.

### **Seven challenges persist in India's maritime-littorals**

1-Porous nature of littoral and maritime borders: India's maritime-littorals and the Exclusive Economic Zone (EEZ) host a dense maritime domain witnessing both native and alien maritime activity, with little governance and regulation, fraught with a wide spectrum of asymmetric maritime threats: increasing incidence of piracy and maritime terrorism, porous boundaries and poor governance due to lack of effective profiling and surveillance. The porous nature of littoral and maritime borders does not define and distinguish between friendly and hostile interventions and hence the possibility arises of threats and attacks from asymmetric sources.

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2-Dense shipping in the sea-lanes: the dense shipping in the sea-lanes of communication running adjacent to India's maritime-littorals has over 100,000 vessels exiting and entering the Indian Ocean-Arabian Sea-Bay of Bengal. This traffic has spawned increased maritime pollution in India's EEZ, ship ballast discharge, unobserved ship-based activities that are unmonitored and covert infiltration by crafts of opportunity. They represent the crucial weakness of maritime surveillance.

3-illegal infiltration into the littoral-maritime space: The third challenge is illegal infiltration into India's littoral-maritime space and in the vast EEZ, including poaching by foreign fishing trawlers that have wrecked the delicate environmental balance of the diversified and rich marine life and resources of the Arabian Sea-Indian Ocean-Bay of Bengal areas

4-Established nexus between organized crime and terror groups: The fourth challenge is the established nexus between organized crime in the hinterland and terror groups, boosted by the proximity of India's borders and boundaries with Sri Lanka, Myanmar, and Bangladesh. India's littorals are the staging points for the long chain of links in the smuggling process that pose the challenges of crime-terrorism conflation and the resulting complexity in responses

5-Covert transit of components and sub-assemblies of WMD: The fifth challenge is the covert transit of components and sub-assemblies of weapons of mass destruction in the Arabian Sea via North Korean-Pakistani shipping. This represents unknown maritime domain activity and is often not detected until interdicted;

6-Devastation of the littorals environment: The sixth challenge is the colossal devastation of the littorals environment owing to the location of ship-breaking yards and other toxic industries that are extremely hazardous to human life and environment, reflecting the ecological mismanagement of the littorals;

7-Poaching by foreign state agencies: The seventh challenge has been the poaching by foreign state agencies such as the Sri Lankan navy and the Pakistani Maritime Agency, which apprehend and fire on Indian fishermen. This demands a response that will secure the lives and livelihood of Indian fishermen.

The nature and complexity of these challenges have proved quite tough for the central and state governments in India. There is an evident lack of constitutional clarity with regard to maritime issues and much time has been devoted to finding ways to manage the centre-state overlap issues. The first task is to resolve the centre-state overlap of organizational and operational jurisdiction of roles, powers and agencies in a seamless manner. It is clearly imperative to configure the importance of maritime domain awareness, which could result from effective governance of the littorals, thus providing meaningful state engagement in development and capacity-building experiments, which in turn will call for seamless intelligence and surveillance operations as well as operational responses.

The Mumbai attacks of 26 November 2008 have exposed the serious weaknesses of India's maritime-littoral operational matrix. There have been several lacunae despite various prior incidents of coastal infiltration and attacks, but these shortcomings have not exploded into a full-blown crisis yet.

### **What are the daunting lacunae?**

While the modernization of locations and equipment and the training of forces is underway; what is missing is the operational coordination of the Special Operation Forces with the civil agencies of the state. Several constitutional roadblocks are being cited as hindrances to the effective interoperability and seamless overlap of central and state agencies. There have been responses taking into account the Mumbai style and patterns of infiltration. In the art and science of terrorism and infiltration, innovation is the key forte for the violent non-state actor. The violent non-state actor innovates for the next wave of attack and the state security forces simply react. This action-response sequence perennially places the weakest actor, the terrorist, as the strongest innovator of tactics and strategy.

### **Several responses are imperative and the following issues need important consideration:**

- ◆ Imperative for reverse analysis: State agencies need to shed bureaucratic rigidity and adapt operational and tactical flexibility to simulate new templates of threats and derive proportionate responses;
- ◆ Surveillance of safe havens: Safe havens are important staging points along the littorals as the first point of landing and rendezvous, Safe havens can be detected only by human intelligence (HUMINT). The imperative is to have continuous surveillance of the littorals and their connecting routes and other villages in the hinterland. The buildup for a terrorist attack commences in the safe havens since they are tactical reconnaissance centres for terrorist attacks;
- ◆ Coordination in secure inter-agency communication: It is imperative to build lateral coordination in secure communication between various agencies. While responses and coordination are vital links and pivots for a robust defence against the next attack, there is a need to think out-of-the-box for new contingencies.

### **Serious and critical introspection is essential for the following contingencies:**

- ◆ What operational responses are in place to deal with terrorists armed with weapons of mass destruction (WMD), possibly nuclear-radiological, chemical and biological weapons?
- ◆ What measures have been initiated to counter the radicalization of the home population with radical ideologies that propel them to be supporters of a possible terrorist attack? There is a priority need for a counter-information/communication strategy against the radicalization campaign of radical groups.
- ◆ What is the Indian state's response to the media? While the media reports on terrorist incidents, it tends to sensationalize it and even hamper operations onsite such as during Mumbai 26/11 as also during the IC-814 hijack.



### **The capacities-responses framework**

There are three levels of capacities-responses in which India has to configure its responses viz: intelligence, operations, governance and development

In the field of intelligence, it is critical to build seamless coordination between state and central intelligence; avoiding duplication of agencies and work. It is imperative to establish 24/7 Area Maritime Surveillance through Unmanned Aerial Vehicles which have already been mounted, and to link such surveillance to various national intelligence gathering means and assessment methods. It is also essential to streamline and channelize intelligence data with analysis.

The objective would be to develop and monitor a national real-time digital mapping process of movements and surveillance assessments. The system would function with a central headquarters as well as coastal stations, which would be field outposts feeding into the digital domain. At present there are a few such stations at Kochi (Kerala), Uchipuli (Tamil Nadu) and Porbandar (Gujarat), but there is a need to build a more viable network of field posts. An urgent requirement is to work out the central-state intelligence sharing and operational coordination of civil-military; as well as the Navy-Coast Guard overlap. Other vital initiatives include increased investment in HUMINT (human intelligence) to be ably complemented with ELINT (electronic intelligence) and SIGINT (signals intelligence)

The second area is in the realm of operations: measures have to be in place for the modernization of equipment and training of NSG personnel, state police, and maritime police. Another imperative is to develop inter-agency interoperability through constant simulation and scenario-building exercises. Inter-agency interoperability exercises must include training along with the Navy and Coast Guard so as to develop common responses and coordinated flexibility. Constant interoperability would strengthen the development of various situational response approaches. It is also imperative to evolve theatre command and operational flexibility even as forces and equipment are now in theatre deployments. Joint operations must be carried out to ensure robust and focused responses as well as effective civil-military coordination.

The third area is in the realm of governance and responses to equitable development. Governance and development are vital even as asymmetric threats gather momentum in exploiting local situations. Good governance and regulation of the littoral areas would address the problem of porous and ungovernable tracts of territory. It is crucial to secure the littorals with good governance and development to avoid having a Naxalite-type ungoverned territory that fosters violence. Higher levels of inter-agency law & order enforcement must be balanced with confidence investment in littoral populations, fishermen and coastal communities to boost their trust and confidence in the state. Coastal communities would be the primary sources of HUMINT (human intelligence). Allocating resources for human development is a primary investment in building secure communities in the littorals and the hinterland.

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Capacity-building and heightened awareness among the coastal people is vital to enable them to deal with prevalent threat assessments. It would make them stakeholders and encourage their civic participation in the counter-asymmetric threat response mechanism. As part of this process, it is also imperative to address their social-economic and civic needs on a fair and equitable basis.

### India's emergent maritime-littoral security praxis

India's praxis in building security of its maritime-littorals could emerge from three responses: governance and security; enhanced domain awareness and responses and joint operations.

**Governance and Security:** The most vital investment from India's perspective is in the human development paradigm that works in tandem with good governance and provides comprehensive security. Winning the hearts and minds of the poverty-stricken coastal communities is highly important as they are the first stakeholders of the littoral maritime domain. Governance and development that augurs equitable growth, invests the state with a constructive role in the public space. This would be the best "human hedge" to keep the terrorists out and integrate the communities for meaningful, sustainable and appropriate development. Good governance and social economic development nurtures India's citizenry as primary stakeholders and creates the vital synergies needed to combat crime and terrorism.

Heavy-handed security measures and draconian legislations have no appeal for a discontented populace. Human security from human development is the derivative of good governance yielding comprehensive security. Either India succeeds in ushering in the long overdue and well-deserved social and economic development of these communities or it cedes their loyalties to terrorists, criminals and insurgents who gain sway by exploiting their poverty and disenchantment.

**Enhanced Domain Awareness and Responses:** Asymmetric challenges and threats are better handled with proaction and robust domain awareness—not from constitutionally mandated structures that have no operational and tactical utility. In the learning curve of counter-asymmetric operations, the degree of success in such operations rests in the robust awareness and the effective translation of intelligence into action. The fact is that there is no guarantee of actionable intelligence, even with an effective intelligence-gathering network. The plaint that there is no actionable intelligence is the most unprofessional admission of lapses and laxity and an escapist argument—intelligence is not served up on a platter of accuracy.


Given its specific domain and theatre milieu, intelligence does not await lethargic bureaucratic perception and response. Intelligence is tactical and extremely fungible and mutates into newer, formidable threats in hyper-momentum mode. Enhanced domain awareness and response involves linking the sensor and the shooter, which demands extreme agility. This can only be achieved by 'jointness' of perception and response involving all levels of respondents: civilian, military, intelligence and local communities—it has to be a mailed fist not an open hand

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**Joint Operations:** In this age of highly coordinated asymmetric operations—'jointness' is the strength and synergy of the terrorists, insurgents and the organized crime syndicates combining stealth, surprise, speed, initiative and maneuver (S3I&M) along with their state patron. That is how the Lashkar-e-Tayyiba (LeT) and the Inter-Services Intelligence (ISI) ran the Mumbai operation of 26/11. The imperative for India is to counter-intuit its operational response through a joint operations approach.

Littoral-maritime operations demand a single maritime agency that coordinates the coastal and off-shore security. It demands the need for a joint forces command model evident in the Andaman & Nicobar Island Command with its adaptive linkages to civil machinery.

The pressing need is for a strategic command and an operational theatre command with a single dynamically evolving digital scenario picture that would elicit robust responses. Lethargic bureaucratic and archaic protocols must yield to on-site operational robustness in countering threats.

In conclusion, India's grand strategic goals should encompass addressing the governance-security paradigm in the littorals, establishing robust, systemic and operational initiatives, and building a national security consensus that is devoid of political fanfare, scoring of political points and acrimonious blame games. A rising India should adeptly balance the imperatives of governance and security on one hand while accentuating economic growth and social stability on the other. 

## Piracy, Private Maritime Security Companies and Coastal Security in India: Lessons from the Enrica Lexie and Seaman Guard Ohio Cases

Two recent incidents that happened along the Indian coast involving the vessels Enrica Lexie and Seaman Guard Ohio have renewed questions concerning coastal security. Has India learned its lessons from the Bombay attacks? Though some measures have been implemented in the aftermath of the attacks, the larger issues regarding the legal norms that govern coastal security still remain open and undecided. At the time of this conference, the premier investigation agency in the country, the National Investigation Agency, NIA, was still grappling with the issue as to whether the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (SUA Act, 2002) should be invoked against the Italian marines involved in the Enrica Lexie incident.

It would be appropriate to first consider the issue of coastal security in general and then proceed to examine the issues thrown up by Enrica Lexie and Seaman Guard Ohio.

The porous nature of India's coastline and its vulnerability has been revealed by the recent spate of terrorist attacks on Indian soil. Those who indulged in the mass killing of innocent men and women were not Indian residents but foreign mercenaries who penetrated the country by sea and wreaked havoc with reasonable ease. To avoid such incidents in future and ensure that the boon of a long coastline does not become a bane, India has to examine its coastal security apparatus and revamp the same.

Coastal security is not a subject that can be scrutinized solely within the confines of national laws. It has transnational relevance as it relates to various internationally accepted and uniformly followed norms that govern the various uses of the sea including navigation. Any amendment to the national laws governing the maritime belt should also take note of the international norms impinging on the issue. In the present era of globalization, no country can afford to unilaterally change the principal norms pertaining to its maritime zones. India is not an exemption and hence before evolving new norms to deal with its perceived coastal security concerns, the validity of the proposed solutions should be tested in relation to relevant international norms as they presently stand.

While reviewing the norms governing coastal security with the objective of redrafting the same, the following questions come to the fore:

- ◆ Is there any conflict between the coastal state's security interests and the concept of freedom of navigation under the international law of the sea?
- ◆ Are there any norms in the international law that empower littoral states to evolve effective laws to protect its territory, including the coastline, from non-state actors or terrorists?
- ◆ If such international norms do exist, then how effective are they in providing coastal security to the state from non-state actors or terrorists?
- ◆ Does the present delimitation of maritime zones and the nature of jurisdiction granted to the coastal state within each of these zones effectively empower the state to protect its coastline from non-state actors or terrorists?

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- ◆ Will the extension of sovereign rights or jurisdictional powers further into the sea and over the contiguous zone and the continental shelf, protect in any manner the security interests of the coastal states from non-state actors or terrorists?
- ◆ Has the concept of freedom of navigation in any manner diluted the coastal state's jurisdiction to secure its coastline?
- ◆ Do the existing norms tilt more in favor of protecting freedom of navigation at the cost of jeopardizing coastal state security?
- ◆ Does international law envisage conferring jurisdictional powers on the federal units over areas beyond the territorial sea?
- ◆ Does the law enforcement machinery in the federal units have necessary infrastructure or professional competence to police maritime zones as far as the contiguous zone?
- ◆ When the state police machinery across the country has completely failed to secure the national or inland water bodies like rivers, lakes and backwaters, can they be expected to perform such law enforcement within the various maritime zones?

Before examining these questions, it is appropriate to have a brief overview of pertinent concepts such as the nature, scope and ambit of coastal security, nature and extent of territorial sea, its evolution and attainment of legal status in the law of the sea arena, the nature of the rights of the coastal state in the territorial sea and the concept of freedom of navigation.

### **Peculiar nature of coastal security**

Protecting the shoreline is a wholly different task from protecting the land boundary of a state. Barbed fences are common along transnational land borders, but are practically impossible in the field of coastal security. From time immemorial, human communities living along the coast have relied on the sea not only for fishing but also for communication and transport. Sea-based commerce is as old as human civilization itself. Shipping conducted through ports and harbors along the coastline account for nearly eighty percent of international trade. Drastic measures like shutting off its seashore to the world at large, even if it were practically possible, is not in the interests of any state and no coastal state can afford to do so except at its own peril. At the same time, the coastline is a matter of enormous security concern to the coastal state since it is a vulnerable frontier through which enemies could infiltrate, thus seriously jeopardizing state security. Coastal security thus involves reconciling the genuine interest of the state in safeguarding its security with the equally important interest of maintaining its access to the oceans, as gateways for commerce and economic upliftment.

### **Coastline and the marginal sea as state territory**

Territory is one of the basic and fundamental concepts in international law. It is the space within

which the state exercises its supreme and normally exclusive authority. Concepts such as sovereignty, jurisdiction, government and security would be meaningless in the absence of territory. The territory of a state consists of the land within its boundaries as well as waters within and adjacent to its boundaries. These waters are of two kinds: national or internal waters and the territorial sea. When a state has a seaboard, a certain portion of the sea adjacent to its coast is also subject to its jurisdiction. The extent of this area of the territorial or marginal sea and the legal nature of the state's right in the said area are two matters which directly concern the norms regarding coastal security.

### **Origin of 'territorial sea' concept**

Certain portions of the sea along the coast of a state are universally considered as an extension of its territory and the coastal state's jurisdiction over such areas is recognized. A state must have control over the approaches to its shores for its security, and over the ships within this area for its economic well-being. This belt of the sea adjacent to the coast is known either as 'marginal belt' or as 'territorial waters' or as 'territorial sea' though each of these terms in their strict literal sense have minute formal differences. The concept of the territorial sea developed naturally based on the fact that it is adjacent to the coastal state. Baldus, a juriconsult of the 14th century wrote "The Prince is the Lord of his territory and of the sea subject to him. The portion of the sea subject to him is adjacent to the coasts of his territory." The process of bestowing territorial character on the adjacent belt of the sea was more or less completed by the acceptance of the concept of 'mare adjacens' of Bartolus in the 14th century and that of 'mare portio terrae' of Gentilis in the 16th century. It was Galiani, the Italian jurist who found the term 'mare territoriale' (territorial sea). It may not be out of place to mention that the concept of territorial sea germinated albeit in an inchoate form in the state practice and legal thinking of ancient India. The Artha Sasthra of Kautilya provided adequate testimony to this contention. One of the first rules enunciated by Kautilya on maritime jurisdiction reads: "The Superintendent of Ships shall examine the accounts relating to navigation on boats sailing close to the shore ('Samudra Samanya'). The Artha Sasthra also contains some very important ideas relating to the nature of maritime jurisdiction of the coastal state:

- ◆ A King's territorial rights extended not only over the land but also over the rivers and seas within his domain
- ◆ These rights involved corresponding obligations including that of keeping these waters safe for navigation and putting down piracy
- ◆ Subject to the condition that the ship must not indulge in piracy activities and must pay necessary dues, it was allowed passage through the territorial waters of the state.
- ◆ So from early times, it had been the consistent practice to confer on the littoral state or its monarch some rights over the sea adjacent to the territory of the state. The concept of territorial waters has a valid basis in international law, though disputes existed regarding the nature of the legal status.

### **Legal status of adjacent coastal waters**

By the practice of nations and the theory of self–preservation and protection, every state has the right to evolve norms and put in place a mechanism so as to protect its territory and people from attacks of any kind. A state may exercise certain well-defined rights of control within its marginal sea belt. The extension of sovereignty of a state outside the limits of its land territory into its coastal belt is justified by the security demands of the state, its commercial, fiscal and political interest and its interest in exploiting the products of the sea adjacent to its land territory. In this instance, the focus is on the security interest of the state, which to a great deal depends on the legal status of the territorial waters. The sovereignty exercised by the coastal state over its territorial waters was viewed in various ways by scholars. Some considered it as an actual ownership (dominion) because it implies in certain cases an exclusive enjoyment very characteristic of ownership, while others treated it as a right of limited sovereignty conferring only a right of jurisdiction on the littoral state. Columbus, the high authority on the law of the sea enumerates the rights of the coastal state as five:

- ◆ Jurisdiction over foreign ships
- ◆ police functions
- ◆ customs and revenue functions,
- ◆ fishery rights
- ◆ establishment of defense zones

Although it was universally recognized that the coastal state was more vulnerable if it had no control over the adjacent sea, there were differences among jurists with respect to the extent of the control to be enjoyed by the coastal state. Should it be conferred sovereign power over that area or should it be reduced to a mere right of jurisdiction? The majority of jurists and general international opinion were in favor of territorial sea subject to sovereignty. Yet this proposition was not as simple as it appeared to be. The spatial character of the territorial sea makes it the subject of simultaneous projection of two sets of competing interests: the exclusive interests of the individual coastal states and the inclusive interests of the international community.

### **Interests of the international community**

One fundamental and judicially confirmed tenet of international law is that a state cannot exercise sovereignty over its territory in a way that denies the exercise therein of the legally recognized rights of other states. The sovereignty of the coastal state over its territorial sea has to be exercised subject to certain limitations made in the interests of the world community. Approximately fifty thousand ships ply the world's ocean routes and at one stage or another traverse the territorial sea of one or more states. Usage of the territorial seas of different states is not only unavoidable in international shipping, but is in the interest of the community of states. Otherwise transportation costs and the prices of commodities would increase unnecessarily. As

pointed out by Hall "a nation cannot refuse access to non-suspected vessels for innocent purposes without infringing its duty. The interests of the whole world are concerned about preserving the utmost liberty of navigation for trade purposes by the vessels of all states."

Selden in his *mare clausum* admitted the principle that a state could not forbid the navigation of its seas by other people without being found wanting in its duties to humanity. He thus endeavored to reconcile the British special claim to the sea with the general claims of freedom of navigation.

### **Freedom of Navigation**

Freedom of navigation is the first in the bouquet of freedoms that together constitute the freedoms of the sea. Though primarily concerned with navigation through the high seas, the concept is also relevant from the perspective of territorial waters. The concept of freedoms of the sea has a chequered history from the 17th century onwards, during the time of the Dutch jurist Hugo Grotius, who was its principal champion though not its founder. The main factor that compelled him to call for freedom of the seas was the need for free and safe navigation to new markets like India. Grotius argues that the vast expanses of the ocean were incapable of being appropriated and that its resources are inexhaustible. The only exemption to freedom of the seas was the freedom of the coastal state to exercise jurisdiction over a narrow belt of sea adjacent to its coast. This was done for the protection and security of the coastal state. After passing various vicissitudes of history the doctrine of freedom of the seas came to be widely accepted. The law of the sea developed around this concept. The principle of sovereignty of the coastal state over its territorial waters developed co-extensively with the concept of freedom of the sea. Even Grotius who fought for the freedom of the seas conceded that a belt of the sea adjacent to the coast would be within the sovereignty of the coastal state. Thus the territorial sea was a necessity and not a threat to the *mare liberum* concept.

### **Effect of UNCLOS III on freedom of the seas**

The Law of the Sea has evolved through the decades. The United Nations Convention on the Law of the Sea III (UNCLOS III) which came into force on 16th November, 1994, was a unique event in the history of mankind. Never before in human history had there been an attempt on this scale to formulate and establish a comprehensive international law through free negotiation and agreement. Of the many achievements of UNCLOS III, the evolution of the territorial sea with clear fixed limits of 12 nautical miles from the base lines, the concept of innocent passage through the territorial sea and the contiguous zone over which the coastal state may extend the operation of certain laws, are of prime importance.

It is now universally recognized that the territorial sea is an integral part of the territory of the coastal state that has sovereignty over it. Nevertheless, the sovereignty of the territorial sea is (unlike that over internal waters) subject to the enjoyment of certain rights of innocent passage and of transit passage by vessels of all nations. The territorial sea is thus open to merchant men of all nations for innocent navigation except cabotage. It is the common conviction that every state has by



customary international law the right to demand that in times of peace its merchant men may inoffensively pass through the territorial sea of every other state. This is a corollary of the freedom of the open sea. That the coastal state has exclusive jurisdiction within the territorial sea over matters of police and control is universally recognized. Yet, here again the said exercise has to be reconcilable with the rights of navigation and unhampered innocent passage. Foreign vessels have a right of innocent passage in the territorial sea including the right to stop and anchor there insofar as this right constitutes an ordinary incident of navigation or is rendered necessary by force majeure or a state of danger.

With respect to the contiguous zone having an extent of 24 nautical miles from the baseline, UNCLOS III recognizes it as a formal belt for certain limited purposes for the coastal state to exercise the control necessary to prevent infringement of customs, fiscal immigration or sanitary regulations. The jurisdiction exercisable in the contiguous zone is confined not only to the four kinds of laws and regulations, but also with a view to their application and enforcement within the territory or territorial sea. After UNCLOS III, freedom of the seas today means in the first place that the sea is open to the common and uninterrupted use of the ships of all nations. The principles of freedom of the seas with respect to the high seas implies specially the following consequences: (1) Freedom of navigation (2) Freedom of fisheries (3) Freedom to lay submarine cables (4) freedom of overflight.

### **National legislation on maritime zones**

The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 is the Indian legislation governing maritime zones. Though enacted prior to UNCLOS III, it reflects the principal norms laid down in UNCLOS III. A notable variation of much relevance to coastal state security is that Sec 5 (4) provides that the central government may exercise such powers and take such measures in or in relation to the contiguous zone as it may consider necessary with respect to (a) security of India and (b) immigration, sanitation, customs and other fiscal matters. The inclusion of security is in addition to the powers available within the contiguous zone under UNCLOS III.

The Territorial Waters Jurisdiction Act, 1878, enacted in the United Kingdom pursuant to the decision in the Franconia case, is retained in the statute book. Its stated objective is to bring within its ambit all offenses committed in the open sea within certain distance of the coasts of the dominion by whomsoever is committed to be dealt with according to law.

The Coast Guard Act and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 contain provisions to deal with the offenses committed within the territorial sea, contiguous zone and the exclusive economic zone.

### **General principles applicable to ports**

It would be relevant to examine the very peculiar position under the international law regarding ports which often fall within the internal waters of the state and thus technically lie fully within the

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sovereign powers of the state. The right of sovereignty recognized as belonging to a state should not be construed as conferring an unlimited power to prohibit the use of its ports and harbors to foreign nationals. This would imply neglect of its duties for the promotion of international intercourse, navigation and trade which customary international law imposes upon it. The general principles applicable to ports, harbors and roadsteads are capable of being summarized as follows:

- ◆ In times of peace, commercial ports must be open to international traffic. Liberty of access to ports granted to foreign vessels implies the right to load and unload their cargo, embark and disembark their passengers
- ◆ no port can be shut against a foreign ship seeking shelter from a tempest or compelled to enter in distress
- ◆ purely military ports may be closed to all foreign vessels
- ◆ entry of ships of war even to commercial ports may be subjected to certain restrictions.
- ◆ each state has a right to enact laws controlling navigation within national waters.

The entry of foreign merchant ships may thus be reasonably regulated provided there is no hindrance to international trade and no discrimination between states so as to favor some at the expense of others.

The above-mentioned general norms of international law relating to ports need to be borne in mind while taking a fresh look at coastal state security, and new norms when evolved may be reconciled with the above since as pointed out by Columbus, “the sea is a way and is common to the peaceable traders of all nations.” There is no man so self-sufficient as not to need the continual help of another, neither is there any country which does not at some time or another need the growth and productions of another.

UNCLOS III has effectively tried to reconcile the conflicting interests of the coastal state's security concerns in its adjacent waters and the concept of freedom of navigation, by evolving the concept of innocent passage. The provisions in UNCLOS III have till date succeeded in its stated objective. The concept of transit passage with respect to straits used for international navigation has sufficiently balanced the interests of navigation against the genuine security apprehensions of the coastal state. The fact that UNCLOS does not specifically talk about terrorism or about non-state actors threatening coastal state security may not hinder the coastal state from evolving norms by drawing force from its provisions. The norms evolved in UNCLOS III have been deliberately left nebulous so as to cater to future developments. A conjoint reading of UNCLOS III and the Indian statutes in force reveal that though there is no specific mention of the terms “terrorists” or “non-state actors” in their provisions, the statutes are wide enough and do empower the coastal state to enact laws to ensure the security of its shores.

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Indian law has chosen to extend 'security' interests to the contiguous zone also, thus deviating from the internal law norms on this point. Therefore, just as within the territorial sea (12nm), the union government is empowered to evolve and enforce norms regarding security within the contiguous zone (24nm) also,. The Indian constitution does not stop the federal units (states) from evolving norms to protect its interests along the coast. The states have always had the right to evolve laws empowering their police to effectively enforce law and order and enforce security within the coastline and marginal sea. That the states had not chosen to invoke those powers is a different matter. However, the states lack the necessary infrastructural mechanism and this is a matter that needs to be effectively addressed.

There is no dearth of legal norms at present to effectively protect India's coastal security. What is lacking is effective implementation and co-ordination between different authorities as also the serious absence of infrastructural facilities. It should be noted that infrastructure in the form of technical contrivances, such as a string of sophisticated radars along the coastline will serve the purpose. There has to be effective participation of the coastal communities. Their immense practical experience accumulated over generations and their minute knowledge of the locality and the inhabitants cannot be substituted by any technological devices. A string of maritime police stations could help the coastal state to co-ordinate between the local communities and channel the data collected from them. The data if passed on to the coast guard and navy in a timely manner will empower them to use their expertise effectively in enforcing coastal security.

There is no need to create any additional maritime zones such as a 'Maritime Security Zone' for enhancing coastal security. Any such addition will only add to the chaos of a spectrum of maritime zones with varying jurisdiction and powers. Any extension of the rights of the coastal states would also detrimentally affect freedom of navigation, which has already been eroded over the years. A wider belt is unnecessary to defend against any threat from non-state actors or terrorists as it would add immensely to the obligations and responsibilities of the coastal state. An additional stretch of territorial sea affords no greater protection without adequate infrastructure and resources to monitor such an area. The states and their police machinery are totally unequipped to deal with the maritime zones and it is best left to specialized bodies like the coast guard and navy. Allowing the state police machinery to interfere with vessels plying in the contiguous zone, on the pretext of coastal security will only create confusion and disrupt the freedom of navigation. Security or defense is no reason to consider an extension of the territorial sea. The contiguous zone, within which security is also protected under the 1976 Act, sufficiently protects the coastal state.

### **The Enrica Lexie and legal issues**

Does the arm of the Indian law stop short at 12 nautical miles from the Indian coast or is it capable of being stretched to further extents of its maritime zones to deal with perpetrators of crime within those zones? This is one of many pivotal questions thrown up by the recent incident involving the

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Italian vessel Enrica Lexie. Two Italian marines who were on duty on board the vessel are presently detained in India charged with the crime of shooting two Indian fishermen to death. They have been charged with murder under Sec.302 of the Indian Penal Code.

There is tremendous public sympathy in India for the two fishermen who were shot to death. One of the deceased is survived by two sisters, both minors. Their parents had already died and now their only brother has been shot dead. The other fisherman's family consists of a widow who has the responsibility to bring up her two young children all by herself. Both families belong to economically weaker sections of society and deserve maximum sympathy.

In Italy too, there is great concern regarding the fate of the two marines who are now lodged in an Indian prison awaiting a lengthy murder trial. A prolonged and onerous criminal trial, which could be a punishment in itself, awaits them, if the Indian courts reject the preliminary objection regarding their jurisdiction to try them. Families of the marines in Italy have genuine reason to be concerned and the Italian Government is trying in earnest to resolve the crisis.

The Enrica Lexie incident captures the attention of maritime lawyers not only because of humanitarian concerns, but also because it throws open several questions within and outside the realm of International Law, especially that branch termed as the Law of the Sea. Though questions regarding the scope and extent of the coastal state's jurisdiction over adjoining waters have engaged the attention of maritime lawyers for decades and were considered to be fairly settled, 21st century problems demand 21st century solutions.

Piracy, once thought to be dead and buried, thus receiving only cursory attention even in the third UNCLOS, has spread its tentacles so wide that the world has to sit up and deliberate, lest incidents like Enrica Lexie are repeated. Twenty first century piracy, supposedly originating from the Somali coast is perceived as being controlled from world business capitals. It is even threatening the life of innocent fishermen from tiny fishing hamlets along Indian coast

The bravado exhibited by US, Italian and even Indian navy so far in and around the Somali Coast, Arabian Sea and some areas of Indian Ocean on the pretext of containing piracy, but which often lead to the shedding of innocent blood are no longer viable solutions to this profound problem. India and Italy learnt this the hard way with the Enrica Lexie incident. Others might realize it later, albeit slowly but in a more gruesome way. This must be avoided as far as possible.

Since the Enrica Lexie incident is an ongoing case, the larger issues are reserved for later discussion and only the limited issue of jurisdictional power (or the lack of it), of the Indian courts to try the Italian marines ought to be examined at this point.

The Italian marines are undoubtedly entitled to a fair trial and hearing and should never be condemned unheard. Their legal and factual contentions must be considered on merit and they

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should be presumed innocent until found otherwise by a competent court. If they argue that they are not governed by Indian law, that contention deserves to be considered and if it is found that Indian law is not applicable they ought to be handed over to be tried under Italian law.

The question whether the Indian courts have jurisdiction to try the two Italian marines involved in the shooting was specifically addressed before the court by the relatives of the dead fishermen. They pointed to Sec.3 of the Indian Penal Code and to two specific statutes in force in India: the Admiralty Offences (Colonial) Act, 1849 and the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (the SUA Act, 2002).

Some details, such as the exact distance from Indian base lines to the marine area where the shooting took place is clouded, but even the state police seem to agree that the shooting happened beyond the 12 nautical mile territorial waters of India but within the Indian Contiguous Zone and Exclusive Economic Zone. That being the factual position, one might jump to the conclusion that since the incident happened beyond Indian territorial waters, neither the Indian law nor the Indian courts have jurisdiction and the Enrica Lexie being registered in Italy, the flag state law ie. Italian law ought to apply based on the principles of the International Law of the Sea as settled under the UNCLOS.

However a conjoint reading of Sec.3 and the two above-mentioned statutes clearly reveal that the Indian courts are well within their powers to try the Italian marines. Sec. 3 of the Indian Penal Code reads as follows: "Punishment for offences committed beyond but which by law may be tried within India: Any person liable by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India. (emphasis supplied)

### **Section 3 of the Penal Code reproduced above has the following attributes:**

- ◆ It applies to all persons including foreigners and is not confined to citizens of India.
- ◆ The said section presupposes the existence of an Indian law under which a person can be made liable for an offence committed beyond India, i.e., beyond the territorial limits of India.
- ◆ If such an Indian law exists, then the person liable under that law is to be dealt with according to the provisions of the Indian Penal Code for such offence committed beyond India.
- ◆ While being so dealt with under the Indian Penal Code, a presumption follows that the offence had been committed within India.

Section 3 applies to all persons including non-citizens. Hence the Captain of the vessel as well as the two Italian marines who are foreign citizens, presently in India are squarely covered by the said provision.

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The Admiralty Offences (Colonial) Act, 1849 is a statute which envisages extra-territorial operation and specifically deals with and empowers authorities to take legal action with respect to admiralty offences or offences committed upon the sea i.e., beyond the territorial waters of India. The said Act is protected vide Art. 372 of the Constitution of India and continues to have extra-territorial effect pursuant to Explanation II to Art. 372.

Sec. 3 of the Admiralty Offences (Colonial) Act, 1849 reads as follows:

### **Provision 7c, where death in the colony follows from injuries inflicted on the sea:**

“Where any person shall die in any colony of any stroke, poisoning, or hurt, such person having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place where the admiral or admirals have power, authority, or jurisdiction, or at any place out of such colony, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished, in such colony, in the same manner and in all respects if such offence had been wholly committed in that colony; and if any person in any colony shall be charged with any such offence as aforesaid in respect of the death of any person who, having been feloniously stricken, poisoned, or otherwise hurt, shall have died of such stroke, poisoning, or hurt upon the sea, or in any haven, river, creek, or place where the admiral or admirals have power, authority, or jurisdiction, such offence shall be held for the purpose of this Act to have been wholly committed upon the sea.”

The above provision clearly and unequivocally empowers the authorities in India to deal with offences committed outside India which during the time of the enactment was referred to as a 'colony'. Mark the words 'or at any place out of such colony' as it specifically empowers the authorities to deal with, inquire into, try, determine and punish the offence in the same manner and respect as if it has been committed wholly in India. Thereby the Indian authorities are empowered to invoke the Admiralty Offences (Colonial) Act, 1849 over and above the IPC and CrPC in the case of the Enrica Lexie.

In February 2003, fifteen Indonesian pirates who had boarded a Japanese ship named Alondra Rainbow were successfully prosecuted and convicted in Mumbai, India invoking inter alia the provisions of the Admiralty Offences (Colonial) Act, 1849. All pirates were sentenced to seven years of rigorous imprisonment with a fine of Rs.3000 for each crew member, in default of payment of fine, to suffer further rigorous imprisonment for two months.

The Captain of the Enrica Lexie and the two Italian marines could also be liable to be prosecuted under the SUA Act, 2002. This Act, vide S.1(2) extends to the Territorial Waters, the Continental Shelf, the Exclusive Economic Zone and any other Maritime Zone of India within the meaning of the Maritime Zones Act, 1976. Thus the jurisdiction of the Indian authorities stand extended beyond the

territorial waters of India up to the edge of the exclusive economic zone which is 200 nautical miles from the baseline. Offences within the said zone are thereby punishable under the SUA Act.

The SUA Act defines the term 'Ship' in S.2(h) as to include any floating craft. Thus both Enrica Lexie and the fishing boat St. Antony are ships/floating crafts and are thereby amenable to the SUA Act. Chapter II of the SUA Act lists the various offences under it. It lays down the punishment for such offences as well. Thereby it can be seen that it is a complete code in itself. Section 3 (1) (a), (b), (c), Section 3 (1) (g) (i) (iv) and (v) and Sec. 3 (7) and (8) (c) of Chapter II of the SUA Act, 2002 are specifically relevant. Relevant portions of Section 3 (1) (a), (b) and (c) of the SUA Act, 2002 reads as follows:

Sec. 3 Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.-

(1) Whoever unlawfully and intentionally-

- (a) commits an act of violence against a person on board a fixed platform or a ship which is likely to endanger the safety of the fixed platform or, as the case may be, safe navigation of the ship shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine;
- (b) destroys a fixed platform or a ship or causes damage to a fixed platform or a ship or cargo of the ship in such manner which is likely to endanger the safety of such platform or safe navigation of such ship shall be punished with imprisonment for life;
- (c) seizes or exercises control over a fixed platform or a ship by force or threatens or in any other form intimidates shall be punished with imprisonment for life;

Section 3 (1) (g) (i) (iv) and (v) of the SUA Act, 2002 reads as follows:

- (g) in the course of commission of or in attempt to commit, any of the offences specified in clauses (a) to (f) in connection with a ship
  - (i) causes death to any person shall be punished with death;
  - (iv) seizes or threatens a person shall be punished with imprisonment for a term which may extend to ten years; and
  - (v) threatens to endanger a ship shall be punished with imprisonment for a term which may extend to two years.

Relevant portions of Sec. 3 (7) and (8) (c) of the of the SUA Act, 2002 reads as follows:

Sec.3 (7): Subject to the provisions of sub-section (8), where an offence under sub-section (1) is committed outside India, the person committing such offence may be dealt with in respect thereof as if such offence had been committed at any place within India at which he may be found.

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Sec.3 (8) (c): No court shall take cognizance of an offence punishable under this section which is committed outside India unless:

(c) the alleged offender is a citizen of India or is on a fixed platform or on board a ship in relation to which such offence is committed when it enters the territorial waters of India or is found in India.

Note the words "is on board a ship in relation to which such offence is committed when it enters the territorial waters" as also the words "or is found in India" in Sec. 3 (8) (c). In the current case, the Italian marines were on the Enrica Lexie when she entered Indian territorial waters and moreover the marines and the Captain are still in India. So the Act squarely applies to the facts of the case.

Further a reading of Sec.13 of the SUA Act 2002 which provides for presumption of offences under Sec. 3 should alarm any lawyer appearing for an accused charged under SUA. The said provision which shifts the burden of proof onto the accused could make the criminal trial very arduous for the accused. In the light of the above-said legal norms presently in force in India, the two Italian marines and the Captain of the vessel are liable to be tried in India under Indian law. If they are so proceeded against and earnestly prosecuted there is a reasonably high chance that they will be convicted.

However till date, the Government of India has refused to invoke the SUA Act, 2002 in the Enrica Lexie matter. Similarly, unlike the Maharashtra Police who effectively invoked the provision under the Admiralty Offences (Colonial) Act, 1849 the Kerala Police is refusing to invoke the same against the Italian accused. More than a month after the incident and several legal battles, the investigating agencies have so far chosen not to invoke SUA Act 2002 nor the empowering provisions under the Admiralty Offences (Colonial) Act, 1849. They have charged the marines only under Sec. 302 read with Sec. 34 of the Indian Penal Code (IPC). It is trite law settled by innumerable precedents including those from the Supreme Court of India that the IPC and the CrPC. have no applicability beyond Indian territorial waters extending to 12 nautical miles except under circumstances falling within Sec. 4 of IPC and Sec.188 of CrPC. That it would be onerous to prove the existence of the said circumstances in the Enrica Lexie incident is also evident. Thus charging the marines under the IPC and CrPC without invoking the SUA Act 2002, nor the empowering provisions under the Admiralty Offences (Colonial) Act, 1849 could lead to a situation where the Courts in India will after a point be compelled to acquit the accused marines.

By virtue of the norms put in place by the Admiralty Offences (Colonial) Act, 1849 and more recently by the enactment of the SUA Act 2002, Indian law does not invariably freeze, stultify or become ineffective upon reaching the outer limits of the territorial waters i.e., immediately upon reaching the outer limits of the 12 nautical mile territorial waters. The courts and authorities in India are empowered, capable and competent under the said statutes to apprehend, try and punish perpetrators of crime as far as the Indian Exclusive Economic Zone which is 200 nautical miles from the base lines. The 21st century world and the issues endemic to our times demand that Indian law has extra-territorial operation and vibrancy so that the law remains a purposive enterprise.



## Somali Piracy and the PMSC boom

The threat of piracy from the Somali coast has led to the creation of private maritime security companies (PMSCs) They provide security to the merchant marines in pirate-infested waters. The recent detention by the Indian Coast Guard of an American Vessel Seaman Guard Ohio has brought to fore a number of issues concerning the status and legitimacy of private maritime security companies (PMSCs).

The vessel Seaman Guard Ohio, registered in Sierra Leone and owned by a US PMSC is under detention in the Indian Port of Tuticorin. According to the Indian Coast Guard, the said vessel was found within Indian maritime zones with a cache of arms and ammunition which she could not properly account for. The Master, officers and crew of the vessel (including Indians) have been arrested and are presently lodged in an Indian prison in the state of Tamil Nadu. They have been charged with violating various Indian statutes including the Arms Act.

The Sierra Leone Ship Registry issued a press release that the detention of the vessel violates the freedom of navigation principle, which is sacrosanct in the Law of the Sea. Sierra Leone has relied on PART VII of Art.87 of UNCLOS to seek the release of the vessel. Though the attempt is to drag the controversial Freedom of Navigation (F.O.N.) Programme of the United States into the issue, if pursued it could prove to be the proverbial “last nail in the coffin” for the Seaman Guard Ohio. The relevant provision referred to in the press release reads as follows:

### Article 87

#### Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:

- a (a) freedom of navigation;
- b (b) freedom of overflight;
- c (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- d (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- e (e) freedom of fishing, subject to the conditions laid down in section 2;
- f (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

The issues that arise from Sierra Leone's contention are manifold. The perceived relevance, if any, of the said Article is apparently clause (a) which pertains to “Freedom of Navigation.” Does this help Sierra Leone's case? Have they realized the import of the “Right” under Art. 90 upon the “freedom” under Art 87? A feeble contention has been put forth that the vessel was exercising its “Freedom of Navigation” through the High Sea and was “illegally lured” into Indian waters by the

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Indian Coast Guard and then an “Illegal” boarding and searching was done, leading to its seizure and arrest.

If this is the best legal contention that Sierra Leone could put forth after a dozen days of detention and seizure, then Indian prosecuting agencies will have a field day when the matter reaches trial. Sierra Leone is likely to confront stacks of legal issues during the trial with generous application of the strict norms under the Indian law of evidence.


At the outset, they might have to deal with the status of the Sierra Leone registry as the purported “flag state”. No one likes being termed a 'Flag of Convenience'. However, if it comes to a trial, Indian prosecutors would dig right from the *Nottebhom* case onwards and would beneficially proceed to such indeterminate premises such as the “genuine link” being the “financial link.” An exit at the initial stage could save Sierra Leone from further embarrassment. In putting forward its contention Sierra Leone seems ignorant of the Indian legal scenario pertaining to distances as far as its EEZ and the international legal ramifications involving particularly sensitive sea areas (PSSA) vis-a-vis provisions of UNCLOS.

The Indian Parliament has enacted the SUA Act, taking its cue from the SUA convention. The provisions in the convention, which provides for boarding a ship even on the high seas when there exists reasonable grounds to suspect that the ship, or a person on board is, has been, or is about to be involved in, the commission of an offense under the Convention, are not anathema to Indian Law. The issue is still unraveling and the outcome is awaited..

After the perceived triumph of Indian law and state diplomacy in the *Enrica Lexie* affair, which saw the Italian marines still languishing in India after being caught unaware, confused and confounded within the virtual labyrinth of the Indian legal system, it appears to be the turn of those concerned with *Seaman Guard Ohio*.

### Conclusion

The incidents involving the *Enrica Lexie* and the *Seaman Guard Ohio* reveal that all is not well with the Indian coastal security scenario despite the steps taken in the aftermath of the Bombay attacks. Both incidents reveal that pending issues cannot be solved by enacting norms in India alone, as they have international ramifications and need to be tackled at a macro level.

Since India hopes to play a larger role in the Indian Ocean region, it ought to evolve steps to control floating armouries' such as the *Seaman Guard Ohio*, which violate coastal state laws with impunity. Strict implementation of PMSC norms ought to be undertaken to avoid incidents such as the *Enrica Lexie*. The SUA Act, 2002 and other enactments of the Indian Parliament cannot be left redundant and must be invoked against those found liable under its provisions. Matters concerning national security and citizens lives cannot wait for elusive international consensus to emerge. Tough times often require tough measures. 

## Human Security for Coastal Fishermen

**T**he sea has been a medium for invasion from time immemorial. Foreigners crossing the sea for trading or religious purposes have ended up usurping the freedom of India. Moreover, the smuggling of drugs and arms through the sea is also easy as surveillance is limited. Hence the security of coastal fishermen and their integration into the surveillance network is of paramount importance for the safety and well-being of the country.

There are manifold threats to the security of fishermen, which are linked to their occupation, economic stability and psychological mindset. There are also external security threats.

### Threats and Challenges

Fishermen are engaged in a dangerous vocation as this industry is of a hazardous nature and the work-related risks are very high. There are several instances of fisherman not returning to the shore and it is estimated that at least 75 fishermen lose their lives annually while fishing along the coast of Kerala. They also sustain the loss of fishing implements due to natural calamities, which pose a serious threat to their security. The tragic loss of life and coastal destruction caused by the Asian tsunami of 2004 is a case in point. Most of these casualties are due to inadequate preparations for meeting emergencies, poor maintenance of fishing craft and inadequate safety equipment or indifference to safety regulations. Most often, fishermen oppose those very safety laws and regulations meant to protect their own interests thereby defeating their purpose.

Every human being ought to be capable of self-actualization. Fishermen face many challenges in satisfying their existential and growth needs. An environment conducive for their personality development, on par with conditions available to the mainstream population, is essential.

Fishermen carry with them the nomadic characteristics of their ancestors. Fishing trips are rather like hunting expeditions and the hunting never ends for fishermen.

In a country like India with its long coastline and particularly in a state like Kerala, security threats from across the seas are to be expected, This has been demonstrated in the wake of the Mumbai terror attacks of November 26, 2008, and cases such as the Enrica Lexie, involving an unprovoked attack by Italian marines on an unarmed Kerala fishing vessel.

No freedom is complete without economic freedom. Indebtedness is a bane of the fishermen community. A bonded community is always insecure. Fishermen are forced to borrow money from middlemen at exorbitant interest rates in order to acquire fishing implements. They also need money for operating the inputs.

Many beaches are now being converted into tourist centres. This poses a considerable threat to environmental stability and also affects the traditional way of life of the fishermen.

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### Present Scenario

There are only limited sea rescue measures for fishermen and it is often not available at the right place or time. The only people they can depend on are fellow fishermen. Search and rescue operations are even now a far-fetched possibility. Even though there is some government machinery for search and rescue, they may not effectively be available for many reasons. At times of acute need, it is fellow-fishermen who dare to rescue lives at sea.

The possibility for developing an alternate livelihood is necessary. Apart from giving some assistance for education, not much else is being done. The number of fishing units is rising but the fish catch is not increasing. Hence an alternate way of living becomes essential.

Fishermen are independent in their way of thinking and are even reluctant to enroll in their own safety schemes, such as personal accident insurance. Subscribers to the Fishermen's Personal Accident Insurance Scheme 2011-2012 being implemented by the Kerala State Co-operative Federation for Fisheries Development Ltd. (KSCFFD, also known as Matsyafed) numbers only 1.50 lakhs, women members included. The Kerala Fishermen Welfare Fund Board is also implementing a similar scheme. Coverage of fishing implements is also necessary. Matsyafed is implementing an exclusive insurance scheme for its member fishermen.

Security begins at home. In Thiruvananthapuram district, there are nearly 20,000 women fish vendors. They start their day at 7 AM and work till 11 PM. Children grow up physically, psychologically and socially insecure. Since the parents do not find the time and energy to care for their children, they often go astray.

Fishermen need money to acquire fishing inputs. Matsyafed and other agencies are giving only a portion of the requirement. For the rest they are forced to approach middlemen, who naturally take away a good portion of their income.

The number of beach resorts are increasing, further impacting the traditional lifestyle of the fishermen and affecting the environment.

### Remedial Measures

Alcoholism and drug addiction are creating a growing disaster in the coastal belt. The evil habits of the parents affect the children and create insecurity in their formative years of growth. Awareness programmes are directed mainly at children and women. By focusing on the affected children and their mothers and sisters, it may be possible to bring in positive change.

Fishermen seldom carry life-saving equipment in their canoes. Their daredevil approach to their occupation is often the reason for this. Attempts at distributing life-saving devices at half price, have

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met with marginal success. The Department of Fisheries has undertaken many programmes but the response from the fisherfolk has been far from encouraging. Their mentality makes them reluctant to enroll in insurance schemes. This issue also needs to be addressed.

The community must be persuaded to promote education, strive for professional dignity, develop alternative livelihoods and cultivate a savings mentality. Instead of living in the present, they must be taught to have dreams for the future and create a better tomorrow for the next generation.

There should be programmes to teach the fishermen responsible fishing techniques. Studies indicate that fish wealth is on the decline. One of the reasons is the destructive mode of fishing employed by the fishermen themselves.


To tide over indebtedness, Government has to arrange adequate finance to meet the capital outlay as well as recurring expenses. For this the project size of Matsyafed has to be increased. The price of fishing inputs is increasing but the project size is not increasing proportionally.

Fishermen find it difficult to meet operational costs. Most are using kerosene and diesel as fuel. The availability of kerosene is a major problem. The price of diesel is also being raised frequently and an effort to subsidize this will surely benefit the community.

It is estimated that nets, canoes and engines costing around Rs 60 lakh are being damaged every year by natural calamities. In the agricultural sector, the loss is substantially compensated. However, such compensation is not given in the fisheries sector. Therefore, creating a corpus fund for distress relief would serve the community.

Fishermen's societies are functioning all along the coast. Local institutions are needed to provide timely help. For this the co-operative society set-up is ideal. Some may face problems but many have developed into support institutions. These institutions are best suited to extend valuable help to fisherman. However, just giving out doles is not a solution. Fishermen's societies are affiliated to Matsyafed, which has brought about many changes in this field.

Like freedom, security stems from an individual's perception or feeling. If you feel insecure you are so. Real security is rooted in community cooperation and support. Promoting mutual respect and creating an environment of harmony will enhance human security not merely for the coastal fishermen but for humanity as a whole.

By providing, sustaining and ensuring occupational and social security and also providing an atmosphere conducive for self-actualization, I believe that the entire fishermen community along the coastal belt can be converted into effective watch dogs of national security. 

## Community Policing: A National Security Perspective

Until recently, the primary focus of national security was to guard the national borders to prevent external aggression. But now the security of a nation is endangered more by the collapse of its internal security than by invasion. It is easier to destabilize a nation by spreading panic within its territory and by jeopardizing the credibility and effectiveness of its internal security agencies. Hence, if national security is to be upheld, it is imperative that threats like terrorism, insurgency, sabotage and subversion be effectively prevented or tackled.

Undoubtedly, efficient general policing on a daily basis is central to national security. A few decades ago, such a statement would have raised many eyebrows. However, contemporary experiences have made us wiser. Inefficient and ineffective policing is an invitation to disaster. A police force that is unable to elicit information or enlist co-operation from the people in its basic tasks of protection, prevention and investigation will actually facilitate the work, not only of ordinary criminals but also of those who wish to destabilize the nation. Neighborhoods would be far less vulnerable to crime and subversion if people respected and trusted the police, and perceived them as their guardians. The forces which promote organized crime tend to exploit police weaknesses such as the inability to obtain timely information on criminal activities from the community or the failure to deliver honest and speedy justice to the public. Forces that spread disaffection enhance their acceptability among targeted sections either by discrediting the police as an inefficient unsympathetic agency manipulated by an opposing group or by fabricating and disseminating stories of police brutality and atrocities against the targeted group. Police credibility is therefore integral to strengthening national security.

Arguably, policing is also the palpable manifestation of the state's monopoly over physical force, which is vital to its very survival. Yet, maintaining this monopoly by continuous use or show of force against the subject population will prove to be self-defeating. This will ultimately lead to the weakening of the Social Contract which made the existence of the state possible and feasible. Moreover, in a democracy, public consent lies at the core of governance. Therefore security should be ensured without robbing citizens of their privacy and freedom. If security is to be maintained without undue restraints on freedom, then public cooperation is absolutely essential. So traditional policing methods which thrived on universal fear of the police have to be replaced by a strategy in which the police seek co-operation from the public at large, in their efforts to provide them with security.

The Community Policing Strategy is centered on the principles of modern democratic policing enunciated by Sir Robert Peel in 1829. This strategy ensures bonding between police and people in such a manner as to safeguard the security of the community and its people. Such a bond becomes a bulwark against insidious attempts to destabilize national sovereignty through internal subversion. It is therefore important to develop a new policing style by which individuals and groups are encouraged to co-operate with the police in defending peace and order with a view to ensuring the security of all, which is the ultimate guarantee for national security.

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After independence in 1947, India retained the colonial police system, without changing its style or nature<sup>1</sup>. This system neither assumed nor expected public cooperation since the police could compel compliance, under duress if necessary. Governments could use absolute power against the citizen. Democracy progressively empowers the citizen through education, politicisation, monitoring mechanisms, media intervention and the spread of technology. Therefore, compelling compliance under duress is becoming difficult for the police. Consequently, conventional policing methodology has weakened, giving rise to serious repercussions in many areas.

Faced with serious problems, the police force, in keeping with its traditional policing style, continues to seek the use of more force and more compulsion. Giving more power to the police so that they could be as brutal as they were in the past is often touted as a solution. But such a style of policing will drive the people further away from the police. Moreover, the marginal utility of incremental force progressively diminishes with every increase in level of force. Eventually the civil police will give up and seek the prolonged deployment of the Central Armed Forces, to enable the State to retain at least geographical control and ensure some level of safety for the people and sometimes, paradoxically, for the police themselves.

There are also some other recognizable paradoxes, which have become part of our daily experience.

- u Everyone needs police services but no one likes the police.
- u Victims need police assistance but most are afraid to approach them<sup>2</sup>
- u Criminals can be punished only if witnesses give evidence but they often hesitate or refuse to cooperate with the police<sup>3</sup>.
- u Laws are framed to protect people but law-enforcing police are perceived as being anti-people.

In a democracy, successful law enforcement requires that citizens must cooperate with the police. Information relevant to crime and security must freely flow from the public to the police and vice versa. The citizen should trust the police and the police must, by their conduct, inspire trust. The law-abiding citizen should not fear the police but must approach and seek police assistance and voluntarily help the police, if necessary. In other words, for effective policing, we need police-friendly people. However, if people must become police-friendly, police have to first become people-friendly.

What should happen first? Should it be police-friendly people or people-friendly police? Certainly, only people-friendly policing can generate enough trust and confidence among people for them to become police-friendly. Therefore, the Kerala State has introduced the Janamaithri Suraksha scheme<sup>4</sup> of policing (JMS) to develop an effective people-friendly style of policing.

## Community Policing: A National Security Perspective

It is significant that the basic scheme and the potential pitfalls of JMS were politically, socially and departmentally debated in Kerala for nearly ten years from the year 2000 and a consensual mindset had emerged among political parties, judiciary, senior administrators and media leaders. It was accepted that, in a literate, politically conscious, media-savvy Kerala with highly articulated public opinion, people-friendliness and service orientation were integral to good policing. Hence it was decided to adopt JMS in police stations to transform the style of policing completely.

The basic feature of the Janamaithri policing was to create a community liaison group in the police station to identify security needs and to promote joint people-police activities to promote security, legal empowerment, and the safety and quality of community life. The jurisdiction of the police station was divided into small beat areas comprising a few hundred homes. Each beat area has a beat officer who is a police officer permanently assigned for liaison with the people in the area without any direct responsibility for investigation or arrest in that particular area.

The beat officer's basic task is to get to know practically every house and its occupants in the area, by house and area visits, at least twice a week and ascertain their safety and security needs and liaise with the community liaison group as well as the police station. The Beat officer is encouraged to act in a manner that citizens recognise and know him and become used to seeing him and talking to him. He is also expected to organise, with the support of the police station and people, activities identified as necessary by the local people such as theft and burglary prevention, precautions as well as use of technology against crime, senior citizens' safety, safety of disadvantaged groups, traffic safety, school safety, accident prevention, accident care, disaster response, legal literacy etc. Such activities help community members to develop a stake in the safety as well as the quality of life in the geographical area occupied by the community.

This was a wholly new style of policing. It called for considerable training of police personnel and much discussion and understanding among the local people. Care was taken to ensure that Community Policing was not perceived as "Policing by the Community". It was also not an effort to create police spies or agents among the community for achieving a secret police purpose. Policing was to be done by the police, but with the active assistance of the community in order to ensure the security, safety and quality of life desired by the community.

So the new system was introduced gradually with training support. It was initially introduced in 20 police stations in the first stage in March 2008. After careful monitoring, it was extended to 23 more stations in the second stage in August 2009 and to 141 more in the third stage in 2010. Currently, in the fourth stage, 100 more police stations are being brought within its purview. It is an ongoing scheme supported by successive Governments and officers and now formally covers about 20 million people. Moreover, although the system is not specifically or formally extended to other police stations, its principles, lessons and discussions have led to greater friendliness in other jurisdictions also. The scheme has been generally successful<sup>5</sup> in enhancing community security, increasing



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public friendliness towards the police, making police more accessible to women and children, raising public willingness to complain about minor crimes, stepping up police measures to make the community safer and in general, facilitating the faster and smoother flow of information.

JMS has led indirectly to the containment of some types of serious crimes (such as murder, traffic accidents etc, the reporting of which does not entail social stigma). It has also led to increased reporting of crimes in matters where victims did not freely report earlier because of fear, social stigma, inconvenience or police inaccessibility. There has also been greater detection of crimes relating to public safety and security because the police assisted by the public are able to take proactive action. Although the scheme has increased community demands on police time, it has simultaneously eased policing tasks. Under the scheme, crime registration has recorded an all-time high, going up from 2.5 lakhs in 2007 to 5 lakhs in 2012. The state has achieved a charge-sheeting rate of 98% for reported crimes with simultaneous rise in conviction rates to 68%, the highest among the major Indian States.

Two significant offshoots of community policing in Kerala are worth mentioning. The Student Police Cadet project involves the police directly in training students in many schools and educating them in drills, civic skills, personality development, community service and avoidance of harmful practices in and around schools. The young cadets do not undertake any police duty but are encouraged to grow as leaders with civic responsibility. The Student Police Cadet strength has reached 60,000. The popularity of the scheme among parents is positive proof of the changing public attitude towards policing. Another project intended to strengthen maritime security, has established coastal people's vigilance groups in all police stations and villages along the 500 km coastline. These vigilance groups comprise sea-going fishermen, who have been effective in identifying any strangers or new boats in these coastal areas, as proved in joint exercises with the Navy.

Currently these programme principles are being extended to a senior citizens' safety programme entitled Care, Aid and Relief for Elders (CARE) as well for Tribal Jana Maithri, a programme that empowers the tribal population to protect themselves against crimes targeting their communities. For mass transit systems such as the Railways, the Railway Police in Kerala is launching a similar scheme, the Jana Yatri Suraksha Project, during the current year.

The Community Policing project is directly sponsored by the Government of Kerala with statutory support, resources, money and manpower. It is not an individual initiative but has been adopted as a public policy initiative by successive governments because there is a broad political consensus favouring the same.

Although community policing principally addresses neighbourhood security, it also generates valuable dividends for homeland security. Community policing activates the community in matters relating to security. The community becomes the eyes and ears of the homeland to guard it against

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subversion and terror. Community policing fills the community space both geographically and observationally leaving little room for anti-national forces to organise activities unnoticed. Significantly, despite a high level of international and interstate influences, Kerala has been singularly fortunate in containing both extremist and terrorist violence in the last 10 years, with virtually no curbs on civic freedoms or political and religious activity,

An isolated act of terrorism can be perpetrated by any determined group anywhere. History has shown us that even with the best of security, assassinations have taken place. However, sustained violence against the authority of the State by an organised group in an area is definitely a threat to national security. The growth of such groups will be possible only if normal policing fails. Community policing is a strategy for the maintenance of law and order, which in turn will minimise the development of such situations.

Experience has taught us that fear, whether express or implied, cannot be the basis of policing in a democracy, where the rationale for law is the consent of the people. Fear will succeed only as long there is no organised long-term resistance, and human rights violations are not seriously challenged resulting in punishment to the officers. Once people start challenging the police, police will use increasing force which will make the general population more afraid, indifferent or hostile to the police. Information flow from public to police will drop. In a populous democracy, involving large numbers, it will be impossible for the police to use force to elicit information. This weakness will undermine public confidence in the police, because they see the “powerful” “threatening” omnipotent police whom they had feared earlier, being unable to locate, apprehend or punish even those who directly attacked or killed police personnel. Any insurgent group that exploits this situation will become popular and the pity is that the policeman, whose very sight had caused the people to tremble, would now be unable even to walk on the roads, except perhaps in huge numbers in armoured carriers. It is worthwhile remembering that many areas in India where the police now find it difficult to move around, were once full of docile, obsequious people who would not think of disobeying even a solitary policeman.

### **Community policing enables both the police station and the citizen:**

- ◆ To know each and every family and business establishment in the locality
- ◆ To co-operate in all activities where there is no contradiction between the community's need for security and the police responsibility to provide it.
- ◆ To mutually interact as individuals – not merely as witnesses, victims and accused.
- ◆ To inculcate a positive attitude to the law within the community and to recognise that compliance with the law is the need of the people and not of the police.
- ◆ To create conditions conducive for the flow of information from public to police.
- ◆ To reduce corruption levels

## Community Policing: A National Security Perspective


- ◆ To increase police intervention in minor crimes thereby preparing the ground for reduction of major crimes.
- ◆ To ensure that the types of crimes that remained unreported earlier are reported to the police
- ◆ To enhance the confidence of the public in the police.
- ◆ To get accustomed to the idea of joint activity to enhance security
- ◆ To enable the community to identify potential and actual security threats and to make note of unusual occurrences which can endanger one or all
- ◆ To facilitate (indirectly) better investigation of cases by better co-operation with the Investigating Officer.

National security implies the security of all neighbourhoods. The whole, of course, is greater than the sum of its parts; nevertheless it cannot be denied that security of homes and neighbourhoods comprises a major segment of the wider spectrum of homeland and national security. The linkage between organised crime and national security is obvious. Therefore bad policing is an invitation to anti-national elements to exploit the situation. Earning and retaining public trust is fundamental to good policing and community policing is the best means to gain trust. If the police cannot earn the trust of the public, forces inimical to the police may gain their confidence; and the police may even lose the capability to talk to them.

Initially, militants and insurgents represent a miniscule minority. The majority wants peace and order but often remain silent, listless, disinterested or afraid. Community policing involves them as partners and participants in the quest for general security, which is a public requirement. Apart from the general policing dividend, community policing enables us to achieve multiple objectives :

- ◆ To coordinate the response of citizens to a terror incident
- ◆ To gain advance information about any suspicious activity
- ◆ To counteract anti-national propaganda
- ◆ To avoid pointless collateral damage in national security operations
- ◆ To strengthen coastal security
- ◆ To better the response to mass casualty events
- ◆ To strengthen general surveillance , because the alert resident is as good or better than a camera
- ◆ To reduce levels of anonymity in any neighbourhood
- ◆ To develop a sense of ownership by the neighbourhood of public areas
- ◆ To increase security in transit systems etc

## Community Policing: A National Security Perspective

There is no point in shutting the stable door after the horse has bolted. Community policing must be established before widespread disorder or chaos has become endemic. Once a serious insurgency situation has arisen, community policing measures cannot take root easily. Therefore, we must go for it, when we still can do it easily. The nation is safe, when all neighbourhoods are safe. 

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### Notes

1. The inherited system had been a very effective tool in the hands of an autocratic, paternalistic administration to enforce the will of the State. The colonial police was seldom service-oriented or people-friendly. They were generally feared. No one usually approached them unless it was unavoidable. Policemen, relatively few in number, maintained order by show or use of force; and confined investigation to cases deemed important enough to merit it. This low cost, fear-based policing failed to secure the cooperation of the people.
2. Victims must be able to complain freely to the police if crime is to be controlled. However, the average victim is apprehensive about going to the police stations and very often does not complain at all. Only those crimes which, if not-reported, would entail serious social or personal consequences are reported (causing crime registration to be very low compared to the West.)
3. In the absence of public cooperation, the police are forced to work extra hard; work without time limits; fight social resistance even in investigation; use force on the sly; adopt "time tested" shortcuts to get acceptable evidence, etc. As a result they are also seen as acting against the law itself.. So, despite being feared, they are not respected. Consequently, they suffer from a bad image and are ill-paid with little chance of promotion. As the level of public cooperation decreases, the police try to show or use more and more force in proportion to the decline.
4. This translates as People Friendly Security Scheme.
5. Ever since its inception, the scheme has been continuously validated by contemporary academic studies and the results have been highly encouraging, underscoring the importance of enlarging and strengthening the scheme. The efforts of the Kerala police have been noted internationally by the International Association of Police Chiefs in 2009 by an award presented in the United States; by the recognition accorded in the United States to Dr Ms B Sandhya, the nodal officer of the Kerala JMS, by the International Association of Women Police; by studies conducted by senior police officers under the Indian Institute of Management, National Police Academy etc, and in several public and media evaluations. The community policing model was also hailed by the Global Conclave on Community Policing in 2010 in Kochi by the US-based International Police Executive Symposium, attended by senior police officers from 45 different countries. At present, the public wants more intensive community policing, an attitude which is diametrically opposite to the earlier apprehensive perception that treated even house visits by the police as socially unwelcome.

## Tackling Terror: Training State Police for Better Brand Value

Ajmal cautiously opened his door. He appeared to stumble before hauling out an assault rifle from between his legs. A policeman grabbed the barrel, pulling and tugging. Ajmal got his finger to the trigger and let off a long burst into the officer's stomach. The policeman lurched back but held on, even as he was dying, the skin of his hands fused to the burning AK.

A mob of khaki uniforms turned on blood-splattered Ajmal, kicking, stripping, slapping and beating him...until someone cried out: "Stop, stop, we need him alive."

--- The Siege: The Attack on the Taj

by Adrian Levy and Cathy Scott-Clark

**T**his passage describes the arrest of Ajmal Kasab on 26/11, during the Mumbai terror attacks, which marked a turning point in India's two decades of war on terror.

If we take the early 1990s as the start of the current phase of foreign-inspired, religiously motivated insurgency-turned-terrorism in India, this was the first time that Indian security forces captured a perpetrator 'red'-handed, alive, and in a condition to be interrogated. The result was that for the first time in the two-and-half decades of its war on terror, India could present the most incontrovertible evidence on the source of the scourge. It is no exaggeration to say that the global, particularly the US, pressure on Pakistan to deliver on its anti-terror commitments intensified only after the presentation of this evidence.

Heartland India's exposure to urban siege-terrorism has been a post-Kargil experience. Prior to Kargil, the attacks had been perpetrated more covertly – mostly by planting explosives in crowded places such as markets, fairs, buses and trains. Overt and open attacks, with armed fidayeen blasting their way into high-profile institutions of political, strategic, social, religious or economic value, have been a phenomenon that began towards the end of the 1990s – post-9/11 if viewed from a global perspective, and post-Kargil if viewed from the Indian perspective. Typical instances have been the attacks on the Red Fort (2000), Avantipur airbase (2001), the Srinagar legislature building (2001), Parliament House (2001), Akshardham Temple (2002), and finally Mumbai (2008).

Siege-style attacks on high-profile institutions have higher shock value and are aimed at delivering unacceptable 'shocks' on the state and its institutions, crippling its will to fight. Such attacks rouse greater public anger against the state (for its failure to defend) than individual assassinations or even covert attacks with planted devices in crowded places such as markets, which may be more deadly in terms of lives lost.

The state response to this post-Kargil phenomenon of siege-style attacks on high-profile institutions, has been to invest more money, manpower and material in protecting those institutions

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rather than on combating terrorism through better intelligence-gathering, better investigation and better regular policing. Post-9/11, there has been a manifold augmentation of manpower, firepower and mobility of the National Security Guard (NSG), and other agencies like the Central Industrial Security Force (CISF).

While such responses need to be welcomed, it is regrettable that traditional human policing remains neglected. Since the role of the traditional beat constabulary in gathering intelligence has been covered by several committees, whose recommendations largely remain unimplemented, this particular aspect is not being elaborated here.

Suffice it to say, the beat constabulary has more of a stellar role in intelligence-gathering than has been recognised by our security managers. The beat constables are in constant touch with local populations, the shop-keepers, the rickshaw-drivers, the paanwallahs, and the guards of apartment complexes, and thus would be the first to know of any untoward activities, the arrival of strangers, or even the delivery or despatch of suspicious goods.

Secondly, the constabulary also has its own network of informers among the inhabitants of the urban underground – many habitating the thin borderline between legality and illegality – and it has been found that often terrorists, mostly from abroad or other parts of the country, seek their help or use their network for getting around, hiring safe houses and arranging transport.

Six major committees have recommended police reforms since 1971 – the Gore Committee, the National Police Commission, the Riberio Committee, the Padmanabhaiah Committee, Group of Ministers on National Security, and the Malimath Committee on Criminal Justice Reform. In addition, there have been the National Police Commission, the 2nd Administrative Reforms Commission and recently a whole lot of Supreme Court directives in the Prakash Singh Badal v. Union of India case.

Viewed from a median's perspective, the focus here is about public perceptions or misperceptions brought about largely by the lack of will on the part of the state to pay attention to police reform. The state constabularies are the most demoralised, and sad to say, a reviled arm of the state today.

On the other hand, there continues to be an overemphasis by the state on a militaristic approach to tackling terrorism – raising more manpower and firepower or making more manpower and firepower available at short notice and over short distances. The forces designated for deployment in such operations, such as the NSG, continue to be heavily drawn from the armed forces, who are trained for combat with all the firepower at their disposal, or simply put, trained to kill.

The result is that operations conducted in a militaristic manner invariably leave a pile of dead bodies. We have seen this happen in the operations in Avantipur, Srinagar Assembly, the Red Fort,

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Akshardham, and Parliament House. The objectives of those operations appear to have been to eliminate the existing threat, secure the place and protect the lives of the remaining innocents.

Indeed, the objective has been noble, but this approach eliminates all possibilities of taking the investigations forward. No interrogations are possible, and the element of deniability is very high. Fidayeen are trained and thrust into the attack by their masterminds in a manner that they leave minimal personal or source signature (soap wrappers, matches, garments with markings etc) that can be used as evidence to point to the masterminds.

More disturbingly, the subsequent investigations and prosecutions have also given rise to unseemly controversies, with prominent intellectuals, civil society activists, writers and even lawyers raising doubts about the veracity of the investigations and prosecutions. While dissent is to be expected and even encouraged in a democracy, there should also be institutional mechanisms to counter them and instil confidence in the citizen about the fairness of state conduct.

The capture of a live terrorist who will 'sing' or can be made to 'sing' (to use police slang) is a different ballgame altogether. This requires minimal or graduated use of firepower which only the regular police or its specialised agencies have been trained to do. By training and philosophy, the police are not accustomed to kill. Even to disperse the most unruly mob, the police are encouraged to fire warning shots in the air, direct minimal firepower, that too below the knees, and only in desperate situations are they urged to shoot to kill. The military, or for that matter forces that have been raised in a militaristic manner (such as the NSG) are essentially trained to shoot to kill.

This was starkly evident from the ways in which the Mumbai attack was tackled by the NSG and the constabulary. It was the constabulary that captured Ajmal Kasab, and therein lies the crux of this presentation. The arrest was possible because an unarmed or a lightly armed constabulary was manning the checkpoint on the Chowpati Road. They arrested the progress of the terrorist, intercepted him despite their own casualty and incapacitated him but ensured that he was captured alive. This was a feat that could not be achieved even by the much commended National Security Guard, which also suffered its own casualties.

The point is that the constabulary has proven its worth every now and then, yet continue to be neglected and continue to suffer from a demoralisingly poor brand image. The constabulary in India evokes images of a paan-chewing or beedi-smoking, pot-bellied, bribe-taking thaanedaar in pop media, whereas in the West the constable or the patrolman is portrayed in popular imagination, augmented by Hollywood movies, as a no-nonsense, smart, gum-chewing, Rayban-wearing copper who hurls a "Hey-you" at the baddies across the mean street.


The blame lies neither with Bollywood nor the media. The principal bane of the constabulary or the regular police is that they are not trained to project a brand image. Therein lies the primary difference between the armed forces and the police. The armed forces, despite allegations of AFSPA excesses against them, continue to enjoy a higher brand value.

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The difference is partly in the way they are groomed. The corporal and the constable, the sub-lieutenant and the sub-inspector come from the same society. But the military sends its best men to groom them, first into young officers, then for junior command, senior command and finally higher command. In contrast, the police force sends its worst men to groom them into constables and inspectors, and leave them to 'fend' for the rest of their careers. A posting to an academy is considered a matter of prestige in the armed forces but in the police force, an academy posting is considered a sinecure, a punishment and a sign that the officer has fallen foul of the higher-ups.

A final word about 26/11. Post-operations, the NSG were made heroes; there were even images in the popular media of the commandos returning on a bus carrying flowers offered by the local children. The brave NSG commandos who made the supreme sacrifice became folk heroes in social and other media.

The book from which the opening passage has been taken also sings paens in praise of those heroes. There are several passages about their heroic action. As for the police officer who took the burst of bullets from Ajmal's AK, yet hung on to its barrel, enabling the others to pounce and capture him alive? The book does not honour him with even a mention of his name.

Tukaram Omble, was it? I bow my head in his memory. 



## Concluding Observations


The Centre for Strategic Studies of the Centre for Public Policy Research (CPPR), Kochi organised its first international conference on the theme National Security Management in Federal Structures: Perspectives from India and the United States, in collaboration with the US Consulate Chennai, during 6-7 December 2013 at Kochi. The objective of the conference was to elicit a range of opinions, build consensus and provide a platform for debate and discussion among members of the academic, diplomatic, strategic and policy communities.

Several pertinent themes were discussed, including the larger contours of national security, technological dynamics, societal and economic issues, maritime security challenges as well as threats to internal security, which formed a substantial part of the debate. These major issues were discussed largely in the context of Centre-State relations. The salient conclusions that emerged from the deliberations are summarized below:

- ◆ In the current geopolitical context, both India and the United States share by and large the same threat perceptions and security concerns. At the same time, both countries have different sets of systems to address their larger security concerns and both need to learn from each other's experiences.
- ◆ In India, national security comes under the Union list, and internal security issues come within the orbit of the State list. The United States, on the other hand, has been able to devise a holistic mechanism after September 11, 2001, where integration of a number of security measures have been led and coordinated by the Department of Homeland Security. The US President obviously calls the shots at the apex level of decision-making. The issue of Centre-State relations, as it relates to the maintenance of national security needs to be understood within the specific political contexts of both countries.
- ◆ Discussions focused on the US federal experience in tackling the diverse challenges and threats confronting the states and the federal governments in terms of resources, expertise and operational experiences.
- ◆ The imperative for establishing the National Counter Terrorism Centre (NCTC) in India was widely accepted but discussion centred on the need to reinvigorate existing institutions dealing with either intelligence gathering or counter-terrorism.
- ◆ There was a consensus that advances in science and technology have made the nation states across the globe highly vulnerable. The issue of cyber security, as a case in point, was deliberated and viewed as a major challenge not only to India's national security but to the United States as well.
- ◆ Discussion centred on left-wing extremism in India and its negative impact on India's security. The rationale for left-wing extremism was explained, and discussions pinpointed the causes of insurgencies, such as inequality. Alternative mechanisms to deal with left-wing extremism were elaborated.
- ◆ Perspectives differed when it came to migration issues, especially in correlating the problems emanating from illegal migration and linking it with both state and national security.

## Concluding Observations

- ◆ As the conference turned the spotlight on violent non-state actors and their emerging role, participants stressed that there are several avenues for nation states like India and the United States to cooperate and counter the perils emanating from such negative forces. The role of Al Qaeda and its affiliates was underscored during the deliberations.
- ◆ In the emerging international system, the participants debated the need to strengthen the concept of the responsibility to protect civilians during times of armed conflict between the state and the people. The ensuing discussion led to a greater understanding of the themes relating to the responsibility to protect civilians and the necessary measures undertaken by the states under the auspices of the United Nations.
- ◆ On the subject of regional security dynamics, there was a consensus that maritime security has emerged as a major concern for the nation states across the globe. The challenges are immense, but unfortunately the collective means to address those challenges are limited. Hence there is a need for heightened awareness about various maritime security threats including piracy, terrorism and the protection of the Sea Lanes of Communication (SLOCs). There is certainly a growing fear that if India and the United States fail to take the lead in managing maritime affairs, the chances of instability and conflict in the maritime domain will be heightened.
- ◆ The challenges to maritime security were considered from a legal perspective. Unfortunately, there are no comprehensive mechanisms and laws for collective security in the maritime domain. The United Nations Convention on the Law of the Sea (UNCLOS) appears inadequate because of the dynamic nature of geopolitical changes. It was emphasized that nation states must understand growing concerns and evolve a comprehensive international law dealing with these emerging complexities.
- ◆ The participants also deliberated on the need to have an effective policing mechanism through community-police partnership. Such a partnership would help in strengthening HUMINT (Human Intelligence) sources and networks. Such processes would help in building mutual trust and confidence, which ultimately would become an important tool in the maintenance of national security.
- ◆ The theme of coastal security and the potential role of fishermen also featured in the discussion. It was highlighted that India has a special responsibility to protect its massive coastline extending to 7516kms. The responsibility to protect particular sections of the coast lies with the relevant state government. In this context, the crucial role played by fishermen especially in gathering intelligence as a part of HUMINT, was underscored.

In the context of new geopolitical challenges, the conference observations focused on how India will need to position itself. Undoubtedly, India and the United States need to make a concerted effort to address common security concerns and needs. The bilateral counter-terrorism effort, in terms of intelligence sharing, needs to be strengthened to achieve better coordination and address specific threats. Obviously, bilateral cooperation needs to be intensified in every sphere for effective outcomes. 

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Dr Gopa Kumar served as Dean of Social Sciences and Professor and Head of Political Science, Kerala University and UGC Emeritus Fellow. He also served as Director General of the Institute of Parliamentary Affairs, Government of Kerala. He is one of the pioneers in the field of electoral studies in India. His areas of specialization include Comparative Politics (with focus on the political systems of the United States, India, Canada, France, United Kingdom, Australia, and China), Politics of Developing Areas, and State Politics in India. Prof. Gopa Kumar has so far published twelve books and a hundred and forty five articles. He has also been awarded Fellowships from Fulbright, Shastri Indo-Canadian, the Australia-India Council, Indo-French Cultural Exchange, Salzburg Fellow, Visiting Research Fellow, University of New South Wales, Sydney and Visiting Professorship from the University of Calgary, Canada and Claremont Graduate University, California. At present, he is an ICSSR Senior Fellow and an Advisor to the Centre for Public Policy Research.

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Daveed Gartenstein-Ross, a Senior Fellow at the Foundation for Defense of Democracies and Adjunct Assistant Professor in Georgetown University's Security Studies Program, focuses his research on the challenges posed by violent non-state actors (VSNAs). He is the author or volume editor of fourteen books and monographs, including Bin Laden's Legacy (Wiley, 2011), and has published widely in the popular and academic press, including in The New York Times, Foreign Policy, The Atlantic, Reader's Digest, Studies in Conflict & Terrorism, and The Yale Journal of International Affairs. He frequently testifies before the US Congress and serves as a consultant for clients who need to understand VNSAs and other twenty-first century security challenges.

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### **V. N. Raman**

Mr. V.N Raman has more than 30 years of experience in dealing with the coastal fisherfolk in Kerala. Since 1985 he has been conducting the appraisal of fisheries and working for the development and security of fishermen on the Kerala coast. This longstanding experience with coastal communities forms the foundation for his outlook on the adoption of coastal security measures that are inclusive of fishermen. At present, he is officiating as the Deputy General Manager (E&MC) at Matsyafed Head Office, Thiruvananthapuram.

### **Jacob Punnoose**

Jacob Punnoose IPS is a former Director General of Police (DGP), having served as the State Police Chief of Kerala. In a career spanning more than three and a half decades in the Indian Police Service (IPS) he has held various senior positions under the Governments of India and Kerala. He has been instrumental in initiating the successful people-friendly Janamaithri Policing scheme in Kerala. He also pioneered the introduction of the Kerala Student Police Cadet Project as well as the coastal security vigilance committees in fishing villages. He chaired the committee which drafted the Kerala Police Act which became law in 2011. He represented India at the Interpol General Assembly, Doha, Qatar in 2010 and at Hanoi, Vietnam in 2011. Mr. Punnoose also organised the International Conclave on Community Policing in Kerala in 2010 with delegates from more than 45 countries and an International Conference on Cyber Security at Trivandrum in Kerala in August 2012. He also hosted the National Conference of Women Police Officers in India at Thrissur in July 2012, focussing on Gender Issues within the Forces and in the Polity. Currently he is actively promoting community policing as well as police reform measures to make policing in India both efficient and accountable.

### **R. Prasannan**

R. Prasannan holds a postgraduate degree in Defence Studies and has been a journalist for the last 30 years. He has been writing on Defence and National Security, Foreign Policy, Politics, Law, Constitutional Affairs, Science and Current Affairs for The Week magazine. He has travelled widely around the world, reporting from conflict zones: the Kargil war, the Siachen conflict, Afghanistan during the anti-Taliban war following 9/11 and the anti-Taliban war in Pakistan's Swat valley. He was recently in Tibet covering political developments there. Currently posted as Chief of The Week's New Delhi bureau, he writes a popular column called "PMO Beat."