



Internal Security in a Multi-Party Federal Polity

Internal Security Cluster

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Summary

Internal threats to national security have assumed centre-stage in the debates on Indian security. They have a pan-Indian presence and are no longer confined to India's north and north-eastern frontiers. Therefore, tackling these threats is a common concern for the Union and the States. And yet, whether it is in the handling of the unrest in Jammu and Kashmir, or the blockade of Manipur by the NSCN (IM) or the lack of coordination between the central paramilitary forces and the state police in naxal areas, the federal nature of the Indian polity has brought forth tensions between the Union and the concerned States. Such tensions result in a sub-optimal response to the challenges posed.

“Issues relating to our internal security (is) an area that requires utmost vigil, sustained and coordinated attention of both Central and State Governments...our success in large measure also depends on the response of the State Governments...a response that is coordinated not only between the affected states but also between the Centre and the States...Internal security is a critical issue which affects the pace and growth of development....we have a hard task ahead but one that can be and must be achieved with determination and coordinated action...we will only succeed if we are united as a nation in addressing our concerns related to our internal security.”

**Prime Minister Manmohan Singh at the Chief Ministers Conference on
07 February 2010**

Introduction

Internal threats to national security have assumed centre-stage in the debates on Indian security. They have a pan-Indian presence and are no longer confined to India's north and north-eastern frontiers. Therefore, tackling these threats is a common concern for the Union and the States. And yet, whether it is in the handling of the unrest in Jammu and Kashmir, or the blockade of Manipur by the NSCN (IM) or the lack of coordination between the central paramilitary forces and the state police in naxal areas, the federal nature of the Indian polity has brought forth tensions between the Union and the concerned States. Such tensions result in a sub-optimal response to the challenges posed.

The main source of these tensions is the lack of consensus on issues of internal security in the multi-party federal polity of India. Thus, the Bharatiya Janata Party has accused the Congress-led United Progressive Alliance (UPA) of aggravating the internal security situation in the country by viewing internal security through the prism of vote-bank politics and going soft on terrorism.¹ The Communist Party of India (Marxist) has criticized the UPA for misinterpreting provisions of Article 355 and sending armed forces to states unilaterally, or sometime delaying the despatch of the required forces to the states.² This latter tendency has been seen especially when the ruling party in the State is not a part of the ruling coalition at the Centre. Moreover, the presence of state-level parties in the ruling coalition at the Centre often comes in the way of decisive action by the Centre. Finally, there could also be differences between the Centre and the States, ensuing from purely state-level or union-level considerations. While a debate on critical issues pertaining

¹ Bharatiya Janata Party, *Resolution on Internal Security*, 7-9 September 2006, <http://www.bjp.org/content/view/1604/394/>, accessed on 17 January 2011.

² People's Democracy, *Resolution on Centre-State Relations*, 30 March 2008, http://pd.cpim.org/2008/0427_pd/04272008_20.htm, accessed on 17 January 2011.

to internal security among political parties is a healthy trend, the inability to move beyond these debates and forge a consensus on such issues can be detrimental to internal security.

This irony, of the very symbols of democracy coming in the way of dealing with challenges to internal security, is further complicated by three prominent factors:

1. The constitutional factor, relating to the powers and responsibilities of the Union and the States in the maintenance of law and order.
2. The institutional factor, relating to the inadequacy of existing institutions in implementing a policy directive.
3. The operational factor, relating to issues of coordination between the central forces deployed in the State for internal security duties and the State's own police forces.

Constitutional Factor

Although the Constitution of India makes no specific reference to internal security, sharing of powers and responsibilities for maintenance of law and order are rendered complicated by the apparently contradictory provisions of the Constitution. Thus, while Article 355 clearly states that it is the duty of the Union to protect every State against internal disturbance, thereby empowering the Union to deploy its forces in aid of civil power in the States, two separate clauses also empower the States to use their police for maintaining public order.³ It has been a matter of concern that Item 1 and 2 of the State List have often come in the way of the clear mandate of Article 355 empowering the Centre to act in cases of internal disturbance, including the imposition of emergency under Article 356. States have usually been vocal in preserving their domains of influence, leading to serious contentions with the Union government when the latter has raised concerns regarding an inadequate response by the States.⁴ The Group of Ministers Report on Reforming the National Security System (2001) also expressed concern about the mismatch between increased Central responsibilities and reduced Central powers in the management of internal security, thus adversely impacting the internal security scenario.⁵

Two important considerations must be borne in mind for adjudicating this matter in favour

³ Ministry of Law and Justice, Constitution of India, coiason29july08.pdf, accessed on 5 January 2011. See Appendix I for a list of select constitutional provisions with implications for internal security.

⁴ IANS, "Chidambaram-Buddha letters renewing Centre-State War?," *The Economic Times*, 15 January 2011.

⁵ Recommendations of the Group of Ministers, Reforming the National Security System, *Chapter IV: Internal Security*, pp. 41-57, February 2001, <http://www.scribd.com/doc/17686354/chapteriv>, accessed on 24 February 2011.

of the Union. **First**, the Union provides States with substantial funds for internal security. For instance, security related expenditure (SRE) reimbursed by the Union to the State of Jammu and Kashmir since 1989 has been to the tune of Rs. 2925.255 crore; to the states of the North since 2001 this has been Rs. 1824.35 crore; and the reimbursement to the Naxal affected states since 2005 has been Rs. 60 crore.⁶ In addition to the security related expenditure, the Union government contributes substantially to development projects, rehabilitation packages, modernization of police forces, and provision of central paramilitary forces and the Army to strengthen the States' capabilities for dealing with matters of internal security.

Second, problems of internal security have conspicuous external dimensions. Several States affected by internal disturbances are at the nation's frontiers, and external support and sanctuaries in neighbouring countries have exacerbated the internal challenge. Also, increasingly, there is a pernicious nexus between domestic miscreants and international criminal networks. As the dividing line between the internal and external realms of security is blurred, there is an urgent need for a combined response in the spirit of collective responsibility. Therefore, while the Union and the States can ill-afford to act in isolation, the primary responsibility for internal security must be that of the Union Government.

Institutional Factor

Critical to a coordinated response to internal security challenges arising in a multi-party federal polity are institutions that can withstand the continuing political differences. Such institutions would be the bulwark against a lack of consensus preventing constitutional amendments or legal solutions. The tussle over spheres of influence has meant that constitutional allocation of powers has received some attention; however, an effective way of sharing responsibilities with the help of strong institutions is yet to be arrived at.

One key institution in this regard is the police. Since law and order is a State subject, the police forces are mainly under the control of State governments. The debate on police reforms triggered by the Janata Government with the formation of the National Police Commission is therefore in urgent need of decisive action. Since then, police officials have taken the lead in taking the matter to the Supreme Court by filing public interest litigations. Interestingly, such initiatives have also been supported by the human rights advocacy groups.⁷ The Supreme Court's directives about creating State Security

⁶ Ministry of Home Affairs, Annual Report 2009-10, [http://www.mha.nic.in/pdfs/AR\(E\)0910.pdf](http://www.mha.nic.in/pdfs/AR(E)0910.pdf), accessed on 24 February 2011.

⁷ For a discussion of the Supreme Court's directives in the case of Prakash Singh vs. Others, see "Seven Steps to Police Reforms," http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven_steps_to_police_reform.pdf, September 2010, accessed 23 February 2011.

Commissions, appointment and tenure of chiefs of State police, fixed tenure of officials on operational duties, separation of investigative and law and order functions of the police, establishment of a Police Establishment Board to ensure transparency in transfers and promotions, setting up a of Police Complaints Authority to receive complaints against police officials and a National Security Commission for appointment of chiefs of Central Police Organisations, are all aimed at removing the political and organizational barriers to effective policing. Since several of these issues fall within the jurisdiction of individual States, they too have taken some measures to comply with the directives of the Home Ministry.⁸

The nexus between crime and terrorism, and that between domestic and external actors, was most evident in the November 2008 Mumbai attacks. Through this incident, one of the foremost lacunae in the internal security apparatus was highlighted, i.e. lack of coordination among various intelligence agencies of the Centre as well as between the Centre and the State. Yet, even with the setting up of the Multi-Agency Centre (MAC) to avoid a repetition, the issue of coordination has not been solved as many States have not set up state-level MACs (SMACs) and, moreover, the MAC concerns itself only with intelligence related to terrorism and not that related to left-wing extremism.⁹ It is imperative that the Ministry of Home Affairs, which has the nodal responsibility for maintaining internal security, addresses these issues of institutional reform and cooperation.¹⁰ It is also important to have some additional institutions that will coordinate intelligence and actions between the Centre and the State. In this regard the Commission on Centre-State Relations (2010) suggested the creation of a Central Law Enforcement Agency to preempt, prevent, control, investigate and prosecute terrorism related crimes.¹¹ It also suggested reforms of the criminal justice system to ensure the involvement of all levels of government, the creation of a Standing Commission on Internal Security and Criminal Justice at the national level, and Departments of Criminal Justice and Bureaus of Crime Prevention, Crime Statistics and Criminal Justice Planning both at the Centre and in the States. Finally, it is also extremely important for other institutions such as the media, non-

⁸ Narendra Modi, *Hon'ble CMs message about Internal Security*, 15 February 2010, http://www.narendramodi.in/speeches_textfile/speeches_textfile_detail/91, accessed on 9 March 2011.

⁹ Mohan Singh, *Failure of Intelligence Coordination- Did we learn anything from 26/11*, Article No. 1739, 25 January 2011, http://www.claws.in/index.php?action=master&task=740&u_id=36, accessed on 9 March 2011.

¹⁰ Recommendations of the Group of Ministers (2001), Note 5, p. 10.

¹¹ Report of the Commission on Centre-State Relations, *Volume V: Internal Security, Criminal Justice and Centre-State Cooperation*, Recommendation Nos. 2 and 7, New Delhi, March 2010.

governmental organizations and corporate houses to contribute constructively to governmental efforts.¹²

Operational Factor

The limited capacities of State governments in the complex domestic security environment has often necessitated the deployment of central paramilitary and armed forces in various States of the country. Although much is made of the presence of such forces in the States, it must be underlined that only in three instances since Independence has the Union deployed its forces suo-motu. In all other instances, such deployments were made at the request of the State governments.¹³ Moreover, where the situation so demanded, the Centre has clearly stated that Central forces will be subordinate to the State police force.¹⁴

The task of Central forces deployed in aid to civil authority has varied greatly depending on the nature of the challenge. Thus, in Jammu and Kashmir and the North East, both the army and the paramilitary forces such as the Border Security Force, Central Reserve Police Force, the Indo-Tibetan Border Police, the Sashastra Seema Bal, Assam Rifles, etc. have been deployed. They perform various roles ranging from counterinsurgency to securing the borders and assisting the state police in the maintenance of law and order. Special battalions of the paramilitary forces have also been trained in counter-guerrilla operations to combat left-wing extremism in various States of the country.

The deployment of these forces creates some tensions between them and the local police. These tensions result not only from a lack of trust, but also from rivalry over which force is better trained and more capable.¹⁵ Often, the paramilitary forces are constrained by the lack of infrastructure and facilities at the State level, as well as by their own organizational lacunae.¹⁶ Moreover, Central forces are often unaware of local sensitivities and are more

¹² For the highlights of a more comprehensive set of recommendations relevant for improved internal security see FICCI, *Task Force Report on Internal Security and Terrorism: Volume I*, (2009), www.ficci.comSPdocument/20032/terrorism-report.pdf, accessed on 15 January 2011

¹³ The Hindu, *Police wants central forces in Darjeeling*, 18 July 2009, <http://www.hindu.com/2009/07/18/stories/2009071857491100.htm>, accessed on 9 March 2011. In this instance, the Superintendent of Police requested the deployment of 6 battalions of central paramilitary forces in addition to the state's rapid action forces to counter the bandh-call given by the Gorkha Janamukti Morcha.

¹⁴ Rediffnews, "CRPF in J & K should only play a secondary role," <http://news.rediff.com/report/2009/jun/11/crpf-in-jk-should-only-play-a-secondary-role.htm>, 11 June 2009.

¹⁵ Sumanta Ray Chaudhury, *Can't trust intelligence inputs: CRPF*, 11 April 2010, http://www.dnaindia.com/india/report_can-t-trust-intelligence-inputs-crpf_1369890, accessed on 9 March 2011.

¹⁶ K.S. Sood, *Challenges of Paramilitary Forces*, Centre for Security Analysis, Chennai, 8 October 2010, <http://internalconflict.csa-chennai.org/2010/10/challenges-to-para-military-forces.html>,

prone to use harsh techniques of interrogation. Interaction with local civil authorities is also minimal, often resulting in operations that can be avoided and/or conducted with more judicious use of force. Despite troubles in joint operational deployments, no standard procedure has been adopted for ensuring better coordination among these forces.

Conclusion and Policy Suggestions

While the constitutional, institutional and operational aspects of Centre-State relations remain unresolved, the challenges faced by the country have become more complex. The continuing proxy war in Jammu and Kashmir, left-wing extremism, insurgencies in the North-East, terrorism by new groups like the Indian Mujahideen and counter-radical organizations are serious issues that require a concerted effort on the part of the Union and the States. For such an effort to be successful, the following measures may be adopted:

1. While there are ample provisions in the Constitution to deal with the challenges, some amendments may be brought about to clearly spell out the joint responsibilities of the Union and State. It may also be useful to constitutionally designate these threats as 'threats to internal security'. The concept of 'local emergency' suggested by the Punchi Commission to limit the scope of the emergency powers of Central forces in a limited area of a state could be introduced by an amendment to the Constitution, as long as it does not impede the institutional and operational requirements.
2. Given the lack of consensus on constitutional amendments, it is extremely important to carry out police reforms, reform the criminal justice system and create additional institutions that will help improve Centre-State coordination in implementing existing laws. Such institutions must be accorded functional autonomy by the Constitution. As suggested by the Task force on Internal Security (2001), a separate cadre may be created for managing internal security.
3. The necessity of better operational coordination requires that a blue-print be prepared for cooperation between the central forces and state authorities. Such coordination requires that the Chief Judicial Magistrate of the district be made overall in-charge of any operation in the zone of conflict. Best suited police officials must be deployed along with central forces during the conduct of operations and for interrogations.

These may further be supplemented by the Recommendations of the Task Force on Internal Security made as part of the Recommendations of the Group of Ministers in 2001. A combination of all these measures may result in better internal security management in a multi-party federal polity.

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Appendix I

Select Constitutional Provisions relating to Centre-State Relations and Internal Security

256. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

257. (1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

352. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or [armed rebellion], he may, by Proclamation, make a declaration to that effect [in respect of the whole of India or of such part of the territory thereof as may be

specified in the Proclamation].

Article 355: It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution

356. (1) If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation-

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

359. (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of [the rights conferred by Part III (except articles 20 and 21)] as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

365. Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.

Seventh Schedule, Article 246, Union List, 2 A : Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment

Seventh Schedule, Article 246, State List, Item 1: 1. Public order but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power

Seventh Schedule, Article 246, State List, Item 2: Police (including railway and village police) subject to the provisions of entry 2A of List I.