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G.K. Pillai

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Inherent Structural Constraints Challenging India's Internal Security

*G.K. Pillai**

The words 'internal security' do not figure in the Constitution of India. At the time of the framing of the Indian Constitution, the lawmakers were more worried about preserving the unity and sovereignty of the new nation. The world was in a far more peaceful environment and issues like terrorism and cybersecurity were far from their minds. Their outlook was conditioned by the constitutions then in existence. The thought was that all law and order situations could be handled by the state governments and the role or duty of the Union government (Article 355) was to protect the states from external aggression and internal disturbances and to ensure that governance is carried on in accordance with the provisions of the Constitution.

It is for this reason that both 'public order' and 'police' were included in the State List (List II of the Seventh Schedule). It was only Article 352 which allowed the President to proclaim an emergency when 'satisfied that a great emergency exists whereby the security of India or any part of the territory is threatened, whether by external aggression or armed rebellion'. This has been invoked only three times since the framing of the Constitution: in 1962 (Chinese aggression); in 1971 (Indo-Pak War); and in 1975 (the Emergency). And then there is Article 356 (powers under which have been considerably circumscribed) that can be invoked

* G.K. Pillai is a former Home Secretary, Government of India and former member, National Security Advisory Board (NSAB). He is currently Chairman of the Data Security Council of India.



when there is a failure or breakdown of the constitutional machinery in the state. Even for restoring public order, the power of the Union government is limited to the deployment of armed forces of the Union, in aid of the civil power.

Apart from the above-mentioned structural constraints, there has been no clear articulation of a National Security Policy, let alone a limited Internal Security Policy. The National Security Advisory Board (NSAB), from time to time, has alerted the government to spell out a National Security Policy so that the role of the Union government and state governments is clearly defined, thereby helping them to work in unison to protect India's internal security and the larger national security. A determined effort was made by the NSAB during 2012–15 to draft a National Security Policy for wider national consultation before it was approved by the government. This draft National Security Policy was ably presented before the current Prime Minister in 2014, after he assumed office. But that was the last that was heard of the policy and it remains in cold storage till date.

What is the reason for this? The first and foremost reason is the constitutional provisions that placed the police and public order exclusively in the hands of the state governments, giving them full power in this regard. No state government would like a dilution of the powers that they have over the state police forces. All political parties see control of the police force as a tool to further their political interests in the state. Thus, they will not cede an inch, unless a national disaster strikes, such as the incident that happened on 26 November 2008 in Mumbai when terrorists from Pakistan struck. As a result of that, the National Investigation Agency (NIA) was set up under an Act of the Parliament. But this agency has a limited role involving only investigation of terrorists and terrorist financing incidents, post the incident.

Post the 26/11 Mumbai incident, the Government of India approved the establishment of the National Counter Terrorism Centre (NCTC), a centralised criminal database that could be accessed by any state police force. In 2018, almost 8 years later, this is yet to be operationalised. The other proposed agency was National Intelligence Grid (NATGRID), a centralised agency from which various law enforcement agencies at the centre and in the states could request for and access intelligence that they needed. The pace at which the NATGRID is being operationalised is extremely slow due to objections from various agencies, who do not see eye to eye and are not willing to be partners, even in the larger

interest of the nation. This basically stems from the fact that we do not have a National Security Policy, which will act as an anchor for all the agencies and help them implement their programmes and work for the larger national interest of protecting India's internal security. In fact, we have had a number of excellent reports on restructuring of the internal security apparatus. For example, the Group of Minister's report following the Kargil War and the Naresh Chandra Committee report. The key recommendations of these reports are yet to be accepted and implemented.

The political class has to take the blame for not reacting to the widespread changes in internal security threats that have come about in the last 50 years. The cybersecurity threat is the latest, where not only do we need cooperation among the states and the Union government but also between countries around the world. In my opinion, there is a need to amend the Constitution of India to bring some of these internal security matters into the Concurrent List by suitably amending public order in List II, that is, to exclude from the latter matters like terrorist financing, human trafficking and cybercrime/threats, which have ramifications beyond state/national boundaries, so that there is a seamless sharing of intelligence, investigation, action and prosecution. Otherwise, we will have instances where, in tackling left-wing extremism, for example, a state may take the view that it is not a priority issue for that state and refuse to take action, thereby endangering the internal security in other states.

Politicians will take a certain action only if they feel that there is public backing for it and that it gives them a strategic political advantage. Since the vast majority of the population in India has very little knowledge and interest in internal security, unless it hits them directly, a public awakening is essential. This can happen when the draft National Security Policy is put up for discussion on the national stage and debated in the Parliament and the state assemblies. Based on these discussions, the necessary legislative changes need to be made and the requisite institutional agencies established to carry out their tasks as per the policy and legislation. The United States did that post 9/11. We did start out in this direction but lost the way post 26/11. Are we waiting for another disaster to strike? The danger is that the next big disaster may cripple the country and it may be too late.

