



## TRANSNATIONAL SECURITY LANDSCAPE OF INDIA: THREATS AND RESPONSES

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### ABSTRACT

Concern for the national security is as ancient as the nation-state idea itself. Man has also transformed with the evolution of civil society from state of war to state to nature to seek security for himself and his fellow beings. The term security has two elements, danger, and safety. These two elements are the epicentre of all the recognized definitions of national security. The term national security is a comprehensive term which involves protection of nation's physical integrity and its citizens ranging from multidimensional threats and constraints. In this paper we neither ignored the strength of India's emerging power nor the potential threats that India is continuously facing. Transnational Criminal Organizations have emerged as the non-traditional threat to sovereignty of India and are jeopardizing the economic development of India in the era of globalization. The linkage and alliances between terrorists and criminal groups are multifaceted ranging from mere coexistence in the same territory, development of business alliances based on their common financial interest and convergence of their respective enterprises. It has become strenuous for the Indian governments to ensure the security of nation from asymmetric forces that are often anonymous. Terrorism and insurgencies are such amorphous forces which gained worldwide recognition as significant dangers to national security after the infamous 9/11 attack.

### KEYWORDS

National Security, Transnational, Terrorism, Insurgency, Organised Crime.

### 1. INTRODUCTION

India as a country has a very wide national security landscape due to its large geographical terms; this national security may not always be vulnerable but is often susceptible to conflict with its surrounding countries most of which are not at friendly terms with India. This way India faces an overly complicated and strategically motivated environment, with its very neighbors developing rapidly in terms of military and technology. However, the models adopted by India for its military are less optimal which only adds to the difficulties faced by the Republic with antagonizing abilities, construction of essential facilities within the defence structure and finding integrative answers to tackle with the challenges faced by the central defence infrastructure. Not only India, all States across the Asian continent are facing huge amounts of risks to their security. The introduction of competition between States regarding their security is a result of the gradual shift of balance of power from the West world to the East world. Today, India has been confronted with a very wide range of intrastate and interstate security challenges with the increase in its economic and military power in the Indo-Pacific region.

In this context, it is noteworthy to keep in consideration the nature and scope of India's military advancement in terms of both number and technology keeping pace with the types of challenges it faces. But, there also remains a great need for increased



integration across the Indian security system. The Indian security system is a blend of interbranch arrangements regarding procurement processes and larger strategic thinking and planning. To analyse the different threats to national security, we need to understand what national security is first. This term has been used from an exceptionally long time by politicians as a rhetorical phrase and certain policy objectives have been described via this term by military leaders. However, in the present times it has evolved as an analytical concept and a field of study as adopted by social scientists. It generally means the ability of a nation to protect its internal values from external threats. A nation has security when it does not have to sacrifice its legitimate interests to avoid war, and is able, if challenged, to maintain them by war<sup>1</sup>.

National security is something which cannot remain static and just like laws the concept of national security needs to be evolved with the change in time and requirements. It is very much evident by the definition given by Walter Lippmann that war was recognised as a method to preserve the security of a nation. However, in the 1960s Arnold Wolfers said, "National security objectively means the absence of threats to acquired values and subjectively, the absence of fear that such values will be attacked<sup>2</sup>". The involvement of threats is also inculcated in this definition with the addition of acquired values. In the

span of late 1970s to early 1980s the definition of national security grew more specific and clearer in terms of what is national security, how to preserve it and what all may be considered as attributes to national security. Harold Brown, US Secretary of Defence gave the definition "National security then is the ability to preserve the nation's physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms; to preserve its nature, institution, and governance from disruption from outside; and to control its borders"<sup>3</sup>. By this time as clear from the definition of Harold Brown national security became a multi-dimensional concept including the foremost protection of territory and physical integrity, development of reasonable foreign policy and to avoid any outside disruption with secured borders. All these points are also clear by the definition given by National College of Defence, India in 1996. Whereby, the institute said, "National security is an appropriate and aggressive blend of political resilience and maturity, human resources, economic structure and capacity, technological competence, industrial base and availability of natural resources and finally the military might"<sup>4</sup>.

It is very well established that the nation's legitimate interest, acquired values, physical integrity and territory, economic structure, technological structure, human resource,

<sup>1</sup> JOSEPH J. ROMM, *DEFINING NATIONAL SECURITY: THE NON-MILITARY ASPECTS*, (Council on Foreign Relations, 1993).

<sup>2</sup> Arnold Wolfers, "National Security" as an Ambiguous Symbol, 67 *POLITICAL SCIENCE QUARTERLY*, 481-502 (1952).

<sup>3</sup> HAROLD BROWN, *THINKING ABOUT NATIONAL SECURITY: DEFENSE AND*

*FOREIGN POLICY IN A DANGEROUS WORLD*, (Westview, 1<sup>st</sup> ed. 1983).

<sup>4</sup> Lt. General Anand M. Verma, *India's National Security*, SALTUTE TO THE INDIAN SOLDIER (Jan. 21, 2017), <https://salute.co.in/indias-national-security/>.



policies and above all a military might are the known attributes of national security. Any act which is a threat to these attributes is a threat to a nation's national security. In India, the threats to national security can be terrorism and insurgency, Naxal or Maoist activities, organized crime. However, it is equally important to note that in this era of globalization and interdependency of nation on another the threats of national security have become global. This is where the concept of transnational security emerges. India has dealt with various transnational threats since its independence from British colonizers. The main security challenges have come from neighbouring countries like Pakistan and China which have resulted in barriers against cooperative solutions which has further deepened the transnational threats. India is a major victim of terrorist activities by Islamic radical groups in Pakistan and problems of insurgency by Maoist and Separatist activities within its borders.

## 2. SIGNIFICANT THREATS TO NATIONAL SECURITY OF INDIA

### 2.1. TERRORISM

India is in an unstable and vicious region which is a victim of terrorist dominance for decades in one form or the other. Most of these terrorist attacks have been done by the radical Islamic groups allegedly harboured by its neighbours. It is in constant battles with these groups since independence. These activities are motivated to destabilize the State control over India and to hinder its economic, social, and military growth; also

known as attributes of national security. The transnational threat of terrorism which is strongly associated to India and its national security is generally linked with Pakistan, the immediate neighbour. The terrorist and insurgent activities are operated by radical Islamic groups in Indian Kashmir, the north eastern provinces and the attacks which happen on major cities have ties with the extremist groups of Pakistan. It has consequently become crucial for the Indian security officials to place this security challenge against the known challenges.<sup>5</sup> However, the threat of terrorism is not new to India, there has been a substantial rise in fundamentalist along with radical Islamic groups outside the valley region.

Prior to the terrorist attacks on World Trade Centre, New York famously known as 9/11 attack, the forerunners of terrorism in India were the Kashmiri militants and Jihadi organisations, besides Naxal activities internally. But, in the post 9/11 era, both the global radical Islamic groups and the fundamentalist groups have established connections together along with the Pakistan based terrorist groups. With the increase in power of Al Qaeda from 2001 onwards the risk of Jihadi domination and threats have increased significantly particularly in Kashmir. This has led to a belief amongst the radical Indian Muslims that their final objectives are very much alike to that of the terrorist organisations like Lashkar-e-Taiba and Jaish-e-Mohammed. While the Kashmiri terrorist organisations are mostly region specific with a goal to target the valley only, the global organisations have focus on whole of India. The Parliament attack (2001), attack

<sup>5</sup> Yateendra Singh Jafa, *Defeating Terrorism: A Study of Operational Strategy and Tactics of Police Forces*

*in Jammu & Kashmir (India)*, 6 POLICE PRACTICE AND RESEARCH, 141-164 (2005).



on US Consulate (Calcutta 2002) and the infamous Mumbai Attacks (2008) are all instances of wider focus of these groups. It is noteworthy that not only the area of these groups has widened but also the scale on which they attack leading to mass casualties. Pertinently, the Indians that are aligning with ISIS's ideology are the youths of the southern parts of the country which has never experience Jihadi infiltration. The youths got associated with the global terrorist groups with internet playing an instrumental role in this union. The use of internet has proved to be much more effective than the offline Jihadi recruiting structure operational in the pre internet era. The increased number of recruits made by the ISIS has made it evident that its propaganda and process of recruitment is much more effective and organised than that of Al Qaeda.

India is countering terrorist for decades now. But the security agencies are slowed down by their conventional counter terrorism methods. The need to adopt and implement new and effective mechanism of counter terrorism has now become a need for India to curb the threat of global jihadism that is looking it right in its eye. The rapid growing transnational terrorism has made it evident that it is unlikely to have more attacks like 9/11 or 26/11; rather India should be prepared for many more small-scale attacks on its civilians, economic and military structures. The reason why these small-scale terrorist activities are more dangerous is that the notorious terrorists have greater chances to escape the radar of the security agencies.

## 2.2. INSURGENCY

<sup>6</sup> Brig. Narendra Kumar, *Decoding Threat to India from Terrorism and Insurgency*, VIVEKANAND INTERNATIONAL FOUNDATION (Dec. 20, 2018),

The Indian states of Orissa, Bihar, Jharkhand, Chhattisgarh, Maharashtra, Madhya Pradesh, Andhra Pradesh, and Telangana have always faced significant threat by the radical insurgent groups following Maoism, also known as Naxalites. Naxal terrorism's focus is to force the departure of foreign enterprises doing business in the country such as mining. They subsequently aim to overthrow the government of India and launch attacks on the upper social strata of the society and upper castes. Naxals are known as the far-left radical communists who attract people especially from the tribal areas. These groups claim to represent the interest of poor and socially marginalised member of the Indian society mainly tribals and Dalits. For decades, they have engaged in war against politicians and security personnel to establish their operational base in remote areas of the forests<sup>6</sup>. Some insurgent groups have attempted to work together for organised attacks to eliminate the chances of disputes with one another. The example of these joint operations is the Coordination Committee (CorCom) of Manipur insurgent organisations with Kangleipak Communist Party (KCP), Revolutionary People's Front, PREPAK (Progressive), People's Revolutionary Party of Kangleipak (PREPAK), Kanglei Yawol Kanna Lup (KYKL) and United National Liberation Front (UNLF).

The north eastern states of Assam, Tripura, Manipur, Nagaland, and Meghalaya are known for poor governance and therefore have high insurgent activities. The separatist sentiments have developed in these areas with several groups adopting to socialist or

<https://www.vifindia.org/article/2018/december/20/decoding-threat-to-india-from-terrorism-and-insurgency>.



even Maoist ideologies as a result. The major concern and the distressing factor of the insurgent organisations is the primitive ideology that remains uniform. However, with time and advancement of technology their potential and methods to create threats to national security have increased. Their new and increased access to artificial intelligence, armed drones, weapons like chemical, biological, cyber, or even nuclear and the conventional firearms has increased the chances of them to execute acts of terror. Under these circumstances, it is only reasonable to eradicate the insurgents and this method has been adopted by the governments also. But to face the truth, killing of insurgents does not imply as killing the insurgent ideology.

Seventy-four security personnel along with twenty-two civilians were gunned down in 2008 in a Naxal attack in Orissa. As a result, two thousand one hundred special police officers were appointed by the state government to counter these activities. Four battalions of the Indian reserve police have been formed to tackle these insurgents. Bhupesh Baghel, Chhattisgarh CM has claimed to have achieved an unprecedented success in combating Naxalites. A decline of 39% is recorded by the Chhattisgarh government which signifies that there were only 210 cases in 2019 as compared to 344 cases till August in 2018<sup>7</sup>. National and State governments of India have declared these Naxal groups as terrorist organisations hence making them illegal. However, there is always a lurking danger of revival of

insurgency and militancy. Chances of rebirth of insurgency in Punjab, Mizoram and Assam is still possible because the ideology has not been completely defeated and decimated. In fact, overlap of crime and terrorism presents significant challenges to international and national security. Based on the example set by narco-terrorism as it originated in the 1980's in Latin America, the use of violence has been an important element in terrorist development. For some point in time such a fusion between the insurgents / terrorists and the crime syndicates even acquires political ambitions. India must remain vigilant and avoid any ignition for insurgency / militancy revival.

### 2.3. ORGANISED CRIME

The primary field of operation in which organised crime groups operate is supply of illegal goods and services to their customers. It has the roots in legitimate business as well as in labour unions. It is based on illicit methods such as tax-evasion, extortion, terrorism, and monopolisation to gain legal ownership and control and to earn more illegal profits from the people. It has become surprisingly sophisticated by bribing corrupt government officials to avoid any interference in their working. With the evolution in time and technology, the crime syndicates have now entered into drug trafficking, illegal trading of arms, money laundering etc amongst their traditional businesses of extortion, contract killing, protection money, prostitution, smuggling

<sup>7</sup> Nidhi Sharma, *A Year in Power, Chhattisgarh CM claims 39% dip in Naxal attacks*, THE ECONOMIC TIMES (Oct. 12, 2019, 7:29 AM), <https://economictimes.indiatimes.com/news/politics->

[and-nation/a-year-in-power-chhattisgarh-cm-claims-39-dip-in-naxal-attacks/articleshow/71697493.cms](https://economictimes.indiatimes.com/news/politics-and-nation/a-year-in-power-chhattisgarh-cm-claims-39-dip-in-naxal-attacks/articleshow/71697493.cms).



and boot-legging<sup>8</sup>. The money collected from these activities is used to invade legitimate business enterprises and other activities. Past experiences have shown that it also tends to disrupt the country's democratic processes by way of influence and violence. In addition to this, organised crime sabotages the country's economic prosperity.

The existence of these crime syndicates has now become a transnational threat and no longer viewed as a domestic problem. This is the inference drawn from their involvement in money laundering, drug trafficking, gun running, terrorism and illicit immigration rackets. Moreover, the development of science and technology has paved the way for organised crime to function with greater mobility and sophistication, resulting in the rise of its power. Organised crime is deep rooted and well associated with terrorist organisations in India and Pakistan. It is evident that the South Asian criminal enterprises have known connections with terrorists involved in international activities on different levels. It aids in logistics involving weapons supply, routes for operation, providing training and finance.

In recent times, drug trafficking<sup>9</sup> has emerged as an imminent threat to India. Much of these activities include illegal supply of narcotics and other drugs by the golden triangle (Burma, Laos and Thailand) via India and Afghanistan, Pakistan and Iran also known as the golden crescent. The drugs are sent to destinations like Europe and Russia by the traffickers from Afghanistan to Pakistan and then by Southern part of India to the ocean from where the shipments finally reach other

continents. While most of the opium is used indigenously, some part of it is rerouted to abroad by the organised crime.

Along with human trafficking, many young boys and girls are sold to Arab countries where the girls are used for sexual exploitation and boys are used as camel racers. Dubai is constantly a hub for Indian criminals for prostitution and human trafficking. These networks are easily used by terrorist organisations to transfer of manpower and arms.

The report of the UN Office on Drugs and Crime (UNODC) in 2018 shows trafficking trends from 142 countries. It states that now human trafficking has achieved horrific dimensions, with the main perpetrator being the victim's sexual exploitation. A total number of 30% are children amongst the humans trafficked, with most of them being girls<sup>10</sup>.

The money laundering operations also known as Hawala on South Asian region is also a prominent threat now a days. The origin of these hawala networks can be linked to the weak rural banking system. The common system which exists in South Asia and the middle eastern countries is based on trust between individuals and social networks. For instance, a simple transaction of an individual paying \$5,000 in rupees to a street vendor and receiving \$5,000 in Washington DC a few days later without negligible or no record of the transfer happened. The transaction so happened is of unknown scale, therefore resulting in the use of hawala by terrorist

<sup>8</sup> M.L. Sharma, *Organised Crime in India*, 54 UNAFEI, 24 (1999).

<sup>9</sup> Rollie Lal, *South Asian Organized Crime and Terrorist Networks*, 49 ORBIS, (2005).

<sup>10</sup> UN OFFICE ON DRUGS AND CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS (United Nations Publication, Sales No. E.19 IV.2) (2018).



organisations of individual criminals to transfer illicit belongings. It is necessary to ruin an organised crime's money network since it is the backbone and biggest strength of any organised crime.

### 3. IMPACT OF ORGANIZED CRIME ON NATIONAL SECURITY

National security is said to be a threat when the independence, sovereignty, integrity, and overall mechanism of a country along with its people is at peril. One of the most prominent challenge recognised to national security of a nation is organised crime in the present scenario. The organised criminal groups have taken advantage of cold wars to increase the pace of their activities and a significant hike in their money power base. The situations like decreased political and economic hurdles; fall of communal setups worldwide and newly established democracies have proved to be opportunities of great potential to the crime syndicates.

National security can no longer be viewed as mere territorial protection and the challenge of state security today surpass the traditional aspect of national security. The non-traditional risks have become transnational and have evolved to a level where they pose a much greater risk and have potentials to sabotage the state functioning. Therefore, the present national security challenge has grown into an issue of serious law implementation. The states have adopted a comprehensive approach to preserve both its security and citizens from any possible violence.

However, the effect of the ever-growing technology and better communication infrastructure is two sided on organised crime. While, these developments have indeed made these organisations more flexible and securing them with better opportunities and maximised profits, it has also resulted in the eradication of almost all the paperwork and records. This has led to a criminal justice system with negligible amount of incriminating evidence against these organisations and hence a fall in the effective police action<sup>11</sup>.

Although, it is evident from the latest trend that there has been a shift in the disposition of challenges to national security, which were earlier focused on collection of power, resources and territorial integrity but are now corresponding to collection and control of information. With immediate concern to this point, the security services are exposed to new susceptibility as the organised crime is using their access to information for expansion and effective control of the business. In addition to this, cyber space since its development has posed a stealthy threat to national security as it has rendered the traditional challenges to national security inadequate and has paved a way to transnational threats. It has no geographical boundaries and therefore the immediate need to reconcile conventional forms of security planning with the modern and meticulous economic, social, and technological advances.

The direct beneficiary of this synthesis is Transnational criminal organisations

<sup>11</sup> Van Duyne, *Organized cross-Atlantic crime*, 22 CRIME, LAW AND SOCIAL CHANGE, 127-147 (1995).



(TCOs). Their roots are cemented due to inadequate state authority and origin from globalisation and are so influential that cannot be neglected or undermined as a regular challenge to law and order. It is conspicuous that transnational criminal organisations especially the ones operating in drug trafficking and arms smuggling, constitute a crucial threat to national security.

#### 4. LEGAL POSITION OF ORGANIZED CRIME IN INDIA

Organised crime has always existed in India in some form or another. It has, however, assumed its infectious form in current times because of various socio-economic and political factors and advances in science and technology.

In India, there is no comprehensive law to control organised crime in all its dimensions and manifestations, there is, however, substantive law regarding criminal conspiracy. There are also penal provisions in various statutes against specific violations of those statutes.

##### 4.1. CRIMINAL CONSPIRACY

India Penal Code deals with the punishment of criminal conspiracy<sup>12</sup>. The punishment for the conspirator is the same as for the principal offender. It may, however, be emphasised that the criminal conspiracy by itself is a substantive offence. The conspiracy need not fructify and the mere proof of the existence of the criminal conspiracy is adequate to have the criminal punished for such criminal conspiracy.

##### 4.2. LAW ON GANGSTERS

There is a vacuum of any central legislation to suppress 'gang activity' having countrywide applicability. The State of Uttar Pradesh has enacted Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, which is applicable in that State only. This Act has a wide canvass and purports to cover large areas of organised criminal activity. It is, however, different from laws enacted in foreign countries, in that, apart from criminalising money-making activities of the criminal gangs, it also criminalises infringement of election laws, causing obstruction or disturbance in the pursuit of lawful trade, business or profession and incitement to violence and disturbance of communal harmony etc. There is absence of any firm data available to prove the impact of the legislation. It appears that due to inadequate investigations and inordinately delayed trials by the courts, this legislation has not been able to make any dent on the criminal landscape of the State.

##### 4.3. PREVENTIVE ACTION

The National Security Act 1980 provides for preventive detention by the Central Government or the State Government or by the officers designated by these Government. The detention order is issued for one year with a view to preventing a person from acting in any manner prejudicial to the defence of India or to the friendly relations with foreign powers. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988 provides for detention of such persons. The Central Government or the State Government or designated officers of these Government, can pass an order for detaining a person with a view to preventing

<sup>12</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India). Section 120B



him from engaging in illicit traffic in narcotic drugs. The detention can be made for one year but in certain circumstances it is extendable to two years.

### 5. NEXUS BETWEEN TRANSNATIONAL CRIME GROUPS AND TERRORISM

Terrorist and criminal institutions, which have profoundly distinct motives for their crimes, may collaborate on specific tasks by networking or outsourcing when their goals of interest cross. A nexus between TCGs and terrorist organizations operating against India has developed since the early 1980s, for the following reasons<sup>13</sup>:

- Reliance of terrorist organizations on cross-border TCGs for assistance in matters such as finding safe areas and timing of covert border crossings without detection by Indian security forces, transportation of weapons and ammunition across the border so that terrorists do not have to bring them, messaging couriers, acquisition of communications equipment, exploitation of multinational TCGs for aid in matters such as the production of legitimate travel documents through their influence in the political leadership and security bureaucracy, the conversion of currency and the transfer of money, the transport of weapons and ammunition by sea, the covert transportation by air or sea to their training camps in Pakistan through third parties<sup>14</sup>.
- The TCG conjectures on terrorist organizations to procure narcotics from Pakistan and Afghanistan's heroin barons.

<sup>13</sup> Steven Hutchinson & Pat O'malley, *A Crime-Terror Nexus? Thinking on Some of the Links between Terrorism and Criminality*, 30 *STUDIES IN CONFLICT & TERRORISM*, 1095-1107 (2007).

- Adopting the kidnapping of businessmen and other wealthy people for ransom by the TCGs and terrorist organizations to increase their sources of revenue and to meet their urgent / unanticipated demands for money.
- The connection between terrorism and organized crime is derived from the relation between the two types of groups and the need for monetary gain. Terrorists use existing criminal logistics, including financial activities. Some terrorist groups even loot banks and create phony (shell) firms for money laundering, while others engage in secret arrangements and form alliances with organized criminals.

What we see now is a fusion of terrorist organizations and organized criminal network to the degree that a single organization displays at the same time traits of violence and terror.

### 6. COMBATING

India's government tackles the threat of terrorism and organized crime elements through better legal infrastructure and sharing of information. Moreover, India has passed legislation in the last decade that gives law enforcement the ability to expedite prosecution in organized crime cases.

Anti-terrorism law has long been in the limelight in India, largely attracting scrutiny and regular legal challenges for breaching the constitutionally of enshrined federalism principles in India. Whether it was the time

<sup>14</sup> B. Raman, *Terrorism and Transnational Crime*, *OUTLOOK* (May 6, 2002), <https://www.outlookindia.com/website/story/terrorism-transnational-crime/215476>.



when the parliament enacted TADA<sup>15</sup> and POTA<sup>16</sup>, or the proposed establishment of a National Counter-Terrorism Centre, these arguments were at the political forefront. Thus, the induction of such laws into the Union Government's legislative system was the major challenge to the country's federal structure.

An analysis of anti-terrorism jurisprudence in India reveals that an act of terror is codified in multiple constitutional entries; in particular, Seventh Schedule entries listing offenses related to India's Defence and offenses against the Union of India's armed forces<sup>17</sup>. Preventive detention related to Indian country defence, foreign affairs, and security is also mentioned in the schedule entries 1,2 and 9, respectively. The State List's first and second entries offer guidance on issues relating to public order and security, which are the state machinery's influential roles. The institutions listed in the statement of police and public order are also used to investigate terrorism related offences. The vague aspect is that in the first, second and third entries of the Seventh Schedule, which also specifies the Concurrent List, criminal law, criminal prosecutions and instructions on preventive detentions affecting public order are listed.

Ideologically, the Indian government has historically taken the view that religion must continue to be divorced from the notion of terrorism, to prevent the probability of the multi-religious communal violence from happening in the country. Terrorists are mere terrorists for the Indian Government

regardless of their religious affiliation. In metropolitan cities, police are taking the lead around counter-terrorism activity, and attempts are being made to enhance interagency capacity. India has also expanded border defence with barriers, sensor systems, and additional security forces deployed.

### 6.1. TERRORISM

No country in today's globalized world is immune to the threat of terrorism. Several South Asian countries, including India, have faced the threat of terrorism, and numerous acts of terror have occurred in the region in recent years. Many of these incidents have complex international connections and potential linkages with transnational organized crime. Terrorism is an emerging trend, with extremist groups constantly modifying their modus operandi, thereby leading to the complexities and threats encountered by practitioners of criminal justice. The ability to address these challenges successfully lies heavily in the ability of national criminal justice systems to manage fair and effective justice for terrorist crime perpetrators. National action, combined with regional and international collaborations, are key elements for effectively tackling terrorism.

South Asian Association for Regional Cooperation (SAARC) is the main body designed to answer these forms of transnational issues. SAARC has made progress in trying to tackle the challenges of exchange of information and legal issues concerning crime and terrorism across South

<sup>15</sup> Terrorist and Disruptive Activities (Prevention) Act, 1987, No. 28, Acts of Parliament, 1987 (India). The Act was repealed in 2002.

<sup>16</sup> The Prevention of Terrorism Act, 2002, No. 15, Acts of Parliament, 2002 (India). The Act was repealed in 2004.

<sup>17</sup> INDIA CONST. sch. 7.



Asian borders. SAARC countries signed an Agreement in August 2008 to provide mutual legal assistance. The Convention was meant to provide a basis for increased collaboration between the Member States' security forces on the extradition of prisoners and terrorists from Member States<sup>18</sup>.

Judicial approach in matters relating to national security has remained very consistent. It has shown due appreciation for the laws framed by the legislatures from time to time, while recognizing the fact that acts of terrorism constitute an 'extraordinary crime.' The courts have scrutinized closely the mechanisms and procedures set down under the current law, with sufficient attention being paid to maintaining citizen's personal freedoms and individual human rights.

The following are the three most landmark cases of terrorism wherein the prosecution of the accused was done under anti-terror laws:

1. *Navjot Sandhu v. State*<sup>19</sup>
2. *Nazir Khan v. State of Delhi*<sup>20</sup>
3. *Mohd. Ajmal Amir Kasab v. State of Maharashtra*<sup>21</sup>

The Supreme Court has investigated the issue during these trials as to what constitutes as 'Waging war' and its current importance. All the three cases involved foreign citizens and charged parties had been sentenced by the trial courts under section 121 of the Indian Penal Code. The rationale was based on their

intention to overawe India's government through criminal force along with activities used to bring hate.

## 6.2. INSURGENCY

Out of India's counter-insurgency strategy, there are three points worth noting. First, strategies have varied over time and space depending on the context and nature of the insurgency rather than abiding by a singular formula. Second, India has consistently departed for an extremely energetic and aggressive enemy-centred COIN from the conventional "hearts and minds," or population-centred COIN. Third, Indian success is never "clean" and always involves uncomfortable trade-offs, be it through criminal activity, overall organisational instability and corruption or further insurgency<sup>22</sup>.

COIN responses from the central Indian and state governments have been strongly reactive, disregarding expectations of the local population. One Indian columnist said, "Overcoming Maoist rebels suspected of violence, paramilitary police tend to execute innocent men and women openly. Maharashtra and Andhra Pradesh are the two states which tend to be effective in growing or holding insurgency violence at bay. At the beginning of the decade, Maharashtra appears to have had relatively higher police-to-population ratio, potentially buffering it from the spill over from neighbouring Naxalite insurgency<sup>23</sup>. While the manpower

<sup>18</sup> The SAARC Convention (Suppression of Terrorism) Act, 1993, No. 36, Acts of Parliament, 1993 (India).

<sup>19</sup> *Navjot Sandhu v. State*, (2005) 11 SCC 600 (India).

<sup>20</sup> *Nazir Khan v. State of Delhi*, AIR 2003 SC 4427 (India).

<sup>21</sup> *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1 (India).

<sup>22</sup> Sameer Lalwani, *India's Approach to Counterinsurgency and Naxalite Problem*, 4 CTC SENTINEL, 5-8 (2011).

<sup>23</sup> Anuj Chopra, *India's Failing Counterinsurgency Campaign*, FOREIGN POLICY (May 14, 2010), 4:50



ratio of Andhra Pradesh has risen much over the past 10 years, Indian analysts generally attribute its success in dramatically reducing Naxalite activity on the territory via a comparatively different strategy of forming a special elite task force known as the Greyhounds.

The Greyhound army, an elite anti-Maoist commando team, was created to conduct small team counter-guerrilla offensives against Naxalite rebels from within the Andhra Pradesh police starting in 1987. The Andhra Pradesh police, roundly thought to have been tremendously successful, have drawn inspiration from the iconic Selous Scouts of Rhodesia to punish the analogue of a “bush war” against the Naxalites.<sup>24</sup> The 2,000-strong Greyhound force has better pays and are prepared to pursue, trace and kill rebel networks by modelling guerrilla operations than federal or state-run paramilitary forces with state-of-the-art arms and equipment, better trained in jungle warfare, and moves in nimbler, more mobile vehicles. The Greyhounds are also well backed by all the state police force.

It is evident that the Greyhound model is so successful that many states are beginning to develop their own small unit commando police battalions. While the Indian government continues to deploy central paramilitary forces into the region (currently on the order of about 70 battalions), 10

Commando Battalions for Resolute Action (CoBRA) are also being raised and deployed alongside state and federal units<sup>25</sup>.

### 6.3. ORGANIZED CRIME

It is noticeable that the Indian Police, and indeed the Indian criminal justice system, are not sufficiently prepared to tackle the rising challenge of organized crime. In particular, the police lack (a) effective legal instruments, (b) specialized training, (c) prompt and accurate organizational structures, (d) technical support, (e) meaningful coordination with other agencies, and (f) proper intelligence to deal with organized crime. There is also no sense of urgency on the government's part in remedying those shortcomings.

The Union Cabinet has granted ex-post-facto authorization of an agreement between the Republic of India's Ministry of Home Affairs and the Republic of Uzbekistan's Ministry of Internal Affairs on cooperation between the two for eradicating transnational organized criminals and global terrorism. The Agreement seeks to strengthen the efficiency of both countries in crime prevention and control, particularly terrorism-related crime and its funding and organized crime, and to create a mechanism for improving coordination between the countries' intelligence officials and law enforcement agencies, in accordance with domestic law and international obligations<sup>26</sup>.

PM), <https://foreignpolicy.com/2010/05/14/indias-failing-counterinsurgency-campaign/>.

<sup>24</sup> Madhavi Tata, *Lessons from Andhra*, OUTLOOK (Apr. 19, 2010), <https://www.outlookindia.com/magazine/story/lessons-from-andhra/265014/?next>.

<sup>25</sup> WORKING CONDITIONS IN NON-BORDER GUARDING CENTRAL ARMED POLICE FORCES

(CENTRAL INDUSTRIAL SECURITY FORCE, CENTRAL RESERVE POLICE FORCE AND NATIONAL SECURITY GUARD) (Parliament of India Rajya Sabha 2018).

<sup>26</sup> *India-Uzbekistan sign pact on counter-terror cooperation*, THE ECONOMIC TIMES (Nov. 22, 2019, 05:08 PM), <https://economictimes.indiatimes.com/news/defence/i>



The Maharashtra government enacted the Maharashtra Regulation of Organized Crime Act (MCOCA) in 1999 with the aim of combating organized crime in the city. If any person on behest of a representative of an organized crime syndicate is in possession of, or at any time has been in possession of, movable or immovable property for which he cannot satisfactorily give account, he shall be liable to imprisonment for a term not less than three years but not less than 10 years, subject to a minimum of one hundred thousand rupees<sup>27</sup>.

Today, the approaches to organized crime at all main levels of the criminal justice system investigation, prosecution and punishment, and the period of incarceration upon conviction are insufficient and incomplete, both in terms of severity and reaction design. Substantive legislation, administrative law, and insufficient budgets for policing and prosecuting authorities to counter organized crime, and the elite 's willingness to frustrate investigations, all hinder the realistic likelihood of actually curbing organized crime.

There are numerous explanations why it is important to view organized crime differently from conventional individual crime. First, the enormous power and influence of such organizations; second, the far greater potential for physical and economic harm caused by organized crime to society; and third, the enormity and seriousness of the implications of organized crime for the political, social and legal systems that are discredited by their presence.

## 7. WAY FORWARD

The terrorism challenge will continue to be difficult for India to cope fully with. Instances of domestic terrorist violence that emerge from disaffected Indian populations can be addressed more efficiently by strengthening stability and transparency in the areas involved. Moreover, greater emphasis on human rights issues and openness would create trust and confidence among populations, either in Mumbai and Kashmir, or the North Eastern separatist regions. The approach about transnationally funded operation is much more nuanced. Pakistani collaboration would be an important part of potential bans of militant organisations.

Organized crime can only be wrecked when the organization's financial power is broken. This requires special skills in accounting and financial matters, a comprehension of wire transfer methods, including hawala deals, financial analytics acumen, etc. Such competence is yet to be built up by Indian police organisations. Such expertise within the department will never be fully available, and there must also be a system of partnership through which the required expert advice can be obtained from outside the policing set-up, and even on an international level.

Only when different task forces are formed to tackle organized crime and officers are granted appropriate tenures on the job will the necessary level of competence be established. No single policeman can investigate organized crime. It is really the special task forces that operate directly with

ndia-uzbekistan-sign-pact-on-counter-terror-cooperation/articleshow/72184981.cms?from=mdr.

<sup>27</sup> Maharashtra Control of Organised Crime Act, 1999, No. 30, Acts of Parliament, 1999 (India). Section 20



the police departments, who will produce efficiency. The special task forces also need supervisory technological services, telephone supervision, IT experts, etc.

Indian counterinsurgency has been and still is likely to persist to look brutal as well as inconclusive (by Western standards) because the incumbent is unwilling to counteract the types of institutional overhaul needed to quench insurgent impulses completely. If it is not the allocation of wealth that can be mended through economic growth that is the underlying problem, but rather the distribution of power dominated by state and elite cadres, instead the epidemic is structure. The cure can then threaten not only India's growth engine, which has been dependant on land ownership and displacement for industries and mining, but also the Indian state's power, structure and identity widening from local to state and national governments.

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