THE ROLE OF CENTER-STATES RELATIONS IN GROWTH OF PROPOSALS AND POLICIES RELATED TO NATIONAL SECURITY IN INDIA: A CRITICAL ANALYSIS

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Abstract
National security includes both external and internal element. This article presents the internal element of national security where it critically analyzes the center-state relation w.r.t. three major issues crucial to maintaining internal peace and security. Section I analyzes the federalist constraints in tackling cross-border terrorism. Section II considers the coordination of center and states in successfully eradicating the menace of LWE from the country whereas Section III evaluates the insurgency movements in India’s North-East and the use of principles of federalism to put an end to that crisis followed by conclusion and suggestions to overcome constraints in the cooperation.

Introduction
National security has been defined to mean “the ability of a state to cater for the protection and defense of its citizenry”1 against threats external as well as internal. Tackling external threats falls under the exclusive domain of the Centre by virtues of the entries under the Union List whereas internal threats requires coordination and cooperation between center and various States with respect to developing policies and programs to tackle the same. This article strives to critically analyze this dimension of federalism w.r.t National security in recognizing and responding to the broader problems faced by the country as a whole.

Cross-border terrorism and the Centre-State relation in combating it
Terrorism has no particular definition & can simply be defined as propagation of terror through infliction of pain on military as well as civilian population of a country. India has been a constant victim of cross-border terrorism from the days of its independence, mainly originating from Pakistan. Overtime, cross-border terrorism has spread to various other states and major cities in India. The 1993 serial blasts in Mumbai, 2001 Parliament house bombing at New Delhi are a few examples to quote. However, one event which takes the crown whenever internal security is concerned is the attack on 26th November, 2008 in Mumbai which till date, remains the deadliest terror attack which shocked the conscience of not just India but of the entire world and killed more than 200 innocent civilians in its aftermath.

Security reforms in the aftermath of 26/11
26/11 wasn’t the first time commando-style terrorist attacks were made in India. However, what sets it apart from rest was the considerable attention it received from the media and through media, the corporate houses and the world in general. India was “humiliated and brought to its knees on

account of a small band of terrorists.” Therefore, under the aegis of newly appointed Home Minister, Mr. P. Chidambaram, certain reforms were introduced which were:

1) Creation of National Investigative Agency (NIA)
2) Addition of Ss. 43D & 43E via Amendment to UAPA Act, 1967
3) Proposed setting up of
   i. National Counter Terrorism Centre (NCTC)
   ii. National Intelligence Grid (NATGRID)
   iii. Reboot of Multi-Agency Centre (MAC)

The NIA was introduced to investigate terror related activities everywhere in the country superseding the powers of state police in respect of matters specified in its schedule, and amendments to UAPA increased the period of interrogation from 90 to 180 days and introduced presumption of guilt of accused. Similarly MACs were set up at the central and state level to coordinate in intelligence sharing between various departments of the Union and States. The MACs and NIA were supposed to be transient steps eventually to be subsumed into NCTC and in turn into NATGRID.

The tussle between Centre and States legislative competencies and the uncertainty associated with the policies regarding National security: A critical analysis

26/11 exposed the lackadaisical nature of the Union and State Governments and conspicuous lack of coordination between Centre and States on security matters. On the face of it, India embarked on a serious journey of transforming internal security policies. However, in reality much of it was mired in constitutional controversies and remained in limbo. The major constitutional challenge to the security reforms was the encroachment by Center upon the legislative powers of the States. Firstly, NIA was established to investigate terrorism and collect and process intelligence regarding the same. Basically, NIA to deal with internal security matters concerning the States. However, in the scheme of federal distribution of powers internal threats concerning States fall under State Legislative competencies viz. “Police”2 and “Public Order”3.

NIA: A Constitutional Conundrum

Now India, unlike U.S, doesn’t have a ‘federal crime’ category in Union list where Centre could legislate. Any such addition means a Constitutional Amendment. Here NIA Act was not a Constitutional Amendment but rather an Act of Parliament.4 A constitutional Amendment would require special majority plus assent of at least half of the total number of States. Terrorism and its effects are felt by States and by virtue of State List; the States only could legislate on counter-terrorism measures. So NIA was craft fully passed in as an Act of Parliament to bypass the mandate of States because otherwise States would not have given assent to a body which severely encroached upon their jurisdiction.

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2 INDIA CONST. art. 246, Sch. 7, Entry-2
3 INDIA CONST. art. 246, Sch. 7, Entry-1
4 NIA was created through an Act of Parliament under Art 355 read with ‘Defense of India’ under Entry 1 to List-I of Schedule VII of Constitution of India, 1950 as The National Investigation Agency Act, 2008, Act No. 34 of 2008
NCTC: Better Luck Next Time

The NCTC fared no better than NIA. It was worse. NCTC was Chidambaram’s brain child and was modeled on the U.S based NCTC. As per him NCTC was supposed to be a “broad mandate to deal with all kinds of terrorist related activities” and its functions were to include intelligence, investigation and operations.

However, several States like West Bengal, Odisha, Tamil Nadu, Gujarat, Madhya Pradesh and Bihar vehemently opposed this as operational power of NCTC would have encroached upon States’ legislative powers thereby violating Federal distribution of power. Consequently, Union Govt. brought NCTC as an Executive Order5 in February 2012. But again, States objected to certain clauses specifically Clause 3.2 and Clause 3.5 which according to them gave unbridled powers to NCTC to carry out search operations on any State without the latter’s explicit permission and to summon any information w.r.t. intelligence or similar purposes from any agency, thereby directly impinging on State Police powers. Even after repeated efforts by the then Home Minister to allay the concerns of the CMs of objecting States no consensus could be reached, as a result of which the NCTC was kept in limbo and could never see light of the day.

Another concern w.r.t National security policy making is that any sort of investigation by central investigating agencies require explicit permission of States as well as cooperation from State police forces as they are the best-source of ground level information. Even, the elite National Security Guards (NSG) can’t operate in a State without the cooperation of the State Govt. and the Police forces. However, as States can statutorily deny them any permission therefore, more often than not, either States do not give permission to these agencies, or State police forces don’t cooperate.

Inadequate Police infrastructure

Apart from above, the existing infrastructure of Police forces is a matter of grave concern. As per data on Police Organizations compiled by Bureau of Police Research & Development (BPR&D), the ratio as on 01.04.2021 of police personnel per lakh persons is 155.78 which is far below other countries like Italy(559) or Mexico(491.8).6 However, even though the infrastructure of existing police forces is far from competent to tackle terrorism, still as ‘Police’ is a state subject, coercing States to improve the existing infrastructure is not possible on the part of the Centre.

Nevertheless, the concerns of the States were not entirely misplaced. There are several instances to make the States accept any proposal from Centre with a pinch of salt. For example:

CBI being a ‘caged parrot’

The Central Bureau of Investigation was established under the Delhi Special Police Establishment (DSPE) Act, 1946. Although this central investigating agency was set-up with an intention to ensure higher level investigation into serious crimes, this agency overtime has gained more criticisms than

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appreciation for being “a caged parrot” which is its “master’s voice” than being an independent investigating authority.

Recently CBI was in news for two major reasons. First, the amendment introduced to S. 17A of the Prevention of Corruption Act 1986 which virtually makes the Union Govt., the master of CBI, as the Amendment mandates that CBI investigate the corruption charges against any government employee only after it obtains due permission from Centre.

Second, is the withdrawal of ‘General consent’ by 8 major States viz. West Bengal, Karnataka, Mizoram, Rajasthan, Chhattisgarh, Jharkhand, Kerala, Punjab & Maharashtra from CBI’s Jurisdiction. Jurisdiction of CBI flows from S. 5 of the DSPE Act which extends the jurisdiction of CBI to areas beyond Delhi. But S. 6 serves as a limitation to this Section by mandating that CBI in order to exercise its powers “in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State.” The major reason cited by all the above named States for this conduct has been the alleged abuse of CBI by the Central Govt. to target opposition and pursue vested political interest and vendetta against them.

Art 356: The foe of Federalism

Dr. B.R. Ambedkar in the Constitution Assembly defended the insertion of Art 356 on the ground that Art 356 to “remain a dead letter, only to be used as a means of last resort.” However, successive Governments at the Centre have used this Article as a first resort to suppress the voice of opposition ruling any State. As per recent reports, Art 356 has been used as much as 125 times till date! This surely is not what Dr. Ambedkar would have expected when he justified the insertion of Art 356 in the Constitution. In fact various Commissions, most notably the Sarkaria Commission headed by a retired judge Justice Ranjit Singh Sarkaria recommended for the sparing and cautious use of Art 356 in order to not undermine the spirit of federalism. Similarly the Supreme Court in the famous S.R. Bommai v. Union of India judgment condemned this practice. Only after this the gross misuse of Art 356 dwindled down.

All the above reasons have shaken the trust of the State governments on the Union Government thereby leading to creation of bottlenecks in the path of tackling cross-border terrorism as much needed reforms are mired in legal and political controversies. Nevertheless, Centre and States have to sort out their differences and build faith amongst themselves as the importance of cordial relation between Centre & State in combating cross-border terrorism can’t be stressed enough.

Centre-State cooperation as the cure to the menace of Left Wing Extremism

PM Manmohan Singh once remarked that LWE is the “greatest internal security threat to our country.” This LWE dubbed as Naxalite-Maoist insurgency traces its roots back to the rebellion of Adavasis and Landless peasants against oppressive landlords in the Naxalbari village of W.Bengal in 1960s. This rebellion later on gave birth to Naxalite movement which after the merger of CPI

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7 AIR 1994 SC 1918

(M). Maoist communities and other rebel factions in 2004 emerged as the single largest threat to the security of India. The most affected States in its wake were that of Andhra Pradesh, Odisha, West Bengal, Jharkhand, Chhattisgarh and Bihar.

The policy of the Central Government to suppress this movement has been a mixture of ‘Hard Force approach’ and ‘Soft Developmental approach’. As a part of the Hard line approach, in 2009 under the aegis of the then Home Minister Mr. Chidambaram, a large scale military offensive called ‘Operation Green Hunt’ was launched to defeat the extremists and liberate the areas under their control, by setting up of industries and providing employment. However after suffering heavy setbacks, the approach was changed to one of Soft developmental one where the insurgents groups were talked back again to join the mainstream society and give up violence.

**Critical analysis of Centre-State relation in relation to policies to curb LWE**

**The Hard Force approach**

The Hard Force approach taken by Mr. Chidambaram was supported by affected States to restore civil administration in all the affected areas where it was overthrown due to the violent Extremists. This support was pivotal because as ‘Public order’ falls under State list therefore, even though center can frame broad policies, implementation of the same or even decision to pursue anti-LWE policies would be solely States’ call. However, the setbacks suffered by the movement were huge enough for the States to withdraw their support. The death of Security forces in Dantewada district of Chhattisgarh and other successive attacks blew a death blow to the Operation.

**The Soft developmental approach**

Consequently, the hard line approach of Chidambaram was replaced by the ‘Soft developmental approach’ actively supported by Mr. Jairam Ramesh, the then rural development Minister. One of the major reasons behind adopting this approach was the opinion of certain States who didn’t vouch for the hard line approach. For example, Jharkhand CM, Mr. Sibu Soren stalled the security forces operation against the extremists whereas Bihar CM Nitish Ku was known to be a forever supporter of peace talks with the extremists to bring back peace. Taking into consideration there viewpoints, the developmental approach was brought in.

It is not to deny that the Hard Force approach was totally wrong per se. In fact, it did yield good result. For e.g. CM of West Bengal, Miss Mamata Banerjee initially resisted the deployment of forces in the state and rather vouched for peaceful engagement process with Naxalites, as she didn’t want to follow center’s diktat. However, when her own party members were killed by extremists, didi did come around and agreed to deployment of forces which was beneficial. Again, the Saranda Development Plan is a good case to illustrate the positive outcomes of Hard line approach whereby extremists were erased and development was brought in in the Saranda forest area of Jharkhand.

Henceforth, it can be rightfully stated that in policy matters for curbing LWE, the role of Centre-State relations is of paramount importance. Other than the Ad-hoc approaches and schemes, there have been several protracted and long-term policies and schemes implemented by both Central and State governments to combat the menace of LWE in the country. These include among others the ‘Operation Anaconda’; a military
offensive launched by the State of Jharkhand along with Central forces to eliminate Maoists from the Saranda region which was successful, the creation of militarily trained commandos referred to as the Gray Hounds by States of Andhra Pradesh and Odisha to combat Naxalite movements in most vulnerable districts of their respective regions. Along with these, several Surrender and Rehabilitation policies by States like Maharashtra, Bihar and West Bengal have been put into place to lure in the insurgents into mainstream society and give up violence.

Successive governments at the Union have also come up with various long-term flagship programs in this regard too. Among them, the UPA Govt.’s Integrated Action Plan (IAP) deserves mention which aimed at eradicating the development deficiencies in the typical tribal hinterland areas which are the most LWE affected areas. It had a budget of Rs. 6,000 Cr. Similarly, the Narendra Modi led NDA Govt. scrapped the IAP replaced it with Special Central Assistance (SCA) to cover 35 most LWE affected districts. Additionally, the launching of the SAMADHAN Scheme in May 2017 and banning of several Maoists organizations under the UAPA Act have managed to limit LWE to a handful of districts presently.

In fact, as per a recent report, India’s protracted effort of half a decade has virtually put a death knell on LWE cue the Center-State cooperation with the States playing the key role and Centre taking on the supportive character in drastically mitigating the menace of Left Wing Extremism in the Country.9

Insurgency in the North-East and Federalism as the plausible solution

The North-Eastern States of India sobriquet as ‘the seven-sisters’ consists of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Sandwiched between a number of recalcitrant neighbors including China, Bhutan, Myanmar and Bangladesh and linked to India’s mainland through a narrow 22 km strip though Siliguri, India’s North-East, a cluster of diverse ethnic groups, has been a witness to number of ethnic insurgency movements from pre-independence era.

The rise of insurgent movements in India’s troubled North-East dates back to 1929, when for the first time members of Naga Club, the first political groups among Nagas, submitted a memorandum to the Simon Commission pleading them to “leave them alone” when Britishers leave the country. During the British era, much of the North-Eastern part was not directly administered, except for Assam, because of the multi-ethnic, polyglot population existing in the region. After independence, there were series of violent clashes between ethnic insurgent groups and Federal military forces resisting federal control and cultural assimilations into the mainland India. In fact, there has not been a single State among the Seven Sisters which doesn’t have at least a single episode of separationist movement revolting against territorial assimilation and demanding independence.

Critical analysis of the insurgency movements and role of federalism in quelling it

Reasons for Insurgencies

The feeling of isolation by virtue of being physically and culturally separated from mainland India, the competition of indigenous Mongoloid tribes with the migrants from foreign countries for scarce arable resources, the lush forest covering providing perfect hideout spots for rebel groups, availability of illegal weapons from home-grown markets as well as neighboring countries and existing poverty are certain reasons and conducive factors for the separationist movements in North East.

Efforts to suppress insurgencies

Successive Union Govt. have used the combination of Sham (Conciliation), Dam (Bribes), Dand (Punishment) and Bhed (Split), a characteristic Kautilyan statecraft, in order to pacify the North-Eastern region. Like, the conferment of ‘Special Area’ status under Art 371 A-C, F-H of Part XXI of Constitution, deployment of large military forces in the form of ‘Operation Bajrang’ and ‘Operation Rhino’ to crush the rebellions, and once the rebellions subsided, to engage the groups in political dialogues, allotment of huge amount of federal expenditure as ‘special development packages’ and siphoning off a huge chunk to appease the rebel groups. Clever tactics like ‘Divide and Rule’ policy have been used by both Central and State intelligence machineries to create splits within the rebel groups in order to weaken them, which have worked all too well to their credit in subsiding rebellions.

Along with the above, the Union govt. in 2014 set up the Bezbaruah committee in response to the tragic death of a 20 year old student from Arunachal Pradesh in Delhi following racial altercation. This committee was headed by Mr. M.P. Bezbaruah, a retired IAS officer, to look into concerns of the North-east people and especially of students living in metros like Delhi and suggest changes accordingly. It submitted its report in July 2014 where it recommended for reaching out to NE people through Social media and other means, creating awareness about the people of NE and to strengthen laws in order to counter racial violence.

Nevertheless, there are instances of gross policy failures which have contributed to increased insurgency movements. The enactment of draconian preventive detention laws like AFSPA and UAPA, apathy and discrimination of the security and law enforcement officials, not enough representation in houses of Parliament (only single seats allotted to all the North-Eastern States except Assam) and forceful mainstreaming of ethnic groups have resulted in increased separationist movements.

Rather than engaging in skillful negotiations, political dialogues or tactical diplomatic backdoor channels through neighbors like Myanmar or Bhutan, successive Union Governments have taken recourse to hardline approaches like suppressing rebellions with brute forces by deploying large-scale Para military and security personnel through laws like AFSPA and UAPA.

The Menace called AFSPA

AFSPA or Armed Forces (Special Powers) Act was brought first as an ordinance and then made into a full-fledged law in the year 1958 in context of Nagaland. Later on, the application of this Act was extended to whole of North East in 1972 and occasionally made applicable to Punjab between 1977 and 1983
and erstwhile Jammu & Kashmir in 1990. The two major drawbacks associated with this Act are first, the power given to the Armed forces to use force against any civilian to the extent of even causing death in a ‘disturbed area’ and second, the tag ‘Disturbed area’ categorically used to refer to any area with prolonged period of disturbance of public peace and tranquility because of conflict between various racial, religious or cultural sections of the society.

The vesting of wide ranging powers in the hands of military officers have resulted wide scale use of terror and gross human rights violations. And this isn’t a thing of the past. On December 4th 2021, in Oting village of Mon District, Nagaland, six unarmed innocent civilians were killed in a botched operation by 21 Para-SF commanders. Even though it was claimed to be a result of intelligence failure, still the unfortunate incident could occur only because Nagaland has been tagged as ‘Disturbed Area’ where, as per AFSPA, military personnel can open fire on civilians on suspicion of the latter engaged in anti-national activities. And there been no such ‘iron-fisted’ law like AFSPA at place, there would not have happened such an unfortunate incident as above.

Indian brand of Federalism as the way forward

Still there is hope. The Indian brand of federalism is inarguably the best way to accommodate all these diverse demands because our brand of federalism supports a ‘melting pot’ polity consisting of structural diversities but united in its spirit. There would be no harm in being a Manipuri and an Indian all at the same time. Negotiations with ULFA or NSCN are helping to buy time, but the need is to reconcile with the demands of strong State and autonomy as it happened in case of Mizoram. And, rather than creating States that divide the ethnic groups in their territory, like creation of Nagaland and break-up of Assam which resulted in violence, the approach should be to respect the ethnic groups and confer statehood accordingly. Also, power at Delhi, instead of trying to assimilate N.E into rest of India by ‘mainstreaming’, should rather focus on accepting the uniqueness and diversity of these ethnic populations, as India is a ‘salad bowl’ of diversities.

Conclusion & Suggestions

The cooperation and coordination between Center and States is essential not just to develop policies and programs to tackle national security crises, but also for its successful implementation, as typified by the declining LWE in the country. Now, although terrorism has declined in India in last few years, still it can do better if Center and States come together for greater good of the country while letting go vested political interests. And as for N.E, instead of ostracizing the North-East region as ‘disturbed areas’, it will be in the greater good of the nation as a whole to apply natural principles of federalism in order to have a secure and united India, that is Bharat.

Certain suggestions which may help develop better policies and proposals related to national security are:

i. Center and States should cooperate to bring NCTC into effect by working out the differences between them, for the common cause of protecting nation from menace of cross-border terrorism.

ii. Inclusion of ‘federal offence’ in the Concurrent list to deal with cross-border terrorism.
iii. States should reform the existing Police structure so that there will be adequate forces to attend to the demands of any urgent situation.

iv. For curbing LWE problem, the effects of development should reach the indigenous population which can be achieved by more engagement by state officials with indigenous population.

v. The N.E diversity should be accepted and Statehood should be bestowed accordingly to put an end to the saga of insurgencies.

Bibliography


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