

## Action Against Terrorism in India : An Analysis

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### ABSTRACT

*The terrorist strikes in India have led to a lot of jingoism and muscle flexing in the media and the streets. 'Enough is enough' like cries heard most frequently. 'Get tough on terror' is the new mantra and getting tough means bringing tougher laws. India has witnessed laws like NSA 1980, TADA 1985 & 1987, POTA 2002 etc. The India government has enacted a tougher terror law called Unlawful Activities Prevention Act (UAPA) 2008. Now the question arises what makes the law tough or how 'tougher' laws might deter or prevent terrorism. The paper has discussed the various provisions of different laws and how far these laws have become successful to curb the nefarious activities like terrorism across the country. It has tried to ventilate the mutual relationship amongst the state, police-administration, media and the common citizen in perspective of usage of these laws to combat terrorism. The implementation of reforms within the police and intelligence agencies is guaranteed to improve security and strengthen the country's capability to prevent terror strikes. But that will not eliminate the problem. It can only reduce the degree of attack. No amount of intelligence or security can stop terrorists willing to sacrifice their lives. They can be stopped only if their motivation is eliminated. The iron determination of the common mass of the country not to spread this heinous crime is the only guarantee of combating terrorism in India. Terrorism needs to be fought, and firmly, through a number of measures, including beefing up the intelligence and investigative apparatus and the police force. The paper suggests the following measures :- Revamp intelligence machinery. Create a federal investigating agency. Modernize the police and intelligence machinery. Abolish draconian provisions in Unlawful Activities (Prevention) Act, 2008. But above all while fighting terrorism, we also need to check disparities in our society. We should always ensure whether the marginalized, downtrodden and people belong to minority community get social and economic justice properly.*

**Keywords:** Action, Against, Terrorism, India, Analysis.

The terrorist strikes in India have led to a lot of jingoism and muscle flexing in the media and the streets. 'Enough is enough' like cries heard most frequently. 'Get tough on terror' is the new mantra and getting tough means bringing tougher laws. India has witnessed laws like NSA 1980, TADA 1985 & 1987, POTA 2002 etc. The India government has enacted a tougher terror law called Unlawful Activities Prevention Act (UAPA) 2008. Now the question arises what makes the law tough or how 'tougher' laws might deter or prevent terrorism. The paper has discussed the various provisions of different laws and how far these laws have become successful to curb the nefarious activities like terrorism across the country. It has tried to ventilate the mutual relationship amongst the state, police-administration, media and the common citizen in perspective of usage of these laws to combat terrorism. The implementation of reforms within the police and intelligence agencies is guaranteed to improve security and strengthen the country's capability to prevent terror strikes. But that will not eliminate the problem. It can only reduce the degree of attack. No amount of intelligence or security can stop terrorists willing to sacrifice their lives. They can be stopped only if their motivation is eliminated. The iron determination of the common mass of the country not to spread this heinous crime is the only guarantee of combating terrorism in India.<sup>1</sup>

### Joint Task Force on Terrorism

It has been set up to overcome centre-state jurisdiction problems in combating terrorism. It identified 56 vulnerable places, and in each, a Special Action Group (SAG) has been set up, comprising six state police officials and two IB officials. These comprised handpicked young, enterprising and daring professionals who could bypass bureaucracy to rapidly act on information. They could draw resources from the Multi-Action Group (which also had armed forces officials), as well as the MAG databank – prepared from every possible governmental source, using a very elaborate software – to find connections between terrorists and incidents in different parts of India.

### Intelligence Coordination Group

It was set up on recommendation by the Group of Ministers after Kargil. It was to do intelligence tasking and reviews. Headed by the NSA, it included the Cabinet Secretary, the Secretaries of Foreign, Home and Defence, as well as the intelligence chiefs.

### Technical Coordination Group

India has built its technical capabilities in intelligence gathering. It wanted the best technology without relying on foreign sources. It included the NSA, the Cabinet Secretary, the government's Principal Scientific Advisor, the Scientific Advisor to the defence minister, the intelligence chiefs and the proposed Chief of Defence Staff. The National Technical Facilities Organisation (NTFO) a body was set up for gathering signals intelligence.

### National Information Board

Under the NSA, this is the apex body in the country's information security structure.

Intelligence is the key to fighting terrorism for two reasons. Firstly, there is a mantra that professionals swear by : that one response to terrorism should be making it costlier. "If ten bombs go off in Mumbai, then set off 20 in Karachi," hypothesizes a serving official, speaking anonymously. The other aspect is defensive : aggressive intelligence operations to "penetrate" more "modules" (single mission units). Incidents can be prevented by catching terrorists in action, or by keeping them on the run, at the very least, so that they don't have the luxury of planning an elaborate strike.

### India's Crack Anti-Terror Force

#### Armour

A bullet-proof vest, designed in-house, that can stop an AK-47 bullet fired at point-blank range. It covers all vital organs from the neck down, including the groin. It is made of Kevlar, a chemical compound. It includes black nomex uniform and bullet-proof helmet that covers the ears.

#### Weapons

Heckler *Other Equipment* and Koch 9mm MP-5 sub-machine gun, Glock 17 or Sig Sauer pistol, PSG-1 7.62mm sniper rifle, with telescopic and night vision sights, H&K 512 12-gauge shotgun, grenades and poison-tipped knife etc are used.

Black cats also carry high-tech surveillance equipment for both day and night operations. They use black balaclavas, plastic knee and elbow guards, like those used by skaters. There is no protection of legs so that movement is not hampered. They use standard ankle-high army boots.<sup>2</sup>

The very fact that innocent civilians are the worst sufferers of terrorism is a sufficient condition for our country to enact extraordinary laws. A comprehensive law is an essential component of any counter-terrorism strategy. In the want of a long-term anti-terror law, India manages its internal security challenges largely through knee jerk crisis management. In 1985, the government enacted TADA but it was allowed to lapse a decade later. In 2002, POTA was enacted but in later course of time it was repealed and an amended version of the Unlawful Activities (Prevention) Act, 1967 came out. India needs both an effective piece of legislation as well as fast track courts to expedite terrorism related cases. The centre passed the Prevention of Money Laundering Act, making it mandatory for banks to report all transactions above Rs. 10 lakh to the Financial Intelligence Unit. But till now, only 12 out of 80 banks in the country have reported such transactions, as most of them do not have a centralized core banking system. The madrassas in India are a sensitive topic. Recently, the National Commission for Minority Education Institutions recommended that all madrassas be brought under a central board.<sup>3</sup>

According to B. S. Sial, former Director General and Inspector General of Police, Karnataka, the manpower and other resources of intelligence machinery including equipment, transport, training and incentives require to be considerably augmented. State intelligence networks need to be positioned not only at state/range/district headquarters, but also in police stations and outposts. Similarly, the state police needs to be urgently strengthened at all levels. The sanctioned strength of State Reserve Police Battallions also must be increased by 40-50 per cent besides sanctioning additional battallions.<sup>4</sup> The revitalization of the Multi Agency Centre (MAC), setting up of Subsidiary Multi Agency Centres (SMACs), National Intelligence Agency (NIA), NSG hubs in major cities, and the Prevention of Money Laundering Act were the need of the hour. The special anti-Naxal Cobra force is in place and more battalions are being raised, the BSF needed hovercrafts and eight more helicopters have been given to the force. No research takes place at the Bureau of Police Research and Development (BPR&D). In 2006, they spent only Rs. 5 lakhs on R&D. There is no place in India where we have a repository of best cases studies, major incidents related to insurgency, law and order, terrorism; not even the National Police Academy at Hyderabad. A proposal in this order, that of the National Police University, hasn't been set up yet. Prime Minister Dr. Manmohan Singh has termed Maoists the biggest threat to internal security. The Maoists have an urban perspective plan and step by step they want to infiltrate and sabotage the military and central paramilitary forces.<sup>5</sup>

**Anti-Terrorism Legislation*****Prevention of Terrorism Act, (POTA) 2002***

1. Applies to whole of India. 2. Terrorism is defined as act done with intent to threaten unity, integrity and sovereignty or strike terror. 3. Carries a maximum term of death or life and fine not less than five years. 4. Harboring carries three years to life. 5. Membership of terror group would carry a punishment up to life or fine up to Rs. 10 lakh. 6. Courts to presume that person guilty if found in possession of arms or if fingerprints recovered. 7. Terror proceeds could be seized by state, officer not below SP rank with written authorization of DGP. 8. SP could direct anybody to provide information, failure to provide it would mean up to 3 years in jail with fine. 9. Fund-raising would mean up to 14 years in jail or with fine. 10. Special courts can carry summary trials; direct for samples of handwriting, fingerprints, footprints, photos, saliva, semen, hair and voice. 11. Confessions to police admissible as evidence, through writing, tapes, cassettes, tapes or tracks. 12. Intercepts admissible if authorized by joint secretary at written request of SP rank officer. 13. Chargesheet in 180 days; so can be held without bail for that time. 14. No bail without hearing Public Prosecutor; if court believes that accused is guilty.

***Unlawful Activities Prevention Act, (UAPA) 1967, with 2004 Amendments***

1. Did not apply to J&K initially but extended later. 2. Unlawful activities defined as those intended or supporting claim to cessation of any part of the country. Refers to bombs and explosives. 3. If resulting in death, punishment would be death or life with fine; in any other case five years to life and fine; five to life plus fine in case of explosive substances. 4. Harboring carries three to life and fine. 5. Membership of terror group would carry a punishment up to life and fine. 6. No presumption cause. 7. Investigating officer can seize and detain cash intended to be used in terror activities. 8. Clause that obligates all to provide information absent. 9. Fund-raising would mean up to five years to life and fine. 10. No special courts. 11. Confessions to police inadmissible. 12. Intercepts admissible. 13. Chargesheet in 90 days. 14. No bail without hearing Public Prosecutor; if court believes that accused is guilty.

***National Investigation Agency (NIA) Bill***

1. Applies to entire country. 2. Acts done with intent to threaten or likely to threaten unity, integrity, security or sovereignty of India or in any foreign country. First time reference to radioactive, nuclear or other substances, kidnappings and abductions any person to compel govt. to do or not to do something. 3. If resulting in death, punishment would be death or life with fine; in any other case five years to life and fine, including in case of explosive substances. 4. Harboring carries three to life and fine. 5. Membership of terror group would carry a punishment up to life and fine. 6. Courts to presume that offence has been committed if weapons found in possession of fingerprints recovered. 7. Investigating officer vested with all powers, definition of cash extended to include ATM, debit cards. 8. Investigating officer with prior approval of SP can seek information, failure would mean up to three years and or fine. 9. Fund-raising would mean up to five years to life and fine. 10. Special courts under the NIA bill. 11. Confessions to police inadmissible. 12. Intercepts admissible. 13. Chargesheet in 180 days, but court can restrict it to 90 days. 14. No bail for foreign nationals, barring exceptional reasons. 15. Punishment for organizing terror camps – five to life term and fine. 16. Punishment for recruitment – five to life with fine.<sup>6</sup>

The NIA officers of and above the rank of sub inspector will enjoy the powers of the SHO in-charge of any police station in the affected area. Trials of terror accused would be conducted on a day-to-day basis in special courts and the NIA would have special prosecutors. Changes in the Unlawful Activities (Prevention) Act would increase the period of police remand of terror accused from the existing 15 days to 30 days. The period of judicial remand before filing the chargesheet would be six months instead three. Those found guilty of collecting funds for acts of terror, running camps and recruiting for terror-related activities could face life in jail.

**Comparative Account Between POTA, UAPA & NIA**

Issue	POTA	UAPA & NIA Bill
Application	Applicable to citizens of India, even outside India.	NIA Bill follows the same.
Definition of Terrorist Act	POTA definition based on 173 Report of the Law Commission of India.	Same as that in the United Nations Resolution.
Powers of Detention	Up to 180 days by court order if investigation not completed.	Same as POTA.
Presumption	Court to draw adverse inference if arms or explosives recovered from the accused or fingerprints of the accused found at the site of the incident.	Court would presume guilt under similar circumstances unless proven otherwise.

Bail	Bail to be given only after public prosecutor has been heard. Bail to be denied unless court is satisfied that there are grounds to believe accused is not guilty.	Same as POTA. But with the provision that foreigners being tried for terrorist acts will not be entitled to bail.
Powers of Arrest, Search and Seizure	Vast Power.	Similar Provisions to POTA.
Special Courts	Yes	Special courts to be formed under NIA Act.
Confessions to Police	Admissible as evidence.	No such thing.

Source : The Telegraph, 18.12.2008.

**Combating Terrorism in India : A Multidimensional Analysis**

India still has no comprehensive criminal-intelligence database available to all end-users in real time. The sale of chemicals that can be used to make explosives remains unregulated. The Intelligence Bureau, which coordinates inter-state counter-terrorism operations, is short-staffed and underfunded. Setting up modern systems needs both will and hard cash and the authority concerned has come up short. Fighting terrorism needs a clarity of purpose and a strong focus but India’s responses to terror have, for the most part and occasion, consisted of setting up committees. India’s intelligence and police services have demonstrated that they possess the commitment needed to combat transnational terror networks. They have shown sometimes that terrorism can be stopped in its tracks. Here, two other challenges must be addressed – one external and the other internal. For example, Pakistan has delivered on its repeated promises to end terrorism directed at India. India needs to deal with the problem carefully and cautiously – without detriment to the process of détente. A considerable section of Indian Muslims overwhelmingly find the perverted Islam propagated by organizations like the Lashkar – the jihadist call for a war-without-end against Hindus and the Indian state – repugnant to their traditions, values, beliefs and common sense. An ideological infrastructure has grown to capitalize on the resentments engendered by decades of communal violence, hate politics, economic backwardness and denial of opportunities. If terrorism and the ideas that feed it are to be effectively combated, political parties and leaders, and civil society organizations need to do much better than they have done so far to isolate and thwart communalism as a political mobilization strategy.

**Salwa Judum**

Chhattisgarh has witnessed the reign of terror unleashed by the Chhattisgarh government and its vigilante squads in Dantewada since 2005. The Supreme Court criticised the Salwa Judum sponsored, armed, and financed by the State government with the support of the Centre in the egregious belief that fuelling a civil war in the heart of India is the best way of countering Naxalism. The Salwa Judum has exterminated more than 500 innocent civilians and caused the forcible displacement of tens of thousands of tribal people in the state. Substantial numbers have fled to neighbouring Andhra Pradesh and are living in pathetic conditions. Neither the State nor the Central government can evade responsibility for trampling on the rule of law and for the human calamity that has been amply documented by a host of official and unofficial inquiries. Chief Justice K. G. Balakrishnan has made a significant observation during the hearing of a public interest petition calling for the disbanding of the Salwa Judum. According to the Supreme Court, distribution of arms to private persons by the government is tantamount to abetting murder. In the light of mounting evidence that the vigilante outfit is involved in large-scale atrocities, the Chhattisgarh government has made two flagrantly false claims. The first is that it is a “spontaneous” people’s initiative. The second is that it is similar to the village defence committees set up in parts of Jammu and Kashmir to protect villagers from terrorist attacks. VDCs are defensive formations rooted in accountable institutions like the village panchayat. The Salwa Judum, on the other hand, is an unaccountable extension of the state designed to apply violence minus the government’s fingerprints. It is a roving, offensive formation led by anti-social elements — not dissimilar to the death squads sponsored by dictators around the world to deal with insurgencies and all manner of deemed opponents. Far from bringing peace, the Salwa Judum proved counterproductive. Naxalism needs to be countered resourcefully but the response must not end up preying on the very people the government claims it wants to save.

A persistent political myth is that tougher, more draconian laws can tackle terrorism. Subscription to the myth is an admission of failure to take the right steps to combat the menace — such as beefing up the

intelligence apparatus, identifying and choking the source of funding for terrorist groups, and addressing the combination of social, political, and economic grievances that feed the growing monster. Prime Minister Manmohan Singh announced that he “was considering legislation to further strengthen the anti-terrorism law.” While the promulgation of a new anti-terror law has been ruled out following a Cabinet meeting, the ‘strengthening’ is apparently to be done by amending the Unlawful Activities (Prevention) Amendment Act, 2004 (UAPA). There are legitimate fears that draconian provisions that bear a worrying similarity to those in the repealed Prevention of Terrorism Act (POTA) may creep in. For instance, among the changes reportedly being discussed are tougher bail provisions to keep the accused in jail beyond a three-month period. Under ordinary criminal law, an accused in custody can get bail if the prosecution fails to file a charge sheet within 90 days of his or her arrest.

One of the most abused provisions of POTA was that accused could seek bail only a year from the date of detention. Already UAPA, which was passed to replace POTA, contains a number of sections that are virtual reproductions of the latter. What made the difference was the exclusion of some of POTA’s most draconian provisions — such as those relating to bail, confessions (admissible as evidence even if made to police), and the shifting of the burden of proof (to the accused). It is virtually certain that draconian laws will be targeted at political opponents and members of marginalised communities. Moreover, India’s decade-long experience with POTA’s equally notorious predecessor — the Terrorist and Disruptive Activities (Prevention) Act TADA— should have taught it that they simply do not do their job.

Of the 67,000 persons detained under TADA from its enactment in 1985 to August 1994, as many as 59,509 had no case brought before them. The conviction rate? Around one per cent.<sup>7</sup> The central government must hold its nerve and not vacillate in the face of some force’s aggressive campaign for draconian anti-terror provisions that violate civil liberties, democratic rights, and proper standards for a fair trial.

There is debate whether we need such anti-terrorism laws at all. Human rights activists opine such laws are unnecessary, while the police- administration says the existing laws are inadequate to meet the situation. The attempt here is to point out that enacting stringent anti-terror laws without at the same time making important structural changes to the police-administration maybe counter-productive. Experience has shown that badly implemented anti-terror laws, however noble may be their intent, can have counter-productive results. The perceived inequity in the system is driving significant numbers of youngsters from the minority communities and the marginalised sections of society towards religious fundamentalism and extremism. In some cases the perceptions of these members of the minority communities and the marginalised sections are real and in a few cases they are imaginary. Stringent anti-terror laws suffer a potential drawback. If they are used to harass members of the minority or marginalised sections of society they are likely to push larger numbers of young men from that community or group towards fundamentalist organisations. It is true that feelings of alienation among the minority communities and the marginalised sections are in quite a few instances without any basis. The independence struggle and the stalwarts it produced brought unity to an impossibly diverse country. However, with the demise of these stalwarts the people of the country are becoming fragmented again and are fast losing their national identity. Terrorists, extremists, cessationists exploit this situation. Anti-terror laws can at best treat the symptoms these cannot cure the disease.

In the long run, as a report the of the Commonwealth Human Rights Initiative points out, the only way to eliminate terrorism is to ensure rule of law, civil liberties, access to justice, people’s participation in governance and better governance based on accountability, transparency and celebration of diversity.<sup>8</sup> The Unlawful Activities (Prevention) Act (UAPA) has raised serious concerns from a jurisprudential and civil rights standpoint. The harshest of these in the amending Bill is the one that mandates special courts to presume that the accused is guilty under certain circumstances which exhibits similar tone of the notorious Prevention of Terrorism Act (POTA). The presumption of innocence, the bedrock on which modern criminal jurisprudence is founded, is a fundamental protection for people accused of crimes. Reversing the burden of proof is a regressive measure that will only diminish the credibility of the criminal justice system. The Bill also increases the period for detention without charges from 90 to 180 days at the discretion of the court. It tightens the provisions for bail: the courts may deny bail when they feel the charges against the accused are prima facie true. When it was amended in 2004 following the demise of POTA, the UAPA had brought the entire issue of bail within the ambit of ordinary criminal law. Harsh laws can do little to deter the kind of people. These are prone to considerable misuse in the hands of the state.

## Conclusion

Terrorism needs to be fought, and firmly, through a number of measures, including beefing up the intelligence and investigative apparatus and the police force. The paper suggests the following measures :-

Revamp intelligence machinery. Create a federal investigating agency. Modernize the police and intelligence machinery. Abolish draconian provisions in Unlawful Activities (Prevention) Act, 2008. But above all while fighting terrorism, we also need to check disparities in our society. We should always ensure whether the marginalized, downtrodden and people belong to minority community get social and economic justice properly.

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