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Maritime Counter-terrorism: The Challenges of Centre–State Relations in India

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Centre–state relations in India are a fascinating area of studies. The structure of the relationship has an effect on every single aspect of life as we know it in India. This paper is an attempt to study centre–state relations in the context of India's maritime counter-terrorism strategy. Although the Government of India has not publicly stated its counter-terrorism strategy on the sea, intelligence, information sharing, crisis response, finances for internal security and the nation's legislation for battling terrorism together comprise India's maritime-terrorism strategy. Through study of these areas, the paper argues that the centre–state divide has had systemic implications on India's maritime security and has largely done more harm than good to collective initiatives that aspire to prevent future risk of terrorism from the sea or on the sea.

Introduction

On the eve of 26 November 2008, a number of terrorists infiltrated Mumbai, one of the most prominent coastal cities of India via the sea. The attackers had sailed from

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Karachi, Pakistan, and on entering the Indian waters had hijacked an Indian fishing trawler to deceive the concerned authorities. On landing, the perpetrators systematically targeted popular and crowded localities in the city, leading to at least 172 casualties.[1]

The 2008 attack precisely fits the Council for Security Cooperation in the Asia Pacific's (CSCAP) definition of maritime terrorism. According to the council, maritime terrorism is:

> … *the undertaking of terrorist acts and activities (1) within the maritime environment, (2) using or against vessels or fixed platforms at sea or in port, or against any one of their passengers or personnel, (3) against coastal facilities or settlements, including tourist resorts, port areas and port towns or cities.*[2]

The modus operandi of the terrorists and the sites chosen for the attack allow us to label this terrorist strike as India's first experience with maritime terrorism.

The attack was ultimately staunched through concerted cooperation at intergovernmental levels. Given that the response of a constituent state government alone was not sufficient during the 2008 attacks and that the prevention of such attacks in future will surely demand an intergovernmental and maybe even an interstate response, it becomes evident that federalism has serious implications for the counter-terrorism initiatives of this nation.

The issue of funding, coastal security, information sharing and the legal framework that deals with terrorism are all undeniably tied with that of federalism in India. Nonetheless, Indian security literature is yet to pay attention to this relationship. Similar to the lack of attention on this subject in security studies, Indian political science and international relations experts too have inadvertently ignored the relationship between federalism and India's security.

This paper is an attempt to bridge this crucial gap in security studies. It appraises the role centre–state relations have played in India's counter-terrorism strategy specifically in the maritime domain and argues that the centre–state divide has adversely affected the Indian initiatives to protect their coasts from a repetition of another 26/11. The paper begins by giving a brief history of federalism in India. The next section is sub-divided into four parts; here the legal framework, information sharing, finance and administration, and crisis response vis-à-vis centre–state relations

in India are discussed. This is followed by the conclusion, where broad policies are recommended for adoption.

1. Federalism in India

Federalism is not a new phenomenon. Ancient confederacies have been known to exist among tribes in Africa, North America, Greece and Asia. The Roman Republic is one of the most famous examples of a confederal arrangement. A relatively recent example of a confederation is the United States of America. The independent colonies set up a confederation in 1781 and soon after transformed into the first modern federation in 1787.[3]

The political system of federalism is essentially a result of rational bargaining among several constituents. This bargain could either be for political motives or for economic gains. In a political bargain, the constituents agree to give up their political autonomy in exchange for security from external threat, while an economic bargain enables a common market and assurance of optimum provision of public services.[4] Federalism in recent years has taken diverse forms and defining it is not easy. Ronald Watts, after having reviewed the works of Wheare, Preston King, Ivo Duchacek and Daniel Elazar, has summarized the characteristics of a classical federation – the political system as is being practiced in the United States of America and with slight variations by the Australians and the Swiss:

> *(1). Two orders (not levels) of government; (2) A national government that deals directly with individual citizens; (3) A formal distribution of legislative and executive authority; (4) Revenue resources allocated between the two orders of government; (5) Some autonomy for each order; (6) Provision for the representation of regional view within the national policy-making institutions; (7) A written constitution; (8) A constitution not unilaterally amendable and requiring consent of all or a majority of the constituent units; (9) An umpire (courts or referenda) to rule on disputes between governments; and (10) Processes to facilitate intergovernmental relations.*[5]

In India, the notion of decentralization has existed since the Regulating Act of 1773. During the early 1920s, there was an increasing demand for decentralization and Indianization of the administration backed by strong nationalist sentiments.

In response, the colonial government served "patchy and inadequate" response in the form of the Montagu–Chelmsford Reforms of 1919.[6]

The (Motilal) Nehru Report of 1928 and the Indian Statutory Commission Report of 1929, commonly referred to as the Simon Commission were both triggered by the Montagu–Chelmsford Reforms to return within 10 years to its goal of a responsible government and both failed to produce any immediate result. They nonetheless made contributions towards thinking about the idea of a federal India.[7] After three unsuccessful Round Table conferences from November 1930 to 1932, the Government of India Act was introduced in 1935.

It committed the Government of India to the system of federalism for the very first time, and though it was rejected by the Indian nationalist at that point, it served as India's constitution for 12 years and later on became the foundation of the Indian constitution after independence. The Cabinet Mission Plan of May 1946 was the last colonial institutional measure for the future constitution of India. The Cabinet Mission had proposed a multi-layered confederal scheme with a weak centre and strong states.[8] However, with the partition of India, there was no longer a necessity to create a weak central government. Instead, the founding fathers decided to construct a strong centre to avoid fissiparous tendencies while presiding over diverse economic, linguistic and cultural entities.[9]

India's decidedly centralized constitution even after independence is what largely distinguishes the Indian model of federalism from the one that is followed in the USA. For India, federalism is related more to the distribution of power between the national and the constituent governments than about limiting the power of the government.[10] The Indian constitution has vested the Union or the Central government with the most important powers; for instance all the emergency powers or the power to encroach upon the state list.

An important feature of classical federations like the USA is that it is an "indestructible union of indestructible states". The Indian constitution on the other hand has conferred the Parliament with powers to constitute new states by separating territories from the existing states, to modify their boundaries and even change their names.[11]

Apart from being legislatively empowered, the Union government has been strongly empowered financially by the constitution as well. Several studies on fiscal federalism in India have clearly observed asymmetrical fiscal federalism in India. States in a federation are generally supposed to be financially self-sufficient. In a strong

contrast, there is a long-standing vertical imbalance in the revenue raising and the expenditure powers between the two tiers of the Indian government. The Indian constitution has granted the Central government with tax-levying powers on the most important streams of revenues such as the income tax and on capital assets of individuals and companies.

The state governments on the other hand have limited avenues for streaming their revenues, but broader constitutional expenditure responsibilities. This forces the state government to depend on centrally sponsored schemes and transfer of assistance by the Planning Commission and by individual central ministries. Apart from these, there are numerous other features that demonstrate that "… she (India) is not a genuine federation, but a quasi-federation having several features of a unitary state".[12]

Asserting the predominance of centralization in the Indian federal system based merely on an interpretation of the constitution is a bigotry exercise. Political reality in India differs from the prescribed constitution. States in India do exercise more powers than those suggested by the constitution.[13] Many regional parties have entered into alliances with the national parties. Such states, i.e. those governed by members of the ruling coalition, at times enjoy considerable power over the centre and have as Anoop Sadanandan contends "…become effective barriers against central dominance".[14]

Dependence in the Indian federal structure is a two-way highway. Much like the states, the centre is forced to depend on the constituent governments chiefly because of the nature of the administrative system, which compels the central government to depend heavily on the state governments for implementing many of its policies and programmes. This has given the states a lot of room to manoeuvre in administering the Centre's policies. Secondly, state governments have in recent years also become increasingly integral to the process of economic development of the country.

Burgeoning literature on Indian federalism alludes to steady change in the Indian federalism over the years. The "interventionist state" in India is seen to be slowly evolving into a "regulatory state" that is better suited to the growing multi-party system in India.[15] Indian federalism, though not a perfect example of a smoothly functioning democracy, has survived its crises and has moved further along. Many would even call the Indian model of power sharing as a reasonable success story in a world where attempts at decentralization have on the whole met with failure.[16]

2. Maritime Counter-terrorism and Federalism in India

2.1. The Legal Framework

India's coastline approximately measures up to 7600 km.[17] Of 28 states and seven Union Territories, nine are coastal states and four are coastal Union Territories.[18] Such large swathes of coastal territory have spawned a complex legislature at both the centre and the state level dealing specifically with the maritime domain. Laws to regulate fishing practices, shipping practices, ports, shipbuilding, for the prevention of pollution and protection of marine wildlife are amongst some of the most important legislations in India.[19]

Even so, presently the country has no laws that deal specifically with acts of terrorism perpetrated on the sea. Post-26/11, Maharashtra – the state where the attack took place – has been mulling recommending to the centre a new model of costal security law that would also take into account terror threats. The Maharashtra state home department has wasted no time in formulating a draft version of the said law.[20] After consultation with the 13 agencies that together are in charge of coastal governance, the draft will be forwarded to the Department of Border management, Ministry of Home Affairs.

It would not come as a surprise if the Maharashtra state assembly were to pass an anti-maritime terrorism law even before such a bill was passed by the centre. After all, the government of Gujarat had passed the Gujarat State Disaster Management Act in 2003, 2 years before the centre passed the Disaster Management Act in 2005.[21]

In the absence of a maritime anti-terrorism law, people suspected of being involved in such activities in the Indian waters are penalized either under the Unlawful Activities (Prevention) Act (UAPA) or under the anti-terrorism law of the state in which the incident has transpired. The UAPA has existed since 1967, but has only recently begun to be used as an anti-terrorism law. Before the UAPA was amended to include anti-terrorist laws, the infamous and now dismantled Prevention of Terrorist Act (POTA) was used to convict persons found guilty of terrorist activities.

Passed by the Indian government in the wake of the September 11, 2001 terrorist attack, POTA was often criticized for not only being a draconian law that was misused umpteen number of times by both the states and the centre but also for reinforcing India's long standing tradition of centralizing tendencies. States such as

West Bengal, Jammu and Kashmir, Tamil Nadu, Kerela and Meghalaya had opposed the act at its very conception.

The act not only created friction between the state and the centre, it also created ambiguity between the judicial and the executive wings of the Indian constitution. The review committee that was set up under the then deputy Prime Minister L. K. Advani to check for misuse of the act had been granted with quasi-judicial powers. Via an amendment to the act, the review committee's decision was made binding over the executives at the state and the centre level.[22]

On coming to power, the UPA 1 government dispensed with the law on the basis of the argument that other sufficiently stringent laws such as the Unlawful Activities (Prevention) Act (UAPA) already exist.[23] The amended UAPA has not escaped criticism either. It has been time and again been accused of being no different from its predecessors in any substantial manner; and consequently has failed to provide a solution for quelling the ever increasing friction between the state and the union government on this issue.

Post-26/11, the Union government passed the National Investigative Agency (NIA) Act. The NIA comes into force when dealing with statutory offences relating to the UAPA, navigation and maritime among others. The act was passed in the parliament without any protests from the states considering the fact that the act made it mandatory for the state government where the case was being investigated to extend all assistance and cooperation necessary to the NIA.[24] This lack of protest may have stemmed from the serious atmosphere that pervaded the country after the 2008 Mumbai attacks.

The NIA was recently used to charge two Italian marines who had allegedly shot and killed Indian fishermen off the coast of Kerala in 2012. This case, although not a clear-cut example of maritime terrorism, highlights the potential for centre-state discord in the arbitration of hitherto unforeseen cases of violence in the maritime domain. The Supreme Court ruled that the state of Kerala had had no jurisdiction to probe this case since the incident had taken place in international waters beyond India's territorial waters and handed the case over to the NIA for fresh investigations.[25]

Surprisingly, the arrests of the Italian marines had initially escaped the notice of New Delhi. It was only after the transpiration of a diplomatic row between India and Italy that the Union Home Ministry and the law ministry began consultations, seeking legal opinion over jurisdiction and whether the NIA could take over the probe.[26] In the ensuing imbroglio, the Italian government questioned NIA's jurisdiction to probe the attacks. Italy argued that the NIA could be invoked only

if charges under the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act (SUA), 2002, were slapped on the marines. Since the apex court verdict had prosecuted the two marines solely under the IPC, the Code for Criminal Procedure, the Maritime Zones Act and the United Nations Convention on the Law of the Sea (Unclos), the NIA could not be brought into the picture.[27]

The Supreme Court finally decided to dismiss Italy's plea challenging the NIA setting a clear precedence for the future, where NIA's jurisdiction will be much more extensive than had been originally conceived.[28] The NIA and the UAPA are blanket laws that are applicable to the entire country. However, many states have their own versions of extraordinary laws. For instance, the Maharashtra legislation has passed the Maharashtra Control of Organized Crime Act (MCOCA) in 1999 that has often been invoked in cases of terrorism in the state. Persons accused in the 2006 Mumbai Train Blasts and in the 2009 Malegaon bomb blast case have been tried, charged and convicted under the MCOCA. Trial and conviction under the MCOCA was challenged in the 2006 train blasts on the grounds that the state legislature had no jurisdiction over the issue of "insurgency" that the act referred to.

The Bombay High Court rejected this argument and asserted that the law was within the "competence" of the state legislature and additionally that there was no repugnance between the MCOCA and the UAPA. An appeal against this judgment has been admitted in the Supreme court and is still pending hearing.[29] Interestingly, in 2004 the Supreme court in the case of the People's Union for Civil Liberties and the Union of India had differentiated between the subjects that ordinarily fall in the "public order" of the state list and situations of terrorism, and clearly gave the Parliament legislative competence on the subject of terrorism.

The judgment supported its decision by arguing that fighting terrorism was not a "regular criminal justice endeavor" and that it does not relate to or affect any particular states; and very importantly that a terrorist attack was a challenge to "India's sovereignty and integrity". This judgment thus shifted crimes of an unusual nature, i.e. those threatening "national security" outside the ambit of the state.

2.2. Finance and Administration

At the Chief Minister's conference on internal security in 2012, Prime Minister Manmohan Singh recognized the fact that the lion's share of fighting terrorism falls

on the state mechanism.[30] Nevertheless, states in India are tasked with the colossal responsibility of developing emergency resources and contingency plans on limited funding and with limited cooperation from the centre. Securing coastlines is a primeval but logically speaking a tremendously important step in preventing attacks on the coastline from the seas or on assets in the seas.

India being a centralized federalism economically, states primarily depend on centrally sponsored schemes and on assistance provided by the central government for fortifying their coastlines. A "supplemental" scheme known as the Coastal Security Scheme was introduced in January 2005.[31] Phase I of this scheme established a total of 73 police stations in the nine coastal territories and the four coastal Union Territories (UT).[32] This scheme approved of Rs. 151 crores for recurring expenditure that included repair and maintenance of boats, training of manpower and fuel for their sea-based and land-based vessels and Rs. 495 crores for non-recurring expenditure for a period of 6 years, after which the states were take over the expenditures.

The coastal security scheme, which had been introduced with the purpose of helping states safe guard their coastlines, itself fell short of delivering its said goals. There is a massive gap in the finances released and the amount that had been initially approved by the central government, compounding the burden on the states (Table 1).

Having experienced the centre's dismal performance, several coastal states refused the patrol boats that the centre had procured for them post-26/11. They justified their actions on the basis of being unable to afford their maintenance and operations costs. Off all the coastal states, solely Tamil Nadu and Kerala agreed to bear the cost of operation and of their maintenance.[33] In 2010, phase II of the coastal security scheme was approved by the government of India. The scheme with an approved outlay is around Rs. 1579 crore is to be implemented by the concerned states and UTs for a period of 5 years beginning 01 April 2011.[34]

How much of the promised funds the centre will allocate at the end of the 5-year term remains to be seen. Gaps in allocation of funds are guaranteed to handicap state's capacity to implement security initiatives in the manner expected of them by the people and furthermore bound to cultivate an indifferent attitude from the states on the subject of coastal security. Such indifference tends to filter down to the district and the sub-divisional levels leading to poor participation in coastal coordination meetings and in the process adversely affecting information sharing and coordination on the ground.[35]

Table 1. Implementation of the Coastal Security Scheme.

Sr. No	Name of state/UT	Approved outlay (Rs. in lakh)	Total release of funds (Rs. in lakh)
1.	Gujarat	5842.60	842.600
2.	Maharashtra	4092.60	692.600
3.	Goa	1653.50	153.500
4.	Karnataka	2711.90	211.900
5.	Kerala	4356.00	356.000
6.	Tamil Nadu	4408.00	808.000
7.	Andhra Pradesh	3267.00	267.000
8.	Orrissa	2765.75	265.750
9.	West Bengal	3353.40	353.400
10.	Puducherry	544.50	44.500
11.	Lakshwadeep	936.80	136.800
12.	Daman & Diu	668.35	68.350
13.	Andaman & Nicobar	2603.90	77.788
	Total (States/UT)	37204.300	4278.188

Source: Document Presented in Rajya Sabha on the Implementation of Coastal Security Scheme in March 2010, http://pib.nic.in/archieve/others/2010/mar/h20010031078.pdf (accessed June 3, 2013).

Comptroller and Auditor General (CAG) reports released after the 2008 Mumbai attacks supporting allegations of just such an attitude of the states in this matter. For instance, the CAG report that was tabled in Kerala state assembly recently in April 2013 warns of the consequences of ignoring lax coastal security. The report has listed several instances within Kerala that "expose the authorities" indifference that could "lead to infiltration and attacks from the unguarded sea similar to the Mumbai 26/11 carnage."[36]

The union government has not been the only one to be callous towards coastal security. A report submitted by CAG in 2008 contended that the central scheme that procured 26 patrol boats at a cost of Rs. 25 crore for patrolling the first 12 nautical miles (nm) of the coastline of the eight states was largely unsuccessful. The procured boats had not been assembled, were lying idle or were being used for purposes other than for that they had been originally intended.[37]

Another instance of state's careless attitude to coastal security is the distribution of the biometric identity cards for the four lakh fisherman residing along the Indian

coast. The identity cards had been one of the key measures taken by the centre after the terrorist strikes in Mumbai. The scheme was funded entirely by the central government through grant-in-aid to maritime state governments and UT administrations.[38]

Up until 2010, solely Puducherry and Tamil Nadu had begun distribution of the identity cards.[39] Amongst the other coastal states, Kerala and Goa began issuing cards only in 2012.[40] Maharashtra that had been ground-zero during the 2008 November attacks was even as late as September 2012 merely promising distribution of the identity cards, and in Andhra Pradesh, distribution of ID cards has come to halt since the state government has stopped releasing funds for the same.[41,42]

2.3. Information Sharing

Intelligence gathering and information sharing has become a significant part of ensuring India's maritime security. With the increasing significance that India's Exclusive Economic Zone (EEZ), its island territories, deep sea mining zones and littorals have begun to assume in the present day and age, intelligence gathering and information sharing on all maritime aspects are likely to keep ascending in their importance.

Studies conducted world over in the aftermath of disasters have observed that information sharing had a direct bearing on crisis response. These reports claim that unhindered access to information enhanced the efficiency and the effectiveness of response and coordination in the network of responding organizations. In contrast, poor information sharing not only affected the coordination but also led to a negative impact on collective decision-making and actions.[43]

Information sharing in India is a complex process with as many as 25 intelligence agencies involved in the gathering of intelligence related to India's internal security.[44] The Kargil Review Committee had suggested setting up a Multi-Agency Centre (MAC) and the Subsidiary Multi-Agency Centres (S-Mac) to ensure "wider and faster accessibility to intelligence information" between all the concerned agencies of the centre and the states.[45] It took a catastrophic event like 26/11 to jolt the government into action. The MAC that had been recommended way back in 1999 was made functional a decade later in 2009.[46] Even then, the system is yet to become entirely functional. A completely operational MAC mandates the setting up of a National Intelligence Grid (NATGRID) and a National Memory Bank.

NATGRID is supposed to provide a platform that would link the databases of all the intelligence agencies in India. This information together would then be stored in the National Memory Bank. Since the project does not have a legal framework or parliamentary oversight and the potential misuses of the platform are enormous, NATGRID is still awaiting approval by the Cabinet Committee on Security (CCS).[47] Secondly, the very effectiveness of NATGRID for prevention of future terrorist strikes can be questioned since state agencies have not listed as "user agencies" and thus may not have access to the database.[48]

Without NATGRID and the memory bank, Mac and S-MACs are simply centres that collate data by pooling together the available intelligence. There is no ongoing arbitration between the centre and state agencies or between the varying state agencies on the analyses of the intelligence each has received in order to arrive at a common threat perception.[49]

Apart from the MAC and S-MACs, setting up of a National Counter-Terrorism Centre (NCTC) had been proposed after the Mumbai 2008 attacks. The NCTC, as the name suggests is an anti-terrorism unit that was largely modelled after the US NCTC. The proposal to set up such a centre came after serious intelligence and operational failures that were spotted during the 26/11 attack in Mumbai. At the time of proposal, NCTC was envisaged to have offices set up across all the states in the country; headed by an Intelligence Bureau (IB) official, who would report to the Home Ministry.

As per the original plan, the NCTC state offices were to be granted powers to carry out raids without seeking the permission of the states and even arrest if necessary. Additionally the states would be obligated to provide any required information. The NCTC like the MAC would provide real-time intelligence sharing using multiple databases such as those maintained by the NATGRID, the Crimes and Criminal Tracking Network and System (CCTNS) and the Intelligence Bureau's intelligence sharing hub.[50]

As many as nine states including the UPA governed West Bengal protested sharply against the concept of NCTC, when it was proposed by the Union government in 2009.[51] The concept of this particular anti-terror body was widely criticized as being anti-federal, unconstitutional and a "unilateral" decision of the central government.[52] There had been and still is a wide-spread belief amongst the states that the NCTC would be a future instrument for centre's intrusion into their

domain and that there could be a misuse of the sweeping powers granted to the NCTC against the political opponents of the centre.[53]

In the face of consistent opposition from the states, the central government in 2013 has decided to curb the wide-ranging powers that the organization was to be granted as had been planned earlier. The remodelled NCTC would now report directly to the MHA instead of the IB and its role has been limited to merely facilitating the state police in conducting the anti-terror operations. On being operationalized, the MAC is to be subsumed into the NCTC.

At the end of this lengthy and much debated process, the final outcome is simply to be the replacement of MAC by another body, whose functions will primarily remain the same.[54] NCTC's inherent feebleness can be traced back to the report, which recommended it post-2008 attack. This report, like many others before it, was basically a crisis-driven review that was retrospective in nature. Such reports often end up suggesting setting up of new institutions as a solution to a gap that they perceive.

Being short sighted, they neither take into consideration nor give clear recommendations on ways and means to avoid turf wars and problems related to overlapping jurisdictions that are bound to occur when setting up institutions such as the NCTC. By instating the NCTC, the Indian government has not fixed the major glitches that have been repetitively observed in the other intelligence institutions of India; it has only spent the taxpayer's money on setting up another institution that is bound to run into hurdles in the future.[55]

In the maritime domain, information sharing is a complex process. Information must flow between the armed forces namely the Navy and the ICG and between the armed forces and their civilian counterparts at the central level and the state level. Considering that there is an overlapping of intelligence interests between the Navy, the ICG, the marine police and the customs, a nodal organization that chiefly interacts with agencies in charge of maritime security must be established to prevent duplication arising because of coinciding intelligence jurisdictions and for the collation and timely dissemination of strategic information between the agencies.

The Maritime Intelligence and Coastal Security Centre has been envisaged to perform this function precisely. But this is a notion, yet a proposal on paper, and may take many years before it is translated into anything concrete.[56] In the meantime, information sharing between state and centre's maritime security agencies will have to take place under the framework of the already existing institutions.

2.4. Crisis Response

Crisis response is commonly believed to be a state's responsibility, with the centre playing a limited role in response and planning. After all, most of the information required during crisis response, such as the best available evacuation routes, areas that could be used as shelters and public health facilities in the immediate vicinity, is housed with the state and local authorities.[57] The accepted unspoken norm is that the union government is to maintain a "hands off" approach until the states ask for crisis assistance. But the fact of the matter is that although crisis response is supposed to be a state function, states very rarely possess the capacity to act by themselves.

The 2008 Mumbai attacks serve as the best example. The Maharashtra police was not sufficiently prepared to deal with trained terrorists. There were several cases wherein police officers remained immobile since they were outgunned by the terrorists. Their bulletproof vests were unable to withstand the heavy artillery being used against them. The head of the Anti-Terrorist Squad (ATS), Chief Hemant Karkare, lost his life when bullets pierced his vest. Several officers were using bolt-action rifles that were used by the British army in the 1950s.[58] Even after the attacks, how prepared the marine police are for another terrorist strike is a question that still finds great resonance in coastal states. There have been reports of a coastal police boat running aground and subsequently being rescued by an ICG helicopter and of police officers drowning after falling overboard.[59]

Conditions in these unprepared states are liable to further deteriorate in the absence of an adequate intergovernmental response system that 1) possesses the capability to coordinate between the centre and the state and 2) provide timely assistance from the Union government in case of exhaustion of state resources and/or capacities thereby cushioning the overall impact of the crises. The absence of such a mechanism for coordination and provision of aid was direly felt during the 2008 attacks.

Lack of coordination between the centre and the state during the attacks allowed the attackers to terrorize Mumbai for up to 3 days and resulted in a high number of preventable casualties. As the situation in Mumbai got out of the police's hands, the National Security Guard (NSG) were called in to help, and took over 7 hours to reach the city; leaving the under-trained Mumbai police personnel to face the brunt of the attack.[60]

After the disastrous attack on Mumbai, setting up of Joint Operations Centres (JOC) and a Maritime Security Advisory Board (MSAB) had been proposed to increase coordination and integration of all the agencies involved. Of the two initiatives, the MSAB which had been envisioned as a federal body for ensuring cohesive policy making and coordination among multiple authorities in the maritime domain still remains a distant dream.[61] The proposal for establishing JOCs has met with better success in comparison. Four JOCs have been set up at Western, Eastern, Southern Naval Commands and the Andaman & Nicobar Islands, the primary purpose of which was to address the lack of integration and coordination between various agencies.[62]

Regardless of the institutionalization of a coordination mechanism between the three agencies, coordination is likely to suffer because of the diverging views many within each agency have with regard to their respective roles and counter-terrorism initiatives in India. Many in the Indian Navy believe that its role does not extend beyond defending their nation during war and enhancing its blue water capabilities. The ICG similarly finds that their prescribed mandate merely deals with search and rescue missions, provision of aid and prevention of pollution of the seas. Finally, the marine police in India look at counter-terrorism on the seas as a part of coastal security that they believe to be the centre's responsibility.[63]

These divergent perceptions can be traced back to the centre–state division of responsibilities as prescribed by the constitution. The Indian Navy and the CG are a part of India's armed forces traditionally responsible for national defence. The two come under the ambit of the Ministry of Defence (MoD), which is headed by a cabinet minister accountable to the Union government.[64] The Marine Police being a subsidiary arm of the state police is regulated by the rules and regulations framed by their respective state government.[65]

3. Policy Considerations: One Nation, One Voice

Counter-terrorism initiatives embraces a wide variety of governmental functions at the central and the state level, obfuscating the line between federal and state jurisdictions on the issue of terrorism in India. Should there be such a clear division of responsibilities and if yes, then to what extent can such a line be drawn are questions that plague the Indian federal system along with several other existing federations on the globe. The confusion arises from the multi-faceted nature that terrorism possesses.

Terrorist acts can be looked upon essentially as criminal acts. Irrespective of the motivation, murder, kidnapping, extortion, torture, bombing, shooting and use of incendiaries is illegal.

Constitutionally speaking, such matters normally fall under the state list. But at the same time, terrorist acts are more than simply criminal acts. They also contain issues of national security, foreign affairs and domestic defence that fall under the jurisdiction of the centre.[66] An understanding of security must extend beyond a military perspective to encompass internal security, economic security, technological strength and foreign policy among others.[67]

The threat of a "nation in danger" has created a division between the centre and the states, whereby crimes of unusual nature such as maritime terrorism have been sifted outside the function of the states and has relegated the primary responsibility of protecting to the centre. Continuation of such discourse will fracture the monotone of national security and put the burden of containing a threat that is largely omnipresent in nature on the shoulders of a single stakeholder in the wide theatre of operations.[68]

Divisions in the domestic realm on this issue threaten India's ability to speak with one voice. Continuing failure to achieve consensus on counter-terrorism policies will undermine the nation's ability to counter the threat of terrorism either on land or on the seas by diminishing the power of the country as a whole in negotiations with foreign states and organizations.[69] The need of the hour is a series of policies that allow the Union, state and local governments to collectively and comprehensively address acts of terrorism.[70] These policies must take into account the strengths, capacities and the shortcomings of the central and the state government.

By doing so, these policies display cognizance of the fact that the multiple tiers of the government in India are not self-sufficient in themselves; and in actuality are interdependent politically and administratively.[71] These policies must delineate processes and institutions to facilitate inter-governmental collaboration in areas of overlapping jurisdictions. The country requires a comprehensive national plan, which recommends measures that state and union government could take not only during crises situations such as information sharing and coordination but also measures that could be adopted during times of peace such as training, support and mock drills.[72]

The plan must delineate parameters that when met in a crisis situation would kick start central assistance to states and facilitate the deployment of the available resources and manpower to the affected areas. Lastly, a mechanism must be evolved that annually assesses the states' and the centre's contingency plans in case of attack on the

sea or from the sea. Battling terrorism on sea or on land asks commitment not only of the Union government but also of the states. It is time for the centre and the states to take their gloves off on this issue.

Notes

1. Angel Rabasa, Robert D. Blackwill, Peter Chalk, Kim Cragin, C. Christine Fair, Brian A. Jackson, Brian Michael Jenkins, Seth G. Jones, Nathaniel Shestak and Ashley J. Tellis, "The Lessons of Mumbai", RAND Corporation, Santa Monica, p. 1 and 7, 2009. http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA493061 (accessed December 4, 2012).

2. Eric Shea Nelson, "Maritime terrorism and Piracy: Existing and Potential Threats", *Global Security Studies*, 3 (Winter 2012), no. 1, http://globalsecuritystudies.com/Nelson%20Piracy%20Final.pdf (accessed January 2, 2012).

3. Harihar Bhattacharya, *Federalism in Asia: India, Pakistan and Malaysia* (Abingdon: Routledge, 2010), p. 11.

4. M. Govind Rao and Nirvikar Singh, "Asymmetric Federalism in India", *Santa Cruz Center for International Economics*, Paper 04'08, p. 4, 2004, http://sciie.ucsc.edu/workingpaper/2004/0408.pdf (accessed May 22, 2013).

5. Ronald Watts, quoted in Douglas V. Verney, "Federalism, Federative Systems, and Federations: The United States, Canada, and India", *Publius*, 25, no. 2 (1995): 84, http://www.jstor.org/stable/3330829 (accessed May 16, 2013).

6. Bhattacharya, p. 54.

7. Lloyd I. Rudolph and Susanne Hoeber Rudolph, "Federalism as State Formation in India: A Theory of Shared and Negotiated Sovereignty", *International Political Science Review*, 31, no. 5 (2010): 10, http://political-science.uchicago.edu/faculty-articles/Rudolphs%20–%20State%20Formation.pdf (accessed May 21, 2013).

8. Bhattacharya, p. 61; Rudolph and Hoeber Rudolph, p. 12.

9. Govind Rao and Singh, pp. 6–7.

10. Bhattacharya, p. 22.

11. Govind Rao and Singh, p. 3.

12. J. P. Suda, quoted in A. S. Kabbur, *Centre–state Relations in India* (New Delhi: Trust Books, 2004), p. 22.

13. Amresh Bagchi, "Rethinking Federalism: The Changing Power Relations between the Center and the States", *Publius*, 33, no. 4 (2003), http://www.jstor.org/stable/3331194 (accessed on May 22, 2013).

14. Anoop Sadanandan, "Bridling Central Tyranny in India: How Regional Parties Restrain the Federal Government", *Asian Survey*, 52, no. 2 (March/April 2012), http://www.jstor.org/stable/10.1525/as.2012.52.2.247 (accessed May 23, 2013).

15. Bhattacharya, pp. 124–132.

16. Amit Ahuja and Ahutoush Varshney, "Antecedent Nationhood, Subsequent Statehood: Explaining the Relative Success of Indian Federalism", in *Sustainable Peace: Power and Democracy after Civil Wars*, ed. Philpi G. Roeder and Donald Rothchild (New York: Cornell University Press, 2005), p. 242.

17. Embassy of India. "India Profile: Facts and Figures", Embassy of India, http://www.indianembassy.org/dydemo/indiaprofile/profile.htm (accessed December 3, 2012).

18. Maps of India. "Indian States and Union Territories", MapsofIndia.com. http://www.mapsofindia.com/states/ (accessed May 29, 2013).

19. Sangeeta Sonak, Prajwala Pangam and Asha Giriyan, "Review of Marine and Coastal Policies in India", The Energy and Resource Institute, http://www.teriin.org/teri-wr/projects/tbtpresentations/sreviewmarine.pdf (accessed June 10, 2013).

20. Sharad Vyas, "Maharashtra Moots New Coastal Security Law to Curb Terror", *The Times of India*, January 27, 2013, http://articles.timesofindia.indiatimes.com/2013-01-27/mumbai/36576602_1_coastal-security-coastal-agencies-port-trusts (accessed May 29, 2013).

21. The Gujarat State Disaster Management Act, 2003, http://www.gsdma.org/dmact.pdf (accessed May 29, 2013); The Disaster Management Act, 2005, http://mha.nic.in/pdfs/DM_Act2005.pdf (accessed May 29, 2013).

22. Ujjawal Kumar Singh, "POTA and Federalism", *Economic and Political Weekly*, 39, no. 18 (2004), http://www.jstor.org/stable/4414959 (accessed May 27, 2013).

23. Rekha Saxena, "NCTC Can't Work Without State's Support", *The Pioneer*, April 18, 2012, http://archive.dailypioneer.com/columnists/item/51452-nctc-can%E2%80%99t-work-without-states%E2%80%99-support.html (accessed May 27, 2013).

24. Bhanu Pratap Singh, Recent Anti-Terror Legislative Changes in Criminal Justice Administration, August 20, 2009, SSRN: http://ssrn.com/abstract=1458285 (accessed May 27, 2012).

25. "Timeline: The Italian Marines Case", *The Hindu*, March 22, 2013, http://www.thehindu.com/news/resources/timeline-the-italian-marines-case/article4538162.ece (accessed April 24, 2013).

26. Bharti Jain, "NIA May Probe Italian Marines Case Afresh", *The Times of India*, March 31, 2013, http://articles.timesofindia.indiatimes.com/2013-03-31/india/38162753_1_italian-marines-salvatore-girone-nia (accessed April 24, 2013).

27. "Court Allows NIA to Probe Italian Marines' Case", *The Hindu*, April 26, 2013, http://www.thehindu.com/news/national/court-allows-nia-to-probe-italian-marines-case/article4656828.ece (accessed June 19, 2013).

28. "MHA, MEA Split on Case against Italian Marines", *The Times of India*, May 1, 2013, http://articles.timesofindia.indiatimes.com/2013-05-01/india/38956450_1_sua-maritime-navigation-act-italian-marines (accessed June 19, 2013).

29. Mihir Naniwadekar, "The MCOCA as an anti-terrorism law?", Legal Developments Blog, June 9, 2013, http://webcache.googleusercontent.com/search?q=cache:F23G3WU2WUkJ:legaldevelopments.blogspot.com/2008/09/mcoca-new-anti-terrorism-law.html+&cd=1&hl=en&ct=clnk&gl=in (accessed June 17, 2013).

30. "Full Speech: PM's Speech at the Conference of Chief Ministers on Internal security", *NDTV*, Last updated: April 16, 2012, http://www.ndtv.com/article/india/full-text-pm-s-speech-at-the-conference-of-chief-ministers-on-internal-security-198068 (accessed April 16, 2013).

31. IntelliBriefs, "India: Coastal Security Scheme", IntelliBriefs, December 11, 2009, http://intellibriefs.blogspot.in/2009/12/india-coastal-security-scheme.html (accessed May 3, 2013).

32. Ministry of Home Affairs, "IV. Coastal Security", Ministry of Home Affairs, India, http://mha.nic.in/pdfs/BM_Costal(E).pdf (accessed June 3, 2013).

33. Pradeep Thakur, "Maharashtra Callous Towards Maritime Security: CAG Report", *The Times of India*, December 2, 2008, http://articles.timesofindia.indiatimes.com/2008-12-02/india/27913287_1_marine-police-boats-patrol (accessed June 3, 2013).

34. Reply to a Question posed to Minister of State in the Ministry of Home Affairs, Shri Mullappally Ramachandran in the Rajya Sabha on December 1, 2010, http://pib.nic.in/newsite/erelease.aspx?relid=67974 (accessed May 3, 2013).

35. Pushpita Das, "Four Years Hence: A Review of the Coastal Security Mechanism", Institute for Defence Studies and Analyses, November 26, 2012, http://www.idsa.in/idsacomments/AReviewoftheCoastalSecurityMechanism_pdas_261112 (accessed April 8, 2013).

36. Pradeep Thakur, "Cag Report Exposes Criminal Lapse in Coastal Security", *The Times of India*, April 7, 2013, http://articles.timesofindia.indiatimes.com/2013-04-07/india/38345804_1_coastal-police-stations-cpses-police-personnel (accessed June 3, 2013).

37. Pradeep Thakur, "Maharashtra Callous Towards Maritime Security: CAG Report".

38. Department of Animal Husbandry, Dairying & Fisheries, "Issuance of Biometeric Identity Cards to Coastal Fisherman", *Ministry of Agriculture*, *Government of India*, http://dahd.nic.in/dahd/division/fisheries/issuance-of-biometric-identity-cards-to-coastal-fisherman.aspx (accessed June 3, 2013).

39. Josy Joseph, "Biometeric Identity Cards for Fisherman Still in the Works", *The Economic Times*, November 26, 2010, http://articles.economictimes.indiatimes.com/2010-11-26/news/27607172_1_biometric-cards-biometric-id-fishermen (accessed June 3, 2013).

40. "Biometric Id Cards for Fishing Community", *The Times of India*, January 5, 2013, http://articles.timesofindia.indiatimes.com/2013-01-05/goa/36161355_1_smart-cards-biometric-id-card-reader (accessed June 3, 2013); "Kerala Scores a First, Issues Biometric Card for Fisherman", *The Hindu*, August 11, 2012, http://www.thehindu.com/news/national/kerala/kerala-scores-a-first-issues-biometric-id-cards-for-fishermen/article3751448.ece (accessed June 3, 2013).

41. Saurabh Joshi, "Fishermen to get Biometric Id by Sept", *Hindustan Times*, July 9, 2012, http://articles.economictimes.indiatimes.com/2010-11-26/news/27607172_1_biometric-cards-biometric-id-fishermen (accessed June 3, 2013).

42. "Fisherman at Sea Over Delays in Biometric Cards Issue", *The Times of India*, May 19, 2013, http://articles.timesofindia.indiatimes.com/2013-05-19/visakhapatnam/39369229_1_biometric-cards-fisheries-department-district-fishermen (accessed June 3, 2013).

43. Nitesh Bharosa, JinKyu Lee and Marjin Janssen, "Challenges and Obstacles in sharing and Coordinating Information during Multi-Agency Disaster Response: Propositions from Field Exercises", *Information Systems Frontier*, 12 (2010), http://webcache.googleusercontent.com/search?q=cache:wMu4r7QjOIEJ:repository.tudelft.nl/assets/uuid:6978bd80-132c-4323-a736-2485aca5cf37/bharosa.pdf+&cd=1&hl=en&ct=clnk&gl=in (accessed June 12, 2013).

44. Sandeep Unnithan and Bhavna Vij-Aurora, "India Doesn't Learn", *India Today.in*, November 16, 2012, http://indiatoday.intoday.in/story/four-years-after-26-11-india-is-not-ready-to-tackle-a-terror-attack/1/229460.html (accessed June 6, 2013).

45. Bisheshwar Mishra, "Multi-Agency Centre Dream for North Block", *The Times of India*, October 3, 2005, http://articles.timesofindia.indiatimes.com/2005-10-03/india/27854444_1_intelligence-failure-gom-intelligence-system (accessed June 5, 2013).

46. "Chidambaram Chairs First Multi-Agency Centre Meet", *Rediff.com*, January 1, 2009, http://www.rediff.com/news/2009/jan/01mumterror-chidambaram-chairs-first-mac-meet.htm (accessed June 5, 2013).

47. B. Singh, "National Intelligence Grid (NatGrid) project of India", Centre of Excellence for Cyber Security Research and Development in India (CECSRDI), http://perry4law.org/cecsrdi/?topic=national-intelligence-grid-natgrid-project-of-india (accessed June 5, 2013).

48. V. Balachandran, "NATGRID will Prove to be a Security Nightmare", *The Sunday Guardian*, June 20, 2013, http://www.sunday-guardian.com/analysis/natgrid-will-prove-to-be-a-security-nightmare (accessed June 20, 2013).

49. IDSA Task Force, A Case for Intelligence Reforms in India, 2012, *The Institute for Defence Studies and Analyses*, p. 27, http://www.idsa.in/system/files/book_IntellegenceReform.pdf (accessed June 5, 2013).

50. Praveen Swami, "Five Years after 26/11, India Faces Intelligence Famine", *The Hindu*, February 27, 2013, http://www.thehindu.com/news/national/five-years-after-2611-india-faces-intelligence-famine/article4456325.ece (accessed June 5, 2013).

51. Oneindia news, "What is NCTC and Why Chief Ministers Oppose NCTC?, Oneindia News, Last updated March 16, 2013, http://news.oneindia.in/2012/02/18/what-is-nctc-why-cms-oppose-nctc.html (accessed on May 28, 2013).

52. "Mamata Banerjee Softens Stand on NCTC, Asks for Time", *India Today*, April 30, 2012, http://indiatoday.intoday.in/story/mamata-banerjee-softens-stand-on-nctc-asks-for-time/1/186741.html (accessed June 5, 2013); Phukan, Sandeep, Sen Ranjan Sudhi, "Jayalalitha, Modi, Patnaik Slam Government's Overtures on Anti-Terror Body (NCTC), *NDTV*, April 17, 2012, http://www.ndtv.com/article/india/jayalalithaa-modi-patnaik-slam-government-s-over-tures-on-anti-terror-body-nctc-198351 (accessed June 5, 2013).

53. Rekha Saxena.

54. "NCTC Emerges a Toothless Wonder", *The Indian Express*, June 5, 2013, http://newindianexpress.com/nation/NCTC-emerges-a-toothless-wonder/2013/06/05/article1620360.ece (accessed June 5, 2013).

55. Praveen Swami.

56. IDSA Task Force, pp. 18, 62, http://www.idsa.in/system/files/book_IntellegenceReform.pdf (accessed June 5, 2013).

57. E.L. Gaston, "Taking the Gloves off of Homeland Security: Rethinking the Federalism Framework for Responding to Domestic Emergencies", http://www.docstoc.com/docs/114570580/Taking-the-Gloves-off-of-Homeland-Security-Rethinking-the (accessed May 30, 2013).

58. Rabasa et al., p. 11.

59. N. Ganesh, "Mumbai's Marine Police All at sea", *The Sunday Standard*, November 24, 2012, http://newindianexpress.com/thesundaystandard/article1353569.ece (accessed January 4, 2013).

60. "Mumbai Attacks: the Bureaucracy of India's Marine Commandos", *The Telegraph*, December 6, 2008, http://www.telegraph.co.uk/news/worldnews/asia/india/3628446/Mum-bai-attacks-the-bureaucracy-of-Indias-marine-commandos.html (accessed June 11, 2013).

61. "Ship Exposes Holes in Federal security", *The Times of India*, August 4, 2011, http://articles.timesofindia.indiatimes.com/2011-08-04/mumbai/29849790_1_coastal-secur-ity-kochi-and-port-blair-coastal-surveillance (accessed June 11, 2013).

62. Saurabh Joshi, "Coastal Security: Navy's Report Card", *The StratPost*, November 25, 2009, http://www.stratpost.com/coastal-security-navys-report-card (accessed June 11, 2013).

63. Pushpita Das.

64. Ministry of Defence, "About The Ministry", Ministry of Defence, India, http://mod.nic.in/aboutus/welcome.html (accessed June 1, 2013).

65. Ministry of Defence, "Armed Forces", Ministry of Defence (India), http://www.mod.nic.in/aforces/ (accessed May 30, 2013); Central Board of Excise and Customs (India), http://www.cbec.gov.in/cae1-english.htm (accessed May 30, 2013); G.P. Joshi, "Police Accountability in India", Commonwealth Human Rights Initiative, http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india.pdf (accessed May 30, 2013).

66. Laura K. Donohue and Juliette N. Kayyem, "Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal law Enforcement, and National Security", *Studies in Conflict and Terrorism*, 25, no. 1 (2002): 2, http://dx.doi.org/10.1080/105761002753404122 (accessed January 11, 2013).

67. IDSA Task Force, p. 86.

68. Kumar Singh, p. 1796.

69. Laura K. Donohue and Juliette N. Kayyem, "Federalism and the Battle over Counterterrorist Law: State Sovereignty, Criminal law Enforcement, and National Security", *Studies in Conflict and Terrorism* (2002).

70. Samuel H. Clovis, Jr, "Federalism, Homeland Security and National Preparedness: A Case Study in the Development of Public Policy", *Homeland Security Affairs*, 11, no. 3 (October 2006), http://www.hsaj.org/?article=2.3.4 (accessed June 10, 2013).

71. Bhattacharya, p. 14, 124.

72. Gaston, p. 524.