

COUNTRY REPORT: INDIA

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I. TERRORISM DEFINED

Before we proceed on any deliberation on the subject it would be desirable to know what is terrorism. It is believed that social scientists are yet to agree on a clear cut definition of terrorism. However, the so called academic consensus definition written by A. P. Schmid and widely used by social scientists and within the UN itself is -

Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi) clandestine individuals, groups or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat and violence based communication processes between terrorists (organisation), (imperilled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion or propaganda is primarily sought.

In India section 15 of the Unlawful Activities (Prevention) Amendment Ordinance, 2004 defines terrorist act as “whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause or likely to cause death of or injuries to any person or persons or loss of or damage to or destruction of property or disruption of any supplies or services essential to the life of the community in India or causes damage or destruction of any property or equipment used or intended to be used for the defence of India, any State government or any of their agencies or detains any person or threatens to kill or injure such person in order to compel the government of India or any other person to do so or abstain from doing any act, commits a Terrorist act”.

II. TERRORISM IN INDIA

India has been among the major victims of terrorism – mostly cross border state sponsored Terrorism - for over two decades. Despite the intolerably high cost in terms of human lives, people and material, India has steadfastly pursued a counter strategy which gives primacy to dialogue, democratic political processes and the rule of law.

Armed counter actions are based on the doctrine of “minimum use of force” within the framework of the constitution which guarantees human rights. The magnitude of the problem of terrorism in India could be gauged by the violence statistics as given in *Appendix A*.

III. INDIAN INITIATIVES

To deal with the problems of terrorism India has taken several initiatives at various levels.

A. At the International Level

- India has been supportive of all efforts, particularly in the UN to combat terrorism and has played a leading role in shaping international opinion and urging the international community to prioritize the fight against terror. Its consistent and basic stand before the international community has been that-
- There could be no justification for terrorism on any grounds: religious, political, ideological or any other.
- The fight against terrorism must be given the highest priority
- To be effective, the fight against terrorism has to be long term, comprehensive and sustained.

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- Strengthening of international cooperation is vital to ensure that action is not restricted simply to the perpetrators but also encompassed states, which sponsor, support, or provide safe haven to terrorists.
- Ad hoc and selective actions have limited chances of success and compartmentalization of actions in terms of regions, religions or organizations is bound to be counterproductive.

B. Multi-Lateral Arrangements and Agreements

- It welcomed UN Security Council Resolution 1373 and is fully committed to implement it. It has submitted its national report on measures taken to implement UN Security Council Resolution 1373 in December 2001 and also submitted a supplementary report on specific queries by the Counter Terrorism Committee under the Security Council.
- It is signatory to all the thirteen UN Sectoral Conventions on Terrorism. It has been supportive of all measures within the UN General Assembly, the sixth Committee and the UN Security Council. It has supported UN Security Council Resolution 1269 and 1368, which clearly identify terrorism as a threat to international peace and security. In addition, India has supported and fully implemented Resolutions 1267, 1333 and 1363 relating to terrorism by the Taliban Regime in Afghanistan.
- It has piloted the comprehensive Convention on International Terrorism (CCIT) in the UN with the objective of providing a comprehensive legal framework to combat terrorism.

C. Regional Arrangements

- At the regional level, India is a party to the SAARC Regional Convention on Suppression of Terrorism 1987 and has enacted the enabling legislation in the form of the SAARC Conventions (Suppression of Terrorism Act) 1993.
- The ASEAN Regional Forum (ARF) was set up in 1994 as a regional security dialogue platform with ten ASEAN countries of which India is also a member.

D. Bilateral Arrangements

India has entered into three types of bilateral treaties to combat international terrorism

- **Agreements** to combat terrorism and organized crimes, drug related offences, etc. such agreements are essentially framework agreements to facilitate the exchange of operational information and development of joint programmes to counter organized crimes and terrorism
- **Extradition Treaties** to facilitate transfer of fugitive offenders and suspected terrorists. Such treaties have been signed with seventeen countries, signed but not exchanged with eight countries in addition to extradition arrangements with eleven countries.
- **Bilateral Treaties on Mutual Legal Assistance (MLATs)** in criminal matters to facilitate investigation, collection of evidence, transport of witnesses, location and action against proceeds of crime, etc. Such MLATs have been signed with ten countries in addition to those signed but not exchanged with nine countries.

E. Mechanism of Interpol

- In addition to the above, cooperation on matters relating to terrorism is also effected through the mechanism of Interpol, of which India has been a member since 1946; there is an Indian member on secondment to Interpol. The nodal point for coordination with Interpol at the central level is the CBI

IV. LEGAL REGIME IN INDIA

In keeping with the requirement of dealing with the menace of terrorism, India has put in place a comprehensive legal infrastructure. There are several pieces of legislation, of which some of them are listed below-

- (i) The Unlawful Activities (Prevention) Act, 1967
- (ii) The Armed Forces (Special) Powers Act, 1967

- (iii) The National Security Act, 1980
- (iv) The Arms Act, 1959
- (v) The Explosives Act, 1884
- (vi) The Explosives Substance Act, 1908
- (vii) The Indian Penal Code, 1860
- (viii) The Code of Criminal Procedures, 1973
- (ix) The Anti-Hijacking Act, 1982
- (x) The Prevention of Money Laundering Act, 2002

It would be relevant to highlight some of the penal provisions of one or two pieces of legislation dealing with the acts of terrorism.

A. The Unlawful Activities (Prevention) Act, 1967

This Act was enunciated by the Indian Parliament in 1967 to make powers available to the law enforcement agencies for dealing with unlawful activities directed against the integrity and sovereignty of India. It provides for effective prevention of certain unlawful activities of individuals and associations including terrorist organizations. It extends to the whole of India.

- Sec. 3 - Power of the Government of India to declare an association as unlawful.
(The list of the terrorist organizations banned under this Act is given under Appendix B)
- Sec. 16 - Punishment for terrorist acts – death or imprisonment for life as the case may be and liable to a fine.
- Sec. 17 - Punishment for raising funds for terrorist acts – imprisonment for life and also liable to a fine.
- Sec. 18 - Punishment for conspiracy – imprisonment from five years to imprisonment for life and liable to a fine.
- Sec. 19 - Punishment for harbouring, etc. – imprisonment from 3 years to imprisonment for life and liable to a fine.
- Sec. 33 - Forfeiture of property of certain persons during trial and conviction.
- Sec. 40 - Offence of raising funds for a terrorist organization - imprisonment up to fourteen years or with a fine or both.

B. The National Security Act, 1980

The Act came into force in 1980 with a view to providing power to the Central Government and State Governments to make orders to detain certain persons including foreigners whose action may be prejudicial to the defence of India, security of India, prejudicial to the maintenance of public order and maintenance of supplies and services essential to the community.

- Sec. 3 –(3) Detention period – in the first instance exceed three months but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.
- Sec. 9 - Constitution of Advisory Boards.
- Sec. 11 - Procedure of Advisory Boards.
- Sec. 13 - Maximum period of detention: 12 months.

C. Prevention of Money Laundering Act, 2002

- Sec. 2 - Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of the offence of money laundering.
- Sec. 4 - Punishment for money laundering.
- Sec.5&8 - Deals with provisional attachment and confiscation.
- Sec. 19 - Power of arrest.
- Sec. 24 - Puts the burden of proof on the accused.
- Sec. 45 - Offences cognizable, non-bailable and limitation on granting bail.
- Sec. 72 - Provides for continuance of proceedings in the event of death or insolvency.

D. Armed Forces (Special) Powers Act, 1967

(Salient features – without replicating the wording in the Act)

- Sec. 3 - The whole or any part of the country/state can be declared as a disturbed area by the central government or the governor of the state
- Sec 4 -
- * Special powers can be utilized by any commissioned officers, non-commissioned officers, warrant officers or any other person of the equivalent rank
 - * Authorizes use of force, even causing death against any person who is acting in contravention of law or carrying weapons
 - * Authorizes the destruction of any arms dumps, prepared or fortified positions from which armed attacks are made or likely to be made
 - * Authorizes arrest without warrant of any person who is suspected to have committed or likely to commit any cognizable offence. May even use such force as necessary to effect the arrest
 - * Enter and search without warrant any premises suspected to be used for any illegal purposes as defined under the Act
 - * Arrested person to be handed over to the officer in charge of the nearest police station with the least possible delay

The above provisions confer sweeping powers on the members of the armed forces and since they are likely to be misused the Supreme Court of India has issued eleven commandments regulating the exercise of powers under this Act.

V. SUGGESTED MEASURES TO COMBAT TERRORISM

- A. It must be understood fully that while anti-terrorism is a philosophical anti-thesis that emerges from a painstaking examination of the concept of terrorism as well as an attempt to understand and articulate what constitutes terrorism, counter terrorism refers to the practices, tactics, and strategies that governments, the military and other groups adopt in order to combat terrorism. A few of the strategies, apart from the legal recourse, which may be adapted to combat insurgency are:
1. A clearly defined policy and no compromise with terrorism
 2. Dialogue with insurgents only within the ambit of the Constitution
 3. Pro-active measures, including (if necessary) pre-emptive strikes on anti-terrorist camps and bases
 4. Strengthening of existing anti-terror laws
 5. Punitive action against sympathizers, beneficiaries of terrorism and funding sources
 6. Strengthening of mechanisms such as psychological warfare in order to combat terror. Such mechanisms must be decidedly pro-active
 7. Creation of and the joining in anti-terror cooperative groups in the region such as Shanghai Cooperation Organisation
 8. Spearhead a global denouncement and alienation of states sponsoring or not acting against terror. Non-distinction of terror perpetrated by religious groups
- B. Talking of the legal regime to combat insurgency, a decision needs to be taken at all levels, including under the UN mandate, as to the extent to which the personal liberties of citizens can be compromised vis-à-vis the implementation of the various legal provisions already in vogue. Most of the time the war on the legal count against the *Ultras* is lost because of extreme sensitivity of our system to the alleged violation of personal liberties. A balance has to be arrived at between both aspects.
- C. At the end, what is required is a will to win the war over terrorism backed up by strict enforcement of existing laws at the National and International level. Any system as it marches ahead reveals certain lacunae and loopholes, which in the instant case affords the terrorists an advantage and ultimately in getting away rather mildly. There should be parity in the norms to be adopted by different countries at the international level when it comes to protecting the national interest.

APPENDIX A

Violence Statistics (2001 -2005)

• Total Number of Incidents

J & K	16394
LWE	7290
NE	6294
Punjab	4
Total	29982

• Attacks on Security Forces

J & K	3439
LWE	830
NE	1728
Punjab	Nil
Total	2879

• Total Persons Killed

J & K	13404
LWE	2752
NE	5387
Punjab	5
Total	21548

• Civilians Killed

J & K	4253
LWE	1457
NE	2345
Punjab	5
Total	8060

• Security Forces Killed

J & K	2098
LWE	545
NE	612
Punjab	Nil
Total	3255

• Terrorists Killed

J & K	7053
LWE	750
NE	2430
Punjab	Nil
Total	10233

• Weapons Recovered

J & K	9427
LWE	2765
NE	2640
<u>Punjab</u>	<u>256</u>
Total	15088

Abbreviations used:

J & K	Jammu and Kashmir
LWE	Left Wing Extremism
NE	North Eastern States of India

Note: The above statistics are not complete for 2005 and hence, they are only indicative.

APPENDIX B

TERRORIST ORGANISATIONS BANNED IN INDIA

1. Babbar Khalsa International
2. Khalistan Commando Force
3. Khalistan Zindabad Force
4. International Sikh Youth Federation
5. Lashkar – E – Taiba/Pasban- E- Ahle Hadis
6. Jaish-E-Mohammad
7. Harkat-Ul-Mujahideen/Harkat-Ul-Ansar/Harkat Ul-Jehad-E-Islami
8. Hizb-Ul-Kujahideen
9. Al-Umar-Mujahideen
10. Jammu and Kashmir Islamik Front
11. United Liberation Front of Assam (ULFA)
12. National Democratic Front of Bodoland (NDFB)
13. Peoples Liberation Army (PLA)
14. United National Liberation Front (UNLF)
15. Peoples Revolutionary Party of Kangleipak (PREPAK)
16. Kangleipak Communist Party (KCP)
17. Kanglei Yaol Kanba Lup (KYKL)
18. Manipur Peoples Liberation Front (MPLF)
19. All Tripura Tiger Force
20. National Liberation Front of Tripura
21. Liberation Tigers of Tamil Elam (LTTE)
22. Students Islamic Movement of India
23. Deendar Anjuman
24. Communist Party of India (M-L)- Peoples War Group and all its formations and front organizations
25. Maoist Communist Centre (MCC) and all its formations and front organizations
26. Albadr
27. Jamiat-Ul-Mujahideen
28. Al-qaida
29. Dukhtaran-E-Millat (DEM)
30. Tamil Nadu Liberation Army (TNLA)
31. Tamil National retrieval Troops (TNRT)
32. Akhil Bharat Nepali Ekta Samaj (ABNES)

APPENDIX C

**SUMMARY OF COUNTER-INSURGENCY OPERATIONS IN ASSAM
FROM 1 JANUARY 2000 TO 2005 (UP TO 25 DECEMBER)**

Year	Insurgent Killed	Insurgent Captured	Arms/Ammn./ Cash Recovered		Security Personnel Killed	Civilians Killed	No. of Incidents	Surrendered
2000	328	1535	Arms	371	80	412	643	1834
			Ammn.	5266				
			Rs.	17,70,256				
2001	308	912	Arms	410	86	261	485	438
			Ammn.	6842				
			Rs.	4,36,664				
2002	322	715	Arms	365	36	218	454	139
			Ammn.	6686				
			Rs.	9,07,138				
2003	276	1024	Arms	456	15	260	474	3067
			Ammn.	20488				
			Rs.	11,21,184				
2004	135	1080	Arms	349	25	202	349	1050
			Ammn.	9623				
			Rs.	8,92,494				
2005 (up to 25. Dec)	75	784	Arms	196	9	63	294	217
			Ammn.	6150				
			Rs.	10,92,544				
TOTAL	1444	6050	Arms	2147	251	1416	2699	6745
			Ammn.	55055				
			Rs.	6219270				