

# **‘Institutional Architecture’ and Police Reforms**

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We have, in India, a great fondness for discussing things in the abstract; in a manner that appears profound, but does not commit us to any narrow or concrete course of action by which we may be quickly judged. Large and sweeping ideas of policy, grand strategy and strategy are examined and there is much talk of ‘out of the box solutions’, but very little attention is paid to what is ‘in the box’; to the situation prevailing on the ground. The result is that many of the various ‘solutions’ and ‘strategies’ that are being articulated are, in fact, neither. They are declarations of intent or aspiration, at best; and mere, counterproductive flights of fantasy at worst. The truth is,

...we do not need to rewrite Centre-State relations and the distribution of powers in the Constitution of India; we do not need sham institutional impositions... What we need, rather, is a relentless focus on the nuts and bolts of capacities and capabilities in existing

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institutions of intelligence, policing and governance; in the absence of these, all our ‘policies’ and ‘strategies’ remain nothing more than slogans.<sup>2</sup>

The most significant element, and one that underpins all arguments that follow here, is that the critical deficit of policing and internal security in India is one of resources and that, absent a sufficient understanding of the sheer quantum of this dearth, all talk of ‘architectural’ transformation is misconceived, misdirected and, crucially, wasteful. Indeed, India’s record of institution building over the past decades has been disastrous. We have set up numberless shell organizations, but few of these have acquired the operational efficacy envisaged. There are structural reasons for this, the most important being the unavailability of the necessary profile of human resources. Any major institutional innovation only cannibalizes existing institutions for educated and skilled manpower; most of these existing institutions are already in a crisis of manpower at leadership levels.

The institutional structures we aspire to are usually those of leading Western nations – and due to our peculiar history and the language we have inherited from our colonial past, particularly of the United Kingdom (UK) and United States (US). People sometimes wonder, for instance, why the Indian policeman cannot be like the English ‘Bobby’. The answer is simple: UK, with a population of just 65.64 million, spends UKP 16.35 billion on policing (roughly INR 142,574 crore; India, with a population of 1.27 billion, has a total state police expenditure of INR 90,662.94 crore. On a per capita population basis, India spends INR 1.94 per day on the Police, less than a fifth of the cost of a cup of tea on the streets; the UK spends almost thirty two times as much per capita per day. Even if we

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2 Ajai Sahni, “The Deception of ‘Policy’”, *Defence and Security Alert*, Volume 3, Issue 9, June 2012, p. 9.

add India's Central Armed Police Forces (CAPF) expenditure of INR 51,040 to this calculus, we spend less (INR 141,702) than the UK in absolute terms; and the UK would still spend more than 20 times per capita on policing than India does.<sup>3</sup>

The National Investigation Agency (NIA), we were told at the time of its creation in end 2008 (in the panic that followed the Mumbai 26/11 attacks) was intended to be 'like the FBI' (the US Federal Bureau of Investigation). But here, again, it is useful to recognize that the NIA's annual budget for 2017-18 was just INR 111.14 crore (USD 17.24 million). The FBI's budget for FY 2017 was USD 9.5 billion<sup>4</sup> – over 76.6 per cent of the entire budget of the Union Ministry of Home Affairs (USD 12.4 billion) in 2017-18. Crucially, despite an expenditure of INR 743.63 crores over the eight years of its existence, the NIA has registered just 183 cases till date, of which 37 have been partially or finally decided in trial, resulting in convictions in 35 of these<sup>5</sup> – hardly a record that would have any dramatic impact on the trajectory of terrorism or related crimes in India, as was promised at its founding. It may be useful to speculate what the relative outcome may have been, had these resources been pumped into existing agencies, particularly at the State level. More significantly, as the NIA's limited resources are

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3 UK Data: "Public sector expenditure on police services in the United Kingdom (UK) from 2011/2012 to 2016/2017 (in million GBP)", The Statistics Portal, Statista, <https://www.statista.com/statistics/298637/united-kingdom-uk-public-sector-expenditure-police-services/>; India Data: "Data on Police Organizations (as on January 1, 2017)", Bureau of Police Research & Development, Ministry of Home Affairs, Government of India, <http://bprd.nic.in/WriteReadData/userfiles/file/databook2017.pdf>

4 "FBI Budget Request for Fiscal Year 2017", Federal Bureau of Investigation, February 26, 2016, <https://www.fbi.gov/news/testimony/fbi-budget-request-for-fiscal-year-2017>.

5 "About Us", National Investigation Agency, Government of India, <http://www.nia.gov.in/about-us.htm>, as on March 29, 2018.

now frittered away on investigations into ‘love jihad’<sup>6</sup> or prostitution and human trafficking rackets<sup>7</sup>, as its credibility is undermined by dubious u-turns in cases relating to terrorism,<sup>8</sup> the very utility of institutional innovations of this nature, particularly in an environment where their objectives are routinely subordinated to partisan political ends by successive regimes, comes into question.

Similarly, and apart from the constitutional legitimacy of this initiative (more on which below), to pretend that India has the capacity – or, indeed, even the need – to replicate the US National Counter-terrorism Centre (NCTC) and the ‘model’ of counterterrorism (CT) response that backs it, is delusional in the extreme. And to believe that the creation of a new office in Delhi called NCTC will create capabilities that are even remotely comparable to the gigantic US CT complex is to ignore the most obvious realities.

It is useful, further, to notice that institutional transformation in post-9/11 USA are not limited to creating a peripheral new

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- 6 Bharti Jain, “NIA finds a common mentor in Kerala ‘love jihad’ cases”, *The Times of India*, August 28, 2017, <https://timesofindia.indiatimes.com/india/nia-finds-a-common-mentor-in-kerala-love-jihad-cases/articleshow/60250975.cms>. See also, “Kerala ‘love jihad’ case: NIA cannot probe 24-year-old Hadiya’s marital status, rules Supreme Court”, *Firstpost*, January 24, 2018, <http://www.firstpost.com/india/kerala-love-jihad-national-investigation-agency-supreme-court-of-india-kerala-dipak-misra-mamala-nia-cannot-probe-24-year-old-hadiyas-marital-status-rules-3-judge-supreme-court-bench-4315579.html>.
- 7 “Cabinet not to Bill for allowing NIA to probe human trafficking cases”, *Business Standard*, February 28, 2018, [http://www.business-standard.com/article/pti-stories/nia-to-probe-human-trafficking-cases-118022800571\\_1.html](http://www.business-standard.com/article/pti-stories/nia-to-probe-human-trafficking-cases-118022800571_1.html).
- 8 See, for instance, Vipin Pubby, “Hindutva terror cases: NIA on backfoot as apex court questions complicity charges”, *Scroll*, October 4, 2015, <https://scroll.in/article/759508/hindutva-terror-cases-nia-on-the-backfoot-as-apex-court-questions-complicity-charges>; “Malegaon blasts: NIA U-turn, Saffron goes out of Terror”, *The Free Press Journal*, May 14, 2016, <http://www.freepressjournal.in/nia-u-turn-saffron-goes-out-of-terror/847954>.

office as an adjunct to some existing department. The sheer enormity of institutional transformations is difficult for us even to imagine as we struggle for years to set up a functional national database of crimes and criminals; or even to recruit roughly 8,000 people to fill up the 30 per cent of long-pending vacancies in a tiny Intelligence Bureau (IB) that had a strength of about 18,795 in 2013,<sup>9</sup> and is not much larger now. The Polnet project for a unified police satellite communications network that was to link all police stations in India, was sanctioned in 1996, and floundered till the Government re-conceptualized another comparable initiative under the Crime and Criminal Tracking Network and Systems (CCTNS) project; but nearly nine years after its sanction in June 2009 (and over six since its original deadline for completion), the system is yet to be operationalised. Ironically, the hardware and software acquisitions under the project are already on the cusp of redundancy.

Though no comprehensive analysis or assessment of these is possible here, it is useful, by comparison, to look at some of the institutional transformations and augmentations the US security apparatus underwent after 9/11. A detailed study by Dana Priest and William M. Arkin in the Washington Post in July 2010 noted that “at least 263 organisations have been created or reorganized as a response to 9/11”. Further, the study notes,

- Some 1,271 government organisations and 1,931 private companies work on programmes related to counterterrorism, homeland security and intelligence in about 10,000 locations across the US.
- An estimated 854,000 people, nearly 1.5 times as many people as live in Washington, DC, hold top-secret security clearances.

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9 “Shortage of manpower in IB”, Unstarred Question No. 2379, *Lok Sabha*, Ministry of Home Affairs, Government of India, March 12, 2013, <http://mha1.nic.in/par2013/par2013-pdfs/ls-120313/2379.pdf>.

- In Washington and the surrounding area, 33 building complexes for top-secret intelligence work are under construction or have been built since September 2001. Together, they occupy the equivalent of three Pentagons... about 17 million square feet of space.
- The 2009 US Intelligence budget, as publicly disclosed, was USD 75 billion, but did not include many military activities and domestic CT programmes.<sup>10</sup>

This dramatic augmentation has resulted in many preventive successes, but there have been failures as well. Despite the massive flows of intelligence – and partially because of them – specific intelligence relating to individual suspects has been neglected or lost in the deluge. “Every day, collection systems at the National Security Agency intercept and store 1.7 billion e-mails, phone calls and other types of communications. The NSA (National Security Agency) sorts a fraction of those into 70 separate databases.”<sup>11</sup> The same process is replicated in a multiplicity of other intelligence agencies, “none of which have enough analysts and translators for all this work.” With all the capacity augmentation, there is still a deficit in terms of capabilities to trawl through the intelligence flows to identify and respond to actionable intelligence.

Clearly, the scale of this response is simply beyond India’s reach in the foreseeable future, and its efficacy is in doubt as well.

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10 Dana Priest & William M. Arkin, “A hidden world, growing beyond control”, *Top Secret America: A Washington Post Investigation*, July 18, 2010, <http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/>. See also, Dana Priest & William M. Arkin, *Top Secret America: The Rise of the New American Security State*, 2011, Back Bay Books, New York.

11 Dana Priest & William M. Arkin, “A hidden world, growing beyond control”, op. cit.,

### **Constitutional Short Cuts**

Beyond such individual 'architectural' innovations, moreover, there is an even more fundamental and disturbing effort to discover constitutional short-cuts, purportedly to deal with the complexities of contemporary security challenges. The broad contours of the argument, here, are that the threat of non-state armed groupings and organised crime transcends State (and, indeed, national) boundaries, and far exceeds the capacities of individual States to cope; consequently, a 'national' response becomes necessary. The expression 'national' in this context is increasingly being taken to mean 'centralized' – implying an augmenting role for the Union Ministry of Home Affairs (UMHA). The arguments here rely on specific instances of the failure of State Governments, and on the visible frustration at the Centre over particular examples of the purported 'lack of cooperation' by, or deficiencies in 'coordination' with, the States. It is only in the rarest instance that they have been based on a demonstrable necessity or superiority of Central responses.

But context is crucial. The Centre's role in internal security management and the adequacy or otherwise of existing Constitutional arrangements cannot be discussed in an intellectual ivory tower. They must be discussed within the framework of the prevailing political and administrative environment, and of multiple and endemic crises of governance and security. I shall argue, here, that the Centre does not have the solution to all of India's internal security problems, and that it has acted, at least on occasion, with as little wisdom and efficacy as the States.

Within the constitutional scheme, the Centre's role in 'public order' or 'policing' and 'internal disturbances' is envisaged only under the Emergency provisions, specifically Articles 352 (proclamation of emergency) and 355 (Duty of the Union to protect States against external aggression and internal

disturbances). The possibility of abuse and overreach by the Centre had troubled the Constituent Assembly, and in its debates on Article 355, B.R. Ambedkar clarified, in particular, that, “The States, under our Constitution, are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter...” The Centre is not, as it often appears to project, the ‘elder brother’ in this relationship, bringing superior authority to its subordinate State constituents; the “partition of the legislative and executive authority between the Centre and the Units” is defined by the Constitution;<sup>12</sup> and further, “...if the Centre is to interfere in the administration of provincial affairs... The invasion must not be an invasion which is wanton, arbitrary and unauthorized by law.”<sup>13</sup>

Crucially, in language with startlingly contemporary resonances, a member of the Constituent Assembly, Naziruddin Ahmad warned against the escalating consequences of any temptation to overstep Constitutional boundaries in the exercise of emergency powers:

...very soon these very drastic powers calculated to strengthen the hands of the Centre will be rather a source of weakness in no distant time... It is a strange thing that though dictators have always been unpopular and destroyed in the long run, yet, it is a strange phenomenon of modern times that dictatorships do grow up. They arise honestly out of good working democracy; they arise out of the desire to deal with lawlessness honestly by constitutional short cuts...<sup>14</sup>

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12 Constituent Assembly Debates, Proceedings, Lok Sabha, Parliament of India, November 25, 1949, <http://parliamentofindia.nic.in/ls/debates/vol11p11.htm>. [Emphasis added].

13 Constituent Assembly Debates, Proceedings, Lok Sabha, Parliament of India, Volume IX, August 3, 1949. [Emphasis added].

14 Constituent Assembly Debates, Proceedings, Lok Sabha, Parliament of India, Volume IX, August 4, 1949. [Emphases added].

What advocates of an augmenting mandate for the Union appear to be seeking is the power for continuous and partial interventions in functions under the State List at a threshold well below the Constitutional breakdown mandated by the existing emergency provisions, or a transfer of these powers to the Concurrent List. It is useful, however, to remind ourselves of the Supreme Court's admonition in *S.R. Bommai's* case, that, "There cannot be two Governments in one sphere."<sup>15</sup> The powers of direct intervention that are being sought for the Union to intervene in a range of protracted crises – and not the transient 'breakdown' currently contemplated – would create a new and perverse diarchy that can only yield continuous conflict between the Centre and the States, and that would be far more detrimental to national stability than the crises they are intended to address. It would, equally, deepen the abdication of responsibility by the States, which has already become a deep malaise in governance across India, with the enlargement of the Centre's unsupportable pretensions that it possesses a 'solution' to every crisis.

Crucially, moreover, no constitutional provision can offer a guarantee against the collective malfeasance, collusion and intentional neglect of the very powers and institutions that are intended to protect constitutional governance. This is not a question of the constitutional distribution of powers, but of bad faith and criminal collusion or neglect by authorities, of which they have been numberless instances through India's independent history. B.R. Ambedkar had clearly warned the Constituent Assembly, "However good a Constitution may be, it is sure to turn out bad because of those who are called to work it, happen to be a bad lot..."<sup>16</sup> To take the conundrum a

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15 *S.R. Bommai vs. Union of India*, (1994) 3 SCC 1, 296-297, Para 434

16 **B. R. Ambedkar's** *speech in the Constituent Assembly on 25th November 1949*, Constituent Assembly Proceedings, Lok Sabha, Parliament of India, Volume XI, November 25, 1949

step further, what happens when the Centre is directly culpable in such mischief? This would certainly appear to be the case in the anti-Sikh pogrom of 1984 (and, indeed, in the protracted mischief that created the crisis of terrorism in Punjab before this event); or the sequence of collusion and intentional neglect that resulted in the debacle at Ayodhya in 1992. What conceivable constitutional provision could prevent the harm in these cases, and innumerable others where active malfeasance by those who are charged with the responsibility of protecting the law and the Constitution are the source of the disorders? All laws have to be implemented by institutions and individuals empowered to manage these. If there is a criminal defalcation of duty by some, and if all other empowered institutions fail to intervene as a result of collusion, neglect, intimidation, or other extra-constitutional considerations, no legislative or constitutional resolution is possible. Where such bad faith is not in evidence in the larger system, and particularly at the Centre, the Constitutional powers would suffice to address the transgressions of some one component of the system – such as a partisan and delinquent State Government.

There is, consequently, urgent need to recognize and check the Centre's jurisdiction hunger, and its surreptitious and creeping expansion into the States' ambit. It is useful to examine what has been attempted in the past, and continues to lurk as a constant danger even today.

It was in a milieu of near hysteria, in the wake of the 26/11 attacks in Mumbai, that an aggressive and successful bid to push through legislation that altered the established equation of Centre-State relations was made. In just over a month, the UMHA had rammed through two crucial Acts in Parliament, the Unlawful Activities (Prevention) Amendment (UAPA) Act, and the National Investigation Agency (NIA) Act, both passed on December 31, 2008, with little meaningful debate. It is not

the intention, here, to engage in any detailed critique of either Act. What is germane is the introduction of Section 43(A) in the UAPA, 1967, conferring powers of arrest, search and seizure on any authority that may be designated by the Centre or the States. The NIA Act, moreover, explicitly conferred on officers of the NIA “throughout India in relation to the investigation of Scheduled Offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have...”; and further, “Any officer of the Agency of, or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise throughout India, any of the powers of the officer-in-charge of a police station...” Astonishingly, this brazen arrogation of police powers “throughout India” for a central agency, and the power of any centrally designated authority to carry out arrest, search and seizure under UAPA’s Section 43(A), failed to attract even a whimper of protest in Parliament, and passed insidiously on to the statute books.

The UMHA, however, overplayed its hand by trying to force through the creation of a National Counter Terrorism Centre (NCTC) “through sleight of hand and subterfuge”,<sup>17</sup> and by a mere executive order in February 2012, once again conferring powers of arrest, search and seizure (among a range of other dubious functions<sup>18</sup>) on the “operations wing” of this proposed entity.

Responding to objections by several Chief Ministers, in his letter of February 24, 2012, then Union Home Minister P. Chidambaram argued that the powers conferred on the NCTC derived from the UAPA Amendments of December 2008,

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17 Ajai Sahni, “NCTC: National Confusion on Terror by Centre”, South Asia Intelligence Review, Volume 10, Number 34, February 27, 2012, [http://www.satp.org/satporgtp/sair/Archives/sair10/10\\_34.htm](http://www.satp.org/satporgtp/sair/Archives/sair10/10_34.htm) .

18 Ibid.

and that, when these were brought to Parliament, “There was no demur or opposition to either section 43A or the other amendments”. UMHA officials argued, further, that when similar powers of arrest and seizure were given to NIA, there were no objections regarding any perceived infringement of the Constitutional distribution of powers between the Union and the States. In other words, the States were now presented with a *fait accompli* and were being told, facetiously, that, having failed to object to the Centre’s jurisdictional enlargement in the past, they had lost their right to do so in the present and the future.

This, however, was evidently not the position then UHM Chidambaram had projected to his closer confidants. Indeed, if evidence of bad faith on the part of the Centre was required, it is provided by the Wikileaks disclosures regarding Chidambaram’s alleged conversation with FBI Director Robert Mueller at a meeting in New Delhi on March 3, 2009. According to the record cabled by US Chargé d’Affaires Steven White, “[Mr. Chidambaram] conceded that he was coming ‘perilously close to crossing constitutional limits’ in empowering the NIA. He explained the concept of a ‘federal’ crime does not exist in India, with law and order the responsibility of the State Governments.” Further, Chidambaram “opined that the NIA law would be challenged in court because it ascribes certain investigative powers to the NIA which may be seen to conflict with responsibility that is exclusively with the States.”<sup>19</sup>

This was the essence of the Centre’s subterfuge – in an atmosphere of near hysteria and complete suspension of critical faculties in the wake of a major terrorist attack, the States are brow-beaten into acquiescence, and then sought to be bound

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19 Alope Tikku, “NCTC debate raises questions on NIA powers”, Hindustan Times, February 22, 2012, <https://www.hindustantimes.com/delhi-news/nctc-debate-raises-questions-on-nia-powers/story-4hA2UkdxbpKkuaf9ybGpI.html?isab=true&meta-geo=---->

to their creeping abdication of power through subsequent and arbitrary orders by the Centre.

It is not the intention, here, to suggest that the Centre was acting in malice or in bad faith. Indeed, Naziruddin Ahmad's cautionary words in the Constituent Assembly have particular significance here. These actions "arise out of the desire to deal with lawlessness honestly by constitutional short cuts..."<sup>20</sup>

This, then, brings us to the next and crucial question: if the Constitution fails to provide the mandate for augmented central intervention, is it time, then, to amend the Constitution?

Before we can address this question, however, we must answer one that is even more fundamental: Where does the crisis of internal security lie? Unless this question is answered in precise and objective terms, all our 'solutions' will incline to failure.

It is clear, despite transient variations in localized trends, that the challenges of insurgency, terrorism, irregular warfare, the contestation of state power by armed non-state actors, and organised crime will remain persistent threats to India's internal security. Even if the trajectory of particular movements inclines towards resolution, the sheer force of demography, the country's resource and human profiles, and a range of factors linked to the internal and external dynamics, ensure that a complex threat of insurgency, terrorism and increasingly complex patterns of crime will extend far into the foreseeable future.<sup>21</sup> The emergency response paradigm, within which the national responses have largely been framed – and to which

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20 Constituent Assembly Proceedings, Lok Sabha, Parliament of India, Volume IX, August 4, 1949. [Emphases added].

21 See, for instance, C. Raja Mohan and Ajai Sahni, "India's Security Challenges at Home and Abroad", The National Bureau of Asian Research, NBR Special Report # 39, May 2012, [http://www.nbr.org/publications/specialreport/pdf/SR39\\_India\\_Security\\_Challenges.pdf](http://www.nbr.org/publications/specialreport/pdf/SR39_India_Security_Challenges.pdf).

central intervention under the existing constitutional provisions are geared – is now evidently failing, and appears to demand radical revision. India’s crises of internal security are no longer appropriately envisaged as transient ‘emergencies’. They may occasionally manifest themselves locally in the character of an emergency, but in the national context they have acquired the nature of a permanent crisis or chronic succession of crises that cannot be met with the abrupt reallocation or concentration of existing capacities to particular loci (the ‘battalion approach’). Contemporary terrorism and insurgency are moulded into a slow process of attrition, the strategy of protracted conflict that “seeks to avoid a general, direct, decisive encounter with the enemy”,<sup>22</sup> and that is based on “continuing, essentially endless, military-economic-political competition,”<sup>23</sup> that would help “impede or disassemble the organizations and institutions that oppose us (anti-state forces).”<sup>24</sup> In this sense, the very paradigm of an ‘emergency response’ approach to terrorism, insurgency and internal security crises, has collapsed.

It has become commonplace, when things are seen to fail—particularly where they fail dramatically – to immediately conclude that new laws or new institutions are necessary to deal with what are perceived as the ‘lacunae’ in the existing system. Such an approach, however, can only lead to incoherence and waste, unless we have found an objective and realistic answer to another basic question – why have existing laws and institutions failed?

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22 Robert Strausz-Hupe, Willaim R. Kinlner, James E. Dougherty & Alvin J. Cottrell, *Protracted Conflict*, 1963, Harper Colophon, New York, p. 42.

23 David J. Andre, “Competitive Strategies: An Approach against Proliferation,” in Henry D. Sokolski (Ed), *Prevailing in a Well Armed World: Devising Competitive Strategies Against Weapons Proliferation*, Strategic Studies Institute, US Army War College, March, 2000, p. 7.

24 Dave McIntyre, “We need to study war some more,” *The Journal of International Security Affairs*, Number 3, Summer 2002, p. 15.

### A Crisis of Capacities

The reality is that India is in the grips of an extreme and unrelenting crisis of capacities that has accumulated over decades of mis-governance and incoherence of policy. State Police capacities are abysmal. To take a single index, Police Population ratios are severely inadequate, and probably exaggerated,<sup>25</sup> at 150.75/100,000 on the average for the country, as against a projected desirable ratio of 220/100,000 for peacetime policing.<sup>26</sup> But numbers are not everything; police capacities and capabilities, in terms of the skills and profiles of personnel, in terms of equipment and technology, and crucially, in terms of status and welfare, are far below acceptable standards. K.P.S. Gill noted,

...our current problems are not a consequence of our current failings. They are rooted in the inability of the Police and political leadership of our past to anticipate entirely predictable transformations, and to initiate the requisite responses two, three, even five decades ago... Primitive policing practices are reflected in poor rates of conviction, in deteriorating efficiency and effectiveness, and consequently in a declining respect for the law. This is the essence of the malady...<sup>27</sup>

The problem is infinitely compounded by parallel deficits in the capacities for civil and justice administration. While

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25 See, Ajai Sahni, "Nine years after 26/11 attack, India is safer today but still vulnerable," *Business Standard*, November 24, 2017, [http://www.business-standard.com/article/economy-policy/9-yrs-after-26-11-attack-india-is-safe-despite-continuing-vulnerabilities-117112400170\\_1.html](http://www.business-standard.com/article/economy-policy/9-yrs-after-26-11-attack-india-is-safe-despite-continuing-vulnerabilities-117112400170_1.html).

26 See, James T. Quinlivan, "Force Requirements in Stability Operations", *Parameters: U.S. Army War College Quarterly*, Volume XXV, Number 4, Winter 1995/96, pp. 59-69, <http://ssi.armywarcollege.edu/pubs/parameters/Articles/1995/quinliv.htm>. The ratio derives from policing operations in the American Zone of Occupation in post-World War II Germany, and was roughly 1:450 (220/100,000 population); also applied by the UN Transitional Authority in Cambodia (UNTAC).

27 K.P.S. Gill, "A leadership lacking in adequate vision", *The Pioneer*, July 8, 2000

comparisons with other countries have enormous limitations, they can provide some broad understanding of standards that prevail in relatively well-governed societies. The prevalent philosophy of governance in the US is summarized in the dictum, “That government is best which governs least”.<sup>28</sup> Government in the US does not run railways, airlines, bus services, hotels, shops and the wide range of public enterprises and services that Governments in India do. Yet we find that, at the State and Local levels, administrations in the US have as many as 6,145 employees per 100,000 population, on the average.<sup>29</sup> Indian States, on the other hand, average out at 812.02 employees per 100,000 population. West Bengal, at the bottom, has 309.99 per 100,000; Bihar, 311.56; Uttar Pradesh, 356.67. At the top end, we have Nagaland with 5805.56; Sikkim with 5,616.61; and Arunachal Pradesh, with 4,678.88. It is significant that the ratio in itself has little bearing on the quality of administration, and a wide range of other factors is decisive. Fairly modest ratios are found in the relatively better administered States of the country, including Andhra Pradesh (859.10), Karnataka (794.78), and Gujarat (706.63).<sup>30</sup> The point, however, is that, while no absolute standard can be applied to this parameter, it is abundantly clear that State Governments in India have manpower, skill, systemic and other resource capacities that are grossly insufficient to carry the burden of a modern administration – especially one that accepts the further weight of an enveloping welfare role, and that has ‘great power’ pretensions or ambitions.

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28 Henry David Thoreau, *On the Duty of Civil Disobedience*, 2004, <http://www.gutenberg.org/files/71/71-0.txt>.

29 “The Employment Situation-October 2017”, News Release, *Bureau of Labour Statistics*, Department of Labour, United States of America, November 3, 2017, [https://www.bls.gov/news.release/archivesempsit\\_11032017.pdf](https://www.bls.gov/news.release/archivesempsit_11032017.pdf)

30 All data compiled from diverse sources by the South Asia Terrorism Portal. See, “Government Employees in Indian States: Estimated 2017”, <http://satp.org/Datasheets.aspx?countries=india>

These considerations would appear to strengthen the logic of greater central intervention in both security and developmental administration in the States. That is, of course, till we look at the Centre's own capacities.

Central capabilities on the administrative front are, as if not more, dismal. For instance, the US Federal Government accounts for 867 employees per 100,000 population,<sup>31</sup> the Indian Union Government employs 257<sup>32</sup>. An overwhelming proportion of these employees are in functions and institutions that are not part of what could be regarded as 'core governance' responsibilities – running a range of 'public sector' enterprises at varying levels of inefficiency. Thus, the Indian Railways alone accounts for 41.33 per cent of the pool of Union Government employees, and if this proportion is deducted from the total strength, we are left with just 147.89 employees per 100,000 population.<sup>33</sup>

Crucially, as much as 93 per cent of all State and Central Government employees are in the Class III and Class IV categories, a bulk of which would contribute, at best, only marginally, to the administrative capabilities of the State. Further, technical, technological, process and management standards lag far behind the contemporary norms of modern governance in the better ordered countries of the world.

Nor, indeed, does the Centre bring decisive capabilities to the security sector. The total strength of all Central Paramilitary Forces, at 987, 497 on January 1, 2017, yields a troop to population ratio of 1:1,336, or 74.85/100,000.

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31 "The Employment Situation-October 2017", *op. cit.*

32 "Annual Report on Pay and Allowances of Central Government Civilian Employees (2016-17)", Pay Research Unit, Department Of Expenditure, Ministry Of Finance, Government of India, December, 2017, <https://doe.gov.in/sites/default/files/PayAllowance2016-17%28English%29.pdf>

33 *Ibid.*

Again, there can be no authoritative prescription regarding the effective operational ratio of counter-insurgent to insurgent Forces. This is not just a function of the strength of the insurgent groups, but also of the spread and population of the afflicted areas. While no comparisons are intended here, it is useful to recall that Jammu & Kashmir, with a current population of about 12.6 million, and an area of 101,387 square kilometers under Indian control, has stretched the Centre's Forces to the limit for nearly three decades. If we look at just the four worst afflicted States in the so called Red Corridor – Bihar, Chhattisgarh, Jharkhand and Odisha – their combined population is over 204 million, and total area is 464,775 square kilometers. The combined availability of Central Paramilitary Forces in all the Maoist affected States ranged between 70 and 90 battalions at various times during the peak of the Centre's 'massive and coordinated operations' in 2009-10, and is now in the range of about 110 battalions – that is, barely 28,000 to 44,000 personnel in actual deployment at various times. It must be abundantly clear that, even if there is significant augmentation of these Forces (and a few battalions of the Army are added on as well, as has been ill-advisedly demanded from time to time), this could hardly achieve the saturation of Force necessary for an effective 'clear, hold and develop' strategy to be implemented, and the abject failure of the 'massive and coordinated operations' of 2009-10 are a clear demonstration of this. It is evident, consequently, that the Centre has no 'magic weapon' to confront the existing and potential insurgent challenge in India.

Justice is an integral element of both security and administrative efficacy, and it is useful to look at one last index here. India has a current judge to population ratio of 1.97 to 100,000,<sup>34</sup> but this is calculated in the 2011 Census population;

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34 "India's judge-population ratio goes up marginally", *The Economic Times*, January 7, 2018, <https://economictimes.indiatimes.com/news/politics-and-nation/indias-judge-population-ratio-goes-up-marginally/articleshow/62400461.cms>.

and the actual ratio to current populations would be significantly lower. In 1987, the Law Commission, in its 120th Report,<sup>35</sup> had said that this ratio should be raised, at least, to 5. There are 10.2 judges per 100,000 population in the US; 11.5 in Sweden; 14.7 in China; 14.8 in Belgium; 24.3 in Germany; and 49.9 in Slovenia.

The unfortunate reality is that most state institutions in India, both at the Centre and in the States, operate at varying levels of dysfunction, and this has remained the case despite the fact that financial constraints have significantly eased over the decades as a result of a growing economy and ballooning tax revenues.

What difference, in these circumstances, would a change in the constitutional distribution of powers achieve? An infirm and dysfunctional Centre would override infirm and dysfunctional State administrations; that is all. Creating layers of meta-institutions – such as the NIA and the proposed NCTC – at the Centre, or expanding the Centre's constitutional jurisdiction over and above the existing 'architecture' of governance, can achieve nothing, as long as the fundamental issue of capacities and capabilities is not addressed. Former Home Secretary Madhav Godbole summarizes the crisis in the security sector, "...the record of premier central agencies such as the CBI (Central Bureau of Investigation) and the National Investigation Agency has been disappointing, regardless of the political dispensation in power. The police departments of the state governments are also in a shambles."<sup>36</sup> Worse, central

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35 "One Hundred Twentieth Report on Manpower Planning in Judiciary: A Blueprint", *Law Commission of India*, July 1987, p. 3, [http://lawcommissionofindia.nic.in/old\\_reports/rpt120.pdf](http://lawcommissionofindia.nic.in/old_reports/rpt120.pdf).

36 Madhav Godbole, "Foreword" in Vappala Balachandran, *Keeping India Safe: The Dilemma of Internal Security*, Harper Collins Publishers, India, 2017, p. xi.

institutions have failed abysmally to keep pace with emerging challenges, such as new and potential terrorist threats, including Weapons of Mass Destruction (WMD) terrorism, and the impending Tsunami of cyber crime and cyber-terrorism, for which response mechanisms remain rudimentary or non-existent.

An infirm and incoherent Centre, today, offers little advantage over the States. There is no necessary superiority in centralized command, Forces or operations – where central institutions lack the basic capacities and capabilities to exercise authority. On the other hand, some States have demonstrated startling successes against the most virulent insurgencies, with varying Central support, no doubt, but clearly within existing constitutional provisions and the disposition of powers between the Centre and the States under the formula of “aid to civil authority”. Punjab, Tripura and Andhra Pradesh are dramatic cases in point. Again, insurgencies have persisted in certain States, even after years of direct Central rule; others have failed resolution despite massive saturation of Central Forces. The sum of this experience demonstrates clearly that augmented Central powers offer no panacea to our internal security challenges, and will create nothing more than an illusion of control, rather than the substance of any effective operational efficiency.

### **Towards a System of Systems**

There are, of course, certain functions within the spectrum of internal security responses that will lend themselves particularly to centralization. The creation of a centralized national database on intelligence – envisaged under the Multi-Agency Centre (MAC) – is a case in point, though even here, its eventual effectiveness will depend substantially in its integration with information flows emanating from State

agencies through the proposed Crimes and Criminal Tracking Network and Systems (CCTNS). The biometric unique identity card project, Aadhaar, has the potential to add tremendously to our security capacities, as can the other major centralization project, NATGRID (National Intelligence Grid). Regrettably, most of these projects have stalled, while others have failed to attain their original scale and objectives. Crucially, these measures require no significant meddling with the existing constitutional distribution of powers, though each of them has raised issues of privacy and other civil rights.

Clearly, the present rot is as deep at the Centre as it is in many of the States. A restoration of vitality and efficiency within the structures of governance across the country is, consequently, the first and most urgent imperative; not a constant, poorly conceptualized, imitative meddling with the structures themselves. Further, infirmity, both at the Centre and in the States is, preponderantly, not the outcome of legislative defects, or of structural and 'architectural' vulnerabilities, but of the virtual 'withering away' of state capabilities over the past decades, under successive administrations that have been driven, at best, by misdirected zeal, populism and sloganeering, and, at worst, by sheer incompetence and venality.

Those who advocate tinkering with the constitutional distribution of powers in order to address the crisis of internal security, tend to speak as if all available remedies within the constitutional framework have been explored and exhausted, and the only option is to begin to rewrite the Constitution. What is needed, rather, is a revitalization of existing constitutional institutions and processes, to recover these from the degeneration and collapse into which they have fallen over the decades.

In terms of the priorities of necessary transformation, it is content that must be given precedence over form. It doesn't

matter if our responses are centralised or decentralised, if the executing agencies are infirm, under-manned, under-trained, ill-equipped and technologically obsolete. Issues of mandate and structure will become relevant only after the issue of capacity has been addressed.

The nation-state is a single but enormously complex system – and this is more the case for a country with the size and diversity of India. To this extent, a centralized authority is necessary – and already exists in the form of the Government of India. However, since national administration involves complex, multifarious and widely dispersed functions, these can only be addressed through delegation to a progressively decentralised structure, with clear mandate and accountability. No single agency or authority could effectively tackle all aspects of national security management across the length and breadth of the country without turning into a colossal bureaucratic nightmare.

It must be clear, moreover, that there is no ideal configuration or distribution of powers and functions that can produce optimal results. As already noted, the crisis is one of efficiency. Governance and administration in India, today, have failed to evolve any systems to maintain efficiency or impose accountability, and are currently operating against the imperatives of even the most rudimentary principles of modern management or administration. Vast resources are wasted where they produce little positive outcome. Initiatives and structures that could produce the best results are, at the same time, rejected or starved of resources. Even where leakages and inefficiencies have been well-documented, no correctives are applied. It has not mattered whether this has occurred in centrally administered projects and agencies or in State administered projects and agencies. Mere structural or Constitutional redistribution of powers, functions and

responsibility will achieve nothing unless issues of capacity, efficiency and accountability are addressed – in that order.

The system certainly calls for an overhaul. It is equally certain, however, that the necessary transformation cannot begin with the “framework”. A focus on capacities and processes within existing institutions would bring far more tangible benefits in the near and medium term, rather than the structural changes that are commonly and enthusiastically advocated.

A false dichotomy is sometimes proposed between a purportedly “strong and centralized framework”, on the one hand, and a “weak and fragmented framework”, on the other. These are not the real alternatives. National security is, of course, a national issue – but that does not necessarily imply that it is a ‘central’ issue. There is no reason to believe that the States are ‘anti-national’, or are incapable of tackling issues just because they have trans-State ramifications. This will, once again, bring up quality of governance issues. Where the potential for efficient cooperation between States exist, there is no constitutional obstacle to State Government agencies acting in concert across State boundaries. Where such cooperation does not exist, it is not clear how Central Government intervention can significantly alter the equation. If States fail to render effective cooperation to Central agencies, the only alternative is to statutorily or constitutionally override the authority of State Governments, or to give the Centre paramount powers on certain kinds of issues or in certain situations – e.g., “Federal Crimes” or “national crises” short of the breakdowns currently envisaged under the emergency provisions of the Constitution. But this is, again, fraught with problems. The Centre is as bereft of effective capacities as are the States. Worse, regimes at the Centre have, in the past, tended to abuse, for partisan political ends, even the very limited provisions and agencies that currently exist. You cannot propose solutions “in an ideal

world”; our systems have to take into account the political and administrative culture that prevails.

Where security emergencies abruptly manifest themselves, moreover, while there could be many alternative conceptions on the structure and pattern of response, there is no intrinsic defect in the present provisions for Central aid to bolster State capacities – through provision of additional Force, intelligence, institutional resources, and financial assistance for capacity building. It is only the extreme ineptitude, corruption, neglect and absence of accountability in State regimes, who fail to respond effectively, or to cooperate adequately with the Central and other States’ agencies, that result in rising crises.

Building a consensus across States on particular issues and, crucially, defining and progressively enforcing specific national standards on key security variables across the country, are elements, among others, of what can be done. It is significant, for instance, that the UMHA had, in 2009, exhorted all States to secure and maintain a Police-population ratio of at least 220 per 100,000, and had said that the Centre would provide necessary financial assistance to achieve this objective.<sup>37</sup> Similarly, a number of other quantifiable parameters could be defined and prescribed, even as Central agencies also evaluate and prescribe process and technology standards for various functions and equipment.

There is a significant failure of imagination in the manner in which these issues have been framed and discussed. The Centre and the States are not adversaries within the Indian Constitutional scheme. Moreover, any distribution of powers – including one in which responsibilities are increasingly skewed

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37 “Police System Neglected, Needs Urgent Reform: Chidambaram”, *SIFY News*, October 27, 2009, <http://www.sify.com/news/police-system-neglected-needs-urgent-reform-chidambaram-news-national-jk1s4bgehfc.html>

in favour of the Centre – will create some friction, even if we were to run the States through centrally appointed governors. Nevertheless, if we are to resolve our problems within the framework of the 'basic structure' of India's Constitution, we will have to deal with this friction with a measure of political and administrative sagacity. If that is lacking, you can do what you like with the distribution of powers, but the obstructive, disruptive and adversarial mindset will still end up undermining the effectiveness of responses.

It is useful to reiterate, moreover, that the Centre's performance in terms of its existing mandate has not been particularly encouraging. A close study of the condition of any Central agency will demonstrate that it is riddled with infirmities and deficits. Central agencies only look better in comparison to State agencies because they are often infinitely better resourced in terms of finance, training and equipment, and manpower. Indeed, the Centre has not been particularly efficient in fulfilling its own obligations and responsibilities towards the defence and security sectors. The abdication of responsibility and inefficiency of responses have varied only in degree between State and State, and between the States and the Centre.

Crucially, neither legislation nor structural tinkering will make the slightest difference until the endemic crisis of capacities is addressed. It is important, in this context, to ask ourselves whether existing legislation is being fully, or even sufficiently, implemented. Everyone loves to hate the 'draconian' and 'colonial' Indian Police Act of 1861 – but can it honestly be maintained that the Indian Police is being run strictly in accordance with this Act? Exceptionalism is now the rule in India, and the rule of law has collapsed. New Acts are only seen as opportunities for particular cabals to entrench their special interests in the established structure of power.

Our solution to every problem in the past has been to bring in new legislation and/or to create new institutions – and these initiatives have failed repeatedly, because no one is making an objective assessment of the infirmities of existing institutions, and attempting to address these, or to ensure that these are not replicated in the new provisions and organisations.

Theoretically, moreover, even if the capacities issue is addressed, centralization would still tend to fail in the very complex and vast Indian system, as well as the country's political and cultural environment. Increasingly, what we need is a well knit and integrated system of decentralised systems. Modern technologies have created an infinite potential for highly efficient integration within a systems approach. Unfortunately, Indian governance and administration have largely failed to take advantage of these, and have remained trapped in arid debates on 'centralization vs. fragmentation', or over architectural and legislative transformations. In the meanwhile, even the most rudimentary projects – the original Polnet, for instance, now reinvented as CCTNS, and the associated and proposed national Database on Crimes and Criminals – are yet to take off. Digitisation of the security structure and departments remains rudimentary. Security related data across India still remains dispersed and inaccessible to any authority beyond the local units responsible for the maintenance of records. Such a situation within the context of the 21st Century revolution in information technologies is not just intolerable, it is ludicrous for a country that sees itself as an 'emerging great power'.

Another essential aspect of the institutional structure not only of security administration, but of all aspects of modern governance, and an increasingly indispensable core of the larger intelligence and enforcement systems, is the necessity of creating permanent cadres of skilled specialists. The present systems, dominated by 'generalists' who are shuffled about at

random, even within specialized agencies, can only lead us into more and more spectacular failures. The sheer volume of background information, the quanta of experience and the grounding in strategy, tactics, and operational lore that are necessary even to make competent assessments of contemporary developments and current flows of intelligence, are simply too great to be absorbed by cadres who are moved about between unrelated responsibilities every few years. Indeed, the degrees of specialization necessary in virtually every discipline, today, make it impossible to command required levels of expertise and competence in any more than a couple of narrowly defined spheres of study or operation. It is impossible to continue to run Governments in general, and security and intelligence operations, in particular, through institutions and processes that militate against this basic reality of contemporary knowledge systems. Manpower profiles and skill management within Government, and the security and intelligence apparatus will have to undergo a comprehensive makeover, if they are to cope with the challenges of contemporary and future terrorism, disruption and crime. What is required, consequently, is an emphasis on processes, manpower profiles, training, leadership and crucially, technologies. Over time and in combination, these will generate greater efficiencies and necessary transformations in the system. Eventually, these transformations may demand architectural reinvention – but that is a long time into the future.

In sum, there is no inherent contradiction between the microcosm and the macrocosm – indeed, any such incongruity would necessarily impact adversely on the system as a whole and on its parts. The individual cannot be healthy if his organs and limbs are afflicted. And what are the organs and limbs in the absence of the individual? Integration is the key in any system of systems – and the country is a system of systems, whether it is recognized and administered as such, or not.

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