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DEVELOPMENT OF COUNTER-TERRORISM MEASURES: INDIA VIS-A-VIS

THE UNITED STATES

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Every nation-state in the world is facing a threat from terrorism. Due to the pan-global nature of the threat, one of the most viable options is putting up a united front to tackle the destructive forces. The unison demands putting their best foot forward, be it a developed or a developing country and the Indo-US cooperation is a manifestation of international efforts to combat terrorism.

India and the US have been termed as “natural allies”ⁱ as the founding principles of both the countries have been democracy, rule of law and pluralism. The joint-efforts can be traced to the setting up of Indo-US Counter Terrorism Joint Working Group in 2000 which has since led to arms sales, warfare exercises and sharing of intelligence. However, what needs to be looked into is whether both these countries that have come together to fight terrorism define it or look at it through similar eyes.

India and the US have nearly equal stringent legislations to deal with terrorism. The USA PATRIOT Act 2001ⁱⁱ and the Unlawful Activities (Prevention) Amendment Act, 2008ⁱⁱⁱ are similar in their structure: broad and accommodating, not making an attempt to define specific activities as substantive acts of terrorism. Instead, these statutes incorporate a vast array of activities, some of which are vague and remotely threaten the security or sovereignty of a nation, under the definition of “terrorism”. Application of “doctrine of literal interpretation” to both the statutes reveals that both the Acts define terrorism as a means to influence the policy of the government through coercive measures. It is an undeniable fact that any penal statute cannot completely adhere to the rule of law in



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practice, keeping in mind the basic fact that these statutes are supposed to act as a means of deterrence and being termed as a “terrorist” puts the alleged person in a more serious and lower plane than that of a “criminal”. Taking a look at the jurisprudential aspect of development of terrorism, even the resolutions^{iv} adopted by the international bodies like the United Nations (UN) suffer from lacunae in adopting a scientific approach to define the umbrella term “terrorism” with the definition is evolving with each changing decade. In codifying such a term to a statute, both the countries have violated human rights treaties they are signatories to.^v All the above circumstances are the factors that are clearly visible. Lifting the veil off the definitions reveals the fact that both the nation states have been victims of terrorism under completely opposite circumstances and hence the parameters used to measure the counter-terrorism methods need not be the same.

While the US has been maintaining its super-power status for decades, its definition of terrorism is a result of repeated political considerations that have become harsher since the 9/11 attacks. Compared with the post 9/11 legislations, the previous legislations were limited in their scope, providing adequate procedural safeguards to the designated terrorists. The present legislations provide minuscule safeguard standards like lack of notice to the individual whether he will be characterized as terrorist and what kind of behaviour is exactly prohibited for him. Thus, the 9/11 attacks became the prime factor for shaping the US legislations in their present form.

On the other hand, India as a territory has faced colonialism for a considerably longer period of time than the US, partition and even emergency and the government continues to face ideological opposition from the political parties through measures like hartals and bandhs; all the factors introducing new hindrances in development of “what is terrorism” and also the domestic policies to confront the problem.

Today, both the countries are facing threats from Islamist extremist organisation that are intolerant towards Christian-Judaism-Hinduism sects and even towards other sects of Islam; while India has a large number of Muslims as citizens, the Muslim population in the US is comparatively



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low. Thus, while the US sees the threat as an external problem, India cannot take the risk of doing so. This is not to say that the territorial threat to India has its roots from within its domestic population. The policies formulated by the legislature are largely the product of its demographics which is far more diverse than that of the Western Superpower. Any counter-terrorism policy has to consider the pluricultural fabric of Indian society. Further, any policy change can also have political repercussions. Unlike US, where trans-border terrorism is the major problem, India is struggling with in-house civil strife from the Naxalites (1/5th of the country is suffering from Maoist attacks) and religious extremist groups. The geographical location of India also contributes to the cross-border terrorism from the neighbourhood- Pakistan, Bangladesh and Nepal.

Looking at the external factors that influence the development of counter-terrorism measures, while the US can exercise its upper-hand in negotiating with the middle-east Islamic nations, India is dependent on those nations for its oil imports and employment opportunities and thus maintaining its increasing economic integrity. While the US can exercise extreme measures such as drone strikes. India cannot afford to carry out such measures considering the neutral status that it has maintained since the Cold War ended. Also, adoption of any drastic measures can disturb the faith of its domestic Muslim population.

It is evident that both the countries should look at terrorism from different perspectives despite carrying out Joint Counter-Terrorism efforts which, till now, have succeeded to a certain extent. From a completely Indian perspective, one can argue that the legislations of National Investigation Act, 2008 and the amendments to the Unlawful Activities (Prevention) Act, 2008 were brought at a time when the government was in a hurry to press the Civil Nuclear Deal with the US. Also considering the 26/11 attacks in Mumbai, the passing of the legislation had also served to emphasize that the government is totally intolerant towards the menace. Despite the ambivalent stand of the US on Kashmir, the Indian efforts to extend cooperation towards the US may be mistaken as a submission to the imperialist attitudes of the superpower. But, this alleged weakness can be a game changer for India as long as it is able to keep the coercive forces at bay with western help.



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End Notes

ⁱ 'Joint Statement Between the United States and the Republic of India', Washington, DC, November 9, 2001, at <http://www.state.gov/p/sca/rls/rm/6057.html>, Accessed on July 1st, 2015)

ⁱⁱ Uniting and Strengthening America by Providing Appropriate Tools Required intercepting and obstructing Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended in scattered sections of U.S.C.). Sec 802 of the USA PATRIOT Act, 2001 defines "domestic terrorism" as A person engages in domestic terrorism if they do an act ""dangerous to human life"" that is a violation of the criminal laws of a state or the United States, if the act appears to be intended to: (i) intimidate or coerce a civilian population; (ii) influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping, occur primarily within the territorial jurisdiction of the United States

ⁱⁱⁱ The specific definition (Sec 15, UAPA, 2008) is as follows: 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 in any foreign country, does any act by using [weapons as described in the POTA definition], 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 [other damage to infrastructure and defense], or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

^{iv} Resolution 1373 (S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001)) and Resolution 1566 (U.N. Doc. S/RES/1566 (Oct. 8, 2004))

^v The Terrorist And Disruptive Activities (Prevention) Act, 1987 and Prevention Of Terrorism Act, 2002 have been violative of certain principles such as natural justice that includes scope of fair hearing and prohibits torture as well as inhumane treatment enunciated in Universal Declaration of Human Rights and International Covenant on Civil and Political Rights