Policing terrorism in India

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Abstract Policing terrorism in India is fraught with difficulty. India is a large, heterogeneous democracy that is surrounded by countries experiencing their own intense problems with terrorism. The legal structure, inherited from the colonial past, is struggling to cope with the demands placed upon it by a country of 1.1 billion. India is a federation and this also complicates the structures needed for counter-terrorism. Despite the democratic framework, policing in India is largely an inheritance from the non-democratic colonial past—a past that paid scant regard to the doctrine of separation of powers. Given these problems, India's performance in policing terrorism has been mixed. We should not look for any early resolution of the problem of terrorism, either through preventive investigation or political amelioration of the issues that contribute to terrorism. But for all of that, India has done well to adhere to its basic democratic norms in the face of what is, by Western standards, a major terrorism problem.

Introduction

According to the US National Counterterrorism Center (NCTC), between January 2004 and July 2007, India suffered 3,900 dead from terrorist attacks, 9,076 wounded and 2,144 taken hostage [1]. This was the second highest death rate from terrorism over the period after Iraq.¹ Of course, India's population of 1.1 billion places the nation at a lower level of loss on a *per capita* basis than the raw figures suggest. And many of these casualties fall into the definitional grey area that lurks between the terms 'terrorism' and 'insurgency'. Nonetheless, the data are chilling.

¹ Iraq had a total of 97,588 victims over the same period [2].

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At least some of these attacks were designed to destroy the *rapprochement* between India and Pakistan in evidence since late 2003. Such an outcome would force Pakistan to re-engage in the violent '*jihad*' in Indian Kashmir and undermine Islamabad's support for the so-called wider international 'war on terrorism'. Given these strategic goals and the high level of destruction caused by the attacks, India's capacity to deal with terrorism through the range of options available to it, including the vital element of policing, is critical.

In other cases, such as the so-called 'red corridor' of Maoist insurgency and the separatist movements in India's northeast, the goals are mostly secular. The various activists in these locations tend to slide up and down the scale between terrorism and insurgency according to strategic requirements. In these places the definitional issues between terrorism and insurgency are far more blurred than in the religiously motivated attacks in major Indian cities.

In this article, we will deal with terrorism in the remainder of India as practiced by violent *jihadi* groups like Laksha-e-Toiba (LeT) and Jaish-e-Mohammed (JeM). Although of great importance to India, the separatist movements in Kashmir and the northeast and the Maoist insurgency in the east will not be covered due to the need to keep the discussion within manageable proportions.

To understand the role of policing in dealing with violent *jihadi* terrorism in India, it is necessary to consider the nature of this type of terrorism, the special conditions within which India's massive police force of 1.4 million is required to operate, and the way in which the police mesh with the other paramilitary and security services involved in counter-terrorism.

The nature of terrorism in India

Violent *jihadi* terrorism in India is conducted in a highly strategic context, both in terms of the viability of the Indian nation and the international 'war on terrorism'. For example, over the years there has been heavy targeting of Mumbai, the commercial and industrial hub of India. Other targets include the vibrant IT centres of Bangalore and Hyderabad, as well as the capital city, New Delhi. Additionally, religious sites, including the holiest of Indian cities Varanasi, have also been hit, as has the Samjhauta Express train linking India and Pakistan.

This apparent strategic targeting appears to be aimed either at damaging India's economic renaissance or stirring up religious hatred between Hindus and Muslims, and thus undermining the viability of India's secular polity and derailing the India–Pakistan *rapprochement*. This *rapprochement* has disadvantaged the militants fighting in Kashmir because it has resulted in a lower level of support from the Pakistani authorities. This is an important reason why the militants would like to see the *rapprochement* destroyed.

Thus the stakes are extremely high for both countries. Indeed, they extend beyond even those mentioned above and touch the so-called 'war on terrorism' itself. If India and Pakistan could be forced into hostilities, as nearly occurred following the attacks on the Indian Parliament in December 2001, it would have a profound effect on the capacity of Pakistan to host the US in its activities in Afghanistan and would greatly complicate the troubled attempts to ensure peace and stability in that vitally important strategic location.

To a significant extent, terrorist attacks in India have been sponsored and supported from across the border in Pakistan and, increasingly, Bangladesh. This support includes overall planning by perpetrator groups like LeT and JeM, provision of explosives and arms, and training of cadres, especially in the camps of Pakistani Kashmir.

Yet closer examination of terrorist attacks in India also indicates a significant ‘home grown’ component, involving a small number of India’s 140 million Muslims. In many attacks, Indian Muslims, including members of the militant and banned Student’s Islamic Movement of India (SIMI), participate alongside members of extremist groups infiltrated, or otherwise supported, from Pakistan or Bangladesh. In some cases perpetrators are recruited within India and amongst Indian guest workers in the Gulf (where LeT has a significant presence).

These home-grown elements appear to be motivated by localised grievances of two closely related kinds. First, there is the poor socio-economic status (SES) of Muslims in general. This was recently chronicled in considerable detail by an official Government of India Report.² This report found that Muslims were worse off than the general population and even worse off than the Dalits (formerly known as ‘untouchables’). This relative position, moreover, was found to have worsened since independence in 1947. This is partly due to the fact that while the Indian Constitution provides special consideration for socially backward social groups like Dalits, as a secular country no provision is made in India for minority religions such as Islam. The matter is further complicated by the fact that since Islam came to India in the 12th century, those tending to convert were often from the lower Hindu castes. Many have remained in low-grade occupations representative of such castes, but have been unable to access the benefits that their Hindu brethren in those occupations have enjoyed.

The second problem encountered by Indian Muslims has been the fact that they have, to some extent, been used as a ‘political football’ by those forces on the so-called ‘Hindu Right’. Elements within the Hindu Right have tended to ramp up Hindu–Muslim tension in order to gain political traction against the secular Congress party and its allies. For example, the 1993 Mumbai serial bombings (which resulted in 260 dead and several thousand wounded) were indirectly caused by the destruction of the mosque at Ayodhya in 1992 and the widespread rioting that followed—rioting in which many more Muslims died than Hindus. The destruction of the Ayodhya mosque had been caused by a movement generated by the Bharatiya Janata party (BJP), which claimed that the mosque was constructed on the site of the birthplace of the Hindu god Ram. Similarly, a number of the terrorist attacks in Mumbai by violent *jihadis* that followed the anti-Muslim rioting in Gujarat in 2002 appear to have been directed against the Gujarati community of Mumbai, seemingly in revenge for the Gujarat riots.³

Increasingly, and crucially for the argument of this article, this sense of Muslim grievance is also driven by the perception amongst some Muslims that their community is unfairly treated by the police, courts and draconian counter-terrorism

² PM’s High Level Committee, Cabinet Secretariat, Government of India, Social, Economic and Educational Status of the Muslim Community of India [3].

³ See Gordon, [4]. For the SES status of Muslims, see the recent report of the Sachar Committee, [3]

legislation. This perception was underwritten by the failure of local courts in Gujarat following the 2002 riots to make any convictions against perpetrators, necessitating the eventual intervention of federal authorities.

Many Indian official and non-official commentators, however, dispute the theory of home-grown inspiration and assert that the problem is a cross-border one largely generated by Pakistani officials, especially the Inter-Services Intelligence Department (ISI) [5]. Indian officials commonly express the view that a group like the LeT is “almost a fully-owned subsidiary of the ISI.” [6]

The debate over the causes of violent *jihadi* terrorism in India is not just academic. Depending on one’s view of whether the origins are partly domestic, one might reach differing conclusions as to the solution. A domestic interpretation would, for example, dictate substantial efforts to address the grievances of India’s Muslims, including those relating to the poor SES status of Muslims and the inadequacies and injustices of policing and law enforcement.

Problems with the crime–terror nexus

More than most Western countries, India’s experience has been one of close connection between major criminality and terrorism. This connection takes two forms. First, there are several instances in which important criminals from minority groups have actually engaged in terrorist acts themselves. Most notably, Mumbai-based gangster Dawood Ibrahim, along with a number of Muslim members of his gang (which had hitherto been syncretic in character) perpetrated the Mumbai serial bombings of 1993. Another member of Ibrahim’s gang, Aftab Ansari, was subsequently convicted of perpetrating the Calcutta attacks on the US Centre in 2003—an attack which was funded by kidnapping wealthy Indians.

A second way in which criminality and terrorism are intertwined in India is through the services provided by criminals for terrorists. These consist of movement of funds via the informal banking system, known as *hawala*, extensive trafficking in firearms and explosives via the networks of smuggling routes that criss-cross South Asia and provision of what might be called ‘corrupt services’. An example of the latter was the ability of the Ibrahim gang to smuggle explosives and weapons into Mumbai for the 1993 attacks by corrupting members of the customs and police services. Several members of these services have now been convicted as a result of their support for the attacks.

These terrorism–crime links in India are highly significant and should not be understated. From the point of view of this article, we note that criminality in India is closely tied with police corruption and that until criminality and corruption can be reduced, it will be very difficult to cut terrorism’s roots.

The structure of counter-terrorism in India

The performance of India’s counter-terrorism authorities is relevant to overall efforts to eliminate terrorism in two ways. First, the capacity to investigate and pre-empt terrorism is important in a preventive sense. But equally important is the way in

which authorities treat minority Muslim communities, which has a significant bearing on individual decisions within those communities to engage in terrorism. Human rights abuses by police and other security agencies often result in a downward spiral of violence and revenge. At the front line of the counter-terrorism effort is the 1.4 million strong police service.

The police

Because India is a federation, the jurisdictional arrangements in the policing of counter-terrorism are complex, just as they are in Australia and the United States. Under the constitution, the mainstream police services are under the jurisdiction of the states and Union territories (equivalent to the Australia Capital Territory and the District of Columbia).

One important difference is that while Indian police have an officer class selected from graduates on a similar basis to the military, Australian and US police officers are promoted through the ranks. Leading this officer class are the members of the elite Indian Police Service (IPS). IPS cadre are selected through highly competitive examinations and trained centrally. They are then placed with various central government policing agencies such as the Central Reserve Police Force (CRPF) or out in the Indian states on the same basis as the elite Indian Administrative Service (IAS). Although initially responsible to the respective state governments, IPS members cannot in theory be censured or administratively disadvantaged without reference to the central government.

The IPS system is intended to ensure a separation of powers at the senior-most levels, to encourage coordination between the various state and central police services, and to provide sound leadership for the police forces. But the system has the downside of causing a 'disconnect' between the officer class and lower level police.

Moreover, at street level, there is enormous scope for petty corruption and considerable scope for brutality to flourish in almost all aspects of policing. This is exacerbated by the fact that 90% of Indian police consist of constables or senior constables—generally poorly educated men and women who have virtually no hope of rising through the ranks into the officer class.

The central government's influence over the IPS gives it at least some leverage over state-level policing. This leverage is also enhanced by the fact that the legal framework governing the police and wider system consists of Acts of the Union government, even though policing is a state-level function. As far as the Central Police Act is concerned, its role is to give guidance to the states, which must then enact their own legislation in accordance with the central Act.⁴

Despite these measures, the reality of policing in India is that state governments exercise a significant influence over law enforcement, which is inclusive of the police officer class. For example, in two violent incidents—the aforementioned Gujarat riots of 2002 and the recent riots in Nandigram in West Bengal—state governments exercised influence over police either actively to support rioters in the

⁴ For a more detailed discussion see, [7]

case of Gujarat, or stood by while rioters attacked in West Bengal. In Nandigram, the state government ordered the CRPF away from the area and central intervention thus proved ineffective [8].

In terms of the more general picture of policing in India, five factors ensure that the Westminster style of separation of powers is honoured more in breach than in practice.

First, India's sprawling polity means that New Delhi is distant from events on the ground in far-flung provinces. The realities of day-to-day governance dictate that state governments generally hold sway in law and order matters. India has approximately 600,000 inhabited villages and it is impossible to provide comprehensive police protection or to monitor the power realities of policing at that level. In most of these villages, the police presence is little better than the locally employed *chowkidar* (watchman). Even in many cities, with their vast slums, the police presence is either distant or degraded.

Second, India has a long history of using police in a repressive role dating well back into the colonial era. Indeed, the current Police Act (now fortunately in the process of reform) actually dates back to 1861 and the years immediately following the Indian Mutiny (or First War of Independence). It was originally based closely on another repressive instrument, the Irish Police Act. Although the Act has been subject to multiple amendments designed to keep it up-to-date, the colonial philosophy is still at the foundation of Indian policing. Basically, the Act does not support separation of powers in the way that would be understood in other Westminster-based legal structures.

Third, under the British, a major role of the police was political intelligence gathering. Political intelligence was gathered and consolidated at provincial and central levels under the auspices of the Home Department on a daily basis. Today, the 'special branch' role is still very evident, even though in most Western democracies such roles are considered dangerously political for the police. This pervasive political intelligence role opens up the possibility of police being misused to support the incumbent government.

Fourth, as a direct reflection of the British need to maintain public order, the Indian police services are still divided into an investigatory role and an armed constabulary role (the Provincial Armed Constabulary, or PAC). These units are structurally highly militarised and constitute about half of the police. In this capacity, they are often required to fire on the populace and such killings are still surprisingly commonplace throughout India. This is hardly conducive to best-practice community policing.

Fifth, also reflecting this colonial role in maintaining civil order, Indian policing is closely linked with use of the military and paramilitary in maintenance of public order in a way that would appear alien to Australians. Central paramilitary forces are increasingly called in to assist states struggling with public order issues. They have been interposed in this way in order to protect the military from over exposure and consequent possible politicisation. The most prominent of these central groups is the Rapid Response Force (RRF). This force was established so that it could be dispatched quickly to states unable to maintain civil order. The 165,000 strong CRPF is also designed for longer-term assistance to states suffering law and order problems.

Essentially, policing in India is under-resourced and morale is low. Corruption is endemic. Manipulation by the incumbent political party is the norm. The relationship of police to the public is often one of power and misuse of power rather than of ‘community policing’ as understood in the West. Legislation to protect human rights is not especially strong and is often ignored. Poorly served by technology, the strong points of Indian policing are the at-times excellent leadership, the massive manpower reserve and the possibility this provides for street-level surveillance, undercover operations and use of informers. As against this, however, the enormous and socially complex population adds to the difficulties of policing in India. Indeed, despite the large number of police, India’s ratio of police to people is only 122 per 100,000, well below ratios enjoyed in the West and the UN recommended ratio of 222/100,000 [9].

Police reform

The Police Act of 1861 is currently undergoing a much-needed process of reform. So far, the Police Act Development Committee (PADC) has provided a set of recommendations to guide the reform process and produced a model police act. At the heart of these recommendations are the following suggestions: enhancement of the independence of police from the Executive; abolition of the constabulary; and the development of a raised initial rank structure, inclusive of a three-year intensive training program at college level. This last measure may prove very resource intensive, but is also necessary to improve the overall quality of policing, particularly community and street level policing.⁵ Obviously, a far-reaching reform process of this nature would take many years to flow through the system, given the large number of constables already in place under the old system. Moreover, although the recommendations were suggested in 1996, they were still not implemented by 2006. The main reason for the delay was concern on the part of the state authorities that they would lose their influence over police. In 2006, the Supreme Court ordered that the reforms be undertaken, and the process is now likely to commence.

Additionally, there are a number of promising ‘community policing’ initiatives being introduced throughout the country. These include a slum policing project in Mumbai and a major reform process in Bihar—significant in that Bihar is normally considered particularly benighted. There are also a number of ambitious attempts to speed up the creaking judicial process. Again, Bihar has been at the forefront of these initiatives.

The intelligence agencies

If the Police Act of 1861 fails to provide adequate accountability, the intelligence services suffer from the fact that they are not governed by any legislation. This gap

⁵ For a copy of the Model Police Act 2006, see, [10]

means they remain unsupervised by the parliament. The relevant agencies in the counter-terrorism mix are as follows:

- The Central Bureau of Investigation (CBI) was initially an investigatory agency designed to fight corruption within federal agencies. Under the constitution, policing is a subject reserved for the states and the CBI has only a limited role. However, the rail system is a federally reserved subject and this gives the centre powers to intervene in the investigation of some crimes, such as terrorist attacks on or against the railways. Equally, terrorist attacks involving other federal powers or properties can also be investigated. Moreover, the CBI can be granted power to assist in investigations on request from states. This is frequently forthcoming in major cases where the state is experiencing difficulty.
- The Intelligence Bureau (IB) is India's domestic intelligence agency equivalent to MI5 in the UK and the Australian Security Intelligence Organisation in Australia. It also fulfils some of the duties of the FBI in the US, but without that agency's executive responsibilities. It is a vast organization with headquarters in New Delhi and branches in most major cities. Along with the Research and Analysis Wing (RAW) (see below), it is rumoured to have had assistance from Mossad in the 1990s to set up its information system, mainly in the context of the insurgency in Kashmir. It is staffed mainly by serving or ex-police officers from the centre and states, but is said by Sahni to have lost out recently due to lack of parity and promotion possibilities. Despite the sprawling nature of the IB, Sahni has attacked it as 'understaffed, under-equipped and ineffective'. Sahni further claims that the IB has made little progress in its designated task of setting up a national terrorism database [9].
- The RAW (of the Cabinet office) (or R and AW) is India's external intelligence agency equivalent to Military Intelligence-6 (MI6) in the UK or The Australian Secret Intelligence Service (ASIS) in Australia. However, unlike those agencies, but like the CIA, it has an operational as well as an intelligence capability. The most notable of its operations was the destabilisation it conducted in then-East Pakistan in the run-up to Bangladesh's war of independence in 1971. Like the IB, it is a massive organization whose ranks are further swollen by the fact that it hosts India's electronic intelligence and SIGINT agencies.

Coordination and inter-agency linkages

Counter-terrorism in India suffers from the usual difficulties of coordinating a sprawling, federal system. Added to this, the system is adversely affected by India's well-known, labyrinthine red tape. Given these restraints, there is ample scope for 'turfism' and general failure to share intelligence between agencies.

The IB recently set up two 'fusion centres' similar in structure to the CIA's Counterterrorism Centre and the National Threat Assessment Centre (NTAC) hosted by ASIO in Australia. The IB centres are the Multi Agency Centre (MAC) and the Joint Task Force on Intelligence (JTFI). But according to Sahni, to date these arrangements have achieved little traction in the battle with terrorism [9]. The Indian

Ministry of External Affairs (MEA) has also established a counter-terrorism coordination centre. And the Security Committee of India's Cabinet receives intelligence and fulfils a high-level coordination role.

External cooperation

Under India's federal structure, responsibility for external cooperation rests with the central authorities. The Interpol National Central Bureau is located with the CBI. International security intelligence cooperation occurs on an agency-to-agency basis—for example between MI5 and the IB. External intelligence agencies such as MI6 and the RAW also cooperate on a similar basis. Although these sets of arrangements would appear routine, the common experience with India has been that cooperation is not especially smooth or easy. Those seeking quick outcomes have often become mired in red tape and stymied by tit-for-tat requests.

But an even more serious issue relates to Pakistan. A considerable amount of support for violent *jihadist* activity in India emanates from Pakistan, and to a lesser extent, Bangladesh. India has persistently demanded that Pakistani authorities extradite 22 leading terrorists, who New Delhi believes are currently residing in Pakistan. The most infamous terrorist believed to be hiding in Pakistan is Dawood Ibrahim, who is also recognised as a terrorist by Pakistan's ally, the United States.

In light of the distinct cooling in Indo-Pakistani relations that followed the July 2006 Mumbai bombings (which India claimed were supported by Pakistan), the two sides attempted to improve the situation by sharing information and intelligence on terrorism. Despite two meetings, this attempt has not yet proven successful. This is not surprising given the talks are being conducted under the leadership of the intelligence agencies rather than police. The agencies share a history of deep mutual suspicion, whereas police are often able to get along as part of an 'international brotherhood' of policing.

The legal framework

India's courts operate according to the Westminster, or adversarial, system. But they are hopelessly clogged with cases and delays of ten years or more can be experienced before cases are heard. The 100 or so cases associated with the Mumbai terrorist attacks of 1993 have only just been heard, and these would have been accorded priority. These delays seriously undermine the counter-terrorism effort, both in terms of damaging the morale of police and civilians alike and undermining the rule of law by encouraging corruption and incompetence in the conduct of trials. Given these excessive delays, recent years have witnessed a growing problem of 'lynch law', especially in outlying provinces and regions.

Counter-terrorism legislation

Between 1985 and 1995, the Terrorism and Disruptive Activities Act (TADA) was the major piece of counter-terrorism legislation. TADA was widely abused. It

contained a very loose definition of terrorism, which allowed state and central governments to undertake mass arrests ranging from trade unionists to agitating Dalits (formerly known as ‘Untouchables’). According to Human Rights Watch, less than 1% of TADA arrestees were convicted, despite the fact that the Act enabled the authorities to hold detainees without trial for months [11]. In 2002, the Prevention of Terrorism Act (POTA) was introduced to replace TADA. POTA allowed detainment without charge for 180 days. Special POTA courts were established to try those arrested under the Act. These courts worked under less stringent rules of evidence than the normal Indian courts, including the provision that a confession constituted an admission of guilt. In part because torture was sometimes used and in part because the usual rules of evidence were relaxed, POTA courts made some unfortunate decisions. For example, a Delhi academic of Kashmiri origin was sentenced to death for allegedly assisting the attack on the Indian Parliament in December 2002. Subsequently, the Indian Supreme Court acquitted him. As with TADA, POTA was widely abused by state governments seeking to harass political opponents.⁶ The Act therefore became unpopular, especially among minority communities. It was repealed by the Singh Government in 2004, but has been retained in a number of states. It was effectively replaced by an upgraded Act of earlier origin, the Unlawful Activities Prevention Act (UAPA). Although somewhat better than TADA and POTA, UAPA itself still has problems. According to Amnesty International, elements of the superseded POTA have been incorporated into UAPA—such as an inadequate definition of ‘terrorism’—that raise the possibility of infringement of human rights and abuse [12]. Worse still, the National Security Act (NSA) enables governments to hold those declared to be a national security threat in preventive detention for up to a year. This act is applicable in particularly troubled regions such as Kashmir.

Assessment

Any assessment of preventive activity requires analysis at two levels: the efforts by governments to address perceived grievances of those engaged in terrorist acts, and the capacity of the predictive and intelligence effort to investigate, interdict and dismantle terrorist organisations.

The issue of the low SES status of Muslims is especially important, but is beyond the scope of this article. Suffice to say, a major factor in addressing some of the SES issues of the Muslim community would be a decision to grant Muslims special status under the constitution similar to that enjoyed by Dalits and other backward castes and tribes. Given that Islam in India is a religion rather than a social state, that issue has become mired in political controversy.

The issue of human rights is, however, more immediately applicable. As discussed above, adherence to best practice human rights norms is an important

⁶ For example the leader of the opposition of Tamil Nadu was arrested under POTA for advocacy on behalf of the LTTE.

part of counter-terrorism in the sense that often times, abuse leads quickly to a downward spiral of revenge-seeking behaviour on both sides.

Human rights issues and counter-terrorism

Muslim grievances have also increased, largely due to the poor record of police and the legal system in maintaining the human rights of minority communities.

Endemic police corruption, bias in police numbers in favour of Hindus, lack of separation of powers, a grossly over-burdened legal system and draconian counter-terrorism legislation have all contributed to a perception in minority communities that they are seriously disadvantaged by policing in India.

The picture is also complicated by historical issues relating to what Indians refer to as ‘communalism’—meaning tension between different religious groups, particularly the Hindu majority, who constitute 83% of the population, and Muslims, who constitute 13.5% of the population.⁷ Police have traditionally played a somewhat negative role in relationship to communal unrest.

One serious problem has been the bias of the police personnel numbers in favour of Hindus and against Muslims. For example, in Rajasthan, which is 9% Muslim, only 1.26% of IPS members are Muslim and only 3.55% of constables are Muslim [13]. This is broadly typical of the situation throughout the country (with the exception of Kashmir).

In managing the communal rioting that periodically erupts in India, in some cases the police appear biased in favour of Hindus. This occurred in the aforementioned case of the 2002 Gujarat riots. As the minority community, Muslims have consistently come off second best in communal unrest. It is estimated that since independence, two-thirds of all lives and property lost have been Muslim [14]. Paul Brass asserts that it is not so much police themselves who are biased, but rather that they operate under the direction of political masters who foment riots for their own political ends [15]. Regardless, the Muslim community is embittered and provoked into further terrorism by the behaviour of the police.

As one would expect given the problems with policing described above, basic policing and human rights norms are often violated under the pressure of counter-terrorism needs and in light of some of the more draconian legislation. Too frequently, suspects have been rounded up and detained over lengthy periods without being charged. Sometimes these situations are accompanied by extensive police leaks or reports that appear to establish the ‘guilt’ of the person even before a trial has been conducted. For example, *The Times of India* wrote: ‘Police sources told the *Times of India* that several suspects too [sic] have been rounded up in connection with the blast [in Hyderabad] and that their involvement in the act would be established shortly’ [16]. Following the Mumbai train blasts of July 2006 (in which 209 people died), 300 Muslims were arbitrarily detained and questioned, generating considerable fear and bitterness within the Muslim community [17].

⁷ The balance is made up of Christians, Sikhs, Buddhists, Jains and Parsis.

Suspects are frequently administered so-called ‘narco-analysis’, that is, interrogation under the influence of sodium pentathol.⁸ It is unclear whether such techniques are effective or whether they simply cause the subject to tell police what they want to hear. According to an editorial in the *Indian Journal of Medical Ethics*,

The police in India have also started violating norms by airing videotaped statements made by the accused person under narco-analysis. This is a way of masking the police’s inefficiency and asserting that if the courts fail to accept the statement as evidence, the judiciary is responsible for not providing justice [18].

Torture itself is relatively widespread. The most horrendous example of torture occurred when 33 ‘undertrials’ were blinded with acid by police in Bhagalpur, Bihar in 1980. Since then, cases of police using torture have surfaced with depressing regularity. Recently in Hyderabad, the Andhra Pradesh Minorities Commission provided details of 20 Muslims who had allegedly been tortured whilst in police custody [19]. According to their own report, Kashmir police have presided over 332 deaths in custody during the Islamic insurgency and furthermore, 111 have disappeared.⁹ It is highly probable that the actual figures are much higher.

Investigation and intelligence

There is a strong correlation between investigative capacity and prevention. Unless terrorist attacks are successfully investigated, terrorist cells will be free to continue their line of attack. The best example of this relationship is the 2002 Bali bombings investigations. The fact that the investigations led to widespread arrests, and that these arrests provided intelligence for further arrests, was one of the most significant factors in the eventual serious erosion of Jemaah Islamiyah’s terrorism capability.

Indian security authorities have had a mixed performance in investigating terrorism. There have been some notable successes, such as the widespread arrests and subsequent prosecutions of those involved in the 1993 Mumbai bombings and the 1998 bombings in Tamil Nadu, to name but a few of many successfully prosecuted cases.

But in recent years, the record appears to be deteriorating. As Sahni claims, perhaps this is due to the increasing propensity of terrorists to work through cut-off cells directed from Pakistan and Bangladesh, which prevents arrest of the senior planners [9]. As well, there are the manifold failures in policing and intelligence, some detailed above in this paper.

In a number of cases, such as the bombing of a mosque in Rajasthan and the attack on the Samjhauta express train, false arrests have been made and no satisfactory long-term outcomes have been achieved.¹⁰ Although a number of people

⁸ This technique appears to require the prior consent of a magistrate.

⁹ See [20]

¹⁰ For the Rajasthan bombing see [21]. The bombings of the Samjhauta express killed 68. So far, those who allegedly sold the suitcases containing the bombs to the bombers have been arrested but at time of writing there have been no follow-up arrests.

have been taken into custody for questioning, and police have made a number of unsubstantiated assertions about allegedly guilty parties, no meaningful arrests have so far followed the two recent bombings in Hyderabad. Notably, 11 arrestees for the major attacks in Mumbai of 2003 were subsequently acquitted [22].

The other area of prevention of relevance for this paper relates to the capacity of the authorities to identify and interdict potential terrorist activity through use of intelligence. In this regard, there have been some notable successes. These include the seizure of a large amount (30 kg) of the explosive RDX at Aurangabad in Maharashtra (intended to destroy major infrastructure in Gujarat), the arrest of alleged Lashkar-e-Toiba operatives in New Delhi, prevention of serious attacks on leading politicians in Gujarat and reported identification of terrorist cells in Hyderabad.¹¹ These are but a handful of examples amongst hundreds of arrests throughout India of those allegedly intent on committing acts of terrorism.

Also, it must be noted for India, as for other jurisdictions, it is often impossible for security authorities to convey the extent to which they have actually prevented terrorist attacks because of the requirement to operate in a secret domain that precludes according publicity to every attack prevented.

Conclusion

Policing terrorism in India is problematic and the country continues to suffer a depressingly high number of attacks resulting in loss of life and damage to property, as well as frequent infringements of human rights, which in turn feed into further terrorism. But these problems need to be kept in perspective. Despite India's burgeoning economy, the country still has widespread areas of poverty, substantial social problems, minimal provision of health and education services, and enormous developmental demands on the exchequer, not to mention a highly heterogeneous population of 1.1 billion. The environment is not conducive to fighting terrorism, especially since terrorist organisations have been able to enjoy the benefits of safe-havens in neighbouring countries, such as Pakistan. In these circumstances, the miracle is that India has clung to a legal system that strives for fairness and justice, however inadequate that system is as a whole.

Moreover, at long last, the country is in the process of reforming the legal system and the Police Act. Reform will take many years and will likely remain incomplete. The challenges are just too great to be dealt with in any complete or coherent fashion.

The most difficult problem of all will be to deal with the grievances of the Muslim and other minority communities and meet their rising aspirations. This will require major re-allocation of resources and sensitive political guidance so as not to exacerbate the problem of extremism among some of the Hindu population. Muslims will consider a fairer system of policing to lie at the heart of the process. But they will also be looking to substantial improvement in their economic position in the Indian Union—a subject outside the scope of this article.

¹¹ Sahni claims that authorities in Hyderabad successfully broke up six terrorist cells [9].

Given all of these caveats, we should not anticipate any early solution to India's counter-terrorism problems. Nor should we lose sight of the fact that India has resolutely clung to a basic legal framework that will ultimately position the country to provide a fairer and more effective policing and counter-terrorism regime.

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