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## National SECURITY Under Legal Regime with Criminal and Constitutional Approach: A critical study.

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### Abstract

*Protecting national security means protecting citizens of a country, territories, wealth, properties, ideologies and institutions against threats that may emerge from evolving geopolitical circumstances, evolving ties between nations, groups, races, religions, advancing technology and shifting ideologies. India's national security has new threats and new aspects each year with the predominant dynamic geopolitical scenario. The strategic, geoeconomic and changing global dynamics in the Indian protection canvas must be taken into account. India's main consolidated position in the North-eastern region, rising potential of aggressive neighbors, internal and global religious radicalisation and the increasingly increasing role of high technology among others. The interplay of the economic and technological concerns in the process of globalization, and the proliferation of low cost wars, through terror groups and also religious and ethnic conflicts, in and around the borders further enlarged the scope of what are called the global security concerns which qualitatively affected the conventional national security ethos...*

*Defining National Security Law is tricky. The subject encompasses broad fields of research, ranging from customs control to immigration into human rights. Practice contexts are often highly diverse, varying from government and non-profits and private practice. However, part of the challenge of identifying National Security Law rests in the fact that real-world conditions asking for National Security Law emphasis are impossible to pin down with some clear confidence themselves. What was once a illegal domestic affair may now be an National Security Law issue. What was once a matter of military order will now have consequences for national security.*

**Keywords:** (Security, Criminal Jurisprudence, Constitutional Provisions, National Security Strategy)

### National Security: CONSTITUTIONAL PROVISIONS

National Security' is not a particular aspect of the Constitutional system, but is specified by each of the three lists: Union, State or Concurrent List. The Union Government has been assigned the security question referred to in Article 352 and under the Emergency Provisions referred to in Part XVIII. Nevertheless, in legislative practice, "Security" is an environment in which States and the Union are of mutual interest and should behave in a cooperation manner This is the primary executive power of the Union. The duties and responsibilities of the Union and the States shall mainly be regulated by Article 256, 355, 356 and 365 in the form of cooperative relations, but shall also be covered by the related provisions. List I of the Seventh Schedule includes entries concerning the Security of India and the control and deployment of the Union's military force. Public and police appear in the List II as Entries 1 and 2. Civil, criminal and judicial trials are included in List III as Entries 1, 2 and 11A.

Drawing up an NSS for India must be a key item on the agenda of the new government. This may be tasked to a group of eminent persons from different disciplines who could consider India's national security in its multiple dimensions. In a democracy, an NSS should be citizen-centric and must reflect the values and beliefs of the people; at the same time, it must seek to raise public awareness of and shape public perceptions about national security issues. The proposed NSS must take the Constitution of India as its guide and its objective should be the safeguarding

and consolidation of India's democracy. This approach would, for example, reject intrusive governmental intrusions into the lives of ordinary people, violating their rights enshrined in the Constitution.

### **AFSPA DEVELOPMENT**

AFSPA i.e., Armed Forces (Special Powers) Act, now extends to Jammu & Kashmir and all states of the NORTH EAST except Sikkim.

- It comes into operation after a declaration is made under Section 3 that a particular area is "disturbed"
- A declaration under Section 3 has to be for a limited duration subject to periodic review before the expiry of 6 months.
- Earlier, only the Governor, Administrator of State/UT was competent to issue such declaration. The 1972 amendment of Section 3 of AFSPA vested a similar power with the UNION Government.
- The Act applies to the Army, the Air Force and the Central Paramilitary forces.
- Once the declaration is issued, 'special powers' becomes available to commissioned or non-commissioned officers of the Armed Forces.
- AFSPA was envisaged to allow the Army to undertake military operations in good faith, without being subject to harassment of mala fide litigation in local courts.

### **CYBER SECURITY**

We live in a technology-driven world; new technologies such as the Internet and digitization are enabling powerful tools for states to enhance national security but also creating new and serious vulnerabilities and security risks. Cyber security has become a major concern and it is only through developing advanced technological capabilities that a state has a chance of defending itself against cyber attacks. The NSS would enable the identification of critical infrastructure that may be vulnerable to cyber attacks, and the development of human resources capable of identifying attacks and protecting and restoring critical systems. Anticipating cyber attacks and hardening systems against them become ever more necessary as economic and governance activities increasingly rely on digital technologies. Ad hoc responses would be grossly inadequate. A critical aspect is that in a democracy like India, the state's use of advanced digital technologies for surveillance and intelligence gathering must not violate the citizens' right to privacy and freedom of expression. There is a trade-off between enhanced security and the citizens' rights guaranteed by the Constitution, and this must be clearly spelt out for the people of the country and well-considered solutions put forward. National security must not become a justification for a surveillance state. The danger of relying on ad hoc responses is that they may cumulatively lead to a predatory and authoritarian state that limits the exercise of democratic rights. The NSS must deal with this dilemma upfront.

Technological change and geopolitical shifts are also impacting India's nuclear security. The country's nuclear deterrent must deal with the challenge of two nuclear-armed neighbours: China and Pakistan. Furthermore, the nuclear domain is becoming closely interlinked with cyber and space-related capabilities. The development of India's nuclear deterrent must take into account the impacts of such technological change. The overall nuclear security environment is also being affected by geopolitical shifts with the gap between the US and Russia on the one hand and China on the other reducing significantly. The older nuclear order anchored in bilateral US-Russia arms control arrangements is now unravelling because China remains outside these arrangements. A new nuclear order is becoming essential as we move into a world of multiple nuclear states. India will need to determine what role it should play in the shaping of this new nuclear order.

- It is, thus, a complex issue that cuts across multiple domains and calls for multi-dimensional, multi-layered initiatives and responses. It has proved a challenge for governments all around the world. The task is made difficult by the inchoate and diffuse nature of the threats and the inability to frame an adequate response in the absence of tangible perpetrators.

- In the twentieth century, India saw an impetus in Information Technology (IT) and an enormous growth in e-commerce. Both these sectors ride on and reside in cyberspace involving electronic transactions, software, services, devices and networks which are highly susceptible to cyber-crimes. Hence to ensure its safety, cyber-security has become one of the most compelling priorities for the country
- Out of the top 10 most targeted countries by cyber attackers in 2017, India ranks fourth and cyber-security defenders are facing a lot of threats from these cyber criminals.
- A report, prepared by the Indian Computer Emergency Response Team (CERT-In) analysing cyber-attacks from April-June 2018 said that the maximum numbers of cyber-attacks on official Indian websites are from China, US and Russia. It has also flagged the possibility of malicious actors from Pakistan using German and Canadian cyberspace for intruding into Indian cyberspace and carrying out malicious activities.
- Economic Cost of Violence refers to the direct and indirect costs incurred in preventing, containing, and dealing with the consequences of violence. The economic cost of violence to India has been 9% of its GDP.

### **NATIONAL SECURITY STRATEGY**

Ecological degradation and climate change have significant impacts on national security. There may be direct consequences of the melting of glaciers on the deployment of troops at high-altitude locations on India's mountainous borders. Sea-level rise as a result of global warming may inundate naval bases along the coasts. There may be large-scale migration of populations from low-lying coastal plains towards higher ground, and this may lead to social disruptions and economic distress, undermining domestic security. Therefore, the NSS must anticipate the consequences of ecological degradation and climate change, and formulate coping measures.

Another oft-neglected dimension of India's national security that must be integrated within the NSS is strategic communications. It relates to the indispensable need, particularly in a democracy, to shape public perceptions through constant and consistent public outreach and to provide a channel for public opinion or feedback. This would enable the government to explain its policies, garner public understanding and support, and review and adjust policies on the basis of feedback received. This has become a far more difficult and complex challenge due to the spread of social media, the phenomenon of fake news, and the instant nature of news gathering and dissemination. Governments need to stay ahead of the news cycle, establish credibility as a source of authentic and reliable information, and shape public opinion rather than be reactive all the time. National security may be adversely impacted by the spread of false news by hostile elements within and outside the country using social media. This will require strong and advanced cyber capabilities, which may have to be constantly upgraded to keep pace with rapid technological advance.

An NSS for India needs to take a comprehensive approach, encompassing domestic and external and economic and ecological challenges, highlighting the inter-linkages and feedback loops among them and on that basis formulate a coherent template for multi-disciplinary and multi-sectoral interventions. Such a template would serve as a guide for a whole of government approach, ensuring that intervention in any one domain does not contradict or even negate intervention in another domain. It is only by having a big picture constantly at hand that contradictory and wasteful policies can be avoided. We should move towards a pattern of governance where interventions in one domain reinforce interventions in other domains.

In every domain of national endeavour there must be pursuit of excellence and high standards to enable India to compete successfully in a highly competitive and globalized landscape. Islands of excellence cannot be sustained in an ocean of mediocrity and low quality. This need not conflict with properly designed policies for affirmative action designed to reduce and eventually eliminate the consequences of long-standing social and economic disabilities suffered by sections of India's citizens. What is critical is the state's capacity to design, execute and evaluate interventions in different domains, and for this the institutions and processes of governance may need to be altered and strengthened. New institutions may be required to deal with newly emerging challenges. This, too, must be included in the NSS.

## COMMUNAL HARMONY

A modern state faces many overlapping and multi-disciplinary challenges. The use of the State coercive authority to resolve domestic and external challenges can not confine national security. The economic and social concerns, for example, may lead to threats to domestic peace and stability. A knee-jerk reaction will undermine these grievances, while coercive force exacerbates the situation instead of improves it. Left-wing extremism in India, for example, is rooted in the continuing oppression of tribal communities.

Similarly, Our borders vulnerability has been linked to large-scale smuggling and trade in contraband which provides easy access for terrorists and criminals. These threats can not be addressed solely by strengthening military capacity without addressing the drivers of illegal trade. Progressive use of subsidies for supposedly social welfare offers an arbitrary means of cross-border smuggling, which also forms the basis of large political mafia groups. Although these groups pose a serious threat to domestic security, the response is both economic and state-strengthening.

There is growing ambiguity between the domestic and the external. Terrorism, for example, is a threat to national security, but can have external ties. Terrorism control can require not only domestic action, but also external action. Water security problems that include coping with neighboring countries with which India shares its main rivers. Thus it may be appropriate to combine domestic and external steps. Only in a rigorous NSS can these dynamic links between national and external dimensions be explored and policy responses be organized.

## FOREIGN POLICY AND NATIONAL SECURITY

In the current uncertain international system, India requires a foreign policy approach nimble enough to tackle the unprecedented yet forceful enough to realize India's growing ambition to be considered a significant player in the world. CPR faculty offers a series of practicable measures for India to play a meaningful role in upholding the world order; ensure its national security; bring about institutional reforms necessary to realize its international ambition; find mutually-beneficial grounds for cooperation with China and develop a more decentralized framework for subregional cooperation within South Asia.

Global Cybersecurity Agenda (GCA) is a framework for international cooperation aimed at enhancing confidence and security in the information society. The GCA is designed for cooperation and efficiency, encouraging collaboration with and between all relevant partners and building on existing initiatives to avoid duplicating efforts.

The GCA is built upon the following five strategic pillars, also known as work areas:

- Legal Measures
- Technical & Procedural Measures
- Organizational Structures
- Capacity Building
- International Cooperation

## CONCLUSION

Indian National Security is being profoundly challenged by the neighboring states ' terrorist activities. The nasty terrorists or the wrongdoers who break the peace of the country are easily saved under the protection of human rights or constitutional provisions. In the case of, Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State of Maharashtra (2012) 9 SCC 1 ; The biggest example is Afzal Guru, a master of the Parliament of India attack, who continues to enjoy our government's hospitality even after the Supreme Court of India has condemned Death sentence. Afzal's appeals for mercy have been lodged for quite a long time in the Union Home Ministry to be processed and submitted for decision-making by the President. It takes about one year and a half-and that in a rare, fast-track trial-to get to the verdict, just like Kasab. The 26/11 attacks on Mumbai led to the exposure of several weaknesses in India's intelligence gatherings and action networks. People like them are behind those insurgencies alone, which create the national emergency atmosphere. Terrorism is a formidable challenge and no

country, no matter how big or powerful, can isolate itself from these all-pervasive challenges, the latest and most grotesque manifestation of which is terrorism driven by distorted religious radicalism.

In the recent general elections, national security has emerged as a major political issue. However, The national security discourse has confined itself to discussing particular security incidents such as a Pathankot, Uri and Pulwama terrorist assault on the Pakistan Control Line; Chinese troops on the India-Bhutan-China border and safety operations in troubled Jammu and Kashmir. A systematic discussion about national security in India seldom takes place in the general public or even the government. The state does not have an overarching national security strategy (NSS) that thoroughly assesses and identifies policy for addressing the security challenges facing the country; such a strategy must, of course, be enforced under the conditions laid down in Indian constitution and the democratic political dispensation of the country. The state is focused on ad hoc answers of dubious usefulness in the absence of an overarching strategy. It also has no method for learning from its experiences. Ad hocism also neglects the wider political, social and economic dynamics underlying and recognizing individual episodes.

Previous exercises undertaken to promote national security could serve as useful reference material for the NSS. These include the Kargil Review Committee report (2000), the Report of the Naresh Chandra Task Force on Security (2012), and the document entitled 'Building Comprehensive National Power: Towards an Integrated National Security Strategy' prepared by the National Security Advisory Board (2015). Only the Kargil report has been made public. It is recommended that these reports and the NSS prepared by the new government should be public documents and open to public debate and review. A well-informed, vigilant and educated public opinion is the best assurance of national security.

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