



## Special Laws to Counter Terrorism in India: A Reality Check

20 Nov, 2012 [Dr. N Manoharan, Senior Fellow, VIF](#) [View4311](#) [Comments 0](#)

A National Convention held recently in New Delhi on 'Politics of Terror' has brought to focus the need to re-look into provisions of special laws currently in use to counter terrorism. When confronted with armed militancy, democracies face what is known as "democratic dilemma" where they have to protect the territorial integrity, sovereignty and security of their people from the arbitrary violence by militants; if they fail, their credibility is undermined. On the other hand, in the process of combating militancy, if they slip into repression and authoritarianism, they alienate the population and lose legitimacy. To maintain the equilibrium, use of legal framework, otherwise called as 'criminal justice system', is suggested.

The use of special/security laws is justified on the grounds that the existing criminal laws are not adequate to deal with the militancy that is "more dangerous and modernised". Since what is at stake is not just law and order but the very existence of state and society, there is a need for special laws with far higher deterrence value. Introduction of special laws are also justified citing prevailing international environment in the case of POTA after 9/11 attack and UN Resolution 1373.

India has long tradition of special/security laws dating back to its pre-independence years. These laws have been enacted, repealed and replaced periodically since independence. Such special laws fall under four categories:

Exclusive laws against terrorism like POTA.

Security forces empowerment laws that give immunity and additional special powers to the security forces like the Armed Forces Special Powers Act (AFSPA).  
Laws of proscription that criminalise terrorist groups and a range of undesirable activities like the Unlawful Activities Prevention Act (UAPA).

Other exclusive laws on control of finances, money laundering, drug-trafficking, cyber warfare and so on.

However, how far these extra-ordinary laws have been successful in preventing, deterring and correcting militants and, in turn, enhancing national security, the answer is mixed. Some of the main reasons for the ineffectiveness of special laws are as follows:

- Over-reaction to the threat posed and far more drastic measures than necessary. .
- Hasty enactment without giving much room for public debate or judicial scrutiny. .
- Overly broad and ambiguous definitions of terrorism and penal provisions that fail to satisfy the principle of legality.
- Pretrial investigation and detention procedures that infringe upon due process and personal liberty. And the number of cases that finally end in conviction is very low.
- Lack of sufficient oversight mechanisms. .
- Space to settle political scores. .
- Weak witness protection provisions. .
- The provision of the use of special courts attracting undue political interference in the judicial process and maximises potential bias.

Yet, this does not mean that special laws are totally redundant. They serve the purpose if all the above identified issues are addressed. It is not "a new law for every new crime" but fewer and effective laws. The guiding principle should be, as William Ewart Gladstone observed, "easier to do right and harder to do wrong." An ideal legal framework should comprise three elements – prevention, deterrence, and rehabilitation. Presently, Indian special laws are biased towards 'deterrence'. The proportion depends on the character of the militancy and the situation in which it is taking place. One size does not fit all. The framework should not fail to take into account human rights concerns. There should be adequate safeguards against any misuse/abuse. To put in simple terms, as Lydia Maria Child observed, "Law is not law, if it violates the principles of justice." There has to be clear cut definitions of crimes and penal provisions to avoid excessive discretionary powers. Enactment of special laws should be done with haste; for greater awareness and acceptance, the process has to be transparent and should be subject to public debate and judicial scrutiny.

What is also required is political consensus on the issue at two levels: at the national level among all parties and between the Center and States. Special laws should possess review mechanisms and 'sun-set' clauses for periodic assessments. "The law must be stable, but it must be able to change." Reforms in criminal justice system – investigation, prosecution and adjudication – are the need of the hour. Role of civil society is vital in the role of special laws in counter-terrorism. Media, especially, has to understand the aspect of legal framework rightly, avoid sensationalism and at the same time support the government of the day in its fight against terrorism.

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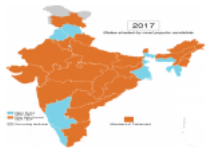
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