

Speech delivered by Selvi J Jayalalithaa, Hon'ble Chief Minister of Tamil Nadu at the Meeting of the Chief Ministers on National Counter Terrorism Centre on 5.5.2012 at Vigyan Bhavan, New Delhi.

Hon'ble Prime Minister and dignitaries participating in the Conference, today.

The Conference of Chief Ministers on Internal Security that was held on 16th April, 2012, ended on a note of optimism for the State Governments with the promise of the Ministry of Home Affairs agreeing to step back in areas concerning Public Order and the Police. I am sure that the meaningful discussions will be faithfully recorded and action taken in a manner consistent with the sentiments expressed by the Chief Ministers.

This Conference of Chief Ministers has been convened for the purpose of discussing the issues concerning the National Counter Terrorism Centre. The National Counter Terrorism Centre was notified through an office memorandum of the Ministry of Home Affairs on 3.2.2012. The order seeks to define the organisation functions, powers and duties of the National Counter Terrorism Centre and spells out that the objective behind the move is to have a single and effective point of control and co-ordination for counter terrorism measures. The order is said to have emanated from a review of the architecture of counter terrorism capabilities in the country.

However, it is surprising that neither the order of the Ministry of Home Affairs constituting the National Counter Terrorism Centre, nor the agenda note circulated to us mentions the gaps and deficiencies in the architecture of counter terrorism capabilities that necessitated the formation of the NCTC. The prelude to the order speaks about the recommendation of a Group of Ministers made in the aftermath of the Kargil War suggesting that a Multi Agency Centre be established in the Intelligence Bureau. The Second Administrative Reforms Commission recommended that personnel for the Counter Terrorism Centre should be drawn from different intelligence and security agencies, instead of confining the selection to the personnel of the Intelligence Bureau alone. This, in my view, is the first indictment made about the inability of the Intelligence Bureau to co-ordinate with various State Intelligence Agencies. Instead of rectifying this, the Ministry of Home Affairs proposes to establish an Operations division of the National Counter Terrorism Centre in the Intelligence Bureau and also equip the Additional Director, Intelligence Bureau with the powers of the Designated Authority under the Unlawful Activities Prevention Act. This is not only irregular, but also not reflective of the views of the group of Ministers and the Administrative Reforms Commission.

Section 2.2 of the Office Memorandum of the Ministry of Home Affairs states that the Head of the National Counter Terrorism Centre shall be an officer from the Intelligence Bureau of the rank of an Additional Director and that the core staff of the National Counter Terrorism Centre shall be drawn from the personnel of the Intelligence Bureau. Officers of other agencies such as RAW, DGMI, NCB etc., who will be taken on deputation to the National Counter Terrorism Centre will not be allowed into the core team and can only function in the outer ring. By this, it is implied that they only enjoy secondary status. Further, there is not even a mention of taking officers on deputation from the State Intelligence Agencies, from State cadres. The National Counter Terrorism Centre is thus going to be dominated only by the Intelligence Bureau and the manner in which the staff is sought to be selected for the National Counter Terrorism Centre provides the ammunition for rifts among the various Intelligence Agencies, which is in itself clearly a regressive step. In my letter to the Hon'ble Prime Minister on 17.2.2012, I had clearly mentioned that the exercise of intelligence gathering is greatly dependent on the State Police networks, since many of the Central Agencies are unfamiliar with the local language, terrorist activities, etc. Therefore, sharing of intelligence in a co-ordinated fashion is the right way forward. Confining the core group selection to the Intelligence Bureau personnel, and providing a second grade status to other agencies, such as Military Intelligence and the Research and Analysis Wing and excluding the State Cadres entirely is going to spell doom and greatly diminish the level of operational capabilities. A caste structure in a Counter Terrorism outfit with the Intelligence Bureau personnel uppermost in the hierarchy is the best recipe for strengthening the hands of terrorists.

The Multi Agency Centre was set up in 2001, but its powers and functions were defined only in December 2008. It is an institutional mechanism for synergising the network between the Central and State agencies. Even when the powers and functions of the Multi Agency Centre were defined in December 2008, the report of the Administrative Reforms Commission was available and hence that has already been taken into account. No new study or review has been conducted either by a Group of Ministers or by the Cabinet Committee after that. There is no recommendation with regard to rectifying any deficiencies that may have been perceived in the functioning of the Multi Agency Centre. At least, no such study or recommendation has been communicated to us. In the circumstances, we deserve an answer to the question that emerges: What were the deficiencies noticed in the Multi Agency Centre mechanism that led to the formulation of a Counter Terrorism outfit in the proposed form of the NCTC?

The State Governments were not consulted at all before the NCTC was notified. In fact, my Government did not even receive a copy of the order. It was the Hon'ble Chief Minister of Odisha, Shri Naveen Patnaik ji, who shared his copy with me. Such is the casual attitude displayed by the Ministry of Home Affairs, which borders on absolute disdain for the Tamil

Nadu State Government. The fact that the Ministry of Home Affairs did not deem it fit to even send a copy of the order to the State Government reveals the utter contempt the Central Government has for the State of Tamil Nadu. Counter Terrorism is a serious matter and any mechanism that is developed should take into account the views of all the stake holders, namely, the various Central Intelligence Agencies and the State Governments. And there cannot be one nodal centre sitting in the Ministry of Home Affairs, whose nod is required before any counter terrorist response is undertaken. Unfortunately the words, "The Standing Council shall ensure that NCTC is the single and effective point of control and co-ordination of all counter terrorism measures" seems to imply that all other agencies can now wash their hands of any responsibility with regard to counter terrorist initiatives and that they should only play second fiddle to the personnel at the Centre. Nothing can be more damaging to the fight against terrorism. Our record against terrorism has shown that failures have occurred mainly in bringing about co-ordination between various intelligence gathering agencies. The counter terrorism strategy should address this fundamental point. The Kargil War exposed the chinks in intelligence gathering in the border areas. The blasts in Mumbai in 2008, again displayed our weakness in the collection of information from the common people about occurrences of infiltration. Ironically, this Counter Terrorism Centre seeks to accumulate more powers under itself and distance the other stake holders. This will only strengthen the enemy.

There must be a system of encouraging frequent interaction with the common people living in the border areas and coastal areas, if any intelligence of substance and merit is to be collected. For this, schemes for the development of the coastal areas and border areas should be expanded. And economic incentives for any information that is provided should be given generously. The Central Government can provide funds for this through the State Intelligence Agencies, who will then be enabled to redouble their efforts in this regard. Moreover, a general view seems to have gained ground in the Ministry of Home Affairs that very little of actionable intelligence is provided by the States. This figured in the agenda notes circulated to us for the Conference held on 16th April, 2012. It must be understood that a lot of intelligence is collected and immediately acted upon by the State Police themselves. It is then communicated to the Central agencies for purposes of record later. It is not necessary for the State Police to take directions from a Central agency before taking action against an unlawful agency to prevent terrorist activity. If the Ministry of Home Affairs desires that in response to terrorist activities, any action should be taken only after receiving their directions then, I am afraid I can only say that they have no knowledge of practical administration.

I am sure that the Hon'ble Prime Minister is concerned about the fiscal deficit situation and the deteriorating balance of trade. The consequent downgrading by the credit rating agency, Standard and Poor, has categorised the global outlook on the Indian Economy as negative.

The time has come for the Government of India to concentrate on setting its own house in order rather than spending time advising the State Governments on principles of administration.

Chief Ministers of States have their feet firmly on the ground and do not keep holding press conferences after a terrorist attack explaining the reasons for their failure. We are proactive and prevent such occurrences. Instead of encouraging us and providing liberal financial assistance, the Ministry of Home Affairs wants to belittle us and treat us like pawns on a chessboard, who can be moved around at will. This is not only a counter productive idea but also seriously violative of the Constitution. I wish to ask this fundamental question: Who will be responsible for the loss of innocent lives that may occur during the course of an operation dictated from the Intelligence Bureau? Who will answer the local people, allay their fears and soothe their feelings? Therefore, even imagining, that there can be an Operations Division under the Intelligence Bureau, independent of the State Police and armed with the powers of arrest and seizure, is preposterous and reveals a total lack of understanding of ground realities.

The Hon'ble Chief Minister of Gujarat Shri Narendra Modi ji, during his speech at the Conference on 16th April, alluded to the growing distrust between the Centre and the States and pointed out how certain actions by certain Ministries are widening this gulf even more. The National Counter Terrorism Centre is one such initiative. It is aimed at creating a quick response Operations Wing of the Intelligence Bureau, since it has no faith in the abilities of the State Governments to apprehend terrorists whenever intelligence is made available. Does the Ministry of Home Affairs feel that their officials are more capable and more virtuous than the Police Personnel in the States? Does it feel that the Intelligence Bureau is more trustworthy than the Research and Analysis Wing or the Directorate General of Military Intelligence? Does it feel that State Governments cannot be trusted with certain confidential information? This feeling of distrust has to be dispelled. Nothing tangible can be achieved by setting up an Operations Division in the Intelligence Bureau equipped with the powers of arrest and seizure. Arrest and seizure are a part of the process of investigation, as per Police practices, and anybody with even a rudimentary understanding of this will not attempt to separate, arrest and seizure from investigation.

From the above, it should be clear that there cannot be a National Counter Terrorism Centre in the manner proposed. The standard operating procedures provide lame excuses for the justification behind the Office Memorandum, and are only worthy of outright contemptuous dismissal by all right thinking persons. If terrorism is to be fought effectively, a nodal mechanism in the States should co-ordinate with the nodal Central Agency on matters of counter terrorism. A Rapid Action Counter Terrorist Force needs to be created in every State, which will function under the nodal State Agency. On receipt of information, the nodal State Agency should activate the appropriate force to organise the

operation in the manner best suited. State Governments should be given liberal financial assistance by the Centre for raising a Counter Terrorist Force fully equipped with modern weapons and training. This would be, in my opinion, the appropriate strategy for counter terrorist operations.

In the context of actions of the Ministry of Home Affairs creating greater distrust between the Centre and the States, I wish to advert to another recent initiative, namely that of bringing amendments to the BSF Act. The BSF is a security force meant to safeguard the borders of India. Its jurisdiction is now sought to be extended to the interior areas ostensibly for the purpose of assisting the States in maintaining public order. But the devil, as is to be expected, lies in the details. Once the amendments are cleared, there will be nothing to stop the BSF from carrying out arrests anywhere in the country under any of the Central Acts, including the Unlawful Activities Prevention Act. While all the Chief Ministers are labouring so hard to fend off an Operations division in the Intelligence Bureau armed with the powers of arrest and seizure, the seemingly harmless amendment to the BSF Act seeks to achieve a similar objective through the backdoor without stating it in so many words. The Ministry of Home Affairs should alter its approach and come up front with its proposals in a clean and transparent manner. The State Governments could consider supporting the Government of India provided the amendments only provide for the deployment of the BSF in the interior areas, based on the request of the concerned State Government and only for the purpose of maintaining public order. They should not be permitted to enforce any of the Central Acts in the interior areas, as is sought to be done, on the sly, through the amendments. But even in that case, a few issues still remain. There is already the Central Reserve Police Force available for assisting the States in maintaining Public Order. When that is the case, why is the CRPF not being strengthened with additional recruitment? Does the Government have no faith in the abilities of the CRPF? Why is the BSF, which is already strained at the border areas being sought to be brought to the interior? All these questions remain unanswered.

Speaking on behalf of the State Governments, I can confidently say that all of us have the highest commitment to maintaining the unity and integrity of the country and to upholding its sovereignty. But we are afraid that any concurrence given based on good intentions will be misused for achieving certain goals that are aimed at weakening the States and usurping more powers for the Centre.

One such instance is the National Investigation Agency. The Agency was set up in December 2008, soon after the Mumbai bomb blasts. The National Investigation Agency Act provides for the Central Government to direct the Agency to investigate and prosecute an offence under any of the specified Acts in the schedule. And this includes the Unlawful Activities (Prevention) Act.

The National Investigation Agency Act, 2008, is an instance of a brazen attempt at encroachment upon the powers of the States.

This Act empowers the Central Government to constitute a special agency called the National Investigation Agency for investigation and prosecution of offences specified in the Schedule to the Act.

The Central Government may also suo motu direct NIA to investigate an offence.

Where any direction has been given for NIA to investigate an offence, the State Government and the Police shall NOT proceed with the investigation and shall forthwith transmit the relevant documents and records to the agency.

This is an extraordinary measure, enabling the Centre to take over investigation in cases within the domain of the State.

A Comparison of NIA with CBI is very revealing. The CBI derives its powers under the Delhi Special Police Establishment (DSPE) Act.

The concurrence of the Tamil Nadu State Government given in 1989 for DSPE taking up cases under a Central Act with the enforcement of which the Central Government is concerned was withdrawn by the State in 1992.

Under these circumstances, if the CBI is to take up investigation in any other case, it must be with the specific concurrence or on the request of the State Government.

These healthy traditions and conventions and legal requirements regarding the separation of powers of the Union and the States are being trampled upon. The NIA has now been given the powers to take up cases without the concurrence of the State Government or even suo motu.

This is clearly a case of the Centre usurping the powers of the State. The very fact that a new agency called National Investigation Agency has been set up, when there is already a specialized agency in the form of CBI, shows that the Centre wanted to by-pass the restrictions imposed by the Delhi Special Police Establishment Act.

The way things are evolving with the creation of the NIA and NCTC and the proposed amendments to the RPF Act and the BSF Act, we seem to be headed towards an autocracy consisting of a "Government of the Centre, by the Centre, for the Centre".

After the NIA was set up, what do the results show? Even today the country wishes to know why the trials in certain sensational acts of terrorism have not been concluded, and why the perpetrators of crimes have not been successfully convicted. With such a track record, does the Ministry of Home Affairs want to have one more instance of failure in the NCTC as it is now proposed? In my view, even the National Investigation Agency deserves to be wound up, if it cannot show any results. The

proposed NCTC needs a total overhaul and for this I suggest that a smaller sub-committee of Chief Ministers be set up.

The NCTC, as has now been notified, should be kept in abeyance, as already advocated by me in my letter to the Hon'ble Prime Minister earlier, till the sub-committee of Chief Ministers gives its report. As a matter of fact, any discussion on NCTC is infructuous as long as the notification of NCTC is in force.

The fight against terrorism can be successfully waged only in a spirit of co-operation. The proposed NCTC has met with a lot of opposition from many States. Even Congress ruled States expressed misgivings in the Conference convened by the Union Home Secretary.

Hence, as stated by me earlier, the office memorandum on the constitution of the NCTC should be kept in abeyance and a sub-committee of Chief Ministers constituted to devise an effective counter terrorist strategy. The Hon'ble Minister of State, Home Affairs, may represent the Ministry in the Committee. Once the recommendations of the sub-committee of Chief Ministers are available, it will be advisable to chart out the way forward based on that. I do hope the Central Government will appreciate the points raised by me and display a sense of statesmanship.

Let me conclude by saying that I have come here today with the earnest hope that a meaningful discussion will help India to formulate an effective counter terrorist strategy. I believe, like all right thinking Indians do, that we must come together in this national effort. We are a great Nation and should strive for a place of leadership in the World. It is only by securing our people from terrorist threats that planned and stable economic development will be possible. Let us therefore dedicate ourselves to this national cause by echoing the sentiments expressed in the National Pledge. "India is my country and all Indians are my brothers and sisters, in their well being and prosperity alone lies my happiness".

Thank you.

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