

A fine law & order balance

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One year after the Mumbai attacks, not many people will connect its lessons with those of the Babri Masjid demolition. But time and distance from these tragedies has allowed reflection: Both raise the same question of the jurisdiction of the Union government.

After Mumbai, many thoughtful people questioned whether the constitutional classification of “law and order” as a state subject was appropriate for an India facing many internal and external national security challenges. These people felt it was time to formalize and legitimize the ability of the Union government to act decisively in a primary and proactive role by moving “law and order” to the Concurrent List. The Liberhan commission on the Babri

Masjid demolition, whose report was released last month, has raised the same Central “mandate” question from a different angle.

But fiddling with coherent state government control of law and order would be a mistake: It is heartening that wisdom prevailed this year when there were so many possible adverse catalysts. The Liberhan commission recommends that “a law be enacted to enable the Central government to take over the administration of a specified area for the purpose of riot control, especially when the state is either unable or unwilling to do so”. The Central special investigation team probing the Gujarat riots after Godhra arrested a serving minister and an elected legislator. The Jammu and Kashmir government requested a rollback in the role of Central paramilitary forces combating in-

urgency. The West Bengal government made the opposite request for Central intervention to handle Naxalites at Lalgarh. The National Security Guard has begun locating forces regionally rather than solely at their Manesar, Haryana, headquarters. The National Investigation Authority is breaking interesting ground around investigation and jurisdiction. These seemingly unconnected events offered specific challenges to the fine balance struck between the Centre and states since 1947.

Our Constitution is clear that the Central government has no direct locus standi in the enforcement of law and order if there is an elected state government. All Central security forces deployed for maintenance of public order—including aggravated situations of terrorism—are placed at the disposal of state governments and are deployed

under their command and control. But some people believe that history would be different if the Central government had the right or obligation to intervene in the spread of Naxalism, the Gujarat riots or the Babri Masjid demolition—especially since it had manpower and firepower on the ground in these situations.

Our Constitution writers probably made state governments supreme on this count to avoid creating a Central fountainhead that a rogue army could capture for martial law—as Pakistani General Ayub Khan efficiently demonstrated in 1952. Not envisaging cross-border terrorism or Naxalism across the multi-state Dandakaranya forest corridor, the only constitutional provisions for Central intervention are Articles 355 and 356. Directions to states under Article 355 are only advisory while Article 356 represents the big step of dismissing a state government and imposing President’s rule.

But this fine balance has worked; any dilution of the working of Central security forces and intelligence agencies under state police leader-

ship would blur responsibility, undermine the chain of command and create situational orphans. Punjab and Kashmir were brought to where they are today by local police—albeit special operation groups—actively supported by Central forces with superior firepower. But firepower is meaningless without local intelligence, support and will—as the US discovers in Afghanistan.

Leo Tolstoy began *War and Peace* describing happy families as alike but unhappy families unique in their own way. Similarly, India has many law and order hot spots but each situation requires local, calibrated and multidimensional responses. The current internal security challenges of India are not those of an invading army but a unique confluence of local events and foreign motivations. And these must continue to be handled by states with Central support.

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