

HON'BLE PRIME MINISTER, HON'BLE HOME MINISTER, MY COLLEAGUE CHIEF MINISTERS AND FRIENDS.

At the outset, I would like to thank the Hon'ble Prime Minister for convening this meeting on NCTC. As a nation, we are fully committed to counter the menace of terrorism wherever it exists in the country and in whatever form. You are aware that the terrorism has been contained in Tripura to a large extent. This has been possible largely on account of efforts of State Police supported by central forces and most importantly by the peace loving people of the state. There should be no doubt that this turn around could not have been possible merely by deployment of central forces and remotely controlling them from centre. The need of the hour is that the Centre and State should work in a cohesive manner without impinging on the role envisaged for each in the constitutional scheme of things.

2. Everybody recognizes that the States are primarily responsible for maintenance of Law and Order and hence they are the most important stakeholders in the matter of maintenance of internal security. However, I am constrained to express my anguish on the fact that in recent past the Home Ministry has taken several steps which have serious implication for the federalism in our country and which tantamount to encroachment upon rights of the States. Notification of NCTC and proposed amendment of RPF & BSF Acts are some glaring examples. The concern expressed by several State Governments on the tendency of the Central Government to invade into the functional domain of State Governments must be looked into seriously.

3. As far as NCTC is concerned, we have sent a detailed response to the note sent by Union Home Minister on 17.03.2012. Our basic objections relate to

creation of operation wing of NCTC, declaring Director of NCTC as 'Designated Authority', conferring power of arrest and search under cover of Section 43A of the Unlawful Activities (Prevention) Act etc which violates the federal principles under our constitutional system. Arming an intelligence body, which is not accountable to parliament or courts, with such powers will have undesired consequences which must be considered dispassionately. Even the NCTC of USA which is model for the Indian NCTC does not have such legal powers of seizure, arrest etc.

4. Hon'ble Prime Minister, you had mentioned in your letter dated 21st Feb, 2012 that the idea of NCTC came into consideration from the suggestion of Group of Ministers in 2001 to set up a Joint Task Force on Intelligence and that of Second Administrative Reforms Commission that a National Centre for Counter Terrorism be established. It is clear that the mandate of Joint Task Force suggested by the GOM was limited to synergizing the national intelligence effort which included pooling, processing and analyzing the intelligence inputs, but operational aspect on the actionable inputs was to be left to executive agencies which are State Police and its anti terrorism wing. Similarly the second Administrative Reforms Commission, while recommending the conversion of Multi Agency Centre into National Centre for Counter Terrorism, envisaged its nodal role to ensuring convergence and coordination of relevant intelligence data on terrorism from all such agencies in the country. Again, no operational role on the actionable intelligence has been recommended for the proposed National Centre for Counter Terrorism.

5. The Central Government has been showing clear lack of trust on the State Governments and ability of State Police and its anti terrorism wing to play the

pivotal role in tackling the menace of terrorism. The notification for NCTC was issued without any consultation with States. Moreover, in the Standard Operating Procedure (SOP) which has been formulated, there is no provision for joint operation by NCTC with State Police/ATS. It is also laid down in para 5(c) of SOP that where it is not possible to give advance intimation, the DGP/Head of ATS shall be informed immediately after the operation. The hesitation of Central Government in giving advance intimation of DGP/Head of ATS also indicates a kind of lack of trust on such institutions of high integrity.

6. If NCTC has any actionable intelligence, it can be shared with State Police or its anti terrorist wing to take follow up action as per law. If NCTC starts taking action suo moto without even informing the State machinery, it will usurp authority of the States under whose functional jurisdiction “Public Order” and “Police” comes. Information to Police Station, after the action of search and arrest has already been taken, is no protection against misuse or abuse of power vested in the proposed NCTC. The mandate of NCTC should be limited to only collection, collation and analysis of intelligence by coordinating with various intelligence agencies. The operational action against terrorism based on any actionable intelligence should be left to State Police and its anti terrorist wing.

7. In *Bhavesh Jayanti Lakhani v. State of Maharashtra*, (2009) 9 SCC 551, Supreme Court, held “The Police power of the State in respect of any offence committed in a State comes within the legislative competence of the State. There cannot be any doubt whatsoever that in the matter of investigation of the matter (sic offence) committed in a State, the jurisdiction of the central government is excluded.” The conferring power of arrest and search under cover of section 43A of the UA(P) Act in respect of the offence committed in a State violates the

doctrine of federalism under our constitutional system. This endeavor of Central Government amounts to breach of federalism which pervades throughout our constitutional scheme.

8. The amendments were carried out in Unlawful Activities (Prevention) Act in 2004 and 2008 without proper consultation with the States. Moreover, the amended provisions should have been operationalised in a manner that does not infringe upon the powers of the States under constitution. A central intelligence agency can't be allowed to encroach into the functional domain of States under the garb of the amended provisions. The scheme of division of power envisaged in the Constitution particularly Article 246 and its federal principles which are basic features can't be overlooked in a zeal to empower an intelligence body. These provisions should be utilized in a manner consistent with the provisions of the Constitution of India keeping in view the powers of States enshrined therein.

9. Power of search and arrest should be vested to an investigating agency and not to an intelligence agency. The State police and its anti terrorist organization already have such powers. There is oversight of courts, NHRC/SHRC, Police Accountability Commission as well as State Government on the State Police. There is no need to vest such powers to an intelligence agency which will only create multiplicity and confusion. If the NCTC is vested with such power, they will start undertaking operations even without prior intimation to the State authorities which will undermine their role in policing and maintenance of public order.

10. As far as Standard Operative Procedure for operation division is concerned, we are against the formation of Operations Division itself. We are also against notifying Director, NCTC as Designated Authority under UA(P) Act as we suggest that NCTC should not get into operational aspect on intelligence. It should be left

to State to declare its officer as Designated Authority. I have already stated, we are opposed to devolving powers under Section 43A of UA(P) Act to NCTC as they should not have an operation division. They should not get into the matters of arrest/search/seizure as it will mean infringing on the powers of the States under the Constitution. If the NCTC is not to have Operations Division, the entire SOP is infructuous. In any case, the operational powers may be used by NCTC in only exceptional circumstances and para 5(b) of SOP may be amended accordingly. Moreover, the State DGP/Head of ATS should be informed prior to any action without exception and necessary changes may be made in para 5(c) of the SOP. In addition, ordinarily State Police/ATS may be involved in the joint operation. In the case of joint operation, the State Police/ATS may submit written statement for registering the FIR and para 5(e) may be changed accordingly. Copy of the report and relevant document may be forwarded to State Police/ATS also for record and para 5(f) & (g) may be amended accordingly.

11. The standing Council, as envisaged in the notification, will allow central agency to interfere in the activities of the State Police. The NCTC should assist the State Police by providing actionable intelligence. The action on such intelligence should be the job of State Police or its anti terrorist wing. Direct interference of a central intelligence agency in operational matters will be highly undesirable. The proposed standing council should have mandate of only evolving mechanism for effective intelligence sharing without getting into the operational domain on the intelligence. The powers and functions as indicated in Annexure IV of the agenda note may accordingly be modified. The Council should limit itself to only intelligence aspect of counter-terrorism effort/measures. The council's powers of co-ordination, formation of Focus Group or formation of special teams may be restricted to intelligence gathering efforts. Similarly proposed Inter State

Intelligence Support Teams (ISIST) should confine itself to intelligence gathering and analysis.

12. We have suggested to make the following changes in the notification:

- a. The operation division proposed in para 2.4 of the OM may be dispensed with.
- b. In para 3.1, the Chief Secretaries/Home Secretaries of the States may be declared as “Designated Authority”
- c. Para 3.2 may be deleted as this power is not required for NCTC if they don’t have the operation division.
- d. Para 3.5 may be amended to indicate that agencies of State may share intelligence on voluntary basis and based on assessed need. It should be qualified in para 3.5 that agency therein means ‘central agencies’.
- e. Para 5.1 may be amended to indicate that all civil authority of Government of India shall act in aid of the NCTC. The assistance by State agencies will be voluntary and reciprocal.
- f. Para 6.1- The role of standing council may be confined to evolving mechanisms for effective sharing of intelligence and policy aspects thereof without indulging into operational aspects which should be with the State Police or its anti terrorism wing.

13. I request that above points may be considered before taking final decision in the matter.