

## State Power and Securitization in USA and India after 9/11

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### **Abstract**

*The juridico-political logic of eliminating terrorism or to fight against insurgents has created a culture of impunity in neo-liberal democracies. The intensive militarization, authorized legal provisions, patterns of the impunity that exceed and operate beyond the domain of law. Neo-liberalism, nationalism and militarism in USA as well as in India produced a prevailing condition of punitive containment for marked category of population, leading to the sedimentation of inequalities and paved way for radicalization. The study deals with state power and punitive containment in the form of arbitrary detentions, torture and draws attention towards the themes of violence, law and justice hypothetically with USA and India.*

### **1. Introduction**

The present condition that allows the democratic regimes to act with impunity in the global arena to kill, imprison and deploy multiple forms of intimidation and violence in the name of war on terror, national security and the protection of the nation. Such democratic regimes typically use connected strategies of militarization, criminalization and internment to exercise control over particular populations, thus remaking individual's subjectivism and public cultures. A culture of impunity occurs when the state operates without fear of punishment and impunity is normalized as a routine procedure across political and legal domains, producing a kind of tangled order or state of exception (Mohanty, 2011).

The war on terror has triggered intense debates about the role of security and liberty, the trade-off between liberty and security. One of these aspects has been closely dissected either as a governmental or exceptional, while as another

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one has been largely cloaked in salience. In the war of terror, the governance of terrorism explored the elements of continuity or discontinuity with the liberal governance and necessitates by the new practices of war, security and risk. The theories of exceptional by Carl Schmitt and Giorgio Agamben argues that exceptional measures are no longer temporally or spatially bound, but have become the norm. The arbitrary detention, extraordinary renditions at Guantanamo bay and Abu Gharib have been exposed as particular practices in a generalized exception or 'global matrix of war' (Aradua, 2008).

## 2. USA and India after Post 9/11

In general terms a question arises that those taking violent action against the USA should be seen through the lens of war model or the law enforcement model. The military measures failed to provide retributive justice to the victims who were detained and interrogated. Similarly, the democratic countries like United Kingdom responded with 'The Troubles' in Northern Ireland, Israel with dirty war theory in Palestine and India with operation all out in the State of Jammu and Kashmir. The method of detention has been employed as a national defense mechanism. It is controversial in nature, because it deprives an individual from freedom. The deprivation occurs in the absence of charge, trial or conviction for any criminal wrongdoing. Besides that it poses a question towards law and justice, which is based on risk and uncertainty rather than guilt. In addition, it is strategically misguided tactic that gives rise to backlash in the form of alienation, radicalization and results in the increase in terrorist activity (Londras, 2011).

The post 9/11 consolidations of imperial democracies and securitised environment in the United States and India mobilise anatomies of violence anchored in colonial legacies and capitalist profit-making. Both of these countries utilise specific techniques and practices against the individuals in order to maintain their hegemonic status in Afghanistan and in the Kashmir valley respectively. Both of these democratic countries exercise militarised and masculinised forms of control, surveillance and dispossession. Besides

that, they militarise all domains of social life and discipline and use arbitrary methods to exercise their power (Mohanty, 2011).

According to Upendra Baxi, the securitised ideology on which nation states are defending the war on terror had its location in the two global wars. The war on terror signifies the collective intent and capability of non-state actors and networks to use force against their objectives across the world by harnessing an ensemble of violent capabilities, which include extra-ordinary material resources and motivation for self-annihilating practices, enabling a capable recourse to violence. It has also installed a new rule of self defense, grounded in suspicion with no recent standard in the international law (2005).

It is notable, that USA had a prominent position in the world and played a prominent role in constructing and framing of international human rights and humanitarian laws. However, after 9/11, the policy of USA changed and boarded on a process of reducing and removing various human rights and other protection mechanisms through various laws and administrative acts, including the Authorization for Use of Military Force, the USA Patriot Act of 2001, the Detainee Treatment Act of 2005, the Military Commissions Act of 2006 as well as various executive orders and memoranda issued by the Office of Legal Counsel (A/HRC/13/42, 2010:43). Similarly India also adopted what Mary Kaldor calls it Neo-Modern Militarism in post 1990's through the expansion of the neoliberal market, mobilization of national identities and allegiances and the transformation of military power especially in the global war on terror (2001). With this mechanism, a new validation for its pre-existing emergency legislations, techniques were exercised to control its own citizens. India also adopted the masculinist ideology of impunity laws used to fight against the secessionist movement in the state of Jammu and Kashmir (Duschinski, 2009).

According to Amna Akbar and Rupal Oza that from 1990's, the geo-political ambition of the USA and India shares a commonality of threat and security and considered the Muslims as the common enemy, cemented through close and ongoing economic and military alliances. However, in India the marginalised

section of the society are also targeted from the state laws enforcements (2013). The securitised administrations of both USA and India reveal the ideological operation of discourses of militarised, securitised nation states and the cultures of nation and territory is deeply linked to their principles (Roy & Singh: 2015).

Both USA and India, have been termed as liberal democracies. Both countries served the colonial rule and have learnt a lesson for the creation of modern nation state. Within its birth, a number of laws were enacted to sustain and to create a new model of society, which would be crimeless. Thus laws narrates, commands as well as inspires social life. It is way of social being and making boundaries to connect and differentiate individuals. The law authorizes as well as prohibits the state in one way or the other and constitutes a terrain of interactions, debates to discuss, protect and promote the interests and the basic rights of the citizens (Hijar, 2005).

The September 11, 2001 attacks on USA and the December 1, 2001 attacks on the Indian parliament have intensified the debate regarding the necessity of formulating national security policy in India and the laws potentially impact on human rights and civil liberties (Kumar, 2004). In USA, lawmakers, judges and activists began to reconsider the fundamental questions. After debating, the bush administration placed the suspected terrorist in a group known as enemy combatants. The jurisprudence of USA has responded to the 9/11 attacks by formulating out four principles like complementarity, maximal extension, restricted derogation and regulated detention (Galchinsky, 2013: 257).

After the commencement of war on terror after the 9/11 attacks in the USA the studies portrayed the development of a visual culture around pain and have located the tortured body within a politics of looking (Foucault, 2013). A new policy was formulated, in which people are designated on the basis of suspicion and surface characteristics like colour, nation, name and identity. All such suspicious persons were arrested and detained in Abu Gharib, Bagram Air Base, Guantanamo Bay Naval Base (Camp Delta), the Manhattan Detention Center, or in the numerous third-country and secret detention centers (Also

Known as CIA black sites) across the world. The publicized treatment inflicted to the detainees in the detention centers turns human subjects into objects. The detainees are subjected to torture and other cruel treatments and such techniques are designed to destroy personality and individuality (Philopose, 2007:1049).

India is governed by a constitutional framework that was set up after post-independence and international legal structure, which includes a strong commitment to fundamental rights. Such framework has been layered on top of a set of colonial era laws and institutions that were designed not to ensure democratic accountability, but to establish the same structure of British control. The laws and institutions in India have remained largely unchanged after independence, which means that India has faced the challenge of unification of these inherited institutions of colonialism with its strong post-independence commitment to democracy, fundamental rights, and the rule of law (Kalhan et al, 2006).

India inherited laws that enabled it to deploy a range of coercive mechanism of laws for the maintenance of public order and internal security. From preventive detention Act (PDA) to Armed Forces Special Powers Act (AFSPA) (1958), all these laws are having colonial roots and controversial till date (Ganguly, 2017). The Indian security forces prizes it as a shield against frivolous legal proceedings that might otherwise be brought to punish them for carrying out domestic order keeping operations, especially against insurgents in the disputed state of Jammu and Kashmir as well as north-eastern state of Manipur which were declared as disturbed areas. This law authorizes the full power to security forces to arrest anyone on the mere suspicion and hold the suspect for weeks without any trial (Chatterji, Buluswar & Kaur, 2015). Further this law allows the use of lethal force against anyone whom they deem to be breaking the law in declared disturbed areas. In India, the government has passed stringent laws protecting national security and combating terrorist threats, but these same laws cannot pass the test of human rights scrutiny (Bhattacharyya, 2018).

In India despite the existence of many constitutional and statutory safeguards, arbitrary detention by law enforcement agencies is a common

occurrence. Such detentions are accompanied by torture in the custody, which means that the individual remains out of due process of law. Without legal representation, the accused is routinely remanded to judicial custody, where he is either killed or disappeared (Dhanuka, 2013).

### 3. Conclusion

Both USA and India, which have been termed as liberal democracies, have served the colonial rule and have learnt a lesson for the creation of modern nation state (Hijar, 2005). After independence, a number of laws were enacted to sustain and to create a new model of society, which would be crimeless. Thus laws narrate, command as well as inspire social life. It is way of social being and making boundaries to connect and differentiate individuals. The law authorizes as well as prohibits the state in one way or the other and constitutes a terrain of interactions, debates to discuss, protect and promote the interests and the basic rights of the citizens.

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