

## **Speech of Shri Nitish Kumar ,Chief Minister, Bihar at the Conference on NCTC at New Delhi on 5<sup>th</sup> May, 2012**

---

I had written to the Prime Minister on 19<sup>th</sup> February, 2012 that Govt. of India should re-examine the issue of formation of National Counter Terrorism Centre (NCTC), and again to the Home Minister on 28<sup>th</sup> February, 2012 that consultations be held with the States to address their concerns on the NCTC. Although, a meeting was held in March, 2012 at the level of officials, it served little purpose and we are not aware of any positive outcome of that meeting. In any case, the core issue being violation of the principle of federalism, the only level at which meaningful discussion could be held is between heads of Government at the Centre and States. Today's meeting gains significance in that context.

2. Let me make it clear at the outset that my objections to NCTC are not against the Centre's overall concern at the existing threat to national security by terrorist organizations and the need to strengthen the mechanism to counter it. Rather, I would like to reiterate Government of Bihar's commitment to provide complete operational support on a case to case basis, as we have been doing in the past, to the Central and other agencies in their actions against terrorist outfits. At the same time, I am disturbed to see the sacrosanct principle of federalism being violated in course of Centre's anti-terrorism onslaught. The order issued to set up NCTC also suffers from several legal and procedural defects as will be mentioned in the course of my speech.

3. The structure adopted for creation of NCTC suffers from a serious and basic flaw as it has been created within the Intelligence Bureau (IB) which is a secret intelligence organization without any accountability to Parliament or courts regarding its work. It has been an established practice as well as a sacrosanct principle all over the world that secret intelligence agencies are not given powers to arrest. Even the British, during their rule over India, never thought it prudent to give the powers of arrest and search to the IB. None of the post-independence Governments did so till date. Such powers, if given to a secret intelligence agency of the Central Government will remain prone to misuse against political rivals. One does not have to go far back in history to recall that eminent political leaders were branded as threats to national security and were put behind bars during the emergency of 1975-77.

4. The proposed operations division of NCTC will be handing over the person(s) arrested by them to the local officer in charge who will further investigate and take legal recourse for remanding the accused to judicial custody. What happens if the local police, on investigation, find the charges not true or find evidence of false implication of a suspect? Will they not be legally required to submit final report leading possibly to further legal pressure from the arrested persons or civil society to initiate the process of law under section 182/211 of IPC against officers of NCTC who had affected the arrest?

Moreover, what happens if more than one person connected with the same case is arrested from the jurisdiction of different police stations or different State boundaries leading to a serious question of conflict about place of registration of the case as well as differing perception of different investigation units?

5. Recently, there have been instances of Central agencies and police of some other States making few terror-related arrests of original residents of some districts in Bihar. In the Media, such events have been reported as busting of a terror module identified as 'Darbhanga module' or 'Madhubani module' etc. This is atrocious, to say the least. Even if it so happens that a few persons somehow connected with a particular district are found to be involved in anti-national activities, there is hardly any justification to name the group or module after the district concerned as if the whole district is directly or indirectly guilty of actively supporting and harbouring terrorists. Should we not try to isolate those 2 or 3 persons suspected to be terrorists from the total population of 20 to 30 lakh residing in the district? Is it proper to let the whole district be branded as a terrorist hub? Will this not lead to widespread sense of resentment and alienation among the residents of the district? The practice of calling tiny groups of accused after the name of a district should be stopped forthwith.

6. Ministry of Home Affairs' order makes it abundantly clear that NCTC is not an investigating agency. It is at best a superior, all encompassing coordinating body for collection and sharing of intelligence, apart from also conducting some operations. In our scheme of the Criminal Justice System, investigating agencies only are accountable to the Courts. All investigating agencies are creatures of legislation and answerable to the courts of the country. However, in the present scheme of things, a body created by the executive instruction of the Govt. of India is sought to be clothed with legal powers which have the potential of impinging upon the life and liberty of citizens of this country, which is normally done only by agencies created by legislative action and answerable to the court. This is a serious legal concern which needs to be addressed. One also wonders as to why a central investigating agency like the NIA which is also a creation of the legislature, meant especially for investigating into terrorist cases and answerable to courts has not been picked up for this work. Even in the standing council, the NIA does not figure. Creating a body through executive order, clothing it with legal powers of operations without making it answerable to the courts for the consequences of its actions and to cap it all keeping this agency under an intelligence agency will be prone to gross misuse.

7. The Indian federal structure rests on a highly detailed and equally complex as well as delicate distribution and balance of power between the Centre and States. It is true that the Union Government retains the important roles of protecting national unity and integrity, preserving Constitutional order in the States and planning for economic development of the nation. States have

been respecting the prime role given to Centre in these matters. But is it wrong on part of the States to insist for a transparent procedure and participatory role in the decision making process of the Union Government? Excessive interference from the Centre in matters of day-to-day governance is against the spirit of the Constitution. Over the decades subsequent to independence, Central Government has slowly but surely extended its control over a large number of developmental and fiscal activities in the States ostensibly for serving larger public interest. The significant area of control left with the States under the Constitution, i.e. law and order and policing, is now increasingly under attack from the Centre and NCTC is the latest instrument of interference in this context.

8. The Centre and the States should all work together for containing terror in our country. In the past, the State police have always been providing valuable operational support to Central agencies in such matters on a case to case basis. The State has never been found wanting in taking action against the perpetrators of terrorist crimes. Where is the need, then, to create new outfits like NCTC with provisions which arbitrarily trample upon the Constitutional safeguards to protect the highly delicate balance of power between the Centre and the States?

9. Under these circumstances, I am of the considered opinion that the order issued regarding constitution of NCTC should be withdrawn immediately. However, if the Centre still deems it prudent to form an outfit like NCTC within the IB, then it must also be given powers to investigate the cases. Further, any such outfit, if it has to be created at all, must be set up through legislation by Parliament. Another feasible option would be empowerment of NIA to arrest as well as investigate all terror related cases. NIA being a premier investigating agency, there should not be any difficulty in entrusting it with full powers as well as responsibility in respect of terror related crimes. In any case, everything should be done within the legal frame work of law while ensuring accountability before the Parliament and respect to the federal structure of Indian polity.

I hope Government of India will pay attention to the state's genuine concerns and address the issues raised in this meeting.

Jai Hind !