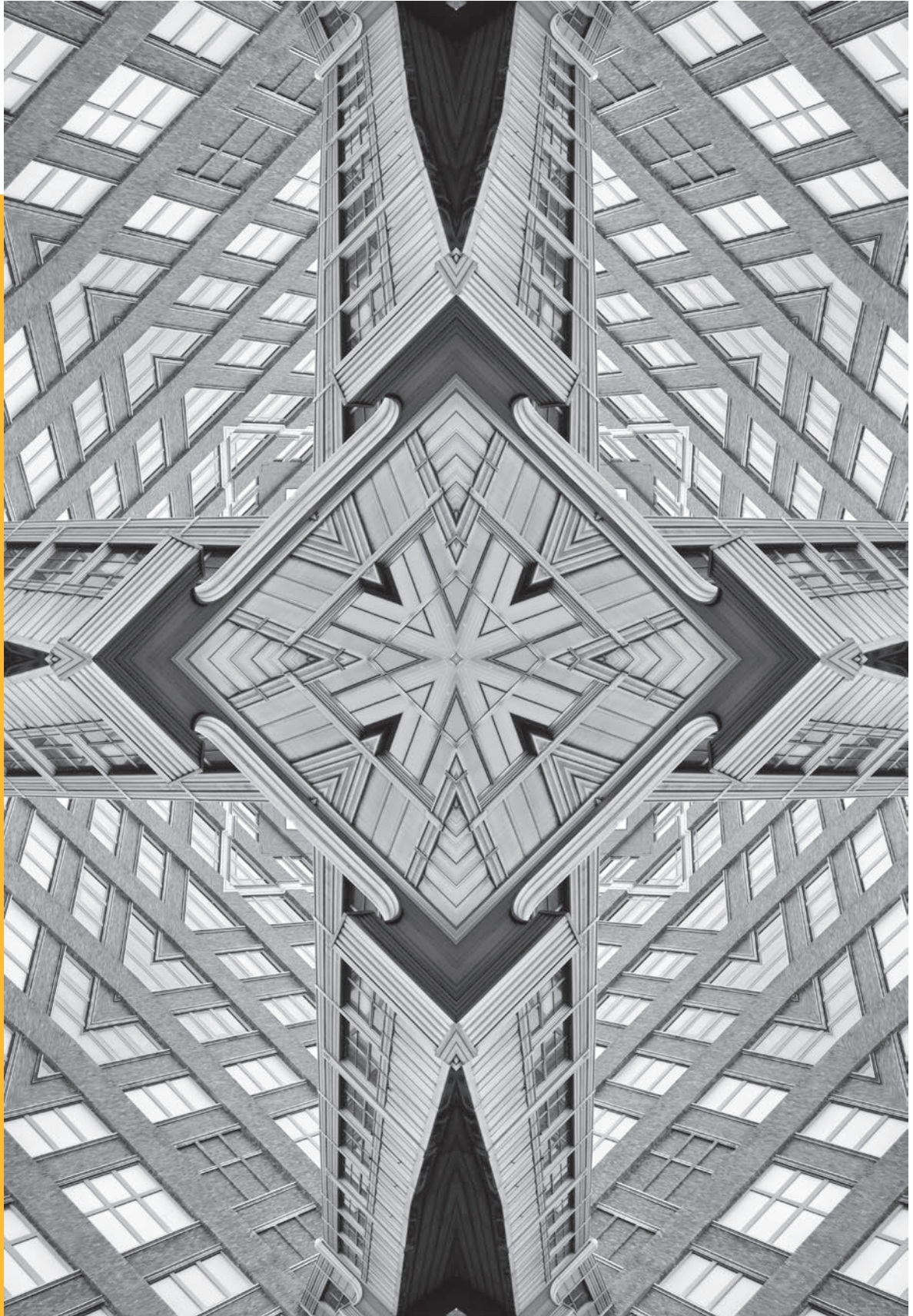


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An Examination of India's Policy Response to Foreign Fighters

Kabir Taneja

Abstract

The phenomenon of individuals leaving their home country and making their way to conflict zones to join terror and insurgent groups is not new. In the past few years, however, the numbers of these “foreign fighters” have increased: thousands of people from more than 80 countries have made their way to Iraq, Syria, Afghanistan, and other battle zones. As countries in the West struggled to deal with these intra-geographic threats from radicalisation and terrorism, others such as India tackled the issue of a notable number its citizens travelling abroad to join terror groups and eventually attempting to return. This paper analyses the issue of foreign fighters in the past ten years, how the West shaped policy responses, and the lessons that India has drawn to create its own strategies.

In 2014, a young Indian man who had joined the terror group ISIS,^a returned to his home town of Kalyan in Maharashtra, not far from the financial capital Mumbai; it generated great interest not only in security circles but among the public as well. Not too long before that, this man, engineering student Areeb Ejaz Majeed, had quit his studies and left for Iraq to join ISIS. At the time, Majeed was one of the very few Indians in history to leave the country to fight for an Islamist terror group abroad.¹ This was when the Syrian civil war was at its peak, and IS was taking control of both territory and cadre at an unprecedented pace across Iraq and Syria.

Despite active fronts of terrorism and insurgency in Kashmir, and a handful of attacks in the valley under the banner of ISIS Hind Province (ISHP), there are no known and confirmed recorded cases of Indians travelling abroad from this particular theatre of conflict. It is from other Indian states such as Kerala, Tamil Nadu, and Uttar Pradesh that young men and women have managed to make their way to Syria, Iraq and Afghanistan in the early stages of the rise of ISIS between 2014 and 2018. They have had different fortunes: some managed to make their way back with the help of Indian security agencies; others died while still in the ranks of the group, either in fighting or in aerial campaigns against ISIS; still others remain imprisoned in countries such as Afghanistan and the UAE, with host governments asking the countries of their origin to take them back.

This paper approaches the question of foreign fighters from an Indian policy perspective—it is, ruefully, an academic gap in Indian counterterror and security studies, perhaps owing to the historically low number of Indians who have joined terror organisations abroad. While India’s experience has been limited, this paper will examine and compare two time periods: the Afghan war against the erstwhile Soviet Union that ended with a Soviet withdrawal in 1989; and during the rise of IS in Syria, Iraq and later in Afghanistan beginning 2010–11, in which years the outfit attracted thousands of fighters from across the globe.² A further aim of this paper is to initiate conversation within the ambit of India’s counterterrorism strategy.

a Also known as the Islamic State, Islamic State of Iraq and the Levant, ISIL, or *Daesh* in Arabic.

Cases of Indian nationals imprisoned in a foreign land or stranded in refugee camps as ideological extremists looking to join transnational causes have been sporadic so far. A more intricate view of “foreign fighters” from an Indian point of view can help launch political, legislative and societal conversations on how to deal with such issues as a society.

The analysis is divided into three main elements of a policy response to foreign fighters, from an Indian perspective: the role of security and intelligence agencies; political considerations (both domestic and international); and the legal considerations in classifying an individual as a “foreign fighter”. Is it a state’s responsibility to bring these foreign fighters back? How does one prosecute a returnee who is a citizen accused of crimes as part of a declared terror organisation, and how does one prove the same in a court of law?

“There is a dearth of studies on foreign fighters from an Indian perspective, perhaps owing to the low number of Indians who have joined terror groups abroad.”

The concept of individuals travelling outside of their native home to join a war traces back to the era of civil wars. The US Civil War (1861–65) and later the Spanish Civil War (1936–39), both inspired people from across Europe to travel and take up arms; they were known as “international brigades”.³ In contemporary history, it was during the American-led “war on terror” after 9/11 that the nomenclature of “foreign fighter” became popular; the term is now used mostly to refer to those who travel to other places to join terrorist ranks. In the aftermath of 9/11, “foreign fighters” referred to the many Arabs who travelled from different parts of the world to Afghanistan to back Al Qaeda and their hosts, the Taliban, against the US-led NATO alliance. A widely accepted definition of “foreign fighter” comes from the Geneva Academy of International Humanitarian Law and Human Rights: “an individual who leaves his or her country of origin or habitual residence to join a non-state armed group in an armed conflict abroad and who is primarily motivated by ideology, religion and/or kinship.”⁴

Indeed, that individuals can decide to travel to war zones is hardly surprising, with globalisation, economic mobility, ease of travel, and overall technological innovations coming together to make it easier for people to move. For instance, a prospective foreign fighter living in mainland Europe wanting to join ISIS in Syria in 2014 via the Turkish border^b would only have to spend an average of 60–70 Euros (USD \$65 – 70) to fly into a commercial airport near the northern Syrian border.⁵

In current analyses on the phenomenon of foreign fighters, especially those done in Europe, this ease of travel is not considered a significant factor in how extremists move between geographies. Yet India’s case could be illustrative. Home to the third largest Muslim population globally,^c India has had one of the lowest numbers of pro-ISIS cases in the world.^d Through some of the biggest conflicts in the Islamic world in modern history,^e the number of Indians who have joined such associations abroad remains small. Viewed alongside figures that show only 5.5 percent of India’s entire population had international passports in 2017, ease of travel could indeed be considered a factor.^{6,7} There have been

b It was a common entry point for hundreds of European jihadists at the time.

c India has more than 200 million Muslims in its entire territory—the third largest Muslim population in the world. Indonesia and Pakistan are the first and second biggest, respectively.

d This paper uses the term ‘pro-ISIS’ to mean those who subscribe to ISIS as a group and its ideology alike without necessarily officially being part of the organisation.

e These include the Afghan conflict during the invasion of the erstwhile Soviet Union in the 1980s, which attracted mujahideen from across the world—this would eventually become what is today known as the Taliban; and the rise of the so-called Islamic State, perpetuated by ISIS from 2014 until its collapse beginning 2017.

pro-ISIS cases in India where the accused “lost interest” in committing terror acts domestically as soon as they realised that their handlers were not going to fulfil their promise of financial aid—that is because, to begin with, what drew them to IS was not a desire to commit violence at home, but to travel to the Middle East and live under the Sharia rule of ISIS’s self-declared caliphate between Iraq and Syria.^{8,9}

ISIS has been able to draw recruits from Europe, Arab countries, Central Asia, and Southeast Asia. The United Nations Counter-Terrorism Executive Directorate (UN-CTED) estimates that by 2017, more than 40,000 foreign fighters from over 110 countries have travelled to join the conflicts in Iraq and Syria. This number includes those who joined not only ISIS, but also other smaller regional jihadist groups such as Hurras al-Din in Syria, or the erstwhile Ansar Bayt al-Maqdis in Egypt which fought in the myriad civil wars that broke out across the Middle East after the fallout of the Arab Spring protests.¹⁰ Another study published by the International Centre for the Study of Radicalisation (ICSR) concluded that over 41,000 people, from over 80 countries, have affiliated themselves with ISIS directly.¹¹

The large number of individuals from the West lining up to join IS has ensured that there is no dearth in studies, data projects, and research programmes devoted to deciphering the reasons for such an exodus. After all, these societies are presumed to be educated, liberal, and economically flourishing, themselves attracting thousands of migrants each year looking for financial, political and societal stability that they could not find in their home country. Most estimates suggest that the Afghan jihad attracted between 3,000 to 10,000 foreigners to join the fight against the Soviets, including those from nations in South Asia.^{6,12} In India’s immediate neighbourhood, fighters from Pakistan and Bangladesh made their way to Afghanistan, mostly via Pakistan, to join the ranks of the mujahideen.

“The UN estimates that by 2017, more than 40,000 foreign fighters from over 110 countries have travelled to join the conflicts in Iraq and Syria.”

f Other estimates put the numbers at a much higher 40,000. See: David Mallet, *Foreign Fighters: Transnational Identity in Civic Conflicts* (Oxford University Press, 2013) pp. 320

The ‘Foreign Fighter’ Phenomenon: Current Theories

The Afghan-Soviet conflict remains the most useful historical prism for researchers and states alike to understand the underlying currents that lead to citizens of other countries to join a theological cause far from home. These questions have been subject to intense academic debates for years, and a variety of variables have been highlighted—including foreign fighters being used as a tool of state policy. Here, Norwegian scholar Thomas Heghammer highlights the importance of distinguishing between “tacit” and “active” support by states—meaning that it was not necessary for fighters going from one place to another to have the official approval of their home state. Indeed, Heghammer notes, while the Arab states have abetted and aided individuals and movements within their geographies that wanted to help the Afghan mujahideen against the Soviets, a large section of “travel” conducted by foreigners to Afghanistan was “private”—i.e., done either personally or through religious preachers and organisations.

Meanwhile, a study by Isabelle Duyvesteyn and Bram Peeters, scholars at the University of Leiden in the Netherlands, proffers four main factors that attract foreigners to join battlefields abroad. These variables are: the characteristics of the group: the group’s messaging, ideation, ideology, and the way they are presented to and consumed by potential recruits; location, geography, and ease of travel; and finally, the reasons for participation.¹³ All of these four factors have been observed in the majority of pro-ISIS propaganda flooding the internet over the past few years—from ideology enshrined in Islamic narratives and successes on the battlefield, to the marketing of these ideas via well-produced media like text, audio, and video.¹⁴

For her part, University College London professor, Kristin M Bakke discusses a fourfold level of threats that worry states on the issue of foreign fighters. First—and this is an aspect not often brought up in other studies: that fighters voluntarily fighting in a foreign state could end up prolonging a civil war by adding to the complexity of dynamics on the ground, and affecting any outreach that local actors of a civil war may have with international organisations, such as the UN, that are working towards a negotiated ceasefire or settlement. Second, a bulk of foreign fighters tracked over the past few years have been Islamists and have joined Islamist insurgencies in geographies where the initial struggles may be of a completely different nature. Syria is a case in point, where the initial conflict was against the government in Damascus. Third, Bakke underscores the fear within the international community of the role foreign fighters can play in creating failed states by turning nations into recruitment and training grounds; Libya and Afghanistan are the primary examples. Finally, a key concern is that these foreign fighters—in all probability lacking in any training in insurgencies or handling weapons—can return as well-trained fighters and strike targets within their home state.¹⁵

The ‘Foreign Fighter’ Phenomenon: Current Theories

In conflicts such as the Afghan war against the Soviets, the conceptual role of Political Islam played a vital role—both its presence in the Arab world and its spread particularly amongst the Muslim populations in the West. The widespread Islamic solidarity that came with the Soviet invasion pushed non-government Islamic institutions to increase not only donation drives across the Islamic world, but also funding for those who wished to travel abroad and fight for Islam. This was why, and how, many foreigners managed to make their way to Afghanistan, mostly via Pakistan. The only official aid known to have been provided by a state, in this case Saudi Arabia, was in the form of subsidies on flight tickets into Pakistan, which has close ties with Riyadh and a significant level of theological commonality as far as state and state religion is concerned.¹⁶ These variables allowed states to be involved in the movement of foreign fighters in an indirect manner, giving them space for plausible deniability.

“Some analysts say foreign fighters could end up prolonging a conflict by adding to the complexity of dynamics on the ground.”

International Response: Examples from Europe and Central Asia

The challenge of addressing the issue of foreign fighters is neither new nor easy. To begin with, these individuals often destroy their identification papers as they land in their destination, making them legally stateless. Some countries such as Germany have proposed revoking the passports of foreign fighters as part of their counterterrorism toolkit.¹⁷ Furthermore, states suffering from insurgencies, civil war, and terror strikes often demand that countries “reclaim” their citizens who had joined a particular group and were captured as part of an insurgent or terror organisation. To be sure, the opinions in this matter are diverse: scholars, policymakers, and governments offer different routes on how best to address the issue of foreign fighters that belong to their countries but may have conducted crimes and terror activities beyond their legal jurisdiction.

In all, there are more than 1,400 foreigners from more than 13 countries thought to be imprisoned around Afghanistan for joining or fighting for ISIS’s Afghanistan Wilayat, called IS Khorasan Province (ISKP). Their countries of origin include Pakistan, China, Maldives, and Bangladesh.¹⁸

Both European and Central Asian states have over the past two years repatriated citizens that had gone to fight for the Islamic State and were languishing in refugee camps, mostly in northern Syria and Turkey. This section takes specific cases as examples to illustrate how European states have approached the issue of foreign fighters, and what sort of debates and challenges to both domestic and foreign policies they had experienced. Examples from Central Asia are also offered as contrast to the experiences of European nations.

During the June 2021 meeting in Rome of foreign ministers of 78 countries in the anti-ISIS global coalition, US Secretary of State Antony Blinken highlighted that of more than 10,000 IS fighters in detention camps across Syria, over 2,000 are foreigners.¹⁹ Blinken called the situation “untenable” and pushed countries to work towards repatriating their citizens. He emphasised that countries should, where appropriate, prosecute, or rehabilitate and reintegrate, their citizens who have joined ISIS.²⁰

It is a task easier said than done. While the US and some European states have taken returnees, there is no institutional policy in place to deal with the crisis. The balance between security, foreign policy, and a commitment to human rights amidst rising domestic political compulsions is difficult to find. Repatriating the

^g These camps are managed by the Kurdish-run Syrian Democratic Forces (SDF).

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foreign fighters, especially for Europe, has become a significant challenge. The Syrian refugee crisis, in particular, has strained European politics, and the overall common ethos around which the European Union was built;²¹ it has strained institutional norms such as open borders and the Schengen visa regime.²²

As the Syrian civil war raged in the aftermath of the Arab Spring protests,^h Europe faced challenges from both those moving into the continent, and those who were leaving for Syria and Iraq. Thousands of mostly young male Muslim fighters left European capitals, drawn by the propaganda of ISIS and the ideological attraction of living under a pious Sharia state. Meanwhile, thousands of Syrian refugees were also fleeing the war and making their way through Turkey into eastern European borders.²³

The Islamic State itself, through its propaganda outlets, played a critical role in how European states perceived the threat of Syrian refugees attempting to enter Europe and managed to create societal divisions by design. These narratives were strengthened by intelligence agencies highlighting that ISIS may try to sneak in trained fighters, specifically those that had come from Europe itself, back into the continent to execute attacks.²⁴ To further examine the predicament of foreign fighters from a European perspective, this paper will use three cases.

France

The first example is the series of terror attacks in France in November 2015, which killed over 130 civiliansⁱ and was planned by a pro-ISIS cell in Belgium, members of which had previously travelled to Syria to fight, and eventually returned. Most of the terrorists behind the attack were born and brought up in France or Belgium, and only two of the nine involved were natives of Iraq—this detail opened a much larger debate in Europe than just the issue of foreign fighters, and led to serious discussions on the very concept of open borders between the states in the continent.²⁵ Over 1,300 French and 400 Belgian citizens are known to have travelled to Iraq and Syria to join ISIS activities, and more than 270 French and 125 Belgian foreign fighters are known to have returned, as per research data available from early 2020.²⁶

^h The protests were soon co-opted by various actors including Al Qaeda and what later became the Islamic State, along with other jihadist entities.

ⁱ On 13 November 2015, coordinated terror attacks took place in Paris and the city's northern suburb Saint Denis, including at the famous Bataclan Theatre. Over 130 people were killed. The terror group ISIS claimed responsibility.

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The groundwork for the Paris attacks in 2015 can be traced to the formation of the Islamic State itself a year earlier, when a group of Islamists from Belgium, France, Germany, and the Netherlands congregated under the banner of Katibat al-Muhajirin, or the “Emigrants Brigade”, led by Abu Omar al-Shishani, a Georgian-Chechen jihadist who was earlier part of the Georgian armed forces.^{j,27} Former ISIS chief and caliph, Abu Bakr al Baghdadi, personally toured these regions around 2013 to recruit foreigners.²⁸ The Turkish border into Syria at this time was the preferred point of entry and exit, with the movement of ISIS fighters from foreign countries made into a business by smugglers, often with the aid of Turkish troops who would accept a bribe to look the other way as the recruits crossed the border.²⁹

“While the US and some European states have taken returnees, there is no institutional policy in place to deal with the crisis.”

One of the masterminds behind the Paris attacks was a 28-year-old Belgian of Moroccan descent, Abdelhamid Abaaoud, who was killed in a raid by security forces in the northern suburbs of the city following the attacks.³⁰ Abaaoud was not unknown to French and European security agencies. However, upon revelations that he had gone in and out of Syria from Europe on more than one occasion (along with some others who were also part of the France plot) raised alarm bells with the security establishment. Investigators found that Abaaoud had received ideological reorientation, where senior IS members showed him images of ruins in the Iraqi city of Raqqa, after Western airstrikes against the group. This apparently convinced Abaaoud that his efforts would be much more effective by conducting attacks against the West, instead of staying in the caliphate.³¹

Abaaoud epitomises the “foreign fighters” involved in the Syrian civil war as part of the Islamic State. However, most of these fighters made their way to the ‘caliphate’ of ISIS between 2010 and 2015; thereafter, travelling to Syria and Iraq became more difficult due to improvements in intelligence and policing operations. Abaaoud’s history of travelling to Syria and radicalisation in Belgium raised many questions: domestic security, societal integration of communities, failure of international policing safeguards to pick up and constrain individuals who had been red-flagged, and the absence of legislative powers against those who had travelled to places such as Syria, been a part of ISIS, and made their way back and resumed normal life.³²

j Interestingly, the use of the word ‘brigade’ in the name takes us back to earlier avatar of such foreign fighter organisations formed during the American and Spanish civil wars, when this term was popular.

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Belgium

Some of the questions concerned Belgium, particularly the ecosystems of radicalisation among Muslim youths that thrived in the suburbs of the capital Brussels. One such suburb, Molenbeek, was home to many of the November 2015 attackers in France, and the site of the March 2016 bombings in Brussels, which killed 32 civilians and injured more than 300.^{33,34} Scholars Thomas Renard and Rik Coolsaet have highlighted that Belgium was one of the first countries that started observing and working towards policy responses as early as 2011–12, at least two years prior to the announcement of the caliphate in 2014 by the Islamic State.³⁵ Local law enforcement in Belgium initially were of the view that many who were travelling to Syria will not come back. After their departure, there was an observable decline in crime rates; at the same time, national intelligence agencies were cognisant of the future threat these people could pose. Arguably, the initial response had varied approaches from different security agencies, with local police welcoming the departure of local citizens for Syria and Iraq from a law-and-order perspective. From a national security point of view, however, the exodus brought about a completely different set of concerns.

Three core principles highlight Belgium's response to returnees, or foreign fighters.³⁶ The first is that the response is led by adherence to criminal law, and the idea of justice through legislative processes. To facilitate this, an intra-agency system with effective information sharing is developed—in itself a significant achievement, considering the generally fragmented intelligence-sharing mechanisms within the European Union. While the EU has systems such as the Intelligence and Situation Centre (ISC), the complicated nature of relations between EU members, and even more so between NATO member and non-member states, often hampers the flow of intelligence.³⁷ Achieving success in information-sharing on a national level is arguably easier.

The second principle is of 'subsidiarity', meaning quick decision-making on what agency will be in the lead, which in turn depends on clear-cut structures and the mandate of said agencies. And finally, information sharing, which Renard and Coolsaet highlight, bind together the first two to achieve a cohesive strategy.³⁸

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Germany

Another example highlighting the foreign fighters' phenomenon is from Germany, where two brothers from a family in Cologne made their way first to Libya, and then Syria, after getting radicalised by local Islamist ideologues. Other members of the same family were also able to move in and out of Syria and Europe, helping the brothers “settle” within the Syrian civil war as arms dealers before they eventually became part of the caliphate.³⁹

The Cologne case highlights how easy it was, during the initial rise of ISIS and the Syrian civil war, to move both people and equipment across the Turkish border with Syria. However, the Cologne case goes beyond this and includes a couple from the family who owned slaves as part of their ISIS life.⁴⁰ The eventual fate of some of the family members shows the varied, often flawed, and random routes that a state is able to take to tackle such cases.⁴¹

United Kingdom

Perhaps the most publicly debated case of a foreigner travelling to Syria to join the Islamic State, was that of a British woman of Bangladeshi descent, Shamima Begum, who left her home in East London as a 15-year-old with two other girls and travelled via Turkey to Syria in 2015.⁴² Begum was discovered in 2019 at the Al-Roj refugee camp in northern Syria's Al Hasakeh governorate, bordering Iraq.⁴³ At the time of writing, she still resides at the same camp after a political storm over her status as a minor who travelled to Syria, a British citizen, and a member of an international terrorist group—all colliding within and outside the British judicial system.

The debate was inflamed further by the fact that Islamist extremists who had been prosecuted and brought under the country's de-radicalisation programmes, and later conditionally released, had gone back to mainstream society and eventually ended up again committing acts of terror. It would be difficult to convince the public that the country's repatriation policy was working considering that de-radicalisation programmes themselves were being questioned.^{k,44}

^k It is not only the UK that is rethinking the effectiveness of deradicalisation programmes. Most states that have applied them as policy programmes are having similar doubts.

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For example, there is the case of then 19-year-old British citizen Usman Khan, who was convicted in 2012 of terrorism charges and later freed “on license” in December 2018; less than a year later, in November 2019, he stabbed two civilians to death in the heart of London. Ironically enough, Khan was in London to attend an offender rehabilitation conference organised by the Institute of Criminology, University of Cambridge.⁴⁵

As for Begum, the UK revoked her citizenship in 2019, citing national security concerns if she was allowed to return. Begum’s case also raised the issue of “citizenship versus statelessness” within the British legal system. British nationality law gives the executive the power to revoke citizenship of a national if deemed “conducive to the public good.”⁴⁶ The government argued that Begum had dual citizenship—British and Bangladeshi—and that revoking her British passport will not make her stateless. Bangladesh, for its part, was adamant that Begum would not be allowed to enter the country as she was never a Bangladeshi citizen, to begin with: she was born and brought up in the UK, and her parents had never applied for Bangladeshi citizenship for her.⁴⁷

In February 2021, the Supreme Court of the UK ruled against an appeal for Begum’s return so she could fight against the case of revoking her citizenship. The court cited “significant national security risks”.⁴⁸ Human rights groups, working for Begum’s return, highlighted the fact that the court itself had accepted that Begum would not receive a fair hearing of her case due to her not being present in the country.⁴⁹ However, the courts took the side of the government and upheld the revocation of Begum’s citizenship.

Begum’s case was being heard even as pressure on foreign states over their citizens in Iraq and Syria intensified, with Iraqi courts meting the death penalty to hundreds of foreigners who had joined ISIS ranks. Human rights groups raised concerns that the courts were equally sentencing to death those who have committed acts of violence as part of IS, those who had only pledged allegiance, or had joined but were accomplices, and those who did not join at all but were simply caught up in the chaos. Some media reports noted that the court would often hear a case for 10 minutes before the accused was given the death penalty.⁵⁰

1 “Release on licence” means a person can stay outside of prison unless the conditions of their release as set by law are breached.

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Even as these specific cases illustrate the complex nature of the issue of foreign fighters, it is not only about specific individuals and their respective geographies. Terrorism scholar Raffaello Pantucci, for one, argues that it is rather about the entire ecosystems that surround and enable them. Pantucci writes:

“The point is that as static as the camps are, the people within them are not. This means that the method of simply leaving people over there and hoping the problem will go away is not an answer. And far more dangerous than leaving them in the camp is the prospect of them escaping unfettered and unobserved. There is no doubt that managing the return of Begum and the many others who joined ISIS will be complicated. But the answer to this problem is to deal with it head on and on a case-to-case basis, than uniformly strip passports.”⁵¹

Women Foreign Fighters

The UK’s Begum is only one of the many women and girls who have joined the ranks of ISIS. Scholar Vera Mironova, who has done detailed interviews and research inside Syria’s Al Hol camp for female ISIS members, describes four kinds of radicalisation amongst women, especially those who were coming from abroad.⁵² First—and she notes they are a minority—there are those who “honestly believe in an Islamic state.” Second are those women who have husbands still alive and fighting for ISIS. Third are those who do not want to be deported as it may endanger their lives once they return to their home country.^m The fourth and largest group, according to Mironova’s findings, are those women who have “strategic” reasons—i.e., mostly money. With the refugee camp providing some sort of protection, considering their ISIS background, this group can stay “indoors” while still receiving funds of up to \$1,000–\$2,000 per person from outside, which allows them to live in relative comfort, compared to the risk to their lives outside the camp.⁵³

According to available data, more than 200 women and 650 children belonging to 11 European countries are held in the Al Hol and Al Roj camps alone.⁵⁴ Overall, more than 13,500 foreign (non-Syrian, non-Iraqi) women and children are reportedly still in various Kurdish camps, with little clarity on their future.⁵⁵ Within these camps, some women have managed to escape by bribing facility

^m Mironova highlights women from Uyghur communities forming a significant section of this group, considering they do not have a home state to go to, and Xinjiang in China and most spaces in Central Asia also not being viable options for this ethnic group.

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staff, using money provided by husbands they find online. Marrying women from one of these camps who once lived under the caliphate has become a “badge of honour” for ISIS sympathisers.⁵⁶

A UN report released in January 2021 outlines the various issues raised by member states on repatriation of foreign fighters, specifically women and children. The report underlined that Western nations are the most hesitant in taking their citizens back; it also acknowledged that there was a generally poor understanding of the roles and motivations of these women.⁵⁷

The next part of this paper investigates India’s experience with foreign fighters, and the government’s policy responses.

“One study has found that of the women IS members imprisoned in Syria, some ‘honestly believe’ in an Islamic state; others have husbands fighting for ISIS; others are in it for the money.”

It was in 2012 when the country's police and intelligence agencies began seeing sporadic cases of Indian nationals travelling abroad to join ISIS in its aim of setting up a caliphate in the Iraq and Syria region. Of the many cases that came to light of those attempting to travel to join terror groups, very few made it.⁵⁸ The following paragraphs investigate two cases of Indians who succeeded, and how New Delhi reacted to later requests for their return to India.

The first case is that of four Indian women who had travelled to Afghanistan with their husbands and others in 2016, moving through the UAE, on to Iran (where some of them obtained visas for Afghanistan), flying into Kabul, and finally dispersing into the regions in and around Nangarhar province on the Afghanistan-Pakistan border. The women were arrested in 2019 by Afghan security forces, and have been in Kabul's Badam Bagh prison since, with no clarity on their future, both from a law enforcement perspective as foreigners in Afghanistan or a potential repatriation back to India where they would face terrorism charges.

The Afghan government has raised the issue of these women with New Delhi, in effect looking into the possibility of India taking them back. However, media reports suggest that Kabul is unwilling to devote resources to prosecute these prisoners, as Afghanistan currently faces a critical security situation following the withdrawal of the US and NATO forces and the fall of Kabul to the Taliban.⁵⁹ While multiple reports in the Indian media have said that the women may not be allowed back, it is neither political nor legal considerations that are preventing the Indian government from making a decision, but rather the very public nature of this case.

In 2016, scholar David Wells put forth the idea of offering amnesty to returning fighters, a chance for ideological revision and potential re-entry into society without facing significant ramifications through counter-terror legislations of a state.⁶⁰ Wells, ideating from an Australian perspective, proposed amnesty with caveats, including demands such as a returnee fighter publicly condemning and renouncing ISIS and its ideology, going through de-radicalisation programmes, as well as helping intelligence agencies and police by providing them information.

Since Wells published these ideas, most have been practiced in some manner, with mixed results as observed in the previous sections of this paper. Former extremists have renounced ideologies publicly, with some of them writing books published in the West; they feed the narrative of former Islamist extremists turning a leaf, propagating peace and working with law enforcement on counter-extremism and de-radicalisation programmes.⁶¹ However, as scholar Phil Gurski argues, the problems with programmes such as offering amnesty are manifold.

In particular, he points to three: determining the returnee's intent; figuring out what acts they were involved in inside a theatre of conflict; and dealing with public opinion.⁶²

The issues faced by other countries over the question of returnees are no different from those in India. Interviews with Indian women in the Kabul prison show that many of the factors covered earlier in this paper, were the same driving issues on why their repatriation is a difficult task where both security and political concerns are at play. For example, one of the women called Ayisha, whose real name is Sonia Sebastian— a trained engineer who reached Afghanistan in 2016—says she travelled to be with her husband who also joined ISIS there (and later died in fighting). During questioning, she said wanted to return to India and live with the parents of her husband.⁶³ She said that she has decided to cut ties with ISIS and was speaking under no pressure from anyone.⁶⁴

At the same time, Ayisha said, she did not harbour any regrets for having joined ISIS and its caliphate.⁶⁵ Her reason gives another clue as to why a repatriation policy may not always be tenable: While attesting to joining what she believes was an “Islamic way of life,” Ayisha says she was not personally involved in any violence, brutality or operations carried out by the terror group.ⁿ

Another Indian woman in the same prison as Ayisha was called Nimisha, whose real name is Fathima Isa. When interviewed by authorities, she spoke of having a “comfortable” life in Afghanistan and refused to say that she cannot *not* recommend *hijra* (holy migration) to such a caliphate if there was one. When asked whether she would like to return to India, Nimisha said yes. She added caveats, however, that if she is allowed to return, she hopes that she would not be tried under India's anti-terror laws.

A third Indian woman prisoner, who goes by the name Mariyam and whose real name is Merrin Jacob Pallath, echoed Aiysha's and Nimisha's reasons for travelling to Afghanistan and joining ISIS.⁶⁶ Mariyam also wished to return to India and to her family.

To be sure, the families of these women themselves had divergent views on whether they would accept their family member should they return. Nimisha's mother, for instance, moved the High Court to seek repatriation of her daughter and four-year-old granddaughter. Mariyam's mother, however has said that she will look into accepting her daughter back only if she publicly “renounced” the Islamic State and “repented” for her actions.⁶⁷

ⁿ Verifying these testimonies becomes next to impossible from a legal point of view.

The stories of these Kabul women, while being in the news cycle in India for months, were not the first tales of Indians joining ISIS and then looking to return. There was Areeb Majeed, who returned to India after being part of the Islamic State in Syria in 2014. As Majeed's history in ISIS and his return is well documented, this section will revisit his case as a foreign fighter, and the fact that he was allowed to return to India and face trial in a court of law. Majeed's return via Turkey, by most accounts, was facilitated by India's security agencies and was potentially aimed at packaging his case as a counter-narrative to dissuade others from trying to travel and join ISIS.⁶⁸

The key points in Majeed's story was that he travelled, joined ISIS, but was humiliated by the group and asked to do menial tasks, such as cleaning toilets. His case also underscored the poor treatment even of those fighting at the forefront, as he recounted how he had to beg his superiors for medical treatment after getting shot.⁶⁹ Studying Majeed's case from a public opinion point of view finds little pushback on the state's decision to spend taxpayers' money to bring him back home. This could be attributed to the generally low number of such cases overall, but also, back in 2015, the far smaller role played by social media in framing the political responses of a state when it comes to terrorism cases.

However, Majeed's case, or the case of the Kabul women, are not the only examples available. Over the years, India has quietly brought back dozens of people that have either been flagged or apprehended by other states. The fast-developing bilateral relationship between India and the UAE is an apt example. Both New Delhi and Abu Dhabi have worked together on counterterrorism, specifically in trying to keep an eye on the large number of Indians who travel to the Gulf, or those who already live there, and catching any suspected cases of radicalisation taking place during their stay in the country. This cooperation has been beneficial, with over 100 individuals falling within the radar and sent back to India by the UAE according to data from 2019.⁷⁰ India's security partnership with the UAE also helped it institutionalise, up to a certain extent, some mechanisms as far as "returnees" and foreign fighters were concerned. It offers one of the few instances where cooperation between two states has allowed ISIS sympathisers, members and even alleged fighters of Indian origin to return to India and be tried under domestic laws. The next section of the paper attempts to trace how these response mechanisms employed by India have worked.

“Over the years, India has quietly brought back dozens of people that have either been flagged or apprehended by other states.”

Political

The basic political understanding between two states, to exchange “interests” — in this case those citizens who may have been radicalised — is critical. With the UAE becoming a strong partner of India over the past decade, security cooperation has become both a critical element, and a result of strong high-level relations. Within the example of India and the UAE, the leadership similarities between the current Indian leadership of Prime Minister Narendra Modi and his centralised style of governance and the UAE’s political system allow further points of synergy.⁷¹

The exchange of “people of interest” between states cannot happen without political goodwill at the top, which then enables the other sections to collaborate and facilitate repatriation of terror suspects. This was specifically developed further under the auspices of India’s then Special Envoy for Counter Terrorism and former Intelligence Bureau (IB) chief Syed Asif Ibrahim. Ibrahim, now retired, was the first Muslim to lead an Indian intelligence agency when he took over IB in 2012.⁷² One of Ibrahim’s main tasks as Special Envoy, a position he took over in 2015 after retiring from IB, was to liaison on counterterrorism with, and between, West Asia and Pakistan. India’s current National Security Adviser, Ajit Doval, had worked with Ibrahim for more than two decades during the latter’s stint with the country’s foreign intelligence agency, the Research and Analysis Wing (RAW).

India’s history with the UAE also acts as an interesting platform, with the splintering of now-disbanded Indian terror groups such as the Indian Mujahideen (IM) and the Students Islamic Movement of India (SIMI) still having former members and sympathisers living in places such as Pakistan and the Gulf. The leaps achieved in political and strategic cooperation between India and UAE allowed New Delhi to have a strong intelligence presence in a city as critical as Dubai. The exchange of such information between the two states then filters down to agencies that handle the security apparatus, intelligence, investigations, and police. As demonstrated in this paper, most countries prefer for other states to take back citizens accused of radicalisation, and the UAE has held the same view.

“The exchange of ‘people of interest’ between states requires political goodwill at the top.”

Over the past few years, Abu Dhabi's relations with India have strengthened due to the fact that Indian Muslims coming to work in the country are usually educated, and not susceptible to either becoming radicalised or carrying aims of spreading radicalisation within the UAE and beyond. In December 2020, UAE announced that it was stopping issuing visas to 13 countries, which included Pakistan, because of security concerns.⁷³ This elevated the security bilateral between India and the UAE even further, allowing the second and perhaps more critical component for a response to an issue such as foreign fighters: cooperation between intelligence agencies.

Intelligence

According to some accounts, Dubai has become central to Indian efforts to counter terrorism from a granular level. The political play between India and the UAE has allowed New Delhi to gain an upper hand over its rival Pakistan in intelligence cooperation with Abu Dhabi on counterterrorism. Islamabad today is using Turkey as a bigger base for its intelligence activities more than the UAE, its traditional bastion.⁷⁴ In the case of returning fighters, the office of India's NSA, along with RAW and other agencies such as the National Investigation Agency (NIA), become the first points of contact along with the Indian embassy of a particular country. The decision on how to deal with an individual case, whether to bring a person back home or let the host country's legal system handle them, is one mostly taken by intelligence and the security establishment in consultation with that host country. The political establishment may have an opinion during the latter stages of repatriating an individual—led by domestic and other political considerations, which in turn could lead to a change of the initial decision made by the security agencies.

While this design seems relatively straightforward, the challenges arise mostly in intra-agency cooperation and communication, as these processes go through multiple and often overlapping jurisdictions. For example, in one case of repatriating a group of individuals from the UAE back to their home state in southern India after they showcased sympathy for ISIS ideology online, the arrangement was for the repatriation to be done quietly. While it remains unknown whether those being repatriated were going to be charged locally or not, that the process remains under wraps was a request made by the host country in the Gulf. However, once the repatriation was completed, domestic agencies rushed to stake claim about “busting” an ISIS cell, and what was supposed to be covert made it to primetime news.⁷⁵ Such outcomes put the entire process, starting from political level to the operational, in jeopardy, considering none of these methods of bringing back people of interest are institutionalised due to the sensitive nature of the issues involved.

Through anecdotal evidence, along with limited access to information available in the public domain, it can be understood that the security establishment also takes into account rehabilitation, de-radicalisation, community, and family as tools: both to attempt to bring wanted people back, and also decide which cases need to be dealt with legally, and which can be left to community and family for rehabilitation under the watch of local police, which utilises its “beat cop” system to good effect in such scenarios. As witnessed earlier in the cases of Ayisha and Nimisha, family plays a critical part in dealing with a returnee’s case. Within these complex elements, perhaps the most important is the kind of legal action that returnees would face, the maximum prison sentences that could be meted, and whether the punishment offered via the legal route is sufficient to address public opinion.

Legal

In 2015, the Indian Ministry of Home Affairs banned the terror group ISIS and all its associated affiliates under the Unlawful Activities (Prevention) Act (UAPA).^{o,76} Not all pro-ISIS acts, however, come under the ambit of this single law. For example, the act of committing terror and that of sharing sympathetic messaging online in favour of a banned terror group fall under the purview of different laws. To begin with, prosecutors face a fundamental challenge in pursuing returnee cases: if the person in question did travel to join a terror group and fought in Syria or Iraq, how could this claim be proven considering that collecting evidence from the war zone in a different country is not an option?

The case of Areeb Majeed illustrates the conundrum. Majeed’s very public return to India saw him stand trial for joining ISIS, which ended six years later in a court that granted him bail after the NIA failed to offer evidence against him in time, and 12 witnesses turned hostile eventually.⁷⁷ This is despite the fact that the NIA had said it was yet to examine 107 further witnesses. While the NIA claimed that Majeed came back to India to commit acts of terror—which included an alleged plan to blow up the police headquarters in Mumbai—the evidence presented was deemed insufficient. At the same time, Majeed maintained that his return was facilitated by India’s security apparatus.⁷⁸ Even if the truth of how Majeed made his way back to India lies in-between these two accounts, it only shows how overlapping agency interests can end up convoluting cases in courts, and how diverging accounts can lead to compromised outcomes.

^o For this section of this paper, the author had planned to track the legal proceedings and processes of some of the returnee cases over the past few years. However, due to difficulties in gaining access to court records in various states, official statements from local police and central agencies, the idea did not materialise.

Other cases of returnees include a group that was returned to Tamil Nadu from the UAE in 2018 and later arrested by the NIA. The NIA charged the returnees under various sections of the Indian Penal Code (IPC),⁷⁹ including IPC section 120(b) (punishment for conspiracy), Sections 18 and 18B (punishment for recruiting any persons for terrorist act). The public prosecutor, according to media reports from July 2019, accused the men of attempting to “wage a war against India.”⁸⁰ As of June 2021, the cases of these men were deemed under investigation and no other public records were available on the matter.⁸¹

Legal experts aver that there is little linearity or predictability in dealing with cases of those coming back to India and facing charges of either having joined a terror group or having propagated such a group’s ideology online,^p attempting to radicalise others, or trying to form a group to travel with the intention of joining a terror group. From a legal standpoint, beyond the available laws under which such people could be charged, other factors are crucial in determining the punishment: who the presiding judge is, for instance, and the weight of public opinion.⁸² Majeed’s is once again an important case in point from a legal perspective, considering he was granted bail based on a running timeline of the case, and not on basis of crimes he was being indicted for under the UAPA.⁸³ All these frameworks are some of the toughest legal tools against terrorism available in India. Yet, bail after six years was granted, despite the NIA highlighting that Majeed had been injured on the battlefield as part of ISIS—this meant he had in fact taken part in violent activities as part of an organisation banned by Indian law.⁸⁴

“Legal experts aver that there is little linearity or predictability in dealing with cases of those coming back to India facing charges of having joined a terror group.”

^p This trend is increasingly more common now.

Finally, more drastic options, such as stripping of passports and citizenship, have their own roadblocks. Over all, dealing with terrorism poses multiple concerns for India: it is, after all, a responsible member of the international community, a signatory to international treaties seeking to protect human rights, and an aspirational permanent member of the United Nations Security Council (UNSC). In the cases involving the Kabul women, for example, they are still Indian citizens. At the same time, the host nation (in this case, Afghanistan), is also within its rights to deport them. If an official deportation process is initiated, New Delhi may have an obligation to receive them.⁸⁵

The legal options available for a state, and the rights of those held beyond their own country's national borders, come together in a complex web of international and domestic laws. It becomes massively difficult for a state to take decisions on how to handle citizens who had joined foreign terror organisations, and perhaps more importantly, what to do with them if they are tried domestically but no evidence against them could be collated. As seen in Majeed's case, this could effectively allow them to re-enter society without significant ramifications other than reporting to their local police stations for a few months and potentially enrolling in a state-sanctioned de-radicalisation/counter-radicalisation programme.⁸⁶

“The legal options for a state, and the rights of those held beyond their own country's borders, come together in a complex web of international and domestic laws.”

Recommendations and Conclusion

As this author set out to conduct research for this paper, the aim was to try and find a homogenous Indian security policy response on the question of foreign fighters. However, it would soon become clear that the challenges in dealing with foreign fighters are multilayered and complex, involving bilateral foreign policy between states, political relations between two incumbent governments at a particular given time, moving in and out between domestic and international law. There is also the equally important, but least debated factor of public opinion. These multiple points of consideration do not allow for a uniform, institutionalised response from the state when it comes to the issue of those who travel to either join, or attempt to join, a terror group outside India's borders. This is why in recent high-profile cases, such as those of the Kabul women, a gamut of responses from Indian agencies and political establishment were on offer, which in turn prevented a concise state response that would keep both political and security interests at the forefront.

Designing or seeking a general policy architecture on how to deal with the cases of foreign fighters and returnees alike, does not appear to be achievable at the current juncture. Instead, it may be more worthwhile to tackle each such case on an ad-hoc basis—the route India's security establishment currently employs—but with strengthened legal tools that keep in mind the transnational nature of modern terrorism threats. The following are a few aspects of the response currently being used that could be reviewed, strengthened, and subjected to further academic and intellectual inspection to help formulate a path towards a more robust policy framework on foreign fighters.

Public opinion

One of the key outcomes of this present research was the finding that public opinion weighs heavily on the making of decisions around foreign fighters, in particular, and terrorism in general. The idea of public opinion here completely depends on each individual state, and the discourses around security, terrorism and counterterrorism. For example, from the perspective of the first Afghan war, some Islamic countries saw their citizens going to fight for the mujahideen and did not see that as a security issue, but instead a theological one, around which often their entire state was constructed. Therefore, even if the leadership of a particular Islamic state at the time was against a section of its citizenry travelling to fight against the Soviets, it did not interfere if people were privately travelling to engage in such activities.

However, from an Indian perspective, national security, particularly in the case of terrorism, is intertwined with public opinion, with attacks such as those on the Indian Parliament in December 2001 and in Mumbai in November 2018 etched deeply in public memory. Newer and more experimental tactics on counterterrorism, such as de-radicalisation programmes, find only a few takers within the general public. The public would be hard-pressed to find a returnee's policy appealing, let alone the legitimisation of people who had joined a group such as ISIS in countries like Syria or Afghanistan. At the same time, keeping it under wraps has limitations as it will eventually come to be known once it reaches the court of law. Ultimately, implementing a specific policy around foreign fighters, which includes domestic legal action and rehabilitation, could come with a political price for the incumbent government.

Inter-agency coordination

Repatriating criminals from other countries largely relies on mechanisms such as extradition treaties. In counterterrorism, any effort at collaboration between political establishment, security, intelligence and legal requires a level of nuance that surpasses traditional understandings on issues of national security. Prior instances, where agencies made cases public despite an understanding between two states on a diplomatic level to avoid such outcomes, only undermine the processes in place.

By themselves these processes are not policy, to begin with, but only pencilled in implicit understandings often not even at an agency level, but granular ones between two diplomatic officials working for the return of their citizens. Of course, inter-agency rivalries are not exclusive to any one country (as earlier seen with regard to examples from Belgium and other European polities). However, an inter-agency slip-up would mean a case going out into public domain, and the final outcome of said case may well then be determined by political considerations, and not necessarily legal or even principled ones.

Strengthening laws on foreign fighters

Broad counterterrorism laws allow overreaching powers to the state under the argument of national security. Their application, however, depends much more on specific variables including the availability of evidence and, ultimately, a court's approach towards an individual case. These legal disparities, especially at the bench level, are one of the reasons why UN-CTED, for example, released a study advocating that differential treatment by courts in terror cases between genders be avoided as there is no evidence that ideological indoctrination and extremism occurs at different levels between them.


Recommendations and Conclusion

Kabir Taneja is a Fellow with ORF's Strategic Studies Programme.

It is wise to look into specific legal tools for cases such as those of foreign fighters, where legal ambivalence may not be adequate to cushion against the Indian state being forced to bring back its citizens who have been named by friendly nations as having joined terror groups or propagated terrorist ideas. The two Indian examples analysed in this paper—those of Areeb Majeed and the Kabul women—present two different legal gaps on how to deal with returnees. The lack of legal tools is further made obvious amidst the changing nature of transnational terrorism—i.e., online extremism and radicalisation, movement between online radicalisation and offline terror threats by individuals and groups.

Building multilateral cooperation

India is in a favourable position of having limited exposure to the complex issue of how states deal with foreign fighters. However, as the second largest country by population and the sixth largest economy in the world, taking important steps at institutions such as the UN to further debate on the issue of foreign fighters can produce dividends for New Delhi's positioning and posturing within the international arena.

India can work with partners such as the EU, the US and states in West Asia to expand the debate around the issue of foreign fighters, specifically from a theoretical, if not practical, point of view. New Delhi's proactiveness on this issue, specifically via the UN, will showcase that India is developing, designing and taking initiative on issues that involve the global community and international security. It would also make known India's own views, concerns and potential policy responses towards international terrorism, an area where most of the narratives have traditionally been dictated by Western interests. 

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20, Rouse Avenue Institutional Area,
New Delhi - 110 002, INDIA
Ph. : +91-11-35332000. Fax : +91-11-35332005
E-mail: contactus@orfonline.org
Website: www.orfonline.org