

## TERRORISM AND HUMAN RIGHTS

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### ABSTRACT

Terrorism, and the way to combat terrorism, poses major challenges to the international protection of human rights. Combating terrorism requires a reaffirmation of human rights values, not their rejection. The human rights frame work is not as soft on terrorism. The challenges relating to both human rights norms and their scope. the focus of attentions has been on a number of specific human rights and the rights of those who are suspected of involvement in terrorism, everyone's human rights are, to a lesser or greater extent, affected by counter-terrorism agency. Acts of terrorism, in turn, constitute a serious form of crime and often result in the destruction of human rights. Indian criminal justice system has two primary responsibilities i.e, prevention and control of crime and the protection of rights. One of the neglected aspects of Criminal Justice System is delay of the disposal of cases and detention of the poor accused under trail. It is against the provision of International Covenant on Civil and Political Rights 1966. Terrorism being a serious threat to the international security of a State in general and organized life of its community in particular, The Indian Parliament enacted several Anti-terrorist laws to combat the multi-dimensional threats posed by the growing menace of terrorism in the country.

**Key Words:** *Terrorism, Combating Terrorism, Human Rights, Anti-Terrorist Laws.*

### UNDERSTANDING TERRORISM

Terrorism has a real and direct impact on human rights, with shocking consequences for the enjoyment of the right to life, liberty and physical integrity of the victims. Global Terrorism Index shows Indian as the 6<sup>th</sup> Rank in the world. Most terrorist incidents increased occurred day by day in all over the world.

**GROSS TERRORISM INDEX 2015<sup>1</sup>**

| <b>RANK</b> | <b>COUNTRY</b> | <b>GTI SCORE</b> |
|-------------|----------------|------------------|
| 1           | Iraq           | 10               |
| 2           | Afghanistan    | 9.233            |
| 3           | Nigeria        | 9.213            |
| 4           | Pakistan       | 9.065            |
| 5           | Syria          | 8.108            |
| 6           | India          | 7.747            |
| 7           | Yemen          | 7.642            |
| 8           | Somalia        | 7.6              |
| 9           | Libya          | 7.29             |
| 10          | Thailand       | 7.279            |

“Terrorism” comes from the French word *terrorisme*, and originally referred specifically to state terrorism as practiced by the French government during the 1793–1794 Reigns Of Terror. The French word *terrorisme* in turn derives from the Latin verb *terreō* meaning “I frighten”. The *terror cimbricus* was a panic and state of emergency in Rome in response to the approach of warriors of the Cimbri tribe in 105 BC. A common definition of terrorism is the systematic use or threatened use of violence to intimidate a population or government and thereby effect political, religious, or ideological change. Terrorism in India, according to the Home Ministry, poses a significant threat to the state. Terrorism in India is basically two types external and internal, external terrorism emerge from neighbouring countries and internal terrorism emulates from religious or communal violence and Naxalite–Maoist insurgency. Terror activities involve either Indian or foreign citizens.

Definition or meaning of terrorism is not difficult to seek. The culture of violence that it has adopted has created its own definition; it is “the calculated use of violence or threat of violence to attain goals

<sup>1</sup> [www.economicsandpeace.org/wp.../2015/11/Global-Terrorism-Index-2015.pdf](http://www.economicsandpeace.org/wp.../2015/11/Global-Terrorism-Index-2015.pdf)  
Measuring and understanding the Impact of Terrorism (Institute for Economics & Peace)

that are political, religious or ideological in nature. This is done through intimidation, coercion or instilling fear.”<sup>2</sup>

The history of terrorism in India is old.<sup>3</sup> Terrorism is a global threat. We should face the threat of terrorism and take constructive action, but action without thought can only make the problem worse. Since September 11, 2001, political leaders, the media, and public figures have brought the words terror and terrorism into daily discourse.

Terrorist activity is a form of violence and terrorism is theoretical philosophisation of such violence. ‘Terrorism’, therefore, simply means belief in a system based on violence. The suffix ‘ism’ here refers a cult<sup>4</sup>. In brief terrorism is a cult of violence<sup>5</sup>. Those who believe in this type of system are called terrorist. For a terrorist, terror is means and terrorism is end. They absorbed in the cult with a missionary zeal.

Terror became terrorism in European usage, during the French Revolution<sup>6</sup>. The definition of terrorism in legal dictionary is:”The use or threat of violence to intimidate or cause panic, especially as a means of affecting political conduct”<sup>7</sup>. The first part of the definition, “the use of violence to intimidate or cause panic”, sweeps broadly. It would include ordinary criminal offences of extortion and robbery, both of which may involve putting somebody in fear. Much criminal conduct involves scaring people, but it is unhelpful to define all such activity as terrorism. The second part of the definition, “especially as a means of affecting political conduct”, is more helpful. In historical contexts, terrorism describes a certain way of making people bow to the political will of the perpetrator<sup>8</sup>.

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<sup>2</sup> ‘Necessary Illusions’ – Noam Chomsky

<sup>3</sup> Ahmad, Irfan. 2014. “Kafka in India: Terrorism, Media, Muslims”. In. Robin Jeffrey and Ronjoy Sen (eds). *Being Muslims in South Asia: Diversity and Daily Life*. New Delhi: Oxford University Press. P.

<sup>4</sup> Ism-used to refer to a set of ideas or system of beliefs or behavior, Oxford Advanced Learner’s Dictionary, 8<sup>th</sup> Edn.(Oxford University Press,2010)

<sup>5</sup> .”Terrorism is one of the manifestations of increased lawlessness and cult of violence.”

The Supreme Court of India made this observation in *Hitendra Vishnu Thakur v.State of Maharashtra*, AIR1994 SC 2623: (1994) 4 SCC 602: JT 1994 (4) SC 255: (1994) 3 SCALE 105: [1995] 2 Um.Ni.P. 104-139, para 1-74

<sup>6</sup> Michael E.Tigar, *Thinking about Terrorism, The Threat to Civil Liberties in Times of National Emergency*, ABA Publishing, American Bar Association, Chicago, USA, 2007 p. 3

<sup>7</sup> Black’s Law Dictionary (8th Edition.2004), available at <http://www.westlaw.com>

<sup>8</sup> Michael E.Tigar, *Thinking about Terrorism, The Threat to Civil Liberties in Times of National Emergency*, ABA Publishing, American Bar Association, Chicago, USA, 2007 p. 3

The General Assembly on December 12, 1997 has also called upon states to take all necessary and preventive measures to prevent, combat and eliminate terrorism but according to international human rights standards. Sometimes certain internal forces compel to commit terrorism. Terrorism is found in many forms depending upon objects of the terrorists<sup>9</sup>. these are; (i) Individual Terrorism, (ii) Group Terrorism (iii) State Terrorism (iv) Revolutionary Terrorism and (v) International Terrorism<sup>10</sup>. Terrorism being a serious threat to the international security of a State in general and organized life of its community in particular, The Indian Parliament enacted several Anti-terrorist laws to combat the multi-dimensional threats posed by the growing menace of terrorism in the country.

Terrorism is described as the greatest crime against humanity, which possess a great threat to enjoyment of human rights. 'One man's terrorist is another man's freedom fighter' is not a valid and tenable concept now<sup>11</sup>.

Terrorism is a sponsored phenomenon. It is always foreign induced internal terrorism. Without powerful backing, international terrorism cannot be sustained. Rightly such states have been warned to change their course of action and switch over to pluralism and tolerance. Thus the ideology of democracy needs protection and promotion. It will be another mistake to align with theocratic states in this 'war on terror'<sup>12</sup>.

### **DEFINITIONS OF "TERRORIST ACTS" AND "TERRORIST ORGANIZATIONS"**

The governments and the United Nations have extensively legislated against "terrorism" and "terrorist acts," defining these terms precisely has been a major challenge. Most governments, including the United States, have found workable and consistent definitions of "terrorism" elusive, and with POTA the Indian government has continued to struggle with the same issues<sup>13</sup>. The result is

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<sup>9</sup> H.O.Agarwal, Human Rights, Central Law Publication, Allahabad, 2010, p-263.

<sup>10</sup> Awasthi and Kataria, Law relating to Protection of Human Rights, Orient Publishing Company, Allahabad, 2005, p-533.

<sup>11</sup> S.K.Datta, Terrorism- A Global & Regional Challenge Combating Terrorism-The Indian Experience (First Edition) 2005, PC Dogra, IPS (Retd), Ahok Malik, Abhishek Publications, Chandigarh, India.p.18

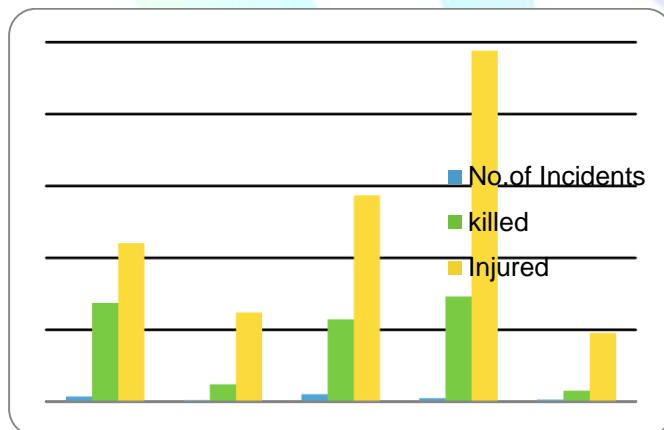
<sup>12</sup> *Ibid*.p.19

<sup>13</sup> By one count, federal law in the United States includes at least twenty-two different definitions of "terrorism." Nicholas J. Perry, The Numerous Federal Definitions of Terrorism: The Problem of Too Many Grails, 30 J. LEGIS. 249, 254-69 (2004).

a set of open-ended definitions that fail to give sufficient notice of what conduct is being criminalized and are susceptible to arbitrary and discriminatory application.

The Ministry of Home affairs (MOH) of India reported total Major cases of terrorists Incidents/Bomb blasts 137 in the hinterland from 1989 to 2015 (Up to 27<sup>th</sup> July, 2015) , 2187 personnel killed and 6077 injured.

| Year      | No. of Incidents | Security Forces/Civilians |             | Total       |
|-----------|------------------|---------------------------|-------------|-------------|
|           |                  | killed                    | Injured     |             |
| 1989-1994 | 36               | 687                       | 1102        | <b>1789</b> |
| 1995-2000 | 11               | 121                       | 621         | 742         |
| 2001-2005 | 52               | 572                       | 1435        | 2007        |
| 2006-2010 | 24               | 731                       | 2441        | <b>3172</b> |
| 2011-2015 | 14               | 76                        | 478         | 554         |
| Total     | <b>137</b>       | <b>2187</b>               | <b>6077</b> | <b>8264</b> |



### COUNTER-TERRORISM LEGISLATIONS: POLICY AND TRENDS:

The Security Laws are Categorized three types in India i.e., First Category nationwide laws, Second Category comprises act oriented or area-specific laws and third category special laws in the individual states. The Indian Parliament has so far enacted three anti-terror laws, the Terrorist and Disruptive

Activities (Prevention) Act -TADA 1985, 1987<sup>14</sup>, the Prevention of Terrorism Act -POTA, 2002 and the Unlawful Activities Prevention Act, 2004. TADA lapsed in 1995 and POTA was repealed in 2004. The repeal of POTA was followed by the amendment of an existing law- the Unlawful Activities Prevention Act, 1967 UAPA – to include POTA provisions pertaining to punishment for terrorist activities and organizations. UAPA (2004) may then well be considered the third anti-terror law in India. The concepts of Acts are meant by ‘terrorism’ and ‘terrorist activity’ that these laws propose to ‘prevent’. The definition of terrorism is complex and defies an accepted definition.

### ANTI-TERROR LAWS AND IMPLICATIONS FOR HUMAN RIGHTS IN INDIAN CONTEXT<sup>15</sup>

1. Anti-terror laws bypass constitutional safeguards that are provided in the Constitution in cases of detention (Article 22) and principles of fair trial as laid down in the criminal procedure. As a result these laws facilitate long-term detention of large numbers of accused/suspects, without charges being brought against them, or proven/disproven in a court of law.
2. The above, combined with provisions that made confessions to a police provisions that made confessions to a police officer admissible, opened up immense possibilities of torture in custody. Significantly, admission of confessions to police officers as evidence is prohibited in ordinary law because the law makers recognized the prevalence of torture and coercion by police, reinforced by custodial deaths reported to the National Human Rights Commission(NHRC). In the Supreme Court judgment in *State v. Afzal and others*, known as the Parliament attack case, delivered in August 2005, the Court expressed ‘serious doubts whether it would be safe to concede the power of recording confessions to the police officers to be used as evidence against the accused making the confession and the co-accused’.
3. Certain provisions, especially section 21 of POTA, assume a civil society founded on suspicion and distrust. The Act squeezes out spaces of freedom and liberty, stifling voices of political dissent. It aimed at ushering in a depoliticized mass society, where elements of public, freedom, and democratic deliberation are absent. The narrowing of democratic spaces

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<sup>14</sup> The Terrorist Affected Areas (Special Courts ) Act, 1984 empowered the Central Government to declare an area to be terrorist affected, and to constitute special courts for the speedy trial of suspected terrorists.

<sup>15</sup> Towards Legal Literacy – An Introduction to Law in India – Edited by Kamala Sankaran, Ujjwal Kumar Singh, Oxford University Press.2008. P.196-197.

of dialogue and deliberation, moreover, breeds a politics of fear and intimidation, the hallmark of the days before and during the emergency.

4. The unfolding of anti-terror laws the world over has shown that they are usually used in a way so as to spin a web of suspicion around specific communities, especially religious and racial minorities, immigrants, and radical political groups. The wide powers of arrest and detention under the Acts, combined with stringent bail conditions, lead to indiscriminate arrests.
5. Moreover, there is a more permanent effect that the Acts have on ordinary legal procedures, leading to what has been termed as the 'permanence of the temporary'. Extra –ordinary laws have a general tightening effect on the law, whereby their provisions become standards of measuring efficiency of law. As seen in the case of UAPA 2004, they get absorbed into ordinary laws, leading to a permanence of what was originally construed and justified as temporary measures. We have noted already that the repeal of POTA was accompanied by amendment in the Unlawful Activities (Prevention) Act, 1967, to bring in specific features of the repealed POTA in UAPA, which was a 'permanent' law. When POTA was repealed, and its extraordinary provisions pertaining to bail, confessions to a police officer, and the period of police and judicial remand were dropped, the provisions giving evidentiary value to telephone tapping were retained through the amended UAPA 2004, without, however, the safeguards that POTA provided. Moreover, unlike POTA, there is no provision in UAPA of recourse to the Review Committee. Further, the inclusion of extraordinary measures into an 'ordinary' law, not only gives them a permanent place in law, it simultaneously excludes them from periodic legislative review, which was necessary for the extension of extraordinary laws, e.g., TADA had to be reviewed every two years and POTA every three years by the Parliament.
6. The unfolding of TADA and POTA showed that they were primarily political laws, with a strong ideological content which was demonstrated most starkly in their selective application in Gujarat. Both TADA and POTA came in response to and were used against people's movements, against tribals in some states, and against political opponents in others. They mark a trend where the scope of terrorism and terrorist activity is broadened to include a wide range of political activity ranging from armed secessionist movements to expressing support to political groups and political ideologies, which are at variance with those in power.

India has various provisions regarding terrorism. The relevant provisions of Indian Penal Code in this respect are, Section 120,120-B, 121-131,153-A, 153-B, 216 A, 295 A and 384.Sometimes anti-terrorists laws are misused by the authorities. That is why misuse of the acts of terrorism is considerably criticized by the National Human Rights Commission, Minority commission and International Human Rights Organizations like Amnesty International on the following grounds.

The Supreme Court of India rightly recognized, “terrorism often thrives where human rights are violated”, and “the lack of hope for justice provides breeding grounds for terrorism”<sup>16</sup>. As the former UN Secretary General Kofi Annan pointed out, “we should all be clear that there is no trade-off between effective action against terrorism and the protection of human rights. On the contrary, I believe that, in the long term, we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism.”<sup>17</sup>

Security laws could be one of the “best prophylactics” in countering terrorism provided they plug all loopholes that provide space for human rights abuses. The core counter terrorism strategy should revolve around “less fear – mongering” and “more confidence”. Adhering to human rights obligations when combating terrorism, therefore, helps to ensure that advocates of violence do not win sympathy from the ranks of those harmed and alienated by the state. Special laws must also seek to ensure that terrorism-related offences are investigated, prosecuted, and adjudicated more effectively, and in turn, bring down the “crisis of legitimacy.” It is necessary to reform the entire criminal justice system<sup>18</sup>.

Human Rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involves respect for, and protection and fulfilment of civil, cultural, economic, political and social rights as well as the right to development. Human rights are universal-in other words they belong inherently to all human beings- and are inter-dependent and indivisible.

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<sup>16</sup> People’s Union for Civil Liberties vs. Union of India, AIR 2004 SC 456,465.

<sup>17</sup> Kofi Annan’s address to the UN Security Council meeting, 21 January 2002.

<sup>18</sup> N.Manoharan, Trojan Horses: Counter-terror Laws and Security in India, Economic and Political Weekly, Vol.XLIV.No.46,November 14,2009 p.24



Various laws regarding terrorism *vis a vis* human rights and their enforcement and judicial approach leads to conclude that strong national variations based on political interpretation for example US and UK anti-terrorism legislations are drastic and do not admit of any latitudes for fear of insecurity of states. The Indian laws, if they can be termed as laws against terrorism are ad hoc responses to public outcry against terrorist activities with apparent softness based on the pretext of human rights standards. The only so-called legislation on terrorism of year 2008 is simply a shy attempt to face the criticism of softness against terrorism. The approach of the National Human Rights Commission of India is astonishing when they plead that hardly any special laws are required against-terrorism. As a result there is hardly any anti terrorist laws in India to be analysed. What is really is the study of various factors for governmental attitude for not having any special laws against terrorism.

Analysis of various laws in the United Kingdom and United States of America vis-a-vis that of India and their enforcement indicate various trends in their policy and enactments which may be illustrated concluded in following chart<sup>19</sup> :

#### 4.1 Counter-terrorism policy and laws in the UK, US vis-a-vis India

| S.No. | Policy                         | UK and US  | India  |
|-------|--------------------------------|--|--|
| 1.    | Zero tolerance Policy          | Policy adherence both in theory and practice   | Only in theory and not in practice   |
| 2.    | Change in policy               | Policy remains unchanged even after media criticism, Human Rights cries.   | Policy changes because of pressure groups  |
| 3.    | Effect of change in government | No effect on policy against terrorism. New government shows agreement with former government consistency in policy | Change in government effects policy. New government shows disagreement in policy from former government. |
| 4.    | Effect of Policy               | Fresh enactment on terrorism a continuing process.   | Legislation on terrorism discontinued, (TADA 1987  |

<sup>19</sup> Anurag Deep, *Terrorism, Policy against Terrorism and the Human Rights: A Critical Study of Anglo-American Jurisprudence*, In: *Human Rights in 21<sup>st</sup> Centaury-Changing Dimensions*-Edited by Gurudip Singh & V.K.Ahuja, Universal Law Publishing Co, New Delhi, India,2012 pp. 811

|    |                                       |  |   |
|----|---------------------------------------|--|---|
|    |                                       |  | expired)and even repealed, (POTA 2002)  |
|    |                                       |  | Fresh enactments neither initiated nor encouraged by Union Government, rather discourages. Example. UP COCA, GUJ COCA   |
| 5. | Exclusive laws on terrorism           | Yes, more than a couple of enactments only to tackle terror threat   | Presently no enactments exclusively to address terrorism, only piece meal legislations.   |
| 6. | Unlawful activity vis-a-vis terrorism | Exclusive enactments on terrorism indicate urge to distinguish crime and Unlawful activity vis-a-vis terrorism | Incorporation of “terrorist activity” etc. In UAPA (Unlawful activities (Prevention) Act)1967 indicate that the mind set of government does not distinguish crime and Unlawful activity vis-a-vis terrorism |
| 7. | Approach of government                | UK Terrorism Act 2006 and the USA PATRIOT Act conceives terrorism as war like situation                        | UAPA 1967, as amended in 2008,2012, still seems to conceive terrorism as law and order problem  |
| 8. | Terrorism as cult of violence         | Policy acknowledge terrorism as cult of violence   | Indian Government fails to acknowledge terrorism as cult of violence through the Supreme Court of India in various cases admit it in no uncertain terms   |

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|----|---|---|--|
| 9. | Whether provisions concentrate on end (ism) | Yes, the policy and provisions in counterterrorism legislations in the UK and US focus on means (terrorist activity) as well as end (terrorism) | No, provisions only concentrate on means and not the end or mission of terrorist |
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## STRATEGY TO COMBAT TERRORISM

Experience shows that key to success in combating terrorism lies in combining liberal democracy, such as India, with sunset tough line legislation backed by determination and skill of the law enforcement agencies.

The 'war on terror' has to be fought at two levels,

- a) Military-security level to eliminate or reduce violence,
- b) Politico-psychological war to secure and expand public support. As said rightly 'the eyes and ears of the security forces must be the citizens'.

The terrorists do not have mass support. They firstly sprout as tiny cells and become a monster with the support of a sponsoring state which sustains terrorism for geo-political reasons. Such sponsoring states are largely controlled directly or indirectly by the military establishment. Thus, the liberal democracy has limitations of laws, judicial restraint and human right considerations. Therefore, the strategy has to be a mix of isolating terrorist cells and neutralizing them with zero collateral damage to civilian law abiding citizens. The stratagem of the terrorist is to provoke the security forces into a repressive over reaction that will alienate the people and push them into the arms of the terrorists.

### Fundamentals to be observed:

- Declaration of a clear and determined policy to deal with terrorism with a backup of national consensus.
- Vigilante groups may create civil war situation. Such self-protection groups should be a part of the state apparatus and should not operate independently.
- There should be no concession to terrorist blackmailing by conceding terrorist demands.

- No vacillation in security operations otherwise it may give the impression of fatigue and capitulation.
- Terrorist propaganda for enlisting public support must be countered by government and NGOs.
- Economic and welfare programmes must not suffer.
- Good governance must be ensured for eradication of corruption at all levels and in all forms<sup>20</sup>.

### **INTERNATIONAL NORMS AGAINST TERRORISM:**

#### *Jus Cogens*<sup>21</sup>

International human rights standards and norms are universal and all human rights are inter-related, inter-dependent. They do not allow any regional variation undermining and downgrading any international human rights standards. Similarly all anti terrorism laws of any nation must be universal in character and no regulation or regional circumscription should be allowed on the basis of religious fanaticism and fundamentalism and so-called glorification and designation of terrorist as freedom fighters. What is required is really the international cooperation and development of international legal standards against terrorism because terrorism *per se* is anarchy, anti democratic, subversive and a missionary of violence. International community therefore is strongly convinced that only one policy can check the threat of terrorism and that is zero tolerance.

United Nations have said, that counter Terrorism measure, must be balanced and must always consider the protection of the human dignity. But, international news shows us that these recommendations are not being taken into consideration on the ground. It is urgent to adopt a “human” approach in the combat of Terrorism and this research has as purpose the explanation of two steps in this regard: the adoption of an International Convention on Terrorism and Human Rights, and, the

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<sup>20</sup> *Ibid.*p.20

<sup>21</sup> *Jus Cogens* means ‘a rule or principle in international law that is so fundamental that it binds all states and does not allow any exceptions. Such rules (sometimes called peremptory norms) will only amount to *jus cogens* rules if they are recognised as such by the international community as a whole. A treaty that conflicts with an existing *jus cogens* rule is void, and if a new *jus cogens* rule emerges, any existing treaty that conflicts with it automatically becomes void. States cannot create regional customary international law that contradicts *jus cogens* rules. Most authorities agree that the laws prohibiting slavery, genocide, piracy and acts of aggression or illegal use of force are *jus cogens* laws. Some suggest that certain human rights provisions (e.g., those prohibiting racial discrimination) also come under the category of *jus cogens*’. Oxford Dictionary of Law, 6<sup>th</sup> Edn., 2006 p.300

creation of an institutional link between the Counter-Terrorism Committee of the UN Security Council and the UN Human Rights Council.

## UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS

The United Nations General Assembly, on 23 December 1994, called the member states to take all necessary and effective measures to prevent, combat and eliminate all acts of terrorism wherever and by whomsoever they are committed. The resolution unequivocally condemned all acts, methods and practices of terrorism as activities aimed at the destruction of human rights, fundamental freedom and democracy. Terrorism, it stated, threatens the territorial integrity and security of states, destabilizes legitimately constituted governments, undermines pluralistic civil society, and has adverse consequences on the economic and social development of the state.

Another resolution adopted by the United Nations General Assembly on 11 December 1995 stressed the need to strengthen international cooperation between states and between international organisations and agencies and the United Nations “to prevent, combat and eliminate terrorism in all its forms manifestations”.

The United Nations Global Counter-Terrorism Strategy<sup>22</sup>, adopted in September 2006, is a comprehensive instrument intended to enhance coordination of national, regional and international efforts to counter terrorism.

The Strategy takes a holistic approach addressing four pillars:

- I) Measures to address the conditions conducive to the spread of terrorism;
- II) Measures to prevent and combat terrorism;
- III) Measures to build States’ capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and

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<sup>22</sup> The Criminal Justice Response to Support Victims of Acts of Terrorism, United Nations office on drugs and crime, Vienna, New York, 2011, p.10, Adopted in the form of a General Assembly resolution and annexed Plan of Action on 8 September 2006 (A/RES/60/288). It has been reviewed and updated by the General Assembly on 5 September 2008 (A/RES/62/272) and on 8 September 2010 (A/RES/64/297).

- IV) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

## INTERNATIONAL CONVENTIONS

The Organized criminal and terrorist violence not only poses a serious threat to the security, peace, progress and prosperity of human race but also destroys the very foundation on which the concept of human rights is based. Recognizing this, in the year 1993, the World Conference on Human Rights declared that, *“The acts, methods and practices of terrorism in all its forms and manifestation..... are activities aimed at the destruction of human rights.”*

Dedicating itself to fighting and eliminating international terrorism the United Nations in the year 1994 adopted the United Nations Declaration on Measures to Eliminate International Terrorism. In Para 3 of the declaration the United Nations affirmed that,

*“Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.”*

The terrorism even when launched in the name of promoting and protecting human rights, and often this remains the claim of perpetrators of terrorist violence, has not been considered as justified. The Successive resolutions of the *United Nations General Assembly and of the United Nations Commission on Human Rights* have asserted that, *“terrorism in all its forms and manifestations, whenever and by whosoever committed, can never be justified in any instance, including as a means to promote and protect human rights.”*

Further, these resolutions adopted under the title *“Human Rights and Terrorism”* have now also repeatedly contained an *“unequivocal condemnation of all acts, methods and practices of terrorism, regardless of their motivation, in all forms of manifestations, wherever and by whomever committed as acts of aggression aimed at destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted*

*Government, undermining pluralistic civil society and having adverse consequences on the economic and social development of States.”*

## **IMPACT OF TERRORISM ON HUMAN RIGHTS**

In 1994 Supreme Court of India, drew a distinction between a merely criminal act and terrorist act in its judgements *Hitendra Vishnu Thakur v. State of Maharashtra*<sup>23</sup> and in short

*“.....It may be possible to describe it (Terrorism) as use of violence with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity”.*

the terrorism is recognised as **an assault on a civilized society** and law required is to entrust the law enforcing agencies with extraordinary powers to meet what is genuinely perceived as an extra ordinary situation of crime (terrorism) and further, at the same time law is to ensure Human Rights at three distinguished stages to **take measures to combat terrorism by Protection of Human Rights, Preservation of Human Rights and Promotion of Human Rights.**

- a) **Protection of Human Rights** of the victims innocent people who are brutally killed or victimized in a terrorist act;
- b) **Preservation of Human Rights** of terrorists in legal and judicial proceedings beginning from cordon/ search operation, encounters, firing in crowded areas, registration of case, detention, interrogation, investigation, charge-sheet, trial, punishment etc.
- c) **Promotion of Human Rights** to eliminate the root cause of terrorism by ensuring basic human rights including liberty, dignity, education, health, employment, i.e., “inclusive growth” i.e. participation of every and each citizen of the country in the progress and development of country.

The destructive impact of terrorism on human rights and security has been recognised at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former

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<sup>23</sup> (1994) 4 SCC 602

Commission on Human Rights and the new Human Rights Council<sup>24</sup>. Specifically, Member States have set out that terrorism:

- (i) threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms and aims at the destruction of human rights;
- (ii) has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society and destabilizes legitimately constituted Governments;
- (iii) has links with transnational organised crime, drug trafficking, money laundering and trafficking in arms, as well as illegal transfers of nuclear, chemicals and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery;
- (iv) has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and
- (v) Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace; and Security, and must be suppressed as an essential element for the maintenance of international peace and security.

*D.K.Basu v. State of West Bengal*<sup>25</sup> that: “State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism: that would only be bad for the state, the community and above all the Rule of Law. The State must, therefore, ensure that the various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto them.” In *Kartar Singh v. State of Punjab*<sup>26</sup> the Supreme Court in this case expressed serious concern about the sheer misuse and abuse of the act by the police and made an attempt to infuse human rights by devising certain guidelines to ensure that confessions obtained during pre indictment interrogations is in conformity with human rights principles which the court went on to elucidate the same in the case of *Shaheen Welfare Association v. Union Of India*<sup>82</sup>, wherein it was elucidated that the rights

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<sup>24</sup> Complaint Procedures (Rev.1)

<sup>25</sup> AIR 1997 SC 610

<sup>26</sup> (1994) 4 SCC 569



under article 21 should be strictly adhered. Observing the at times, innocent people had to languish in jail for long periods due to stringent bail requirements, the court stated that it causes irreparable damage to innocent persons who have been wrongly accused of crimes and are ultimately acquitted but have to remain in jail for sustained periods due to stringent bail provisions in TADA.

Particularly in the era after the atrocious terrorist attacks in the USA on 11 September 2001 ('9/11'), and Indian Parliament attack on 13 December, 2001 a whole wave of counter-terrorism measures has been introduced. While human rights are not absolute, and public security therefore may form a legitimate ground for introducing certain limitations, it would be a mistake to conclude that security generally trumps human rights. A more nuanced legal analysis is essential in order to counter to the challenges of complying with human rights while at the same time effectively combating terrorism. Those challenges appear not only at the level of domestic law, where increased security has often been the justification for measures that restrict human rights. At International level the UN Security Council has identified international terrorism as a threat to peace and security, and resorted to its far-reaching powers under Chapter VII of the UN Charter. Shortly after 9/11 it adopted Resolution 1373, imposing a whole set of legally binding counter-Terrorism obligations upon states, and established a new subsidiary body, the Counter-Terrorism Committee (CTC)<sup>27</sup>. Another subsidiary body, the 1267 Sanctions Committee, administers a regime of listing individuals and entities for targeted sanctions for their association with al-Qaida or the Taliban.

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<sup>27</sup> SC Res 1373 (28 September 2001).