

CHALLENGES TO HUMAN RIGHTS IN THE CONTEXT OF TERRORISM AND COUNTER TERRORISM

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ABSTRACT

Today, both the world at large and India in particular, face daunting challenges in the task of protecting human rights of common people regardless of the country they belong to. No country in the world can be said to be free from the threat of terrorism. Terrorism presents a global threat to democracy, the rule of law, human rights, peace and security. It also constitutes an attack on mankind's most fundamental value; the right to a life lived in peace, freedom and dignity. Security of the individual is a basic human right and the protection of individual is, accordingly, a fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their citizens and others. In recent years, however the measures adopted by Governments to counter terrorism have themselves often posed serious challenges to human rights. Terrorism substantially diminishes government's respect for fundamental human rights such as absence of extrajudicial killings; political imprisonment and torture. To some extent, civil rights are also restricted as a consequence of terrorism. Therefore, both terrorism and counter-terrorism efforts affect the enjoyment of human rights. The purpose of paper is to analyse how the terrorism and counter terrorism measures taken by States are posing a serious challenges before human rights and human security in India as well as rest of the world.

KEYWORDS: Human Right, Terrorism, Counter Terrorism,

Since last two decades, the world has been witnessing widespread violence and terrorism at both national and international levels. No country in world can be said to be free from the deadly threat of terrorism. In the Third World countries, violence due to terrorism has become a menace for the society. Millions of people have lost their lives, homes and properties due to terrorism. In many parts of World, terrorism has ruined the very nature of human being and society.

Terrorism clearly has a very real and direct impact on human rights, with devastating consequences towards the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism also destabilizes Governments, weaken civil society, endanger peace and security in the nation and threaten economic development of the country. All of

these also have a real impact on the fundamental human rights of individuals.

Security of the individual is a basic human right and the protection of individual is, accordingly, a fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their citizens and others. For this State takes positive measure to protect them against the threat of terrorist acts and bringing the social justice towards the suffering civil society. In recent years, however the measures adopted by States to counter terrorism have themselves often posed serious challenges to human rights and rule of law. Therefore, both terrorism and counter-terrorism efforts affect the basic human rights of the society and individuals (OHCHR, 2008:1).

HUMAN RIGHTS

The fundamental rights that humans have by the fact of being human, and that are neither created nor can be diminished by any government. They are supported by several international conventions and

treaties (such as the United Nation's Universal Declaration of Human Rights in 1948). It include cultural, economic and political rights, such as right to life, liberty, education and equality before law, and right of association, belief, free speech, information, religion, movement, and nationality. Implementation of these rights is not binding on any country, but they serve as a standard of concern for people and form the basis of many modern national constitutions.

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 rights to development. Human rights are universal because they belong inherently to all human beings. Since the adoption of the Universal Declaration of Human Rights, and for the first time in human history, the international community has been committed to respect human rights. States have become committed towards respecting fundamental rights and number of other international conventions that have been successively adopted at international level such as the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, or the 1987 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and at the continental level like in Europe, the European Convention on Human Rights (ECHR), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Sykiotou, 2011:203).

TERRORISM

Terrorism can be defined as an act of violence that target civilians in the pursuit of political or ideological aims. Terrorism includes "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" and such acts "are in any circumstances unjustifiable, whatever the considerations of a

political, philosophical, ideological, racial, ethnic, and religious or other nature that may be invoked to justify them" (OHCHR, 2008:6).

However in India these 'terrorist' acts are referred as 'freedom struggle', 'militancy', 'insurgency' or naxalism' and are being committed against the State (and innocents) with similar objectives and designs; These groups claim that these acts do not come under the definition of terrorism. Thus in pursuance of the above given definitions we can comprehend that terrorism is something which includes state, terrorists, their demands, society, terror effect, innocent victims and most importantly human rights of the victims and human rights of terrorist while enforcing Anti-Terrorism law (Das, 2010:3).

The description of terrorism as *irrational* also depends on perspective. Those who adopt terrorist methods say that they respond to circumstances. They evaluate their methods by result; they certainly consider they act rationally. For victims, on the other hand, the violence inflicted upon them is indeed experienced as arbitrary, unpredictable and without cause or justification. However, terrorism is a global threat that can never be justified. After the 9/11 attacks on the World Trade Centre in United States ,the December 13 2001 attacks on the Indian Parliament, 26th November 2008 Mumbai Attacks, terrorism has assumed new dimensions. It has come to threaten the very foundation of modern civilized life. The way these attacks were carried out, redefined the term of terrorism. New concepts and definitions of terrorism need to be developed for new realities. Today there are many changes occurred in traditional terrorist acts, their motivation, strategy, means, weapon and above all their aims (International Council on Human Rights Policy 2008:9).

VIOLATION OF HUMAN RIGHTS BY ACTS OF TERRORISM

The issue of terrorism is not a new to society. It is on the human rights agenda for many years. Acts of terrorism in all forms have endangered and killed innocent people, threatened fundamental freedoms and seriously impaired the dignity of human beings.

It attacks the values that lie at the heart of the Charter of the United Nations and other international organizations such as respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peoples and nations.

In the present time, the effects of terrorism are wide-ranging and there is probably no single human right that is exempt from the impact of terrorism. The terrorism has devastatingly affected the rights to life, liberty, security and the dignity of the individuals. The attack of 9/11 struck at the fundamental human rights of every person. The individual victims were deprived of the most fundamental of all human rights- the right to life. In addition, the right to liberty and the right to security were among the other human rights directly affected by the attack of September 11 (Schorlemer 2003:269).

Today, terrorism on larger extent creates a climate of fear. By using violence and fear as a tool, it influences ideological and political factors in order to impose its own model society. It impedes citizens in their use of their rights to have a say in the decisions that affect their lives. Furthermore, terrorism weakens pluralism and democratic institutions through the creation of negative conditions for functioning of the constitution and hinders the democratic process of a country. In this way it undermines free political, economic, social and cultural development of the nations and their citizens (ibid).

The violence of terrorism-in all forms, is objectionable to everyone who believes human life is a gift of God and therefore it is infinitely precious. Every attempt to intimidate others by inflicting indiscriminate death and injury upon them is to be universally condemned. The answer to terrorism, however, cannot be to respond in kind, for this can lead to more violence and more terror. Instead, a concerted effort of all nations is needed to remove any possible justification for such acts.

In recent times, acts of terror have introduced new dimensions of violence. Fundamental international laws and norms, including long-

established standards of human rights, have come under threat. Terrorist groups justify their action and motives on social, political and religious grounds. However, terrorism, as indiscriminate acts of violence against unarmed civilians for political or religious aims and it can never be justified legally, theologically or ethically.

In recent times, terrorism poses challenges to human right in various ways:

Threaten the dignity and security of human being everywhere, endangered or takes innocent lives, creates an environment that destroys the freedom from fear of the people, and aims at the destruction of human rights.

It has links with transnational organised crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery;

It has adverse consequences for the economic and social development of the States, obstructs friendly relations among countries and has a negative impact on relations of cooperation among states.

Threaten the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations (OHCHR 2008:6-7).

Thus, it is evident that there is a direct and indirect link between the terrorism and the violation of human rights and freedom.

VIOLATION OF HUMAN RIGHTS BY COUNTER TERRORISM MEASURES

As mentioned above, because terrorism has a serious impact on a range of fundamental human rights, States are obliged to take effective counter-terrorism measures. These counter terrorism measures must be based on the respect of human rights. However, today counter terrorism measures taken by State has itself posed a serious threat to human rights. Counter-terrorism measures affects in particular: the presumption of innocence; the right to a fair trial; freedom from torture; freedom of thought; privacy rights; freedom of expression and peaceful assembly. Counter-terrorism measures

addressing specific ethnic or religious groups would also be contrary to human rights law (OHCHR, 2008:9).

In response to the events of September 11, 2001, the “antiterrorist policies” both at international and national levels has gradually led to the restriction or even suppression of human rights. Immediately after the events, States turned their attention to the re-evaluation of their security. They have increased the powers of law enforcement and intelligence agencies, including the power to interrogate and detain persons. They can intercept private communications and have access to conduct searches of private homes and personal properties without procedural safeguards. They have tightened border controls that impede access to their territory. They also have authorized various registration and profiling policies appearing to target certain groups solely because of their race, ethnicity or religion (Sykiotou, 2011:204).

Furthermore, around the world, 9/11 attacks were followed by a wave of racist attacks directed against Muslims, Arabs and Sikhs based on their appearances. Some governments arrested hundreds of people for political reason, thus using the war on terror as an instrument to combat political opponents.

However, many of the measures that have been adopted by States appear to be disproportionate to the threats posed, and seem to be strange towards the goal of strengthening national security. These measures violated fundamental human rights, even some of which were considered as non- derogative rights in times of emergency. Among the measures taken in the name of security were secret arrests and dubious conditions of detention. This also includes inhibition of free contact with the defendant’s lawyer and extraordinary military courts. Freezing of accounts for individuals organisations that were supposed to relate with terrorism was also part of measures taken by States (Sykiotou, 2011:204).

It is not possible to provide an in-depth analysis of all human rights concerns in the context of counter-terrorism measures; however, this paper

identifies following as current and emerging human rights challenges.

1. The right to life
2. Challenges to the absolute prohibition against torture
3. Transfer of individuals suspected of terrorist activity
4. Liberty and security of the person
5. The principle of non-discrimination
6. Due process and the right to a fair trial
7. Freedom of expression and the prohibition of incitement to terrorism
8. Freedom of association
9. Surveillances, data protection and the right to privacy
10. Economic, social and cultural rights

A number of factors are responsible for such violations. These include lack of transparency and accountability, inadequate training and education among security personnel in observing human rights. Police also lacks of scientific investigation skills and tools, they have deficient information and investigation details for these situations. There are high levels of stress factor caused by extended tour of duty in conflicting cases under treacherous and tough conditions, and not authoritative judicial system. In this agenda-driven attacks of trading charges by the human rights groups and the security forces, the perceptions, rational voices and aspirations of the unbiased sections of the civil society, as well as those who have fallen victim to human rights violations are either lost, or are ignored. It might not be incorrect to state that the unbiased civil society does not object to the killing of terrorist, but gets enormously disturbed and concerned when innocent persons fall victim to either terrorist acts or excesses by the security forces (John and Ramana 2007:2).

In this counter terrorism measures taken by the State, the intelligentsia, media and non-governmental organisations can play a significant and useful role. They could not only infuse confidence among the people against terrorists but also act as a bridge between the community and the State in effectively combating terrorism. It is extremely important to train and educate the

security forces like police, Para-military and the army on the importance of observing, restoring and safeguarding the human rights of the people. The training and education should focus especially on the lower level of the security forces, which, in large numbers, comes into contact with the community during counter terrorism measures (ibid).

CHALLENGES TO HUMAN RIGHTS IN INDIA IN THE CONTEXT OF TERRORISM AND COUNTER TERRORISM

India is no stranger to terrorism. It has been a long-time sufferer of terrorism in many parts especially in the North-east, Punjab or in Jammu & Kashmir. However, since the last decade specially, terrorism has increasingly spread to other parts of the country. Terrorism before 9/11 primarily was restricted to the violence in Punjab, the parts of Jammu & Kashmir. However, after the 9/11 attack these acts assumed new dimensions. Sleeper cells, terrorist modules, crude bombs, frequent bomb blasts in densely populated areas which caused innocent lives being lost. This illustrates the brutal reality of the 'global jihad' coming to India. Notably the attack on Parliament, the Malegaon blasts, the serial blasts in Delhi, Ahmadabad, Surat, Mumbai local trains, in Guwahati and Mumbai attacks in 2008, there seem to follow a predictable pattern. Regional terrorist organisations and groups have also posed threat to human rights and integrity of India (Das, 2010:1).

The counter measures taken by Central and State government and security forces has also violated human rights of individual in large extent. At present, the suppression of the people's freedom of speech and expression and frequent attacks on the dignity of common citizens has risen to alarming proportions. Many states are witnessing struggles for the right to self-determination, like Jammu and Kashmir, Manipur, Nagaland and parts of Assam. These parts have large no. of cases of detentions and encounters of people being who are sometimes considered as supporters of terrorist groups. Strong laws like the Armed Forces Special Powers Act, 1958 under which anybody can be picked up merely on suspicion, houses searched and

so on, leads to violations of the basic right to life and liberty. Further, there exists no mechanism of public accountability since the army cannot be questioned and can deny access to any information, which may be in national interest at times (Srivastava, 2011).

At times Combating terrorism measures are targeted and profiled towards some sections of society. The country's intelligence and security establishment is now claiming that terror activities have moved from being sponsored by forces across the border to being home grown. This has resulted in some hardliners supporting the cause of terrorist groups. Records show that if you have been charged in one terror case, there is every possibility that one will be linked to all subsequent terror cases and this affects fundamental human rights of the accused at times.

Governments are increasingly taken strong stand against terrorism. There is frequent use of sections called 'offences against the Indian state' in the IPC (Indian Penal Code). This law on sedition, Sec 124(A) of the IPC, is one of the most vaguely defined and unclear sections of the Indian Penal Code where in accused can be detained for long periods even when he is not proven guilty of the offense. The manner in which it is being applied by the police in various states of the country, clearly shows that it has become strong tool used by law enforcers to silence dissent against government's policies and actions. Clearly there are pro and against for Government policies which can co exist in democracy. Special laws have been drafted for the national security; like the central law called the Unlawful Activities Prevention Act, 2004 (which replaced POTA that had earlier replaced TADA) or state laws like the Chhattisgarh Special Public Security Act, the various Goonda Acts and the National Security Act which are used indiscriminately. Many argue that these laws are intrinsically violate of the principles of Constitution as they mostly criminalize intent, treat a mere statement to a senior police officer as admissible in court, and place onus of proof on the` accused to prove his/her innocence. The people who are increasingly being booked are local and other

human rights activists supporting people's struggles (ibid).

Of late, a section of the judiciary, in the lower courts and the High Courts, has actively endorsed and put its seal of approval on the actions of the government even though the official actions overstep limits imposed by the Supreme Court on the use of such laws. Far more disturbing is the tendency of endlessly detaining people in jails, without even framing charges and continuing to deny bail to the accused on what appear to be flimsy grounds. The entire mechanism of the National Human Rights Commission, which through its state commissions, was expected to restrain state excesses, appears either defunct or co-opted.

CONCLUSION

Terrorism has been the biggest problem today that threatens the basic rights of human existence and development of a nation. This paper argues that violation of human rights is a major causal factor of terrorism. Consequently, the fight against terrorism should not only focus on military means, but should also address the worldwide lack of respect of human rights. A clear civil reaction is needed. Furthermore, it also shows that there is a dangerous tendency to legitimize human rights violations under the pretext of combating terrorism.

However, the war of terrorism is a security concerns, but is also a human rights concern. Consequently, it ought to be pursued with full respect for international law and human rights. All nation states have a dual obligation to maintain human security and to promote international human rights. Freedom, human rights and security have to be realized simultaneously and basic human rights may not be diluted under the pretext of combating terrorism. Governments must respect the agreed norm governing the protection of human rights, when dealing with those suspected of involvement in terrorist acts.

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