

TERRORISM AND HUMAN RIGHTS

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ABSTRACT

According to a phrase in Mahabharata:

अहिंसा परमो धर्मः,
धर्म हिंसा तथैव च ।

The above phrase means that Non-violence is the ultimate dharma.
Similarly violence in service of Dharma.

"To strike the balance between the law enforcement machinery on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a consistent problem of State. The pendulum over the years has swung to the right. Even as long ago in beginning of the twentieth century, Justice Holmes declared that 'at the present time in this country there is more in danger that criminals will escape justice than that they will be subject to tyranny.'"

- *Nandini Satpathy v. P.L. Dani*²

The balance between the rights of people who are innocent on one side and on other side rights of the accused person so that injustice should not be done to any person is paramount importance. Human rights and terrorism are broad phenomena, not just legal problems, and the legal perspective is surely not the only one relevant aspect to an analysis of their role in contemporary international relations. Let's discuss first about the meaning of terrorism and human rights in brief.

WHAT IS TERRORISM AND HUMAN RIGHTS ?

The term "terrorism" comes from French word *terrorisme*, in Latin, it means "great fear" or "dread", related to the Latin verb *terrere*, which means "to frighten".

"Terrorist" is a person who uses unlawful violence and intimidation, especially against civilians, in the pursuit of political aims.

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² 1978 Cri. LJ 968 (SC), para 15

"Terrorist organization" which unlawfully using violence and intimidation, especially against civilians, in the pursuit of political aims.

Besides the above definition the *United Nations General Assembly in December 1994* gave a political description of terrorism as "Criminal acts intended or he provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them".

The Supreme Court of India in *Madan Singh vs. State of Bihar*³ quoted definition of terrorism "defining acts of terrorism veritably as "peacetime equivalents of war crimes."

The Internationally-recognized human rights are commonly understood "to encompass those rights to which all persons are entitled without discrimination by the mere fact of being human" — that is, rights that cannot be denied or restricted on the basis of culture, tradition, nationality, political orientation, social standing or other factors, but must be protected in fact and given effect by law.

Broadly speaking, these rights include the most fundamental preconditions for a dignified human existence. They are primarily asserted against government authorities but in some instances are also capable of assertion against other individuals in their private capacities it means that generally the rights must be respected, protected and given effect by the government but reasonable restriction could be imposed or discrimination could be done under some reasonable circumstances.

INTERNATIONAL PERSPECTIVE

International laws, treaties covenant conventions and other instruments secure and protect the rights of people and prohibit acts of terrorism.

1. INTERNATIONAL HUMAN RIGHTS LAW

The main articulation of international human rights law is found in various human rights treaties and other international instruments. The core documents are the 1948 *Universal Declaration of Human Rights (UDHR)* and two multilateral treaties, the 1966 *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* ("International Bill of Rights"). As a General Assembly resolution, the UDHR is technically non-binding under international law but is generally accepted as articulating the obligations undertaken by UN Member States under the UN Charter.

2. INTERNATIONAL TERRORISM LAW

International humanitarian law contains several provisions that expressly prohibit acts of terrorism. Article 4(2) of Additional Protocol II provides that "acts of terrorism against civilians and non-combatants are and shall remain prohibited at any time and in any place whatsoever"

Four of the treaties against terrorism are – the 1979 Convention against hostage-taking, the 1997 Convention against terrorist bombings, the 1999 Convention against the financing of terrorism and the 2005 Convention

³ AIR 2003

against nuclear terrorism – contain provisions referring to international humanitarian law and to counter terrorism. There are several more laws in different countries to prevent terrorism and protect the innocent people and their rights.

The Terrorism Prevention Branch of UNODC believes that "to effectively combat terrorism along with respecting human rights and fundamental freedoms is not only possible but also necessary. Indeed, effective counter-terrorism measures and respect for the rule of law, human rights and fundamental freedoms are complementary and mutually reinforcing objectives which must be pursued together as part of State's duty to protect individuals within their jurisdiction."

TERRORIST ATTACKS IN INDIA AND HUMAN RIGHTS VIOLATIONS

India had experienced several terrorist attacks which shocked the whole nation, as on 13th December 2001 five armed gunmen infiltrated into and attacked the Indian Parliament house and in cross firing between them and security forces, five police personnels, a gardener and a parliament security guard lost their lives.

On 13th May 2008 pink city of Jaipur, capital of state of Rajasthan was rocked by seven serial bomb blasts, sixty people died and more than 120 people were injured.

On 26th November 2008 terrorists attacked India's fiscal capital Mumbai at eight places including CST Railway station, Taj Mahal Hotel, Oberoi Trident Hotel, Cama Hospital, Metro Cinema etc. attacking, murdering and wounding hundreds of innocent people, as they had planned and targeted areas having huge conglomeration of human population. There was huge loss of lives of people and property in the cruel attack.

In **Mohammed ajmal Mohammed amir kasab @ Abu mujahid Vs State of Maharashtra AIR 2012** The Supreme Court held that "In short, this is a case of terrorist attack from across the border. It has a magnitude of unprecedented enormity on all scales. The conspiracy behind the attack was as deep and large as it was vicious. The preparation and training for the execution was as thorough as the execution was ruthless. In terms of loss of life and property, and more importantly in its traumatizing effect, this case stands alone, or it is at least the very rarest of rare to come before this Court since the birth of the Republic. Therefore, it should also attract the rarest of rare punishment."

The above terrorist attacks and many more are examples of such incidents around the world, including the World Trade Center attack in the US, have constantly shocked the whole world through the mass killings and huge destruction. Thus there is need to stop these inhuman attacks in which innocent people suffer, they loss their lives. In India to protect the rights of people against the inhuman acts, torture and loss of lives with the help of laws and regulations are discussed further.

LAWS ON TERRORISM IN INDIA

Law necessarily reflects the community it serves. It mirrors the community's values and structure and should serve the interests of the community in resolving disputes among its members in accordance with their expressed values. Law provides only one way of defining and dealing with communal problems, but without clear legal principles and effective legal processes, the community lacks a critical stabilizing force.

In India too there had been a long history of the anti terrorism laws and felt a need to enact special and strict laws to counter terrorism and terrorism activities. In **Indian Penal Code** 1860, Chapter 6, Section 121-130 deals with the offenses against state and punishment for such acts. **Terrorist and Disruptive Activities**

(Prevention) Act, 1987 (TADA) which was allowed to lapse in 1995, the **Prevention of Terrorism Act, 2002 (POTA)** which was repealed in 2004, **Maintenance of Internal Security Act (MISA)** repealed in 1977, the **Unlawful Activities (Prevention) Act, 1967, National Security Act of 1980** and special laws like the **Maharashtra Control of Organised Crime Act, 1999 (MCOCA)** in Maharashtra, the **Armed Forces Special Powers Act, 1958 (AFPSA)** in the North East against terror because terror attacks. In the Indian Constitution there are laws for arrest, preventive detention (Article 20 and 22) and the fundamental rights could also be restricted on the grounds of sovereignty, integrity of India, security of State, public order etc.

The National Human Rights Commission and State Human Rights Commission established under the **Human Rights Act 1993** aimed at protection of basic human rights and giving all people equal opportunities and preventing unfair treatment on the basis of irrelevant personal characteristics. It covers discrimination on the grounds of sex, marital status. It embodies key values in our society such as fairness, dignity, equality and respect. They are an important means of protection for us all, especially those who may face abuse, neglect and isolation.

Justice J.S. Verma, the then Chairman of the Human Rights Commission's opinion mentioned in Chapter III in the **173rd report of the Law Commission** when it was called to comment on the proposed "Prevention of Terrorism Bill 2000" :

Having regard to the extraordinary situation obtaining in the country and in view of the steadily worsening situation in certain parts of the country, a special law was necessary to fight terrorist activities. At the same time, he suggested that the Act must contain necessary safeguards and it must be a legislation with a human face. He stressed the importance of maintaining a balance between individual rights and the rights of the society and opined that in case of conflict between the two, the interest of society must prevail.

WAY FORWARD

State which seeks to defend human rights must protect both innocent persons from false implication and arrests, but at the same time it must also try to put in place legally uncomplicated methods for identification, swift apprehension and punitive action against terror suspects, by enacting appropriate laws, and ensuring their impartial and efficient administration. Failure to give justice to innocent victims of terror attack and reparation to their families in case they lose their lives or are disabled in terror attacks is no less a denial of human rights than the alleged human rights violation when a terror suspect is tortured for his possible role in a terror crime. Because people are dissatisfied with regard to the bona fide or the capacity of the State to punish the perpetrator of the terror attack, they become dispirited, and alienated from the system and are unwilling to come forward to give evidence to help investigations into these crimes.

Now the time has come when the world has to put its head together to have a consensus on such an issue that those who kill innocent people must not be allowed to silhouette themselves behind human rights violation veil when the punishment to be inflicted on them is considered. Even in *Ramcharit Manas*, the most sacred Hindu Scripture, its writer Goswami Tulsi Das has written that when Lord Hanuman got himself captured by Ravan in an attempt to teach him good things, then Lord Hanuman had to inform Ravana as follows:-

"Sab Ke deh param priya swamy

Marih moh kumarag Gami

Jin mohi mara to mai mare..."

Transliteration of the aforesaid means that every body loves his body, and I was assaulted by those who followed the wrong illegal path, I had assaulted only those who had assaulted me first.

Non-violence is a bliss for those who have a consideration for it. There can not be any non-violence by one side. If we want to protect humanity then the ailment of terrorism has to be contained and rooted out by all means. Unless the whole world agrees for mutual respect for each other and recognizes human values and human rights of each one of the fellow human beings, that the debate on human rights conferment on terrorists will continue and hopefully, without yielding any results.

