

A Study on Counter-Terrorism Laws in India

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ABSTRACT: *It is always an uncomfortable procedure in democracies to use law as a tool to improve national security, where security interests may conflict with the more democratic goal of law and order, maintaining civil liberties. A manifestation of this dilemma is the Prevention of Terrorism Act (POTA): it is a law that seeks to fulfill both objectives. Therefore, when assessing POTA, the question that should be asked is not how much civil liberty is lost, nor how much security is gained. Instead, the question should be: how willing is India to compromise one of these objectives in order to save the other? Both are integral to the character of India as a sovereign democratic state, but in excess, either of them could harm that character significantly. POTA, standing next to the procedural safeguards of due process with its harsh measures and implementation loopholes, demonstrates Parliament's understanding of the need to compromise, to aim for that elusive optimal point between a safe, undemocratic state and an insecure, volatile, fiercely democratic one. In this paper we will discuss in brief the concept of the Human Rights, Terrorism, need for Counter terrorism laws; analyze the POTA and at last will conclude on the basis of the discussion made in this paper.*

KEYWORDS: *civil liberty; democratic goal; national; security and terrorism.*

INTRODUCTION

The September 11, 2001 terrorist attacks sent shockwaves of fear and insecurity far beyond the borders of the U.S. In particular, India had reason to fear, and its fear was not merely for the 250 Indian citizens who were trapped in the World Trade Center's burning towers. It was obvious, as a nation already at war with terror, that the struggle was about to get harder. India has seen the assassination of its most prominent civil rights leader, a prime minister, a former prime minister, and a retired Army chief, since gaining independence fifty years ago. In addition, India has been fighting rebels in Kashmir for over ten years, including Pakistani and Afghanistani Islamic Extremists.[1]

Terrorists have killed thousands of civilians, policemen, and Indian soldiers in Kashmir since the fall of 2001, and violence has been raging. Add to these concerns the ongoing separatist violence in the northeast of India, the potential threat to the Tamil Tigers in the south, and the existence of an organized, international crime network distributing weapons and explosives to all of the above, and it is not surprising that government officials felt compelled to act quickly and forcefully in the aftermath of Al Qaeda's assault on the U.S.[2]

In October 2001, India's Union Cabinet issued the Prevention of Terrorism Ordinance (POTO). The central government claimed that its action was a response to "an upsurge in terrorist activities, the intensification of cross-border terrorism, and insurgent groups in various parts of the country." The decree provided sweeping powers for state law enforcement to investigate, detain, and prosecute a wide range of terrorist-related crimes. POTO targeted, most notably, those who allegedly incited, supported, encouraged, harbored, concealed, or benefited from terrorist proceeds.[3]

To some, POTO was ominously similar to the notorious Terrorist and Disruptive Activities (Prevention) Act (TADA), which, after years of abuse, expired in 1995. However, despite some initial criticism, events in India soon made POTO an obvious necessity for the ruling coalition and many other lawmakers. In a failed effort to assassinate politicians, Muslim terrorists, reportedly backed by Pakistan, assaulted the Indian parliament on December 13, 2001.[4]

The Cabinet denounced the attack as targeting "the very heart of our governance system, the symbol and keystone of the world's largest democracy." Three months later, the provisional order became the

Prevention of Terrorism Act during a rare joint session held at the behest of the Prime Minister (POTA). The Indian media and human rights organizations witnessed and protested regular violations of the law after the legislature passed POTA in March 2002, including hundreds of questionable and prolonged detentions with no formal charges filed.

Human Rights and Terrorism

Human rights are basic principles and legal protections that protect individuals and groups against acts and omissions, mainly by agents of the state, which conflict with fundamental freedoms, rights and human dignity. The full scope of human rights includes respect for legal, cultural, economic, political and social rights, as well as the right to development, and security and fulfillment thereof. Human rights are universal and are interdependent and indivisible; in other words, they belong inherently to all human beings.[5]

In the pursuit of political or ideological goals, terrorism is generally considered to apply to acts of violence against civilians. In legal terms, while a systematic definition of terrorism has yet to be adopted by the international community, such actions and core elements are specified by current declarations, resolutions and universal "sectoral" treaties relating to particular aspects of it.

In 1994, the Declaration of the General Assembly on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes "criminal acts intended or calculated for the purpose of causing terror to the general public, to a group of persons or to specific persons for political purposes" and that such acts "are unjustifiable in all circumstances, irrespective of the considerations taken. [6]

Terrorism seeks to undermine human rights, equality and the rule of law in its very own right. It challenges the fundamental principles of the United Nations Charter and other international instruments: respect for human rights; the rule of law; the laws regulating armed conflict and the security of civilians; tolerance between cultures and nations; and peaceful conflict resolution.

Terrorism has a direct effect on the enjoyment, in particular the rights to life, liberty and physical integrity, of a variety of human rights. Terrorist attacks may destabilize regimes, disrupt democratic society, jeopardize peace and stability, jeopardize social and economic growth, and can have a detrimental effect on some groups in particular. These all have a direct influence on the enjoyment of basic human rights. At the highest level of the United Nations, the devastating effect of terrorism on human rights and security has been noted, especially by the Security Council, the General Assembly, the former Human Rights Commission and the new Human Rights Council.

It is evident from international and regional human rights law that states have both the right and the responsibility to protect individuals from terrorist attacks within their jurisdiction. This stems from the general responsibility of states to protect persons from intervention in the enjoyment of human rights under their control. More precisely, this duty is recognized as part of the obligation of the States to ensure respect for the right to life and the right to protection.[7]

The right to life guaranteed under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as "the supreme right" because all other human rights will be meaningless without its effective guarantee. As such, the State has a duty to uphold the right to life of any citizen with a right to life. Security of the right to life requires States to take all reasonable and necessary measures to safeguard the lives of those under their control. States must put in place effective criminal justice and law enforcement mechanisms as part of this duty, such as efforts to discourage the commission of crimes and prosecute violations where they occur; ensure conviction of alleged perpetrators of criminal acts; offer effective remedies for victims; and take other appropriate steps to avoid the recurrence of violations.[8]

Laws related to terrorism in India

Terrorism has influenced India greatly. In India, the causes of terrorism can differ widely from religious cause to other things such as poverty, unemployment and non-developed etc. In *Kartar Singh v. State of Punjab*[9], the Indian Supreme Court noted that the nation has been in the firm grip of spiraling terrorist violence and is trapped between the deadly pangs of destructive activity.

There has always been a lot of debate about anti-terrorist laws in India. One of the points is that the constitutional rights of people guaranteed by Part III of the Constitution are impeded by these rules. The anti-terrorist laws were previously passed by the legislature and enforced, albeit not without hesitation, by the judiciary. The aim was to pass and put into effect these laws before the situation improves. These drastic steps were not meant to be a permanent aspect of the law of the land. But the laws have been reintroduced with required changes because of continued terrorist activities.

The National Security Act, 1980 and the Illegal Activities (Prevention) Act, 1967 are the laws in effect to regulate terrorism in India at present. Other anti-terrorist laws have been in effect at various points in time in this country. The metric laws are that-

- (i) Unlawful Activities (Prevention) Act, 1967: The UAPA was intended to deal with alliances and operations that challenged India's territorial integrity. The scope of the Act has been narrowly limited to meeting the challenge to India's territorial integrity. The Act was a self-contained code of provisions for declaring unconstitutional secessionist associations, a tribunal's adjudication, regulation of illegal associations' funds and places of employment, punishments for their members, etc. The Act has been holistically worked as such all along and in the 7th Schedule of the Constitution is fully under the purview of the central list.
- (ii) Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA): It was the second major act that came into force on 3 September 1987. This act had much more stringent provisions than the UAPA and was explicitly intended to deal with terrorist activities in India. When TADA was introduced, it was challenged as unconstitutional before the nation's Supreme Court. In the case of *Kartar Singh vs State of Punjab* (1994) 3 SCC 569, the Supreme Court of India upheld its constitutional validity on the premise that those entrusted with such draconian legislative powers must act in good faith and for the public good. There were also cases of abuse of authority for collateral reasons, however. In the custody of law enforcement officers, the stringent protections found in the legislation were misused. In 1995, TADA lapsed.
- (iii) Prevention of Terrorism Act, 2002: With the intensification of cross-border terrorism and Pak ISI's continuing offensive policy aimed at destabilizing India and the post-September 11 developments, a special law to deal with terrorist actions had to be put in place. Consequently, on 28.03.2002, the Prevention of Terrorism Act, 2002 (POTA, 2002) was enacted and published. POTA, 2002 specifically defines, in Section 3, the terrorist act and the terrorist act, and gives special powers under the Act to the investigating authorities. The constitutional validity of the Prevention of Terrorism Act, 2002 was debated in the case of *People's Union for Civil Liberties vs. Union of India* (UOI) (2004) 9 SCC 580. The court claimed that Parliament has the power to legislate the Act under Article 248 and Entry 97 of List I of the Seventh Schedule of the Constitution of India. The need for the Act is a matter of policy, and it is not possible for the court to go through it.[10]

CONCLUSION

In India's counterterrorism efforts, the need for coherence is becoming clearer by the day. The shortcomings of the law are due to the lack of a strategic context, of a holistic strategy to deal with a terrorist threat that cannot be answered by law alone. POTA is a symptom of a larger issue. The debate about the need of POTA shows that not many government critics are addressing the bigger issue-it is not whether POTA is required, but what is lacking in POTA that could make it work, to make it more useful and efficient in prosecuting terrorists in compliance with democratic norms than the ordinary law. Indeed, a statute merely

because it does not operate should not be repealed. But a rule is doomed if it is left in a vacuum to function. The law will effectively balance civil liberties with the security measures required to deter terrorism only if POTA is focused on a strategic sense in which means are not misjudged.

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