

***ASSESSMENT OF HUMAN RIGHTS CHALLENGES AND COUNTER-
TERRORIST MEASURES OF GOVERNMENT***

*-Prapti Bhattacharya**

Abstract:

Human Rights are the basic inter-dependent and individual rights and freedom that belong to every living person in the world, regardless of their nationality, place of residence, sex, colour, religion, language and any other status.

The primary threat to Human Rights is terrorism and it has been directly affecting Human Rights by thwarting government and threatening social development.

Thus some states of India have been subjected to terrorist attacks since independence and it led to enactments such as Terrorism and Disruptive Activities(Prevention) Act,1987; Prevention of Terrorism Act,2002 etc.

The most effective way to counter terrorism is by respecting Human Rights and advocating the prelacy of rule of law. Sometimes terrorists lose few rights too due to committing heinous crimes, but not all. The Fundamental Human Rights, inalienable under International Law, can never be denied to an individual under any circumstances.

In fact Terrorism and Human Rights are mutually destructive subjects. Where there is terrorism, Human Rights cannot exist there because terrorism hinders human solemnity, life and common values. But while warranting the Human Rights of everyone in state, measures adopted by state to counter terrorism often pose grave provocation to Human Rights.

Full body scanner, passenger profiling, temporary passport seizure, rendition are some anti-terrorism measures against individual's right which are unethical in nature on government's part.

Along these lines our research reflects the changing dynamics of terrorism, threat of terrorism to national security, unethical measures of government and suggestions of some measurements to counter terrorism.

I .INTRODUCTION

What are Human Rights?

Human rights are moral principles ^[1] which specify the standards of human conduct and are designated as natural and legal rights as per International Law. These are inherent, fundamental rights regardless of their age, origin, language, religion, location, ethnicity, or any other status. They are universally applicable everywhere at every point of time. This is established through the rule of law ^[2] and thrusts a duty on everyone to respect the human rights of others, and it is implied as a whole these shall not be taken away except on certain circumstances followed by accurate procedures of law.

The basic Human Rights are as follows:

- The right to life
- The right to privacy
- The right to freedom of association
- The right to political participation
- The right to freedom of expression
- The right not to be arbitrarily arrested
- The right to a fair trial
- The right not to be discriminated against
- The right not to be tortured

What is Terrorism?

Terrorism ^[3] in itself has a very wide concept and that is why it is not defined singularly anywhere. Bruce Hoffman of has defined terrorism as “violence—or the threat of violence—used and directed in pursuit of, or in service of, a political aim.” Likewise Louise Richardson thinks terrorism “deliberately and violently targets civilians for political purposes.” Thus it can be said that terrorism is

* *Prapti Bhattacharya is a 2nd year student at Asian Law College, Noida.*

¹ Human Rights. Retrieved from <https://www.un.org/en/sections/issues-depth/human-rights/>

² Choi, N. (n.d.) Rule of Law. Retrieved from <https://www.britannica.com/topic/rule-of-law>

³ J.P.J. (n.d.) Terrorism. Retrieved from <https://www.britannica.com/topic/terrorism>

the use of violence against random civilians in order to create generalized pervasive fear for the purpose of achieving political goals. Terrorism can thwart government, prejudices peace and security and threaten economic and social development. All of these collectively hamper the enjoyment of Human Rights.

II. INSTANCES OF TERRORIST ATTACKS IN INDIA

Mumbai- the 1993 series of Bombay Bombings was a single day attack but it sown the seeds of terrorism if then Mumbai's ground. It was reported to be coordinated by Dawood Ibrahim with the help of Tiger Menon and Yakub Menon. There were total of 12 car bombs, more than 300 died and more than 1500 got severely injured. ^[4]

And then the most important attack is 26/11 attack of Mumbai where 10 Pakistani men of group Lashkar-e-Tayyiba were behind this. The Chhatrapati Shivaji Terminus Railway Station, Café Leopold, Kama and Albless Hospital, Nariman House, Oberoi Hotel, Tajmahal Palace and Tower Hotel were attacked during this deadly incident.

The only survivor terrorist Ajmal Kasab of 26/11 was executed in November, 2012.

Andhra Pradesh – The terrorist attacks started in Andhra Pradesh with Naxalites Movement in Naxalbari during 1967. Naxalites are the members of an armed revolutionary group who advocate Maoist communism. Human Rights organizations have estimated that a large number of members of Naxalites are of armed militants who become the cause of death of hundreds of Indians every year. The Naxalite terrorism is growing exponentially and it may direct to indelible challenges. Human rights groups in India have always condemned the methods of government to tackle the Naxalite influence because in spite of continuous efforts, the Naxalite influence has spread to almost thirteen states of India. Capturing woods and jungles of central India, the Naxalites takes shelter and recruits destitute from there by brainwashing them. The states of

⁴ E.O. (2019, November 26). Revisiting the night of Mumbai terrorist attack. Retrieved from https://m.economictimes.com/news/defence/revisting-the-night-of-mumbai-terror-attack-when-10-pak-terrorists-attacked-indians-financial-capital/amp_articleshow/72235424.cms

Andhra Pradesh, Jharkhand, Orissa, Bihar, West Bengal, have gone through potential Naxalite activities, but Chhattisgarh witnessed the most in 2006 with more than 350 deaths.

North-eastern states- After the partition of Bangladesh some North- Eastern states have been continuously subjected to terrorist attacks specially Assam and Nagaland, which have received a large invasion of immigrants from several corners of India. Multiple religious and cultural conflicts have created a vacuum in their growth and development. Poverty has reached to the core of this region, and many downtrodden groups has been demanding independence as they have suffered a lot of neglect and inequity, classism on part of government. Militant groups like the **United Liberation Front of Assam, Karvi People Liberation Tiger, National Democratic Front of Boroland, Kamatapur Liberation Organization** have took the way of violence to wipe out the suppressive government.

Jammu and Kashmir- Now comes the state which is most prone to terrorism since the dawn of independence 73 years back. The feud between India and Pakistan has persuaded a number of terrorist attacks. Since the late 1980s, the region has been a safe haven for a number of insurgent groups seeking independence along the Line of Control (LOC). Generally it is assumed that these groups get tremendous support from Pakistan which resulted in some deadly incidents such as, **Sangrampora Massacre(1997), Wandhama Massacre(1998), Amarnath Pilgrimage Massacre(2000), Srinagar Bombings(2005), Doda Massacre(2006), Uri Attack(2016), Pulwama Attack(2019).**^[5]

III. INDIA'S COUNTER-TERRORISM POLICY AND FAILURE TO SECURE THE HUMAN RIGHTS OF NATIONALS

The police and security system of India is severely tattered and generally unorganized and the federal system leaves most of the responsibilities to the states to form security policies, which consists of own separate counter-terrorism and intelligence bureaus. The local police, who handle the lowest hierarchy of this security system are not properly trained and armed. The local authority often fails to run the system as they suffer from high levels of corruption.

⁵ Wikipedia. (1970, January 1). Terrorism in India. Retrieved from https://en.m.wikipedia.org/wiki/Terrorism_in_India

- The Intelligence Bureau, Indian Police Service, Central Reserve Police Force, and National Investigation Agency (NIA), the Research and Analysis Wing (RAW) and Central Bureau of Investigation (CBI) are some of the main institutions which deal with internal and foreign threats secure human rights.
- The coordinating mechanisms between state and central authorities aim to balance the intelligence gathered by the security agencies and produce the extent of threats in our country but the process is burdensome.
- States and the central agencies squabble over means and the technologies to execute the plans, and they do not co-operate each other in securing human rights.^[6]
- All these drawbacks were noticeable in the failure to avert the Mumbai attacks of 26/11 There was prominent suggestions from RAW that terrorist attack is going to target the Taj-Hotel. The Coast Guard and the Maharashtra state director-general of police ignored this vital information. On the other hand, Maharashtra Anti-Terrorism Squad made some efforts to deal with such situation but none of the efforts was enough to save thousands of people's lives.
- The rectifications in the security system and coordination at the national level till this date were not sufficient to protect people's lives and their right to life.
- The grace attacks of Mumbai ultimately resulted on thorough master-minding between agencies at state and federal levels, and the establishment of a new National Investigation Agency (NIA)^[7]. The main end of the NIA is enabling a federal agency to qualify to investigate major crimes such as terrorism and organized crime before being referred by the affected states. Currently special courts are being established to hear the trials of terror related cases. The NIA should be filled with new organized and talented selected from existing intelligence and law enforcement agencies throughout India. An adequate amount of funding and work forces are inculcated into the overall security hierarchy to make the structure more effective and the NIA is expected to offer a quicker response to future attacks throughout the India.^[8]

⁶ (2009, January 12). Securing the home front against terror. Retrieved from <https://www.indiatoday.im/magazine/cover-story/story/20090119-securing-the-home-front-against-terror-738720-2009-01-12>

⁷ Raghavan, R. (n.d.) Terror Trackers. Retrieved from <https://frontline.thehindu.com/static/html/fl2601/stories/20090116260110200.htm>

⁸ Kaplan, E., & Bajoria, J. (2008, November 27). Counterterrorism in India. Retrieved from <https://www.cfr.org/backgrounder/counterterrorism-india>

Human Rights and terrorism can be studied in following case laws-

The important legislations to regulate terrorism in India are:

Terrorist and Disruptive Activities (Preventive) Act, 1985 (commonly known as **TADA, 1985**); **TADA, 1987**; **Prevention of Terrorists Act, 2002**; the **Maharashtra Control of Organized Crime, 1999**; **Unlawful Activities (Prevention) Act, 1967**; **National Security Act, 1980**.^[9]

The Human Rights violations committed under **Anti Terrorism Law** have been brought before all, both by Judiciary and National Human Rights Commission. The validity of **TADA** was challenged in **Kartar Singh v State of Punjab** ^[10] where provisions of TADA, 1987 were tampered.

After **Kartar Singh** validity of TADA was again challenged in the case **R.M.Tiwari v State** ^[11] and in spite of close monitoring of the use of TADA, 1987, the review committee complained of its continuous gross abuse, where under the circumstances of the case, the court justified the constitutionality of TADA, 1987 and India has been facing the high rising wave of terrorism since then.

Correspondingly the **Prevention of Terrorism Act, 2002 (POTA, 2002)** was enacted to make the provisions for the prevention of and to control the terrorist activities facing the challenges management of cross border terrorist activities of India. Again the plausibility of certain sections of **POTA, 2002** was challenged in **Peoples Union of Civil Liberties and another v Union of India** ^[12] and under this case the validity of POTA was discussed and it was realized that it is the duty of the court to maintain the delicate thread of balance between the

⁹ Acharya, B.(n.d.) Anti-terrorism laws in India. Retrieved from <http://www.legalservicesindia.com/article/382/Anti-terrorism-laws-in-india.html>

¹⁰ (1994) 3 SCC 569

¹¹ (1996) 2 SCC 610

¹² {(2004) 9 SCC 580}

State anti-terrorism acts and Human Rights, maintaining the constitutional validity of the aforementioned act.

Afterwards in the case of **Vaiko v Union of India**,^[13] Vaiko got arrested under **section 21** of POTA, 2000. Later on the trial, it was challenged that **Central POTA Review Committee** found that no case was made out against them. The Madras HC upheld that it was for the public prosecutor had to apply his mind independently to the concerned matter and to take a decision to withdraw the case on the basis of the report of the central POTA review committee, and further nullified the writ petition seeking a direction to Tamil Nadu government to withdraw the case.

Thus the contentious act, POTA, 2002 was nullified on September 17, 2004 and thus **Unlawful Activities Prevention Act, 1967** was amended.

In **Kartar Singh v State of Punjab**, Hon'ble Supreme Court depicted serious concern about the misuse and abuse of the act by the police authority and made an endeavour to saturate Human Rights by coming up with certain parameters to conform that confessions obtained during pre arraignment is in compliance with the principles of Human Rights. Such forwarding steps show that the judiciary system of our country has always placed all sorts of efforts to preserve the Human Rights in putting an end to terrorism.

Even though there is already too much anti- terrorism laws in India like **The Unlawful Activities Prevention Act, 1967; Criminal Law Amendment Act, National Securities Act, 1980; state enacted laws such as the Maharashtra Control of Organized Crime Act, 1999**; there has been an everlasting need for more such laws to fight the terrorism, and many more constructive anti-terrorism measures to protect human rights and the largest democracy of the world.

The Supreme Court go to the bottom of the Terrorist Act under **section 15** of **The Unlawful Activities (Prevention Act), 1967** in **Md. Ajmal Amir Kasab's case**^[14] confirmed that an

¹³ [2004 indiancanoon.org/doc/643469/](http://2004.indiancanoon.org/doc/643469/)

¹⁴ [(2012) 9 SCC 1]

act of “wagering war against the Government of India” and “a terrorist act” may have some common features.

Facing all these incidents higher standard of international human rights have evolved over more than six decades but on the other side, newer forms of terrorism have also emanated from different circumstances to terrorize the core of Human Rights and those are on the dangerous rise resorting to rape and other sexual assaults, and with the help of bio-hazardous weapons and with taking hostages etc.

When we try to find the mainsprings of terrorism, we observe that systematized violations of Human Rights since time immemorial are the main cause of conflicts and terrorism.

One of the most important objective of **Human Rights Act, 1993**^[15] is to build the Human Rights courts at every district level. The State Government is capable of establishing a Court of Sessions in each district of each state as a Human Rights Court under **section 30** of the aforesaid act. The idea behind the act is to provide the speedy trial of offences arising out of violations of Human Rights. The creation of Human Rights courts at the district level has a great potential to protect and realize Human Rights at the middle-class level too.

Thus it is proved that the Judiciary plays a very important part to restrict the terrorism by confirming the right to access to justice to each and everyone present in the country which is the basic ground of Human Rights and if the primary principles of Human Rights are not conserved, the threat of terrorism cannot be narrowed down.

The struggle against terrorism demands a close cooperation of all affected and non-affected countries both at administrative level and at the level of execution of laws in order to put end to illegal trafficking which fuels up the terrorist networks. To put a complete restraint to terrorism, the international communities must target the roots of dissatisfaction as well as the feeling of injustice and deprivation with a humane, secular and rational approach.

¹⁵ Kapoor, S.K. *Human Rights under International Law & Indian Law*. (7th ed.), 368-428. Central Law Agency.

IV. UNETHICAL MEASURES OF GOVERNMENT OF COUNTER-TERRORISM

Terrorism and Human Rights are reciprocally environmentally unfriendly subjects. Where there is terrorism, Human Rights cannot exist there because terrorism slows down the human solemnity, life and common values. But while upholding the Human Rights of everyone in state, the measures adopted by state to counter terrorism are not always humane, secular and rational. It often poses grave taunting to Human Rights. Except the inalienable fundamental rights under international law, terrorists also lose some of their rights in light of the unethical measures taken by the government and get deprived of their human rights too.

Some of these measures are:

Full Body Scanner- this is a tool which affect on individual's rights. It contravenes privacy laws and it might breach child pornography laws by producing naked images of children.

Passenger profiling- It is an extremely controversial security technique for monitoring passengers externally. Profiling means picking out travelers for extra security checks which is biased on the race and religion which generally imposes threat.

It is also against individual's rights but the supporters to this measure claim that while securing a nation, an individual's right can be compromised.

Temporary Passport Seizure- It was introduced under the Counter-terrorism and Security Act, 2015 for people suspected of intending to leave Great Britain in connection with terrorism related activities. It involves seizing of another country's property, in addition to the personal infringement upon an individual's right to travel.

Stop and Search- It grants the police to stop people abruptly without any ground of suspicion and search them thoroughly based on that. The European Court of Human Rights ordered in 2010 that this authority is unlawful under Terrorism Act, 2000.

Detention- The **Protection of Freedom's Act**, 2012 permanently reduced the precharge detention period for maximum of 14 days by amending the **Terrorism Act, 2006**. In Ireland this period is 7 days, in Canada it is 1 day, in Italy it is 4 and in USA the limit is just 2 days.

This detention is against basic democratic principle of justice, fairness and liberty. It is also against Article 5(3) of the **European Convention of Human Rights** which states that suspects should be entitled to trial within a reasonable time or to release pending trial.

Rendition- It means the handing over or surrendering a terrorist suspect from one state to another, provided such transfers comply with national and international law. Rendition becomes unlawful when a suspect is handed over without the permission of a judicial authority or, after the transfer, that person is tortured or captivated in breach of their Human Rights.

Since 1980's the United States has increasingly turned to rendition as a judicial and extra-judicial method for dealing with foreign defendants.

Torture- it is defined under UN Convention on Torture and cruel, inhuman and degrading treatment. Torture involved causing severe physical or mental suffering to the victim, is incited intentionally, and is used to obtain information or a confession or to punish, intimate, intimidate.

The prohibition against Torture or any form of cruel treatment or punishment is an absolute human right that allows for no exception, even during times of emergency.

Government often denies that torture is used by their law enforcement or intelligence agencies or military forces. Nevertheless the practice of subjecting terrorist suspects to torture became widespread after 9/11.

V. CONCLUSION

The war against terrorism requires amplified surveillance on security system but also increased awareness that our freedoms and rights are the foundation of our societies and life. The best shield to fight terrorism is to spread the benefits of enjoying all human rights with the help of extensive debates by several organizations in civil societies, voice of the presses, educational institutions and by several other means. Education of the youngsters is very important to inculcate the knowledge of human rights in their minds and likewise greater protection and respect for economic, social and cultural rights through more impartial development would lower down discrepancies. All of these will incur a huge cost and require a continuous concrete effort. But as it is said the threat imparted by terrorism presents a striking danger, calling for equally leading-edge and fresh thinking.

In short human rights are mandatory for a happy living and upbringing of human beings. The government and citizens need to work together to tackle this issue for mutual protection and better progress and it will slowly ensure the welfare and happiness altogether.^[16]

¹⁶ Aggarwal, D. Human Rights. (16th ed.). Central Law Publications.