



ANTI TERRORIST LAWS IN INDIA: QUESTION ON HUMAN RIGHTS

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Abstract

Terrorism poses significant challenge to the all political systems. Even though it is an old phenomenon, but its velocity is recognised only in recent times. The impact of terrorism as a greatest problem in the world is identified only after the September 11 attacks. The attacks challenged not only USA alone but the entire world also. The post 9/11 scenario demanded many nations to enact new strategies and policies to counter terrorism. In the Indian context terrorism significantly challenge our democratic culture. We have faced terrorism even before the period of independence. India's long standing effort to counter terrorism strategy is based on legal policies. India has adopted many legal measures to combat the menace. In this perspective the paper tries to analyse anti terrorist laws in India and its implications on human rights.

Keywords: *Terrorism, Terrorism in India, Anti Terrorist Laws in India, Human rights Violations*

Introduction

In the contemporary era the international communities, irrespective of developing or developed, confront terrorism as a major hurdle in the path of its progress. Terrorism is not a new phenomenon, but it has been identified as a big problem even decades ago. But the term 'terrorism' has been widely studied and discussed in a different perspective since the attack of World Trade Centre in America in 2001 September 11. The attack of World Trade Centre had altered the over read concept of terrorism. The US attack of Al Qaeda has made 140 countries to take protective layer of anti- terrorist laws to save their people from the hazardous effects of terrorism. The international integration processes such as globalization and information revolution have dissolved the physical boundaries among nations, thus it enhanced the flow of goods, services and information and in turn the spread of terrorism. Paul Johnson, One of the eminent writers of the century views terrorism as a dangerous cancerous cells. According to him no state is immune to it and if it is not treated properly it will grow uncontrollably and will destroy the society down to ashes. International terrorism is a movement carried out by religious, economic, nationalistic and ethnic fervor.

In the present century terrorism has become a common phenomenon everywhere in the world. It is very hard to find a precise definition for it. If we search we could find copious definitions for it. But for our convenience we could restrict the term terrorism as 'an activity of a group of people who achieve their political or ideological goals by means of politics and power'.

To curtail the calamities of terrorism the countries have taken many legal measures in the global level. But by putting some limits on the activities of the civilians these legal measures actually restrict the fundamental freedom and rights of the people. Democratic countries like India cannot construct a borderline for the activities of her citizens. Because freedom is the hallmark of democratic countries and it has to be maintained at any cost.

The origin of the term terrorism can be traced back to the French word 'Terrorisme' which is believed to have evolved from the Latin verb 'terrere' which means to cause or tremble. The term was first used by Jacobins in 1795 to describe the actions of the members in Jacobin club. The term became a very significant one in the post revolutionary France for the Jacobin rule was addressed by the historians as "the reign of terror". Hence the term terrorism got a substantial definition- terrorism is something which causes terror in the minds of people, commotion in states through violence, social threats or attacks to accomplish the specified political, religious, ideological motifs of a group.

Terrorism did not originate in 21st century. The seed of terrorism had been already sowed in early resistance and political movements. Many political fights from time immemorial was touched by the colour of terrorism. Judas of Galilee, leader of the Zealots, believed that the Jews should be ruled by God alone and for that the armed resistance was necessary. So he founded a terrorist organization 'The Sicari' to overthrow the Romans in the Middle East. The Jews targeted by the Sicari they believed to be collaborators or traitors to the cause. The tactics employed by the Sicari were described by the historian Josephus around 50AD as follows: "they would mingle with the crowd, carrying short daggers concealed under their clothing, with which they stabbed their enemies. Then when they fell, the murderers would join in the cries of indignation and, through this plausible behavior, avoided discovery.

We can trace out so many instances to prove that terrorism was there in the earlier periods. It was spread in all areas of life such as politics, religion etc. Religion was affected by terrorism when Guy Fawkes attempted to reinstate the Catholic



Monarch, but the attempt was failed. 'The reign of terror' during the French revolution showed the role of violence in state affairs. But now a day's terrorism has been used as a powerful weapon to achieve many political goals. Terrorism itself has taken a new form and showed its presence in every nook and corner of all national affairs after the Second World War and with the up raise of nationalist movements in the European empowers. The anti colonial movements showed the knack of the terrorists to increase the popularity of a cause and thus influence global policy. Bruce Hoffman, opines that a group of aggrieved people considers terrorism as an effective means to transform local conflicts into the level of international issues and believes that the terrorists are a group of people who has the capacity to accumulate sympathy and support outside from their "theaters of operation" thus setting a powerful model for others who aspire to do the same. This concept inaugurates the reign of international terrorism in 1960s. The massive terror attack of September 2001 which is also known as 9/11, took the life of 3000 innocent people, has now widely been regarded as a crossroad in the world history of terrorist attacks and is marked as the most deadliest attack in the human history.

Terrorism in Indian Context

In the words of Indian Home Ministry, terrorism is one of the old foes in the history of India, which pursues and tries to restrain the development of the nation. According to the third edition of the Global Terrorism Index 2015 (GTI), India ranked 6th out of 162 nations as the most affected by terrorism in 2014, which means the carnages created by terrorism is at its peak and it must be controlled. Terrorism found its way in India by the Khalistan movement in Punjab in the eighties. Punjab was formed as a separate state after the independence which accelerated terrorism in late eighties in Kashmir region by the anti Indian separatist elements supported by Pakistan. India is choked by some grave problems which may affect the unity and integrity of the nation. Religious fundamentalism is one of them. India had been dissected many times through religious fanaticism and sometimes by political motifs like separates elements in Jammu and Kashmir.

India has to defend herself from some external hostile force also. Before the attack of Babri Masjid, there was an attempt by ISI in 1991 to destroy the coalition between Khalistan terrorism that prevailed in Punjab and the terrorist groups in Jammu & Kashmir and the latter became the first victim of Islamic terrorism. Now the state has become the pray of Islamic terrorism since it shares its border with Pakistan. Terrorism is fostered in India not only by the internal excruciating elements but by the neighbouring hostile countries. But it is observed that the country has improved its safety measures in the interstate affairs because the country was deeply wounded by many terror attacks during the last couple of years. The great enemies of India like Lashkar-e-Taiba (LeT), Hizb-ul-Mujahideen (HM), Harkat-ul-Mujahideen (HuM) and Jaish-e-Mohammad (JeM) are actually sprout out in Pakistani soil under the aegis of Pakistan's Inter-Services Intelligence (ISI, first started targeting Indian interests in J&K). Now they have extended their activities and spawned terror attacks in other parts of the country as well. Over 35-odd Islamist formations are active at one time or the other in India. Except the LeT, all the other terror groups target Kashmir. The multiple terror attacks in Mumbai on November 26, 2008 is considered as the most ferocious attack carried out by LeT in the India in which around 166 civilians and security personnel gave up their life and 26 foreign nationals and several hundred persons were severely injured in the attacks. Even after 26/11 the country could not kill the germs of terrorism from its territory. India is still suffering from terrorism.

India has introduced many strategies especially on legislative policies to prevent terrorist attacks. But in democratic countries like India such policies are still a matter of controversy. The fundamental question regarding on these laws are, whether these laws upheld democratic values or infringe the civil liberties of the people. But India tries to ensure the welfare of the citizen without disturbing the civil liberties guaranteed by the constitution.

Anti Terrorist Laws in India

India has fed up with the bouts of terrorism. The people in Indian society will always be up in arms when a new anti terrorist law is enacted. Because such laws contradict part III of our constitution which guarantees the fundamental rights of the citizens. Anti terrorist laws are actually white canes in the hands of government to mend the practices of the militaries and police and to defend the threats from the terrorists by acclimatizing themselves to the situation. Terrorism is viewed as 'vulnerable point of the national security and now which has become a part and parcel of the life of people in India. Many have lost their life in terrorist insurgent or communal riots and in the subsequent responses of security forces. When comparing with other countries India has suffered more than other countries on account of terrorism. It is to be noted that the India had been marred many times by the cruelties of terrorism in the past decades.

The history of anti- terrorist laws can be tracked over to the colonial period. In primitive period a group of belligerent people who were labeled as 'terrorists' employed aggressive tactics to accomplish some political goals. As time passes the ideological goals of the group became wider along with the proliferation of violence. In the early 1980s India witnessed some blood-stained terrorist attacks which forced the government to pass some sweeping criminal antiterrorism laws. Since then the laws have been cancelled and enacted many times but are made on the British model. Some of the anti terrorist laws



which were created during the colonial period have been continued with slight difference as preventive detention laws. On 30th December 1967 the first law made in independent India to deal with terrorism and terrorist activities came in to force. Some of the laws are discussed as follows,

1. Unlawful Activities Prevention Act, 1967

The act was brought about with a view to endorse the integrity of the nation. The main purpose of the law was to terminate the forces which ruined the integrity of the country. But when the bill was passed the government had taken a special care that through this act the right to association should be remained unaffected. The Act has been drafted holistically as such and is completely within the purview of the central list in the 7th Schedule of the Constitution.

2. Terrorist and Disruptive Activities (Prevention) Act, 1987

This Act which commonly known as TADA came into existence in November 1987. It was designed to prevent the terrorist operations in the country. When the Act is compared to UAPA, TADA is labeled to be more penal and more stringent. When constitutionality of the law was questioned by the public, the Supreme Court said that the free and fair administration of such laws is entrusted with the person in statutory powers by law who will act in good faith. Unfortunately the law became inactive in the year 1995.

The definition of terrorism in the act as "Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act".

TADA empowered the law enforcement agencies to the extent to take actions for curbing the activities of the terrorists and any socially disruptive forces. According to this law the captive need not be produced before a judicial magistrate within 24 hours. The detainee could be kept in prison up to 1 year. The police could take the accused in the custody even though there is no solid evidence to prove that he is culpable. But the accused could prove his innocence with ample evidence during the trial in the court. Special courts would be set up exclusively to hear the cases and deliver the judgment where the trials were recorded with the assistance of camera. The identity of the witness always kept in secret. Under 7A of the Act, Police officers were given the right to attach the properties of the accused, but not allowed to speak a single word to ruin the dignity of the accused person.

3. Prevention of Terrorist Act 2002 (POTA)

It is the Indian version of US Patriot Act which came into existence in the context of the September 11 terrorist attack on USA, several other attacks in the distraught land of India, Jammu & Kashmir and the attack on Indian Parliament. All these attacks had enhanced the quick enactment of the POTA. It was introduced by the National Democratic Alliance and was abolished during the period of united progressive Alliance Government. POTA is said to be the different version of TADA with slight variations. POTA was introduced when the cross border terrorism became out of hands and the legislature felt that the situation could be controlled only with a new powerful act. POTA clearly demarcated the terrorist activities. According to this law a suspect could be kept in custody up to 180 days without the filing of charges in court. The police were allowed to file a case against the suspect by taking his or her confession as a proof that he or she had committed the crime. His confession would be taken as strong evidence against him, and the accused, unlike the provision in other Indian law, would not have no right to deny such confessions in the court. But many human rights organizations in India widely protested against POTA since they considered it was an obvious violation of fundamental rights of people guaranteed by the Indian constitution. On the other hand some people considered POTA was an active measure to abetting terrorism because the judiciary could easily decide whether the suspect deserved punishment through a speedy trial process. Even though the constitutionality of the act was questioned, it should be noted that there were certain clauses provided in the Act itself which disallowed the abuse of power and violation of human rights.

4. Unlawful Activities (Prevention) Amendment Act, 2004

The amended act gives a clear definition for what terrorist activities are and the term 'terrorist' is defined in relation to the 'so called terrorist activities' a person carrying out. Section 15 of the act gives a clear cut definition for terrorist act which was not provided in the 1967 Act. The law has been expanded by telling the differences between lawful and unlawful activities. According to this law if an association is found to be unlawful the central government should declare it unlawful by law by stating the reasons for it. The association is equally responsible to defend their stand by stating that why it



shouldn't be declared unlawful. Under the amended Act also, the court cannot take cognizance for any offence falling under this act without the permission of the Central or the state government. Unlike TADA and POTA the confession of the suspect in front of the police will not be taken as evidence. Instead it should be collected directly from the alleged. Collection of the evidence through the interception of oral, telephonic and wireless communication is made admissible under section 47 of the Act.

5. The Unlawful Activities (Prevention) Amendment Act, 2008

This law was passed in the parliament after a single day of debate. The bomb blast in Mumbai in 2008 necessitated the enactment of a strong and stringent law in the country. The fundamental and practical provisions included in the 2008 Amendment to the UAPA indicate that the other anti terrorist laws in the nation such as the Prevention of Terrorism Act (POTA) and the Terrorism and Disruptive Activities (Prevention) Act (TADA) are inactive due to their tyrannical natures.

But the Amendment does not talk about the safeguard of these laws. Further, unlike those laws, however, the UAPA is an ordinary law, and thus binding indefinitely, till repealed. This 2008 Amendment gives a vague and imprecise definition of terrorism. The definition of terrorist act covers any act that creates damage to a property "disruption of supplies or services essential to community". But it is said that the amendment is perilous since the state can brand those who engaged in peaceful protests such as rail strike as terrorists. Since it has not incorporated any provision it is evidently encroach of the legislation on the fundamental rights of citizens to demonstrate or to organize a protest in peaceful manner. Hence man's fundamental right to speech and expression is denied here. Moreover UAPA allows the government to declare certain organizations unlawful for a period of two years. At the same time the state has to prove before the court that an institution in the state is unlawful through several trials and can withhold evidence from the incriminated organisation on grounds of public welfare. It clearly implies that no association can function well without the consent of the state authorities. Some chancy provisions are also incorporated into the act which empowered the police to search, seizure and arrest without warrant or court order. They were given the power to detain an accused for 180 days without filing charges against him which include up to 90 days in police custody and provisions regarding in camera hearings and secret witnesses. A rebuttable presumption of guilt on the basis of certain evidence is allowed by certain provisions in the law. Thus, the onus of proof is on the accused to prove his innocence when weapons believed to have been used in the commission of the offence are seized from her possession.

6. National Investigation Agency Act, 2008

National Investigation Agency Act came into force in 2008 along with the Amendments to the UAPA. National Investigation Agency (NIA) which is similar to the FBI in the United States. NIA through its concurrent jurisdiction empowers the centre to look into the matters related to terrorism, sovereignty and integrity of the country. NIA is entrusted to investigate some crimes which come under UAPA and some violence like Bomb blast, hijacking, air craft and ships, and attacks on nuclear installations etc. The law allows instituting special courts to deal with cases related to terrorism. But Human Rights Watch warns against the setting up of such courts because the record of national security courts in many countries over many years indicates that such courts, being sensitive to the issues which destruct the peace and national security, show no respect to the rights of dependents intrinsic to criminal courts of broader practice.

7. The Unlawful Activities (Prevention) Amendment Bill 2012

The act was genial to all community, religion and caste. The definition of terrorism given by other anti-terrorist laws has never included the offences such as the circulation high value counterfeit currency and other financing of terrorist activities which threaten India's economic security. The bill of 2008 has become more effective and is able to fulfill its obligation made with the Financial Action Task Force which is an Intergovernmental organisation set up to formulate policies to devastate money laundering and terror financing by amending the unlawful activities.

The Bill amends the original act to expand the definition of a 'person' to include an individual, a Hindu undivided family, a company, a firm, an association of persons or a body of individuals, every artificial juridical person, any agency, office or branch owned or controlled by any person falling within any of the preceding sub clauses. It defines the "proceeds of terrorism" as "property which is being used, or is intended to be used for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organisation, including property intended to be used for terrorism. As per the bill the punishment for raising funds for terrorist acts shall not be less than five years, which may be extended to imprisonment for life.

State Laws

In India the Central Government has generated a large number of anti- terrorist laws to maintain the unity and integrity of the nation. Similarly different states of the country have enacted many anti-terrorist laws both repealed and current. Anti terrorist



laws of the state keep an eye over the organized crimes while others are aimed at maintaining public order and protecting public safety.

1. Maharashtra Control of Organized Crimes Act, 1999 (MCOCA)

The act is applicable in the state of Maharashtra and Delhi which has been designed to punish and prevent the organized crime and the monetary benefits arising from reform. The act resembles in many aspects of TADA. MCOCA, as in TADA, allows the police to take the confession made by the suspect during the police custody as the evidence against him to prove the corruption. Andhra Pradesh and Karnataka have adopted MCOCA to curb the terrorist activities in the respective states. It has been held up as a template of a model criminal law in the debates preceding the enactment of the POTA. MCOCA has been often regarded as an extraordinary for it is effective in dealing with organized crimes. But sometimes it tends to be treacherous since the confession of the accused will be directly taken as the evidence and there would be no proper investigation in case filed. And the possibility of making of forced confession by the police to do favors for some people makes it worse. By organized crime the law means unlawful activities and violent acts to gain pecuniary benefits or to "promote insurgency". Due to the presence of the latter phrase, this law has been used to prosecute terrorist suspects under this law.

II. Jammu and Kashmir Public Safety Act, 1978 (JKPSA)

In order to solve problems which are related to public safety and curtail the unlawful activities of some states have implemented certain laws by themselves. The origin of such act can be traced from the Defence of India Act created during the colonial period. This rule demarcates the prohibited places or the protected areas in the state. In such areas in a state the movements are restricted. The law controls the circulation of certain documents which are considered to be detrimental inside the state. The persons who are suspected for certain reasons can be kept in the prison thus the state maintain the security of the state and public order. According to this law the suspect can be detained up to two years without any detailed trial. Having blind faith in the state officials this law allows complete freedom for them.

III. The Chhattisgarh Special Public Safety Act 2000 (CSPSA)

This law was put forward as proto typical of Madhya Pradesh Special Areas Security Act, 2001 to saddle the growth and actions of Naxal violence in the state. According to this law all the activity transition which may affect the peaceful administration of law is 'unlawful'. Disrespect towards the established law also comes under the definition of unlawful activities. Those who are engaged in unlawful activities or conspire to do so will be imprisoned for up to 7 years. This definition goes well beyond the definition of "unlawful activity" and "terrorist act" provided for in the UAPA. According to this law the state government has the power to declare an organization as unlawful and the members of the organization as criminals if they have substantial evidence to prove it. The place where the unlawful institution is situated can be notified as a place being used for the purpose of unlawful activities. Once the place has been notorious for the unlawful activities the District Magistrate can take the control of the occupation of the place, seize moveable properties and dislodge residents. There is limited scope for review and appeal against notification of places under this law.

IV. The Gujarat Control of Organised Crime Act 2003

In 2003 Gujarat Assembly passed a legislation named GUJCOCA to combat terrorism in the state. The law has already become popular among the public and officials before getting the approval from the President. Like the Karnataka Control of Organised Crime Act of 2000, the Andhra Pradesh Control of Organised Crime Act of 2001, the Rajasthan Control of Organised Act, 2006 etc. It has the ability to suppress and abolish many essential fundamental rights and civil liberties of citizens. In order to fight against terrorism the authorities have to frame some laws which are rigid and strong. Unfortunately many loyal citizens have to give up their many fundamental rights and liberties to eradicate terrorism from the country.

Anti terrorist laws vs. Human rights violations

Human rights were born along with human civilization but get notified and discussed in the recent times. The concept got wide recognition in the post-second-world war period, particularly after the United Nation's Declaration of Human Rights (UNDHR) in 1948. Human rights are the fundamental rights which are necessary to the people in the whole world. The universal nature gives the rights an international dimension. The anti terrorist laws are introduced in the country with a view to destroy terrorism in its every form. In a way we can say they are created to safe guard the human rights and the fair administration of the existed laws and thus strengthen democracy. But many times anti terrorist laws fail to save the fundamental freedom of the citizen. Terrorism is a highly inflammable word and a careless comment on the topic may destroy the citizen's sense of freedom and rights. So anti terrorist laws must be a bridge between the security and integrity of the country and the human rights of the people. So the two sides of it must be balanced and should be fixed in a strong manner. Being the large democratic country in the world, human rights of the citizen which are guaranteed by the Constitution cannot be sacrificed for the sake of the terrorism. It is to be noted that Article 21 (Protection of life and personal



liberty, or right to life), Article 20 (Protection in respect of conviction for offences, or Protection against Testimonial Compulsion) of the Constitution cannot be suspended even during an Emergency.

Thanks to Article 20 & 21 the fundamental rights of human beings in India will not be violated under any circumstances. Terrorism from minorities and political opponents is oppressed by Indian government using the Terrorists and Disruptive Activities (Prevention) Act (TADA) of 1985 (amended 1987), POTA. Under POTA within 3 years of its existence a total of 217 cases were reportedly investigated and trials in 116 of these cases were either completed or are ongoing.

Under POTA around 3,500 persons in 18 Indian states (including a few children in Jharkhand and Tamil Nadu) were arrested and Gujarat is the state with the highest number of detentions and all but one of the 287 people initially held under the act were Muslims. In Gujarat were Muslims for burning Sabarmati Express in Godhra. 87 Muslims of them have not been released on bail, while prosecutions for the death of thousands of Muslims. In the massacres post Godhra have been few and far between, with none even charged under POTA. But POTA has been condemned by numerous politicians, journalists and India international human rights saying that the law is used by many persons for taking vengeance against their opponent. This tendency can be clearly seen in states such as Jammu and Kashmir. Even though the government has introduced some safeguard to protect the fundamental rights of the people but it is said that such provisions are not adequate to halt the violation of the law and terrorism as well. India's own National Human Rights Commission has stated that "existing laws are sufficient to deal with any eventuality, including terrorism, and there is no need for a draconian POTA." And it has been used as a powerful weapon against political opponents, religious minorities, Dalits, tribals and even children.

When 77,000 people had been arbitrarily arrested and thousands were tortured to extract confessions under TADA, 72,000 of them were later freed without having been charged or tried. 147 persons were under detention for offences under that Act, when it was lapsed in 1995. Some held in connection with high profile cases for which trials are still ongoing.

The government of India made the act in active when the protest against it was high from all the parts of the country. From the time of colonialism certain security laws have been existed in India. These legislation in India have also been extensively used against non Muslim "others" considering adivasis and peasants and naxalites, Maoists or involved in secessionist movements. Lack of procedural safeguards provides a scope for the authorities to abuse the people in lower strata of the society. Terrorism not only affects the human rights but the established norms of human dignity and personal security that is mandatory for peaceful existence in any society. Fight against terrorism should not affect the universal values of human rights and fundamental freedoms for all.

Conclusion

Rooting out terrorism from a country is a laborious task which requires utmost care and intelligence because it may affect the security and integrity of a country and the destruction of the fundamental rights of an individual. How to balance national security and fundamental right is an essential question which demands the support a group of people who respect traditional values and civil liberty. The system of democracy can provide an opportunity to create a meaningful discussion among the civilians. When anti terrorist laws is legislated both the national and international human rights must be taken into consideration.

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