



Impact of Terrorism and Counter-Terrorism on Human Rights - Concerns of the Civil Society

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Abstract:

This paper identifies the critical human rights issues in the context of terrorism and counter-terrorism and provides an idea of the measures to be initiated to comply with human rights while countering terrorism, in the light of recent challenges across the globe. Terrorism has a direct impact on human rights. The right to life, liberty and integrity of the victims at individual level are severely affected, besides the civil society as a whole. Security of the individual is a fundamental obligation of the State. Counter-terrorism measures adopted by States to nullify the impact of terrorism on civilians have proven themselves to be serious challenges to the human rights and the rule of law as such. At times, repressive methods are adopted to strangle human rights activists. The funds allocated to developmental activities are being diverted to meet security challenges. Altogether, these have a corrosive effect on the rule of law, good governance and human rights.

Key words: human rights, challenges, terrorism

Introduction:

Terrorism in its many colors and shapes has been thwarting the world since long. Many nations suffered to a great extent and devised measures to combat terrorism on their own strengths. In doing so, many nations are allegedly containing the rights of people. The international response to terrorism and its side effects has been the tendency to pit the ideas of liberty and security against each other. Counter-terrorism strategies adopted in compliance with the human rights principles avoid certain legal issues and prove to be more effective tools at winning the ideological battle against terrorism. The fight against terrorism should ideally deal with terrorist threat by addressing its causes, dealing with its perpetrators,

protecting the victims and minimizing its consequences.

Terrorism:

Terrorism is commonly understood as the acts of violence which target civilians in pursuit of ideological and/or political gains. There is no consensus in adopting a comprehensive definition of terrorism. As per the UN General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), terrorism is defined as 'criminal acts intended to provoke a state of terror in the general public, a group of persons or particular persons for political purposes' and that such 'acts which are in any circumstances unjustifiable, whatever the conditions of a political, philosophical, ideological, racial, ethnic, religious or



other nature that may be invoked to justify them'. [1] Later, terrorism has been described as any action that is 'intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act' [2].

Human Rights:

Human rights are universal values that belong to all human beings inherently. These values are interdependent and indivisible [3], and protect against any action of the State that interferes with the fundamental freedoms and human dignity guaranteed by the rule of law. These human rights include civil, cultural, economic, political and social rights, in addition to the right to development. International human rights standards emerged from a need to control violent and extreme behavior. The United Nations human rights standards were created to deal with the ravages of political extremism and violence in the back drop of war of the 1930s and 1940s. So, human rights instruments are structured to respond to conflict and to ensure peace and stability. Modern human rights standards are rooted in four simple values – freedom from want, freedom from fear, freedom of belief and freedom of expression. These four form the core principles of Universal Declaration of Human Rights (UDHR), which is accepted as 'a common standard of achievement of all peoples and all nations'.

In India also, certain fundamental rights are guaranteed as enshrined in the Constitution [4]. State has an obligatory duty to respect, protect and fulfill these human rights, for which they have to

adopt legislative, judicial, administrative and educative measures. In addition, it is the responsibility of the State to provide effective and fruitful remedies in case of human rights violation [5]. As the world is one unit of existence, the international human rights framework is applicable to all countries.

Impact of terrorism on human rights:

Terrorism aims at destroying human rights, democratic structure and the rule of law. A number of human rights are severely afflicted by terrorist activities, in particular the right to life, liberty and integrity. Terrorist activities result in loss of economic might. These activities extend their arms into the very basic fulcrum of the civil structure and cause unrest in the society, may destabilize the government, hinder future progress and ultimately may prove a great threat to the very sovereignty of a nation. The destructive impact of terrorism on human rights has been well recognized across the globe. The UN Human Rights Council [6] recognized terrorism at the highest level, as a threat to global security.

Terrorist activities in particular – Threaten the security and dignity of human beings and jeopardize fundamental freedoms, have an adverse effect on pluralistic society and democratic base, promote well organized transnational crime and consequent commission of serious crimes like hostage-taking, have adverse impact on the social and economic development of States, threaten the territorial integrity and security of nations and above all, international peace and security.

As it is known, the State has an obligatory duty to protect the right to life and the right to security of those individuals under their jurisdiction from



terrorist attacks. Many international and regional human rights laws make it clear that this is the right of a State also. Hence, international conflicts have been common due to contrasting mutual interests.

The right to life has been accepted as 'the supreme right' [7]. This is due to the fact that without an effective guarantee of the right to life, all other human rights would be meaningless. Hence, it is obligatory on the part of the State to protect the right to life of every individual of its territory and no deviation is acceptable even in times of emergency. As part of this obligatory duty, the State must devise effective law enforcement and criminal justice systems. State may opt to initiate measures to put off offences, investigate into the violations of the rule of law, ensure that those suspected of guilt are prosecuted, provide relief to the victims and try to prevent recurrence [8]. In special circumstances, States have a positive obligation to have preventive operational measures also [9]. Under human rights law, it is the right and duty to take effective counter-terrorism measures to prevent and daunt future terrorist attacks and to prosecute those responsible for future terrorist attacks. Now the pertinent question is whether the counter-terrorism measures pose grave challenges to the protection and promotion of human rights.

Nexus of Terrorism and counter: Specific Human Rights challenges

As discussed earlier, terrorism has a direct impact on civil life and human rights. So, it becomes imperative for the State to initiate counter-terrorism as part of its duty to protect human rights while complying to the international human rights standards. Effective counter-

terrorism initiatives and human rights protection should ideally be complementary. After 2001, there has been an explosion of security and counter-terrorism legislation throughout the world. And in most countries, civil liberties and fundamental human rights are at stake on the guise of State's obligation to counter terrorism by legislation. Ensuring both the protection of human rights and effective counter-terrorism measures raises serious practical challenges for the State. To overcome these challenges, the international human rights law has provided certain limitations on select human rights and some derogation from human rights provisions, thereby providing the States flexibility required to deal with terrorist activities in exceptional circumstances. Some of the flexibilities are discussed here.

States have been authorized to take away the right to life of the 'suspects' by using such methods like 'targeted killing' and 'shoot-to-kill', for example while dealing with suicide bombers, when it is strictly necessary to safeguard the larger good of the civilians. This is often a raging practice among the law enforcement authorities, which is called 'encounter' in the language of common man.

Likewise, States are authorized to adopt a policy of detention of the 'suspects' to elicit information from them, and in doing so to take away the right to personal liberty and security and the right to due process of law. Practices like secret and prolonged *incommunicado* detention [10] and prolonged solitary confinement causing stress amount to torture. Though torture and other cruel and inhuman treatment [11] is absolutely prohibited by human rights law, States have often been resorting to such



degrading methods in many 'can't but' situations.

States have an obligation for transfer of detainees consistent with human rights law. This should be consistent with honoring the right to respect for a person's dignity, the right of recognition and the right to due process. This must be done in the established legal framework. But it is reported that, after 11 September 2001, some States have extradited, expelled, deported or transferred foreign nationals suspected of terrorism to their countries of origin or other countries [12]. Many of them are actually asylum-seekers. Such extradition is in violation of the principle of non-refoulement. Transfer of individuals without the due process may lead to serious human rights violation like infringement of the right to liberty and security of the person and the like. It may also amount to enforced disappearance [13].

As part of the efforts to counter terrorism, State may lawfully detain persons suspected of terrorist activity. But, if a measure involves deprivation of an individual's liberty, strict compliance with regional and international human rights law is required. This provision is often being used by many a State across the world. Any such measure must provide for judicial scrutiny. If such a measure of detention is taken, the person must be allowed to have the lawfulness of their detention by an established judicial authority [14].

The principles of equality and non-discrimination are central to human rights law. These are recognized as norms of *jus cogens* [15]. Profiling of potential suspects is being resorted to as a permissible means of investigation. When

law enforcement authorities use broad profiles which reflect generalizations, for counter-terrorism, that may constitute disproportionate interference with human rights, and this is also happening. Specifically, if a person's ethnic or national origin is taken as an indicator for profiling, the conformity of such profiling with the principle of non-discrimination becomes questionable [16]

At present, the international legal framework on counter-terrorism does not provide a comprehensive definition of the term terrorism. It is left to individual States to define the term in their own way, and this leads to vagueness in defining what exactly amounts to terrorist activity, and consequently to unintended human rights abuses and even deliberate misuse of the term terrorism [17].

Incitement to terrorism is a common strategy used by various terrorist organizations to support for their cause and call for violent action. The UN Security Council called on States to take steps to prohibit and prevent this incitement [18]. Proscribing incitement to terrorism is integral to the protection of national security and public order, both of which form legitimate grounds to limit freedom of expression. Limiting freedom of expression is to be carried out very carefully, because this is an essential foundation of democratic society [19]. Proscription of the glorification of terrorism has been a disturbing trend across the globe as vague terms of uncertain scope to define glorification of terrorism are being used by States to contain freedom of expression.

The right to freedom of association is a platform for the exercise and defense of other rights like political



and cultural rights. This is central to the integrity of a democratic society [20]. The right to freedom of association is used as the legal basis for human rights defenders activity. But the fact is that, this right is often limited by States in their response to a perceived or real terrorist threat [21]. Under many international human rights treaties, the right to freedom of association may be subject to derogations. And as such prohibition and other impositions on associations are common in these days in many countries.

Article 17 of the International Covenant on Civil and Political Rights prohibits States from interfering with the privacy of the individuals. Privacy includes information about the individual's identity and the private life of the person as well [22]. But in recent years, many countries have extended and stepped up surveillance practices involving collection of biometric data, photographs, fingerprints, iris etc., which are exclusively personal. The security of data thus collected is a million dollar question. So far, efforts to address the human rights implications of terrorism and counter-terrorism have limited to focus on civil and political rights only. In fact, both of them have profound effect on the realization of economic, social and cultural rights. In any form of discussion on the impact of terrorism and counter-terrorism, this is an aspect quite ignored. Broader developmental objectives of different countries are also affected severely both by terrorism and counter-terrorism. Targeted sanctions and repressive security measures adopted to counter terrorism have sternly restricted certain populations to work and their rights to education, health services and family life.

Conclusion

During the past few years, many countries have become agile on counter-terrorism front. Many anti-terrorism laws have been enacted. In Indian context, independent India's constitutional legacy is a pride. It has faced the ugliest facet of terrorism, but the way India responded with durable, enduring and ever-improving commitment to protect human rights is really exemplary. India has been emphasizing the need to upgrade its intelligence and investigative capacity and to hold perpetrators accountable for terrorist activities, rather than on enacting new anti-terrorism laws. To protect human rights and advance the rule of law and long-term security, ensuring that all anti-terrorism and other security laws have provisions for good administrative and judicial oversight of investigative and prosecutorial decision making, and transparency is helpful.

To attain nationwide uniformity and adherence to fundamental rights, the following **measures** may be initiated:

Pending cases, which lack *prima facie* evidence for prosecution should be deemed withdrawn. Establish review committees to dispose of all pending prosecutions be disposed within the given time frame. Establish mandatory nationwide guidelines and standards for investigative and prosecutorial methods and restricting the authority of state/provincial governments for independent investigation of terrorist activities and narrow down the definitions of terrorism and related offenses to eliminate vagueness. Compile, maintain and publicly disclose statistics related to prosecution and detention under all central and state security laws. Improve those mechanisms available for citizens to



seek redress and hold government officials accountable for human rights abuses. Work with all stake holders to develop and implement reforms to ensure independence of the police and effective mechanisms to hold police more accountable. Work with all stakeholders to develop and implement appropriate reforms to criminal justice system. Cooperate more with the institutions responsible for compliance with international human rights standards.

The above measures will help improve human rights standards in State actions in India and the world, thereby guaranteeing the civilians a peaceful existence. It is apt to say that effective counter-terrorism measures and promotion of human rights are not conflicting goals, but mutually reinforcing and complementary.

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