

organizations is before the new generation. And ultimately these organizations created problems to the superpowers in return and the 9/11 is one the example of those problems.

Though America and its allies are safer as a result of these achievements, we are not yet safe. We have important challenges ahead as we wage a long-term battle not just against terrorists, but against the ideology that supports their agenda. These challenges include:

- Terrorist networks today are more dispersed and less centralized. They are more reliant on smaller cells inspired by a common ideology and less directed by a central command structure.
- While the United States Government and its partners have thwarted many attacks, we have not been able to prevent them all. Terrorists have struck in many places throughout the world, from Bali to Beslan to Baghdad.
- While we have substantially improved our air, land, sea, and border security, our Homeland is not immune from attack.
- Terrorists have declared their intention to acquire and use weapons of mass destruction (WMD) to inflict even more catastrophic attacks against the United States and our allies, partners, and other interests around the world.
- Some states, such as Syria and Iran, continue to harbour terrorists at home and sponsor terrorist activity abroad.
- The ongoing fight for freedom in Iraq has been twisted by terrorist propaganda as a rallying cry.
- Increasingly sophisticated use of the Internet and media has enabled the terrorist enemies to communicate, recruit, train, rally support, proselytize, and spread their propaganda without risking personal contact.

TERRORISM AND HUMAN RIGHTS NATIONAL AND INTERNATIONAL PERSPECTIVES

By

—M. BHASKARA RAJASEKHAR, LL.M.,
Advocate
Karimnagar, A.P.

Introduction

The problem of terrorism is not limited to the particular country, but it is a problem at world level and it is true to say that no country is free from the terrorism. Terrorism continuing to target innocent people, the prevention of terrorism task has been ever challenging for the institutions around the world.¹ The social order largely depends on justice and individual accountability². In many parts of the world the problem of terrorism appearing in many ways, the world has

become complicated web³, it is to say that. The destinies and the interests of the nations and their citizens have become interlinked to such an extent that, invariably, the action of the one has adversely affected the other, leading to strife and suffering. In all such tragic situations, it has been affecting mostly the common people, like men, women and children whose rights have been violated⁴. The challenges by the terrorist outfit the world have to respond in positive way. In their constant endeavour for better future, nations and their citizens should always respect the

1. Dr. D.R. Sachdeva, Social Welfare Administration Kitab Mahal 5th Ed. 2006

2. Dr. D.M. Mahajan, Jurisprudence, Eastern Law Book Co.

3. Computers and Commonsense, Hunt Shelley, 4th Ed.

4. Dr. S.K. Kapoor, International, Central Law Agency 8th Ed. 1994. P51

human rights of the people who could be affected in the process⁵. But experience has shown that more often it is not so. The result is that innocent people all over the world, irrespective of their colour, religion and status have suffering more, after all the human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion⁶. It is important to understand the nature of terrorism and the way or the manner in which terrorism is treated by the world and the countries deploying the counter-terrorist measures⁷.

Schools of thoughts on Terrorism

There are two schools of thoughts according to the strategies adopted by the countries in countering terrorism or on which counter terrorist strategies are based⁸. The British School considers terrorism as a crime and it thinks that terrorist are handled through standard criminal justice system. This school has developed a nexus with the international organizations such as the Interpol and various other institutions to handle the situations of terrorism with co-ordination. On the other hand there is another school of thought which considers terrorism as a War which also known as an American School.

The American school of thought treats terrorism as an existential threat and believes in using military assets and operations, individual liberties and human rights are frequently threatened. Terrorist are either shot or imprisoned without judicial recourse, Based upon looking entire terrorist group(s) as an enemy rather than looking at each terrorist as criminal. Example of this school can be Israel, Russia where as for British school it is Spain, India *etc.*

The Human Rights Impact of Counter-Terrorism Measures

The human rights concerns raised by counter-terrorism measures in China, Egypt, Georgia, India, Indonesia, Russia, Spain, United

Kingdom, United States, and Uzbekistan. Particularly troubling, and common, have been the pretext use of counter-terrorism laws as new weapons against old political foes, systematic violation of terrorist suspects' due process rights, and tightening of controls on refugees and migrants. It include far-reaching restriction of civil liberties, crackdowns against internal political movements, misuse of immigration laws to circumvent criminal law protections otherwise available to suspects, pervasive secrecy, allegations of torture, and at times indiscriminate detention.

Terrorism as Threat to Human Rights and Development in India

India has had its share of terrorist attacks⁹. These groups has been adopting the high technology and sophisticated equipment to their activities, for which they are maintaining the terror networks by which they are procreating the illegal articles for their use. We have in the last 15 odd years, seen different kinds of terrorisms emerging in India. Of course the most significant one is the one we see on account of cross border insurgency in Jammu and Kashmir. The second is the Punjab which we saw in the 1980's. The third we saw a severe problem in the south from the LTTE. Problems in the north east is continuing and the latest to join these categories is the kind of terrorism spread along the various parts of Central India the Maoist insurgency from Andhra Pradesh¹⁰.

In last 15 years the number of civilians who have lost their lives to terrorism is 62,221, a figure almost 6 to 7 times more than those who have lost their lives in conventional wars. The security personnel killed in various terrorist actions is again over 9000.

Role of Security Personnel in Protection of Human Right

Section 2(d) of Human Rights Act, 1993, defines human rights as the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and

5. Ibid

6. UN Charter Article 13(b)

7. w.w.w. US Department of Justice

8. Hoffman, Bruce "Inside Terrorism" Columbia University Press 1988, P32

9. The Hindu, 7.9.2008

10. www.nhlgc.com

enforceable by the Courts in India. Since, there has been increase in number of cases of terrorist activities, communal riots, and activities of naxalism. In these circumstances the role of security forces has become paramount and necessary. These forces although play an important role in protecting the borders their requirement is even more necessary in controlling civil unrest, enhancing the security at the important places and also control and maintain law and order whenever required¹¹. That all security personnel shall respect and protect human dignity and uphold the human rights of all persons as well it applies to the armed forces, they have to abide the following norms under various legal instruments

- * The international conventions against torture and other cruel punishments,
- * Principles of international cooperation in the detention,
- * Arrest,
- * Extraditions and
- * Punishment against humanity.

Sometimes implementation of security legislations led to a gross violation of human rights in several States. Widespread abuses of Armed Forces Special Power Act in the North East States drew a lot of criticism for ignoring impunity issues and recommending use of the Unlawful Activity Prevention Act. At least 400 people remained in jails under the repealed POTA and several continued to face special trials of proceedings of which failed to meet fair trial standards. These various issues relating to the violation of the human rights are reported in our country.

Protection of Human Rights During the Terrorism

How to protect human rights in times of terrorism and insurgency confronted the National Human Rights Commission during the 90's the tragic death of civilians in Bijbehara, in the State of Jammu and Kashmir, in the course of a firing by the Paramilitary force. The Commission took '*suo moto*'

cognizance of the incident and after examining the reports, for which it had asked, concluded that excessive force had been used¹². There has been a strict vigilance by the Commission on such kinds of violations

Role of Police in Terrorist Activities

In 2001 the Parliament attack has taken place, the fact of the case like this; white Ambassador with at least five armed men entered the Parliament Complex¹³. In the gun-battle, all the five attackers and nine others, including eight security personnel, were killed. The police investigation was concluded in a fortnight and four persons *Mohammad Afzal Guru*, his cousin *Shaukat Guru*, *Shaukat's* wife *Afsan Guru* (alias *Nayot Sandhu*) and *SAR Geelani*, a Delhi University Arabic Lecturer were arrested; while three others (including usual suspects *Ghazi Baba* and *Masood Azhar*) were declared the masterminds of the attack. The designated POTA Court convicted all four, sentencing all but *Afsan Guru* to death. *Geelani* and *Afsan* were later acquitted by the High Court and their acquittal was confirmed by the Supreme Court. *Shaukat's* sentence was commuted by the Supreme Court while *Afzal's* death sentence was upheld.

Non-recognition of poor legal representation of *Afzal* was not the only failing of the Courts. Upon his own acquittal, *SAR Geelani* remarked, as quoted by *Haksar*, "The acquittal of an innocent man is not an occasion for celebration, but a cause for reflection". Such reflection, as *Haksar's* essay shows, reveals this: though the Delhi High Court found no evidence whatsoever against *Geelani* and *Afsan Guru* and further observed that the police had not followed the procedures of arrest and even forged recovery documents and lied on oath, it still did not pass any strictures against the police officers, nor did it initiate or suggest any reprimands or other action against them. The failure to hold the police accountable was further compounded by the Supreme Court's unfortunate reference to 'needle of suspicion' while upholding *Geelani's* acquittal.

11. The United Nations General Assembly adopted a resolution on December 17, 1979

12. Report of National Human Rights Commission 1996-97

13. On 13 December 2001

Since 2005, Chhattisgarh, especially the Bastar-Dantewada forest area, has witnessed escalation of violence between the Maoists and the Salwa Judum. Civilians were routinely targeted on both sides, resulting in at least 300 deaths. Also, 45,000 adivasis displaced from their homes have been forced to live in special camps putting them at increased risk of violence. The Chhattisgarh State Government claimed that it enacted the CSPSA (Chhattisgarh Special Public Security Act) to take action against the Maoists and at the other hand the Human Rights Organizations in India have demanded the repeal of CSPSA as it contains several provisions similar to those in POTA.

These include:

- * Violation of the principle of certainty in criminal law (including vague definition of membership and support to terrorist or unlawful organizations);
- * Absence of pre-trial safeguards (including insufficient safeguards on arrest, the risk of torture, obstacles to confidential communications with counsel);
- * Virtual impossibility of obtaining bail as there is no provision for remedy of appeal or review of detention;
- * Threats to freedom of expression and
- * Threats to freedom of association.

Mentioned above are few instances where the police has been either negligent in conducting investigation or are colluding with the criminals. As declared by The United Nations General Assembly¹⁴, “all police officers shall respect and protect human dignity and uphold the human rights of all persons as well it applies to the armed forces, they have to abide by the international conventions against torture and other cruel punishments, principles of international cooperation in the detention, arrest, extraditions and punishment against humanity”, which is paramount in the functioning of the police. Since time immemorial police have not been able to leash its atrocities in spite of the commendable

job done by them. Time and again National Human Rights Commission has been shown causing the officials of the police as to why an action should not be taken against them.

It is of utmost importance to understand various human rights of the individuals, the situations in which violations are likely if sufficient care is not exercised and the likely allegations or charges against personnel of Armed Forces as well the police. Laid down below categorically are certain rights enshrined under Article 19 of the Constitution¹⁵ and how these rights are violated which further violate Article 14 of the Constitution¹⁶.

The Human Rights Impact of Counter-Terrorism in India

India's response to perceived threats of terrorism intensified in the wake of an attack by militants on the national Parliament, the long debated Prevention of Terrorism Act (POTA) was enacted. Like its predecessor, the much misused and now lapsed Terrorists and Disruptive Activities (Prevention) Act (TADA) of 1985 (amended 1987), The criticism against is that the POTA has already been used by the Indian Government to target minorities and political opponents¹⁷.

The Prevention of Terrorism Ordinance sets forth a broad definition of terrorism¹⁸, that includes acts of violence or disruption of essential services carried out with “intent to threaten the unity and integrity of India or to strike terror in any part of the people.” It also extends existing law by making it a crime not to provide authorities with “information relating to any terrorist activity.”

POTA creates an overly broad definition of terrorism, while expanding the State's investigative and procedural powers. Suspects can be detained for up to three months

15. The right to fundamental freedoms

16. The equality before law and equal protection of the law

17. A Human Rights Watch Briefing Paper for the 59th Session of the UNCHR, March 25, 2008.

18. Section 2 of POTA under (g) “terrorist act” has the meaning assigned to it in sub-section (1) of Section 3, and the expression ‘terrorist’ shall be construed accordingly.

14. Adopted a resolution on December 17, 1979 that

without charge, and up to three months more with the permission of a special Judge. Its close resemblance to TADA foreshadowed a return to widespread and systematic curtailment of civil liberties. Under TADA, tens of thousands of politically motivated detentions, acts of torture, and other human rights violations were committed against Muslims, Sikhs, trade union activists, and political opponents in the late 1980s and early 1990s. In the face of mounting opposition to the act, India's Government acknowledged these abuses and consequently let TADA lapse in 1995.

Indian and international human rights groups, journalists, opposition parties, and minority rights groups have unequivocally condemned POTA. Numerous political parties have alleged the misuse of POTA against political opponents in States such as Uttar Pradesh and Jammu and Kashmir. Since it was first introduced, the Government has added some safeguards to protect due process rights but POTA's critics stress that the safeguards do not go far enough and that existing laws are sufficient to deal with the threat of terrorism. 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." India has a plethora of security laws, some pre-dating independence. Many lack adequate procedural safeguards and have been similarly abused.

Conclusion

Our political thinkers, academics, and the media have to girdle them to examine rationally all the steps being taken to see how far they impinge on the Human Rights of the people. Every law restricts some rights. Some laws restrict even human rights as defined by the United Nations. True, some restrictions may be inevitable because society in the real world is not Utopia as visualized by Sir *Thomas More* wherein everything is perfect or idealistic and all the citizens are selfless

One person's rights ends where the other person's rights begin. We have to be clear and conscious; therefore, that when we make

a law and restrict the freedoms of the citizens, this must be, well defined, and open to justifiability. There have to be clear and strong safeguards and the restrictions have to be, the especially in the case of human rights.

In present day's scenario we have also to see whether our laws serve our interests. The interests of an under developed country may clash with the interest of developed countries, though their will always be grey areas. Such a situation needs fearless and honest leadership. We have to beware that compelled by globalization or 'need to curb terrorism' we may not be surviving the interest of the developed world. Just as terrorism is temporary, curbs on human rights also have to be temporary as human rights are permanent.

Every act of terrorism infringes on the human rights of the people. We also have to accept that laws restrict rights of the people, necessarily or unnecessarily. But we have to be clear that we have to define terrorism in the context of our country and have to devise temporary limitations on the rights of the people. International pressures may land us in situations which may push us into the lap of self appointed Inspectors of the world who need our markets and resources and are therefore keen to point out 'identity of interests' in fighting 'international terrorism'.

India for global cooperation against terrorism¹⁹.

"Terrorism has neither religion nor boundaries. In fact, no country can be said to be insulated against terrorism," Tourism Minister *Ambika Soni* said while addressing the²⁰, in Madrid.

Section 4 of POTA mimics Section 5 of TADA in setting out a legal presumption that if a person is found in unauthorized possession of arms in a "notified area," he or she is automatically linked with terrorist activity. This and other provisions undermine one's right to be presumed innocent until proven guilty.

19. New Delhi, October 14 (IANS)

20. 84th Session of the UNWTO Executive Council Meeting

The Act²¹, punishable the act of abetting a terrorist but does not spell out the requisite intent.

Finally, the National Human Rights Commission, which opposed the now defunct Criminal Law Amendment Bill, has yet to see a copy of the Ordinance. The Commission also maintains that existing laws are sufficient to fight the threat of terrorism.

In light of the problems outlined above we recommend that you:

Establish a Civilian Review Board or Civilian Ombudsman Committee comprising Judges and lawyers to monitor police stations and ensure that 1996 Supreme Court guidelines on treatment of persons in custody, as established in *D.K. Basu v. State of West Bengal*, are strictly enforced.

PARDONING POWER OF PRESIDENT OF INDIA

By

—M. BHASKARA RAJASEKHAR, LL.M.,
Advocate
Karimnagar, A.P.

The Constitution of India has explained, The Union under Part-V of the Constitution¹, and the Parliament Part VI², among this provisions of the Constitution, the pardoning power of the President is the most important judicial power³.

Article 52 of the Constitution says about 'the President of India' as 'there shall be a President of India' and the executive powers of the Union shall be vested in the President and shall be exercised by him or through officers subordinate to him in accordance with this Constitution⁴. The executive powers of the President as explained by the Court as follows:

Executive power must be exercised in accordance with the Constitution including in particular, the provisions of Article 14⁵.

Under Article 72 of the Constitution⁶, President has power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence

1. By Court Martial;

21. Section 3(3) makes

1. Article 52 to 78.

2. Article 79 to 122.

3. Article 72 of the Constitution

4. Article 53(i)

5. *Rao v. Indira*, AIR 1971 SC 1002

6. Power of President to grant pardon, etc., and to suspend, remit or commute sentences in certain cases

2. An offence against any law relating to a matter to which the executive power of the Union extends; or
3. In all cases in where the sentence is a sentence of death.

The Purpose of Judicial Power of President

The object of conferring the "judicial" power on the President is to correct possible judicial errors⁷, no human system of judicial administration can be free from imperfections⁸.

The Effect of Pardon

A pardon completely absolves the offender from all sentences and punishments and disqualifications and places him in the same position as if he had never committed the offence⁹. Commutation means exchange of one thing for another. For the purpose of the Article 72. Commutation means substitution of one form of punishment for another of a lighter character, *e.g.*, for rigorous imprisonment to simple imprisonment. Remission means reduction of the amount of sentence without changing its character, *e.g.*, a sentence of one year may be remitted to six months. Respite means awarding a lesser punishment on some special grounds, *e.g.*, the pregnancy of a

7. Dr. J.N. Pandey, Constitutional Law of India, CLA, and 42nd Ed

8. *Basu* – Introduction to the Constitution of India, Part II, P.21(3rd Ed)

9. (Ibid)