



INTERNATIONAL JOURNAL OF ADVANCE RESEARCH, IDEAS AND INNOVATIONS IN TECHNOLOGY

ISSN: 2454-132X

Impact factor: 4.295

(Volume3, Issue5)

Available online at www.ijariit.com

Human Rights and Terrorism: A Psycho-Social Perspective

Dr. Sonia Shali

Assistant Professor of Criminology and Criminal Justice Administration
Unitedworld School of Law, Karnavati University, Uvarsad, Gandhinagar, Gujarat
soniashali@yahoo.com

Abstract: *This chapter discusses the relationship of Human rights and terrorism as one of the most important issues in contemporary human rights jurisprudence. This is an area that needs both political as well as psycho-social attention. Every human being on this universe is entitled to human rights on the basis of simple characteristic of human being and the same perception has also been recognized under the framework of International law. Human rights, as defined in the Universal Declaration of Human Rights, United Nations (UDHR) are the rights inherent to all human beings irrespective of our nationality, place of residence, sex, colour and religion we belong to, language/languages we speak or any other status. (Un.org/universal Declaration_1) These are the universal values and legal assurances that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity.*

Keywords: *Human Rights, Terrorists and Other Disruptive Activities, UDHR, Fundamental Rights, Psychological Implications*

INTRODUCTION

The full spectrum of human rights involves respect for, and protection and fulfillment of civil, cultural, economic, political and social rights, as well as the right to development. Human rights are interdependent and indivisible, inalienable and not-derogable even in cases when some of them can be derogated under the need of the time. Human Rights and Terrorism being a great threat to the welfare and violations, being not only a disputed concern but protection of these rights during counter-terrorism operations is also most relevant and requires discussion from all perspectives, because various abuses have been reported in the recent history regarding the violations of human rights during the conduct of counter-terrorism operations and abuse of process on the pretext of counter-terrorism measures. (Globalisation.org/human rights_2) It has also been observed by the international bodies and organizations that the violations committed during counter-terrorism operations are as much serious in nature as the acts of terrorism themselves and make no difference between the acts of terrorists and those who claim to be acting against them for the elimination of the same. Some of the main reasons behind the violations of human rights are that the definition of terrorism itself has not been agreed upon among the states of the World claiming to be the eliminators of terrorism, and the same is due to the personal interests of the states and particularly the powerful states, because terrorists of one state or nation may be the heroes and freedom fighters of the other, and the freedom fighters of one may be the terrorists for the other one. On the basis of this reason, most of the times powerful states succeed to get control over the insurgents and use their own measures and parameters for the use of force, collateral damage, and principles of necessity which cause apprehension for the violations of human rights. (Jawad, 2015_3)

In this chapter, I try to share my personal experience with terrorism being a civilian, terror attacks, and massacres, innocents being targeted, tortured and murdered in a broad daylight. It seemed nobody came to their rescue, cared about whether they lived or not irrespective of having prominent positions in the society. It is hard to forget, no matter how hard one tries to erase the horrifying memories, but they come back, again and again, to haunt you for the rest of your life.

INTERNATIONAL HUMAN RIGHTS LAW

As per the procedural definition, "International human rights law is a set of regulations on the basis of which certain groups or individuals may seek protection from their respective administration". Universal Declaration of Human Rights (UDHR) is the fundamental human rights document and obligatory on all states. International human rights law has been codified through major human rights treaties and the remaining portion is available in customary international law. The most important of these treaties are, International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights, and its two Optional Protocols; International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women, and its Optional Protocol; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol; the Convention on the Rights of the Child, and

its two Optional Protocols; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Two major human rights treaties have been concluded recently, namely the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities and its Optional Protocol, which were all adopted in December 2006. (www.un.org_4) Moreover, there are a number of other human rights treaties as well which are being concluded with the passage of time, because a large area of human rights till remains to be codified under the corpus of international human rights law. Among these treaties, the part of Human rights which forms part of the customary international law is considered to be binding in all states, whereas as far as other human rights treaties are concerned, only those states will be bound by those treaties which are party to it. The mechanism is also provided under international human rights law to enforce the obligations of states. (United Nations Treaty System 2012_5)

Respect for human rights primarily involves not interfering with their enjoyment. Protection is focused on taking positive steps to ensure that others do not interfere with the enjoyment of rights. The fulfillment of human rights requires States to adopt appropriate measures, including legislative, judicial, administrative or educative measures, in order to fulfill their legal obligations. A State party may be found responsible for interference by private persons or entities in the enjoyment of human rights if it has failed to exercise due diligence in protecting against such acts. For example, under the International Covenant on Civil and Political Rights, State parties have an obligation to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. (Human Rights, Terrorism, and Counter-terrorism, Fact Sheet No. 32_6)

TERRORISM THAT TARGET CIVILIANS

India has been the worst victim of cross-border terrorism since the 1980s. Terrorism is commonly an unspecified act of violence that target civilians in the pursuit of political or ideological actions. It is generally understood as those acts of violence which spread terror among the civilians and the civilian population. (Sagar, 2014_7) In legal terms, although the international community has yet to adopt a comprehensive definition of terrorism, existing declarations, and resolutions and universal “sectoral” treaties relating to specific aspects of it define certain acts and core elements. In 1994, the General Assembly’s Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes” and that such acts “are in any circumstances unjustifiable, whatever the considerations of a political, psycho-social, ideological, racial, ethnic, religious or other nature that may be invoked to justify them. There are basically the sociopaths that target innocent civilians and kill them in targeted violence. Their role is of religious/dogmatic brainwashing because they have no conscience or care for anyone and its impact on society. (UN_Measures to eliminate terrorism_8)

HISTORICAL BACKGROUND

The modern terrorism began in the 1860s and 1870s in Russia- called as the birthplace of modern terrorism. The participant included the commentator of Russian revolutionary terrorism, Sergei Kravchinsky who himself was part of the targeted assassination against the Tsar and his henchmen. In 1878, Kravchinsky stabbed General Nikolai Mezentsev, the head of Tsar Alexander II after he fled to London and continued terror strikes under the nom de plume Stepnaik. The terrorism in United States was practiced in the era of KU Klux Klan as a campaign against black emancipation and empowerment in the South. Then came the French revolutionaries’ vision that was secular and religious extremism. One of the closest examples of religious terrorism came in 2006 during United State’s occupation of Iraq when Samara’s al-Askari Shrine was bombed. World War II and its aftermath lead to the emergence of de-colonization and the spread of ethno-nationalist movements that acted as fertile ground for the adoption of terrorist tactics. In 1970, international bodies started exploring the nature of terrorism as a violence associated with the hijacking of airplanes, mass massacres causing unlawful deaths, injuries, hostilities of armed conflict with the purpose of intimidating and compelling governments to agree upon their unjustified and unfair demands. (Law, 2015_9)

In India, like most of the major conflict situations that are prevailing in India today, the Kashmir issue is a product of British Raj. During independence the British gave options to every princely state either to merge with India or Pakistan or remain independent. Based on this theory Kashmir, the princely state ruled, by Hindu ruler, Maharajah Hari Singh, whereas about 77 percent of the population are Muslim. In December 1947, Pakistan attacked Kashmir to merge it forcefully. In that juncture Maharajah called for India’s help and agreed to merge with India with certain conditions. Followed by the formal signing of declaration to be merged with India, India sent military troops to Kashmir to prevent the interference of Pakistan. Challenging this move, Pakistan launched formal war with India which failed and got defeated. And the Kashmir dispute became a part and partial of Indian subcontinent since then. (Shodganga.inflibnet.ac.in_10)

Followed by repeated complaints from Indian part, the UN formed a separate commission to look this matter. The UN Commission of India and Pakistan (UNCIP) adopted a resolution on 13 August, 1948, which was acceptable for both India and Pakistan. The resolution suggested for four interlinked linear steps. First Pakistan have to withdraw its army from the occupied areas of Kashmir, secondly the tribal would be cleared from the state by the joint efforts of both the countries, thirdly all steps would be taken to restore normalcy for which India was to maintain a certain level of military forces in the state: and finally, the when normalcy would be restored, the majority voice will decide whether they would merge with India or Pakistan, with no provision for independence. Within this Pakistan forcefully occupied nearly one-third of the state and didn’t withdrew its army from state as prescribed by the UN resolution. And the issue continues throughout the history stretched by violence and terrorism. In 1957, declared Kashmir as the integral part of Indian Union. But since the partition, there have been three major wars in 1965, 1971 and 1999 that eventually forced withdrawal of Pakistani forces across LOC. These growing trends of terrorism have been posing a greater threat to internal as well as external security of India. (www.un.org_11)

THE IMPACT OF TERRORISM ON HUMAN RIGHTS

Terrorism is a crime, an attack on human rights, a powerful and immoral method to attain the desired objective. The core intention of terrorist activities is to depose the existing law and order system. The innocent masses are not the direct target of the terrorists, but are only a hidden means to achieve and serve political and economic agenda. As we are all aware, it affects different aspects of the society including its political, social and economic set-up. A country like India has been struggling against terrorism, yet it continuously faces terrorist attacks which disturb its economic progress and social fabric. The common public is always the end sufferer of repeated terror attacks. As it is a general consensus that human conflict cannot be done away within society and terrorism is an extreme form of this conflict. Terrorism not only affects economic prosperity but also leaves a psychological effect on the minds of people and the profound consequences can be seen in human personality and society. (UN Global Counter-Terrorism Strategy-12)

The main aim of the terror attacks is the destruction of human rights, democracy and the rule of law. It is a great violation and threat to human rights. It violates all the provisions of all the international human rights and other instruments. Most importantly, it directly deprives a person from the enjoyment of fundamental human rights, for instance right to life, which is the supreme human right as defined in the International Convention on Civil and Political Rights and other human rights instruments, freedom, and the rule of law. Moreover, it destabilizes the states and therefore anarchism and disorder spread in the society. It attacks the principles that lie at the heart of the Charter of the United Nations and other international mechanisms: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Therefore, Korff (2006) found that all the states are indebted to protect these human rights of the individuals from every threat and protect them against the acts of terrorism, taking appropriate measures in this regard. While addressing the problem of terrorism, States must distinguish between acts of terrorism and general criminal acts without which it is difficult to address the problem of terrorism and for that purpose it is desirable to define terrorism. Terrorism and International Humanitarian Law (IHL), has been defined as the set of rules which is aimed to solve the problems and protect the lives of the innocent people during an international or national/domestic armed conflict. The fundamental goal of International Humanitarian Law (IHL) is to protect persons and their human rights in an armed conflict and reduce sufferings. IHL contains rules to be adopted during an armed conflict to achieve this end, which is contained in the four Geneva Conventions and their two Additional Protocols, as well as a number of other international instruments aimed at reducing human suffering in armed conflict. Some of these rules are now considered to be part of the customary international law. Terrorism and international criminal law in the recent times along with the number of conventions have been adopted to suppress the acts of terrorism, which have laid down many obligations upon the states to take appropriate measures in this regard and provide legal assistance. (Korff, Council of Europe, 2006_13)

The association between human rights law and international criminal law is very supportive in the enforcement of human rights and a number of individuals including organizations and states have been prosecuted and punished for their alleged violations of international human rights and international humanitarian law. Terrorism and international refugee law provide protection to the refugees who migrate from the effects of hostilities or on other basis set forth and defined in the refugee convention of 1951. (Korff, 2006)

UNDERSTANDING THE PSYCHOSOCIAL CONSEQUENCES OF TERRORISM

Kaufmann, Kuch, Webster et al., (2011)_14 argues that sixty years later since the Preamble of the Universal Declaration of Human Rights was passed for the welfare of humankind and enlightens with compelling clarity the profound consequences of human rights abuses around the world. In spite of international efforts to combat them, mass killing, torture, slavery, gender-based violence and other human rights violations occur worldwide every day where women and innocent populations are the targets.

The fear of terrorism spreads so rapidly and is not confined to those who experience violence directly—others that are affected include family members, neighbors of victims and survivors and people who are exposed to broadcast images. Psychology is deeply involved from multiple factors and perspectives such as vengeance, blind obedience to authority, the intoxicating effects of power and the dehumanizing and demonizing of those who are different. Further, the psychological barriers frequently discourage individuals or nations from prevailing obstacles that include fear, apathy, denial, perceived helplessness and diffusion of responsibility. The most tragic consequences of human rights abuses are sociological and psychological as well, including the trauma experienced by victims of torture and their families and the humiliation experienced by groups who are exploited. For all of these reasons, the promotion and protection of human rights represent a core commitment of Psychologists for Social Responsibility. (Borum, University of South Florida_15)

Terrorist attacks create a sense of fear in the minds of the people that leads to a sense of discontentment and helplessness. It further creates depression among people regarding their personal and social well-being. Moreover, the violent acts of terrorism badly disturb the mental growth and force people into constant stressful situations. Being affected by the consequences of terrorism produces a hostile attitude among the masses. It further damages human and familial relationships, which ultimately affects the working performance of the individuals. These disruptive activities enhance anger and resentment among the people against the government and state bodies. The social relationships also suffer and face great loss in the presence of these psychological disturbances. (Pareek, 2016_16)

Psychological distress is usually more pervasive than the physical injuries from a violent terrorist act. Understanding these psychological consequences is serious to the nation's efforts to develop intervention strategies at the pre and post-occurrence phases that limit the adverse psychological effects of terrorism. The effect of exposure to a violent and traumatic terrorist attack is unpredictable and both psychological and physiological in nature. Social context, biological and genetic makeup, past experiences, and future expectations interact with characteristics of the past traumatic experience to produce the individual's psychological

response. In general, those exposed to a traumatic event show increased rates of acute stress disorder, post-traumatic stress disorder (PTSD), major depression, panic disorder, generalized anxiety disorder and substance abuse disorder. Although psychiatric illnesses such as PTSD are the more severe outcomes of traumatic events. However, PTSD is just one outcome in a myriad of consequences resulting from traumatic events. (Butler, 2003_17)

SOCIAL CONSEQUENCES

Terrorism not only negatively impacts individuals but also the whole social system. Due to terrorism the society splits, causes suspicion and tension among different ethnic and religious groups and harms the social fabric and unity. It causes social segregation and isolation among the different strata of the society. As the difference between the sufferers and the accused gets broadened, the feeling leads to social disturbance and people feel divided within the society. Because of the continued violent attacks, social prosperity and well-being of the masses are always at risk which makes the lives of the people more difficult and intolerable. The incidents of murder, torture, mutilation, kidnapping, and extortion create an atmosphere of suspicion, fear and panic all around. The terrorists kill unarmed civilians including women and children. (Human rights world report, 2013_18)

COMBATING TERRORISM AND THE PROTECTION OF HUMAN RIGHTS IN INDIA

India, being the consistent victim of cross-border terrorism since independence faces the scourge of terrorism with increasing intensity. The terrorism in Punjab started in the early eighties; the oldest and still unsolved violent struggle against the Indian state has been raging in the Northeast part of the country. Even though it has not hogged as much limelight as terrorism in other states, it is strategically as important as terrorism in J&K. The repeated terror attacks in all most all major cities of the country leaving hundreds of innocent lives/ army men dead, destroying massive properties gives a clear indication that terrorism is the biggest danger the country is facing presently. (Jadoun, 2015_19)

The legislators of this country both at the Centre and State level are well aware of the fact that terrorism is an organized crime, having acquired global dimensions with full support from modern means of technological innovations and communication.

As far as combating terrorism is concerned, we have anti-terrorism laws in India under the perception of protecting the States that are facing this menace since long. Under National Security protection, the Supreme Court of India and High Courts along with domestic and International organizations and NGOs have laid certain useful interventions for terror attacks and violent activities. Apart from it, we have National Human Rights Commission (NHRC), State Human Rights Commission that reports various human rights violations and bring it to the fore to the judicial system and the NHRC. Firstly, we had Unlawful Activities (Prevention) Act, 1967 (UAPA) designed to deal with associations and activities that questioned the territorial integrity of India and was strictly limited to meeting the challenges. The Maharashtra Control of organized Crime Act, 1999 (MCOCA) was enforced on 24th April 1999, was made to deal with rising organized crime in the State of Maharashtra and particularly in Mumbai due to the criminal underworld activities. The Terrorist and Disruptive Activities (Prevention) Act, (TADA) came in force in (1985-95) in response to Punjab insurgency but was applicable to the whole of India. For prevention of terrorist activities and human rights violation, the Parliament of India passed Prevention of Terrorist Act, (2002) POTA with an aim to combat anti-terrorist activities carried out from time to time. (http://www.legalserviceindia.com/articles/anti_pota.htm 20)

In fact, after descending of TADA in the year 1995 there was no law of extraordinary nature which could be used as a weapon against the rising terrorist activities in India. The reason for the rise of terrorism in India may vary vastly from religious to geographical locations. The most important case related to terrorists incidents is that when the Supreme Court took the case of *Kartar Singh v. the State of Punjab* and observed that the country has been in the firm grip of increased terrorist violence and is trapped between fatal pangs of disrupting activities of anti-terrorism laws in India which have always been a subject of much controversy. (<http://www.legalservicesindia.com/article/article/anti-terrorism-laws-in-india-382-1.html> 21)

Hence, it is clear from the above discussion that while connecting it with the human rights there are always arguments in these laws as they stand in the way of fundamental rights of citizens guaranteed by Part III of the Constitution. The anti-terrorist laws have been enacted before by the legislature and upheld by the judiciary though not without reluctance. The intention was to enact statutes and bring them in force till the situation improves. This intention was not to make these drastic measures a permanent feature of law of the land. But because of continuing terrorist activities, the statutes have been reintroduced with requisite modifications.

CONCLUSION

In the end, while concluding our discussion it becomes evident that as far as protecting the rights of the individuals are concerned, it is the duty and right of the States to protect its individuals under their jurisdiction from such deadly terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights (Barth, 2006_22). In particular, this duty is recognized as part of States' obligations to ensure respect for the right to life and the right to security. Under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, the right to life, is protected and has been described as "the supreme right" because, without its effective guarantee, all other human rights would be having no meaning. At the same time, there is a compulsion on the part of the State to protect the right to life of every person within its country/territory and no derogation from this right is permitted, even in times of public emergency. The protection of the right to life includes a compulsion on States to take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction. As part of this obligation, States must put in place effective criminal justice and law enforcement systems, such as measures to deter the commission of offences and investigate violations where they occur; ensure that those suspected of criminal acts are prosecuted; provide victims with effective remedies; and take other necessary steps to prevent a recurrence of violations (Milken, 2006_23). In addition, international and regional human rights law has recognized that, in specific

circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk for the criminal acts of another individual, which certainly includes terrorists (Jain, 2013_24). Also important to highlight is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist. This, of course, includes terrorist threats. In order to fulfill their obligations under human rights law to protect the life and security of individuals under their jurisdiction, States have a right and a duty to take effective counter-terrorism measures, to prevent and deter future terrorist attacks and to prosecute those that are responsible for carrying out such acts. (Global Terrorism, 1984_29). At the same time, the countering of terrorism poses grave challenges to the protection and promotion of human rights. As part of States' duty to protect individuals within their jurisdiction, all measures taken to combat terrorism must also comply with States' obligations under international law, in particular, international human rights, refugee and humanitarian law. To combat terrorism, a delicate balance between fighting terrorism and respecting the constitutional rights of every citizen will have to be maintained. The Supreme Court has taken a positive step by permitting the Maharashtra police to tap telephone conversations of terror suspects (Financial Express, 2017_27). However, powers given to the police and other forces should not be unlimited and unchecked. There is need of Global awakening about human rights and the threat that terrorism has posed to human rights of the people all over the world (www.humanrightsinitiative.org _ 28). All nations must, therefore, cooperate to relentlessly and without any compromise fight terrorism. Our, legislative, executive and judicial institutions must be prepared to exercise their authority to protect all citizens from pretty fears and prejudices that are so easily aroused. Terrorism is a challenge which has to be met with innovative ideas and approach.

REFERENCES

1. <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>
2. <http://www.globalization101.org/uploads/File/HumanRights/humanrights.pdf>
3. Saqib, Jawad. Terrorism and Human Rights. *Sociology and Anthropology*, 3, 104 - 115. doi: 10.13189/sa.2015.030205. 2015.
4. <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>
5. United Nations Treaty System 2012 www.ohchr.org/documents/publications/hr.pub.12.2_en.
6. Human Rights, Terrorism, and Counter-terrorism Fact Sheet No. 32 <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>
7. Sagar, Saumya. Famished for knowledge. June 26, 2014. www.quora.com/Pakistani-civilians-think-about-the-terror
8. United Nations General Assembly_Measures to Eliminate International Terrorism <http://www.un.org/documents/ga/res/49/a49r060.htm>
9. Law, D. Randall. *The Routledge History of Terrorism*. Routledge Taylor & Francis Group, 2015.
10. http://shodhganga.inflibnet.ac.in/bitstream/10603/92831/7/07_chapter%201.pdf
11. http://www.un.org/en/sc/repertoire/46-51/Chapter%208/46-51_08-16-The%20India-Pakistan%20question.pdf
12. UN Global Counter-Terrorism Strategy <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>
13. Korff, Dauwe. The Right to Life. *Human Rights Handbook*, No 8. Council of Europe, 2006
14. Kaufmann, Paulus. Kuch, Hannes. Webster, Elaine. *Humiliation, Degradation, Dehumanization*. Springer, 2011.
15. Borum Randy, *Psychology of Terrorism*. The university of South Florida. <https://www.ncjrs.gov/pdffiles1/nij/grants/208551.pdf>
16. Pareek, Ritu. *TERRORISM AND ITS PSYCHO-SOCIAL IMPACT ON SOCIETY*. <http://puneresearch.com/media/data/issues/572ff9fef2739.pdf>
17. Butler, S. A. Understanding the Psychological Consequences of Events, Disasters, and Terrorism. (<https://www.ncbi.nlm.nih.gov/books/NBK221638/>)
18. Human Rights World Report, 2013 https://www.hrw.org/sites/default/files/wr2013_web.pdf
19. Jadoun, S. Harshit. *Cross-Border Terrorism and Home has grown Militancy. 2015* <https://www.lawctopus.com/academike/cross-border-terrorism-home-grown-militancy>
20. Anti-terrorism laws in India and the need of POTA. http://www.legalserviceindia.com/articles/anti_pota.htm
21. Anti-terrorism laws in India: Distinguishing Myth & Reality (<http://www.legalservicesindia.com/article/article/anti-terrorism-laws-in-india-382-1.html>_ 21)
22. James R. Barth et al, "Economic Impacts of Global Terrorism: From Munich to Bali," 2006.
23. Milken Institute, October 2006.
24. Jain Rashee, Textbook on Human Rights Law and Practice, Universal Law Publishing Co. Pvt. Ltd., Delhi, 2013.
25. US Department of State. Patterns of Global Terrorism. 1984.
26. Visco Ignazio. "Economic Consequences of Terrorism." OECD Economic Outlook. Vol 1 No. 71, June 2002.
27. <http://www.financialexpress.com/article/fe-columnist/the-fast-lane-economic-cost-of-terror/34641/> Accessed: April 2017.
28. www.humanrightsinitiative.org/new/papers/chri_paper.pdf.