

Terrorism and Human Rights

Shriji Seth,

H.OD, Political Science Sri Sathya Sai College for women, Bhopal (M.P.), India

Abstract

Terrorism brings suffering and miseries to human beings. It being immoral and inhuman act puts under threat the rights and freedoms of innocent people.it, therefore, abuses the fundamental human rights of the victims, particularly, the right of life, the right of physical integrity and the right to personal freedom. The increasing numbers of innocent persons including women, children and the elderly have been either killed, massacred by terrorists in indiscriminate and random acts of violence and terror which in no case can be justified. Resolution on human rights and terrorism adopted by the general assembly since 1993 stated that terrorism creates an environment that destroys the freedom from fear of the people.

A crucial question arises as to whether terrorists should be provided human rights? Human rights are the rights independent of particular conditions of social recognition. These are inherent in the very nature of a human being as a conscious and self respecting individual. These are the basis of human life, dignity, and worth. These are the natural and essential conditions of happy and prosperous living of all the people of the world.

It is to be noted that while considering the question of providing human rights to the terrorists, it has to be taken into account the impact of the act on the victim, on the society and on the state in addition to the number of the victims. It is to be noted that derogation to human rights is permissible if they are proportionate to the dangers that those events represent.

KEYWORDS-Terrorism, Human rights, United nation, Violation

Introduction

The issue of terrorism and human rights has long been a concern of the United Nations. The terrorist attacks of 11 September 2001 and subsequent surge in acts of terrorism worldwide, it has become even more urgent. While condemning terrorism unequivocally and recognizing the duty of States to protect those living within their jurisdictions from terrorism, the United Nations has placed a priority on the question of protecting human rights in the context of counter terrorism measures.

The human cost of terrorism has been felt in virtually every corner of the globe. The United Nations family has itself suffered tragic human loss as a result of violent terrorist acts. The attack on its offices in Baghdad on 19 August 2003 claimed the lives of the Special Representative of the Secretary-General, Sergio Vieira de Mello, and 21 other men and women, and injured over 150 others, some very seriously. Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, and jeopardize peace and security, and threaten social and economic development. All of

these also have a real impact on the enjoyment of human rights. Security of the individual is a basic human right and the protection of individuals is, accordingly, fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice.

In recent years, however, the measures adopted by States to counter terrorism have themselves often posed serious challenges to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centers, and have often been disregarded. The independence of the judiciary has been undermined, in some places, while the use of exceptional courts to try civilians has had an impact on the effectiveness of regular court systems. Repressive measures have been used to stifle the voices of human rights defenders, journalists, minorities, indigenous groups and civil society.

The primary objectives of an effective terrorism effort are to safeguard human rights, strengthen democracy and uphold the Rule of Law. The response to terrorism can neither be selective nor lead to unleashing a wave of unbridled repression, which would, as a consequence, enormously infringe upon the rights of the citizens. Thus, it is critical to strike a just balance between ensuring the security and integrity of the country and safeguarding the human rights of the people.

Indeed, there cannot be any compromise in the effort to root-out terrorism from the country. The state is expected to, and should, take all possible legal, security, social and economic measures to neutralize terrorist groups. What, however, needs to be kept in mind is that in India, the largest democracy of the world, human rights of citizens, which are non-alienable and are guaranteed by the Constitution, cannot be allowed to be sacrificed. Importantly, 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.

It is equally important to bear in mind that it is the terrorists and terrorist groups which are, without any doubt, always guilty of gross human rights abuses, and not the security forces (barring exceptional cases) which are often maligned by the gullible media and motivated activists. The violations by the terrorists, however, receive little attention, especially because of the mortal fear of violent retribution and victimization.

US Senator, Henry Jackson, wrote: It is a disgrace that democracies would allow the treasured word 'freedom' to be associated with acts of terrorists".

There's a generalized perception, that today's world -against what could be thought- is a more

unsafe one. Of course, the cause of this covers a multiplicity of dimensions and certainly it's hard to precise, but the Terrorism could be a clue to understand why the traditional concepts of international security that have been effective until now, have become obsolete and indeed, no longer provide real answers to the challenges and problems the world is facing. And the reason of that is actually very simple.

In the genesis of the contemporary International Organizations, the Terrorism was present

but

was not an issue that would manifest itself in such magnitude as now? Today, day after day, we have get used to see news related to terrorist acts, perpetrated in the heart of the western world -United States, Spain, England- as well as in places very far away from our closest geographic location -Algeria, Israel, Lebanon, Iraq, India, Pakistan, Indonesia.

Human Rights

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. 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 universal in other words; they belong inherently to all human beings and are interdependent and indivisible.

International human rights law is reflected in a number of core international human rights treaties and in customary international law. These treaties include in particular the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its two Optional Protocols. Other core universal human rights treaties are the 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. The most recent are 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. There is a growing body of subject-specific treaties and protocols as well as various regional treaties on the protection of human rights and fundamental freedoms.

International human rights law is not limited to the enumeration of rights within treaties, but also includes rights and freedoms that have become part of customary international law, which means that they bind all States even if they are not party to a particular treaty. Many of the rights set out in the Universal Declaration of Human Rights are widely regarded to hold this character. The Human Rights Committee has similarly observed, in its general comments N° 24 (1994) and N° 29 (2001), that some rights in the International Covenant on Civil and Political Rights reflect norms of customary international law. Furthermore, some rights are recognized as having a special status as norms of *ius cogens* (peremptory norms of customary international law), which means that there are no circumstances whatsoever in which derogation from them is permissible. The prohibitions of torture, slavery, genocide, racial discrimination and crimes against humanity, and the right to self-determination are widely recognized as peremptory norms, as reflected in the International Law Commission's articles on state responsibility. The International Law Commission also lists the basic rules of international humanitarian law applicable in armed conflict as examples of peremptory norms.

Similarly, the Human Rights Committee has referred to arbitrary deprivation of life, torture and inhuman and degrading treatment, hostage-taking, collective punishment, arbitrary deprivation of liberty, and violations of certain due process rights as non-decodable, while the Committee on the Elimination of Racial Discrimination, in its Statement on top of racial discrimination and measures to combat terrorism, has confirmed the principle of nondiscrimination as a norm of jus cogens.

Terrorism

Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims. 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, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.” Ten years later, the Security Council, in its resolution 1566 (2004), referred to “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act”. Later that year, the Secretary-General’s High-level Panel on Threats, Challenges and Change described terrorism as any action that is “intended to cause death or serious bodily harm to civilians or noncombatants, 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” and identified a number of key elements, with further reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004).

The General Assembly is currently working towards the adoption of a comprehensive convention against terrorism, which would complement the existing sectoral anti-terrorism conventions. Its draft article 2 contains a definition of terrorism which includes “unlawfully and intentionally” causing, attempting or threatening to cause:

- (a) Death or serious bodily injury to any person;
- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment;
- (c) Damage to property, places, facilities, or systems..., resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.”

The draft article further defines as an offence participating as an accomplice, organizing or directing others, or contributing to the commission of such offences by a group of persons acting with a common purpose. While Member States have agreed on many provisions of the draft comprehensive convention, diverging views on whether or not

national liberation movements should be excluded from its scope of application have impeded consensus on the adoption of the full text. Negotiations continue. Many States define terrorism in national law in ways that draw to differing degrees on these elements. Today are effective twelve legal instruments of universal reach on Terrorism, being the most recent one, the International Convention for the Suppression of the Financing of Terrorism, signed in New York in 1999. From the list of those instruments it's very easy to find out that no one gives a clear and express concept of Terrorism and none of them covers the relationship between counter Terrorism and human rights.

Links and Effects

Terrorism and Human Rights, in order to give binding support to the Reports, recommendations, Resolutions and statements made by different United Nations organs. The preamble of the Convention would just consist in the mention as a recompilation, of the last UN Resolutions about the issue Terrorism-Human Rights, from the General Assembly, the Human Rights Council and the Security Council. There could be quoted also, excerpts from Reports of the thematic Special Reporters and from other relevant documents -such as the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention relating the Status of Refugees and the Geneva Conventions of 1949 with its Additional Protocols-. This would express the philosophic, historic, legal and rational source of the main proposal of the Convention, which is, combat Terrorism respecting human rights.

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: 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. Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity.

Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former Commission on Human Rights and the new Human Rights Council. Specifically, Member States have set out that terrorism:

- Threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights;
- Has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments;
- Has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and

robbery;

- Has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and
- Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security.

International and regional human rights law makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States'

Obligations to ensure respect for the right to life and the right to security. The right to life, which is protected under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as "the supreme right" because without its effective guarantee, all other human rights would be without meaning.

As such, there is an obligation on the part of the State to protect the right to life of every person within its territory and no derogation from this right is permitted, even in times of public emergency. The protection of the right to life includes an obligation on States to take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction. 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. 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.

From a human rights perspective, support for victims in the context of terrorism is a paramount concern. While efforts immediately following the events of 11 September 2001 largely failed to give due consideration to the human rights of victims, there is increasing recognition of the need

for the international community to take fully into account the human rights of all victims of terrorism. In the 2005 World Summit Outcome (General Assembly resolution 60/1), for example, Member States stressed "the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief." Similarly, the United Nations Global Counter-Terrorism Strategy reflects the pledge by Member States to "promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation."

In addressing the needs of victims of terrorism, consideration must be given to the distinction between victims of crime, on the one hand, and victims of human rights violations, on the other. While this distinction is not always clear-cut, it is important to note that, in most cases, terrorist-related acts will be addressed as criminal offences committed by individuals and a State will not, in principle; be responsible for the illegal

conduct itself. Acts constituting human rights violations are committed primarily by organs or persons in the name of, or on behalf of, the State. In some circumstances, however, the State may be responsible for the acts of private individuals that may constitute a violation of international human rights law.

Suggestions and Conclusion

- Follow "due procedures", adhere to the Rule of Law and function within the ambit of existing laws while combating terrorism.
- Ensure transparency in, and accountability for, the actions carried out by the various agencies of State while responding to terrorism.
- Improve intelligence gathering procedures, systems and mechanisms.
- Continuously educate and train all the agencies of the State, especially the security forces, and more importantly those in the lower-rung, in the observance of human rights.
- Human rights should be an integral part of the syllabus at all institutions training police, paramilitary and army men and officers.
- The officer cadre should be given periodic refresher courses.
- Special Human Rights Officers should be deputed to army, paramilitary and police units deployed in conflict zones.
- Institute mechanisms and procedures to reduce stress among the security forces working in areas affected by terrorism/insurgency
- Ensure speedy, fair trial of those accused of being involved in terrorist activities. Revamp judicial processes and procedures. The number of fast track courts should be increased.
- The Union Home Ministry should issue instructions to the police to take utmost care while charging persons in terrorist cases.
- Severe punishment/reprimand should be given to those violating the Home Ministry instructions.
- Do not alienate the people, but make them partners in the fight against terrorism.
- Establish police-citizen coordination cells at select vulnerable conflict zones. Involve resident welfare associations in the initiative.
- The intelligentsia, media and non-governmental organizations should be encouraged to create confidence in the minds of the people that terrorism can be defeated, and also function as a bridge between the state and the community.
- Interest groups must be made to desist from involving in agenda-driven propaganda on human rights violations.

The Terrorism is a form of violence that breaks all the patterns of civilization that mankind share. We certainly cannot ignore the suffering caused by groups of peoples and individuals that act apartheid from the rule of law. But, the combat of Terrorism cannot serve as an excuse to implement measures that could be or have proved to be restrictive of human rights or that violate human rights. Dignified the human being in the combat of Terrorism is not a feature of weakness but without doubt, a symbol of the reaffirmation of the values that the Terrorism pretends to attack. In consequence, it is not possible the violation of human rights countering a phenomenon that by its own nature, already violates them. From an ethical and moral point of view, there wouldn't be any difference at all between the terrorists and those who combat them.

Pope Benedict XVI said this year in its message on the World Day of Peace, "the scourge of Terrorism demands a profound reflection on the ethical limits

restricting the use of modern methods of guaranteeing internal security... States cannot fail to recognize the need to establish clearer rules to counter effectively the dramatic decline that we are witnessing".

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