

CHAPTER I

INTRODUCTION

The genesis of terrorism, as a global problem in the modern times, is attributed to development of political situation in the world during the late 60s in the 20th century. However, it is not a modern phenomenon as it has been in existence since the days of ancient Greece, in medieval Italy. The origin of the present day terrorism can be traced to the Sinai War of June 1967 when in an Israel decimated the armed forces of some of the Middle East countries in few days and occupied large tract of their land. The Arab world has since then been simmering with anger and rage leading to the beginning of "contemporary wave of terrorism" in the Middle East in 1968. The first manifestation of moving away from the conventional war and confrontation between the Israeli and the Arab was the seizure of an American Airline by a Palestinian sympathizer. Terrorism is no longer a technique of protest but has become a global apparatus to challenge the number one superpower in the unipolar world. What had not been reckoned earlier was the way in which religion was to become enmeshed with the political aspiration.

The acceptability of violence in a society is dependent on whether terrorism is perceived to be a valid form of protest and is thus; closely linked to the level of support a group can hope to receive from their society at large. This does not necessarily suggest that, if support is lacking, terrorists will renounce violence because it is counter-productive. A part of their problem is that terrorist organisations often have difficulties in moving away from violence. Terrorism, as an effective weapon, has thus appeared as a serious challenge to the world order and cannot be overlooked or washed away. In the words of R. Venkatraman, the former President of India, the response to this "*spectrum of challenges*" has to be "*multi-dimensional*". In his inaugural address at the 21st Annual Conference of the Indian Society of International

Law, he underlined the "*need to mobilize the processes of ratiocination that have taken the shape of legal enquiry*"¹. He said "*Lego-philosophic minds can arrest the world in so arranging or ordering human affairs as to make them consistent with the evolution of collective human thought. What is involved in the process is not just the maintenance of the powers of the States or "order" but "order" with "law". Within the boundaries of a State the balance is not so difficult to maintain. But in trans-national affairs, the task becomes difficult*"².

Terrorism has become the most powerful hazard to international security, and terrorism driven by religious extremism, is doubly so. Plural and open democracies are the targets of the scourge of terrorism that strikes at the very root of tolerance, the mainstay of civil society in a free world. India has been battling with surge in terrorism driven by religious extremism for many years.

Behind every terrorist action there is a cause, a political goal, which could not be achieved or articulated through conventional methods of protest and agitation. The roots of terrorism lie in misery, frustration and sense of injustice arising from neglected cause and political objectives which the terrorists bring into public focus by symbolic acts of violence, invariably directed against innocent targets.

Many factors have contributed to the rise of ethno- religious, linguistic and regional conflicts in India. They include colonial legacies, the forces of modernisation, the exigencies of electoral politics, the movement of ethnic populations across porous borders and the decay of indigenous political institutions.

¹ Malimath, Committee Report on Criminal Justice Reform, March 2003, Government of India at 216- 217.

² *Ibid.*

India's social structure has been a unique blend of diverse religions, cultures and ethnic groups. Despite these numerous social, cultural, religious and racial diversities, India still remains a largely unified society. But one has to agree to the fact that in India politics is caught up in the violence of opposing factions by which they are shaped, and through which they are shaped, and through which they prosper. In that situation, democracy itself is a spur to violence. When societies are divided, democracy adds depth to the sense of division. Political considerations, of late, have had their own way in ushering in the era of ethnic conflicts in the Indian subcontinent. The more dangerous aspect has been ruthless and cynical use of communal and ethnic contradictions by political gains. Monsters of communal and ethnic separatism and conflicts were created or encouraged out of such expediency.

In Punjab, it was a problem of prosperity combined with unequal distribution of wealth due to results of Green Revolution boom. The rich Punjabi farmers, in search of investing their surplus for better returns, found it compelling to capture State power. Further marginalization of small and landless peasants forced them into militancy for bare survival. By contrast the situation in Jammu & Kashmir, Assam, and the North East States has been one of economic neglect and discrimination in the perception of the affected masses. Even when national funds were allocated they did not reach the targeted groups, because of the corruption of bureaucrats, politicians, and other mediators.

The functioning of the federalism has, nevertheless, had undesirable implications for the ethnic scene in India. The linguistic reorganisation of the States gave impetus to various groups of specific cultural markets and ethnic identities to seek political expression and legitimacy. This was because ethnic identity was provided a territory under the scheme of reorganisation. The importance of ethnic territory in ethnic conflict is very crucial, as it can be gathered from examples of Punjab and Kashmir.

Punjab was afflicted by terrorism, which lasted over a decade. Jammu & Kashmir has been facing the challenge of insurgency since 1989. The North Eastern States are confronting insurgent movements rooted in ethnicity and sub-nationalism. Every militant movement has a distinct identity moulded by its geopolitical and socio-economic context. Terrorism in Punjab was different from the ongoing insurgency in Jammu and Kashmir, while the North Eastern insurgency has little in common with either. However, all these movements shared a common genesis- that is misgovernance of the State, reflected in the unresponsiveness of the administration to the demands and grievances of the people, and the inaction of the establishment.

India has also been a victim of cross-border terrorism. Pakistan's role in spreading terrorist activities in Punjab and Jammu & Kashmir is well known. Proper co-ordination in interception and the commitment of the State and its police in countering such activity lay at the root of the control of terrorism in Punjab. But in the case of Kashmir, terrorism still persists because Pakistan has taken recourse to the concept of *jehad* to fulfill its long time policy of securing Kashmir from India. Actually, Pakistan's inclination of using force to annex Kashmir has been apparent from the very beginning. The blue print of aggression against Kashmir, which was drawn in 1947-48, continues to be followed as policy even today. Attacks by infiltration in 1965, which led to the second Indo-Pakistan war, Pakistan's proxy war since 1988, and the Kargil offensive of 1999, confirm that Pakistan prefers to follow a policy of confrontation in Kashmir.

In 1988-89, Pakistan began expanding its operations to sponsor and promote separatism and terrorism primarily in Kashmir, as a part of long-term strategic programme, and also to avenge the loss of Bangladesh.

The country has suffered huge casualties amongst civilians as well as security forces, besides colossal damage to private and public property, due to terrorist incidents. Annual Reports of the Ministry of Home Affairs in the chapter on internal security gives an idea about the impact of terrorism in not only the State of Jammu and Kashmir alone but in whole country. An analysis of some of the recent terrorist attacks indicates that terrorist organisations have used the existing organised crime networks. Terrorist groups and these crime syndicates have international links with similar organisations and are supported by foreign agencies inimical to our interests. Their activities are being financed through international money laundering and drug trafficking, thus creating an intricate web of crime, terror and trafficking in arms and drugs. Experience in some of the chronically insurgency affected states shows that terrorist outfits with initial political objectives sooner or later degenerate into mercenary groups.

India is among the worst victims of terrorist violence in recent decades. In the face of this massive threat, despite severe limitations, the Indian State responded with a reasonable degree of success. Extra-territorial sponsorship of terrorism, porous borders, diplomatic complexities in dealing with safe havens across the border and the deficiencies in our own criminal justice system have made the task of countering terrorism extremely arduous and complex. And yet the valour and sacrifice of our security forces, the alertness and high degree of cohesion among various agencies, a broad political consensus backed by strong public opinion, democratic legitimacy of the State and the economic and social strengths that form the bedrock of our nation have greatly helped us withstand the onslaught of terror. The Indian response to terrorism has had significant success. Terrorism was totally eliminated from Punjab; Mizoram, which at one point of time was infested with insurgency, is now a peaceful state; there has been a decline in violence in Jammu and Kashmir, too. Several attempts of terrorists have been thwarted by timely action in any parts of the country.

The success of counter-terrorism strategies in Punjab has also highlighted the importance of a well-coordinated strategy. The security forces have to win the confidence and support of the local people. Highhanded action by security forces, especially violations of human rights tend to alienate the local people who may then fall prey to terrorist designs.

Terrorism being a serious threat to the internal security of a State in general and organised life of its community in particular, the Indian parliament enacted the anti-terrorist laws to combat the multi-dimensional threats posed by the growing menace of terrorism in the country. A multi-pronged approach is needed. As these are special laws to deal with the extraordinary situation created by terrorism, it is quite natural that they contain some extraordinary provisions, which do not find place in the ordinary laws applied in normal situations. Socio-economic development needs to be taken up on a priority basis so that the local people do not fall into the trap of terrorists; the administration and the service delivery mechanisms need to be geared up so that the legitimate and long standing grievances of the people are redressed promptly and therefore cannot be exploited by terror groups. Strong measures are required to deal with criminal elements but with respect for human rights. To ensure this, the law enforcement agencies have to be supported with an appropriate legal framework, adequate training, infrastructure, equipments and intelligence. With the spurt in terrorism in recent years, many countries have enacted appropriate and stringent anti-terrorism laws. India too has had two enactments for dealing with terrorism in the past – (ii) The Terrorist and Disruptive Activities (Prevention) Act, 1985 (allowed to lapse in 1995), and (iii) The Prevention of Terrorism Act, 2002 (repealed in 2004). However, both these legislations were allowed to lapse/repealed as it was contended that the powers conferred on the law enforcement agencies had the potential for misuse. The law commission in its 173rd Report (2000) examined this issue and highlighted the need for a law to deal firmly and effectively with terrorists. It also drafted “The Prevention of

Terrorist Activities bill". The Supreme Court has also upheld the Constitutional validity of anti-terrorism laws. Many have urged that a strong legal framework be created to deal with terrorism. Clearly there is a felt need to strengthen the hands of security forces in the fight against terror, even as human rights and constitutional values are protected.

The legislature while drafting the anti-terror legislations kept in mind the fact that an extraordinary situation calls for an extraordinary remedy for this motive the anti- terror legislations contain some stringent provisions. One has to bear in mind the fact that the problem of terrorism calls for adoption of drastic measures without which the State cannot hope to protect the rights and freedoms of the people.

Terrorism signifies debasement of the personal freedom of the terrorists and destruction of the personal freedom of the fellow human beings. Personal freedoms means the freedom of every law abiding individual to think what he will, say what he will and go where he will on his lawful mission without any let or hindrances from any person. But this freedom has to be matched with the law of the community in which the individual lives. Therefore, every individual should respect the rights and freedoms of other individuals and carry out his lawful obligations to the community, remembering that his is not the only will in the world and since it is the law which resolves the conflicts of wills exist within a community, the law must be respected under all circumstances. In other words, the ideal of the free individual can never mean that the individual is completely unstrained and devoid of any responsibility towards his fellow human beings and the community. Right and duty can be considered as two sides of the same coin. Neither right can survive without duties or any freedom without obligation.

Implicit in the concept of the rule of law is the recognition of the need to strike balance between liberty and public order and since law provides this balance, the anti-terrorist laws emerge as the dividing line between the chaos and order. In the context of the serious threats to the human rights by the terrorists, these laws should be looked upon as defenders rights and freedoms rather than as their destroyer.

There should be no reservations in expressing the view that the anti-terrorist legislations enacted by the Indian Parliament to combat terrorism in India are very much in tune with the principles set out in the Universal Declaration of Human Rights. *These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.* As the terrorists exercise their rights and freedoms contrary to the purposes and principles of United Nations and, thereby, they jeopardize life, liberty and property of the fellow human beings, the anti-terrorist laws rightly limit the rights and freedoms of the perpetrators of terrorism in order to protect the rights and freedoms of the law-abiding members of the society and meet the just requirements of morality, public order and the general welfare in the society. However, the very fact that these laws contain somewhat unusual provisions underscores the need to guard against their misuse in the course of their enforcement.

The northeastern region of India comprised of seven States (often called the seven sisters) namely Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura. This region has more than 200 ethnically diverse groups with distinct languages, dialects and socio-cultural identities. Some parts of this region have been suffering from militancy for several decades. Militancy in the region started with the Naga movement way back in the early 1950s and rose to serious levels in Manipur in the 1960s. Large-scale immigration into Tripura gave birth to militancy there in the 1960s. Militancy in Assam, on the foreigner's issue, has multiplied and spread

to any new areas. The numerous militant movements in the region have different objectives. A few movements seek outright secession from the Indian Union some aspire for separate Statehood while others demand greater autonomy within the existing State. Extortion and abduction are frequently resorted to by some of the militant groups. Apart from causing huge loss of human lives, militancy has hampered economic development of the region. The situation is compounded by the involvement of some foreign intelligence agencies, which are providing material support to the insurgents besides; the long porous international borders have facilitated the movement of these groups and the smuggling of arms. Corruption, economic deprivation and unemployment are driving segments of youth into the fold of and trafficking in arms and drugs. Experience in some of the chronically insurgency affected states shows that terrorist outfits with initial political objectives sooner or later degenerate into mercenary groups.

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It goes to the credit of the security forces that they stood as a bulwark against these forces of disintegration and saved the nation.

Human relations on all levels have been characterized by decisions demonstrating who gets what, when and how often accompanied by the threat and use of force. Political and ideological violence, which sometimes arises from, and contributes to such conflict, is commonly known as terrorism. The process of force taking the form of random and systematic intimidation, coercions, repression or destruction of human lives and property used intentionally by an organized group to create a climate of extreme fear in order to obtain a vowed realistic or imaginary goals.

The first and foremost problem with respect to the terrorism, which attracted the attention of jurist relates to the definition of terrorism. There has been lot of confusion and contradiction as to its definition. An attempt to arrive at an internationally accepted definition of terrorism was made in League of Nations but the Convention drafted in 1937 never came into existence. Lack of agreement on the definition among the member states was the reason. The situation in India in this context is not much different. The present study will deal with the problem as to why it was not possible to give precise definition of terrorism.

The next problem with respect to terrorism is to find out suitable place under the law i.e. International Instruments to combat terrorism. The series of plane hijacking gave rise to international concerns. Geneva Convention on the High Seas came into force on 29 April 1958, which had included acts of violence on board, a private aircraft in a broadened formulation of piracy and had made an appeal to all countries to co-operate in suppressing. Such acts proved thoroughly inadequate to meet the situation created by the tremendous in the sixties of air piracy cases.

Convention on Taking Hostages clearly lay down that the taking of hostage is an offence of grave concern to the international community and that it is urgently necessary to develop international co-operation between state devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking hostages and manifestation of international terrorism.

The problem of terrorism, violence, which endangers or takes innocent lives or jeopardizes fundamental Conventions and Protocols, has been under consideration of the General Assembly since 1972. The Assembly recommended measures to prevent international terrorism which endangers or takes innocent lives, and study of the underlying causes of those forms of terrorism and act of violence which lies in misery, frustration, grievances and despair and which, cause some people to sacrifice human lives, including their own in an attempt to effect radical change. Security Council adopted resolution after the 11 September attack in New York and Washington on 28th September 2001 with steps and strategies to combat terrorism. An attempt will be made to study these Conventions, Instrument and Resolution.

In India there are various forms of criminal acts and offences resorting to terrorism. There are organized group of persons resorting to violence for putting pressure upon National Government to satisfy their political goals, takes guerilla warfare, attack police chowki to cause terror, cause fire to loot the public and private property, take hostage of civil population or Government staff for putting demand of the release of the member of their own group and demand for the right of self determination is indirectly undertaken by the terrorist attacks. Indian Penal Code is comprehensive piece of legislation embodying the general principles of penal law of the country and the provisions of punishment for specific offences. This present study has examined the adequacy of laws needed to meet the recent demand.

The act of terrorism is not new as because history shows that during British rule freedom movement carried out by the Indians was taken as terrorist act. Hence the Britisher's called those Indians as terrorist who denied their rule. Those persons who were arrested as terrorist were detained without trial. This was done under the Notorious Bengal Regulation III of 1818 (The Bengal State Prisoner Regulation) and there were similar enactment in Madras and Bombay. After this came Rule 26 of the rules framed under the Defence of India Act, 1939 which authorized the Government to detain persons whenever it was satisfied with respect to that particular person that such detention was necessary to prevent him from acting in any manner prejudicial to the defense and safety of the country and the like. One after the other preventive detention laws came i.e. Preventive Detention Act, 1950, then Maintenance of Internal Security Act, 1971, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 then National Security Act 1989. Then the Terrorist and Disruptive (Prevention) Act 1987 was brought in. And the very recent legislation Prevention of Terrorism Act 2002 has been enacted. All these legislation lays provision of preventive detention. The significant question in this respect arises is: whether there is a need of preventive detention law. Does this legislation fulfill the aims to

combat terrorism? Under this Act when a person failed to disclose information about terrorist activities, that could lead imprisonment up to one year and fine. Person found with arms in notified area would be presumed linked with terrorist act. The Act tries to block the flow of funds to terrorist organization, wide powers has been given to police and investigating agencies to seize forfeit property and arrest groups suspected to be involved in terrorist acts. An attempt has been made to study the Act in detail.

Terrorism is described as the greatest crime against humanity, which possess a great threat to enjoyment of human rights. Though phenomenon of terrorism was present for centuries, the spread of international terrorism across border thereby threatening not only the friendly relations among States but posing an extremely serious threat to the human rights and fundamental freedom also is an unprecedented phenomenon of the past few decades.

This has posed a global threat before the individual and nations as to the measures to be adopted to combat such terrorism. The main question to be considered in the present study is: What are the appropriate measures that can be adopted by the States to fight war against terrorism in the 21st century? Another ancillary question arises in this respect is whether the existing laws are sufficient, or is there a need to enact new legislation? In India the first enactment during British period was the Anarchical and Revolutionary Crime Act, 1919 popularly known Rowlatt Act. If one reads this act and also studies the Prevention of Terrorism Act, 2000, no much difference can be discerned. The constitutionality of such legislation is often subject to challenge on various grounds including *inter alia* the violation of fundamental rights and legislative competence. The relevant question to be investigated in this respect is: whether the law for eradicating acts of terrorism stands on the touch stone of the modern human rights jurisprudence? Again whether Parliament can enact such laws under the head 'maintenance of public order'?

The recent trend relating to punishment is the reformatory process. Punishment can be looked from two aspects. It can be regarded as a method of protecting society by reducing the criminal behaviour or consider it as an end in itself. Reformation seeks to bring about a change in the offenders character itself so as to reclaim him as a useful member of society. In the present century, increasing weight has been attached to this aspect. Less frequent use of imprisonment the attempt to use prison as training rather than a pure punishment and greater employment of probation, parole and suspended sentences are evidence of this general trend, at the same time to investigate cause of crime and the effects of penal treatment. The question as to whether law conforms to the modern criminological and penological trend, is to be considered in the present study?

There is a growing consciousness of the international community of the negative effects of terrorism in all forms on full enjoyment of Human Rights, Fundamental Freedoms, on the establishment of Rule of law and the democratic freedoms as enshrined in the United Nations Charter and the International Instruments on Human Rights. Indian Constitution guarantees Fundamental Rights to its citizen in Chapter III whether law enacted for the purpose of combating terrorism violates Fundamental Rights of the people under Articles 14, 15 and 21?

State empowers its official with weapons like POTA and many other preventive detention laws. History proves that more people are killed from the bullets of State than any other. How far is it desirable? Under the umbrella of these legislation armed forces are committing more heinous crime then the terrorists. What are the laws we have to stop such crime committed by state in name of terrorism?

These anti-terror legislation enacted for combating terrorism also deny the rules of natural justice. These laws are so powerful that there is barring for the judges to follow the rules of natural justice. (*Kartar Singh v State of Punjab*) How far exclusion of natural justice in anti terrorism law is justified?

It is obligatory on everyone to furnish information and so a journalist who has to divulge everything to police under the POTA might not get access to true information given by a terrorist. Confession made to police is admissible in courts. So people can be tortured and made to confess whatever the police want. Police is allowed to intercept communication between any of us and invade our privacy. An accused of any offence is protected by constitutional provisions as well as statutory provisions to the extent that no self-incriminating statement made by an accused to police officer while he is in custody could be used against such maker. In view of the legal position visiting authority on higher police officer to record the confession hitherto enjoyed by the judicial officer in the normal procedure, there should be no breach of procedure and the accepted norms of recording the confession, which should reflect only the true and voluntary statement and there should be no room for hyper criticism that the authority has obtained an invented confession as a source of proof irrespective of the truth of the truth and creditability.

In view of the above development we find that on the one hand the human rights jurisprudence is expanding beyond limits on the other hand it is totally obstructed. The significant question in this respect is: what impact the exclusion of liberty jurisprudence would have on the most fundamental of fundamental rights, the right to life and liberty?

The present study is divided into seven chapters. Chapter one is the Introduction dealing with the subject matter, object of the study and the research questions discussed in brief. Chapter two deals with the Historical Retrospective discussing the period from the ancient times to the present the situation of terror and laws brought in to tackle the situation. Chapter three deals with Definitions as there is no uniform definition applied to all Nation States today and Kinds of Terrorism prevalent there in. Chapter four deals in Prevention of Terrorism through Law in international level and in the national level time and again instruments have been brought in to deal with the menace of terror. Chapter five deals with the Terrorism and Human Rights the laws brought in to force do violate human rights or not. Chapter six is related to reforms and rehabilitations of terrorist and victims of terrorism. Chapter seven is the conclusion and suggestions.