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# Counter-Terrorism and Human Rights: An Analysis

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## ABSTRACT

*The act of terrorism is an act against humanity has a major repercussion on human rights. Terrorism causes many concerns with respect to the security of nations and its citizens. There is also a major negative impact on the development of nations and the prosperity of its citizens as well due to terrorism. Apart from human rights, terrorism poses a threat to rule of law and democracy as well. The act of achieving an ideological or political goal through terrorism, always puts human rights at stake. This paper focuses on how terrorism and the measures taken to counter it impacts human rights by taking the various terrorist attacks that have occurred throughout time as examples. For instance, the attack on the World Trade Centre on September 11, 2000 or be it the instance of Taj attack in Mumbai in November 2008. Due to the large number of terrorist attacks that have taken place over the course of time, many countries have taken counter measures to fight against terrorism and have introduced many laws for the same, such as the 1967 Unlawful Activities Prevention Act in India, The Patriot Act in the United States, The Counter-Terrorism and Sentencing Act in the United Kingdom, etc., to fight off terrorism. Apart from the laws passed for countering terrorism, there are many conventions that are also made for the same. This paper focuses on analyzing these measures in order to determine whether they are in accordance to the human rights guaranteed to people across the world. This paper also tries to determine whether the counter terrorism measures provide a favorable outcome in preventing terrorism or negatively impacts human rights.*

**Keywords:** Human Rights, Terrorism, Counter Measures, Conventions, Legislations.

## I. INTRODUCTION

As it continues to have a negative impact on many different countries, their populations, and their socioeconomic development, terrorism poses a severe threat to global peace and security.<sup>2</sup>

With the terrorist attacks such as 9/11 in New York city, the 2008 Mumbai attacks, etc., terrorism has become a big concern throughout the world. Terrorism cases have grown dramatically post these attacks, posing a severe challenge to human rights since it creates

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<sup>2</sup> University Module Series Counter-Terrorism, UNDOC, (July 09, 2023, 4:26 PM) <https://www.unodc.org/e4j/en/tertiary/counter-terrorism.html>

difficulties for both victims and perpetrators. As a result, a critical examination of the link between terrorism, the methods undertaken to eradicate terrorism and human rights are required.

Terrorism can be regarded an offense to humanity since it violates the core human rights established in the United Nations' Universal Declaration of Human Rights. This research aims to provide a thorough examination of the topic of terrorism and the various perspectives on how governments respond to it and if those measures violate human rights in any way or not. Many governments have placed strict laws on anyone accused of being involved in terrorism in order to combat terrorist operations.

These severe penalties to the terrorists present other questions, such as whether those determined to be engaging in terrorist operations abandon their basic human rights on their own accord? Terrorists, according to human rights advocates and organizations, have the same right to be treated as other members of humanity. But this view is not readily accepted by anti-terrorist groups.

When societies give up human rights in exchange for security, they almost always receive neither. Minorities and other marginalized<sup>3</sup> groups, on the other hand, pay the price in terms of human rights violations. This trade-off might take the shape of mass slaughter or genocide, arbitrary detention and incarceration, or the restriction of freedom or religion.

These human rights violations have also resulted in the deaths of millions of people during the past few years.

## **II. TERRORISM AND POLITICAL VIOLENCE**

Terrorism and political are interchangeable terms, when used in the context of strikes, national liberations movements, guerrilla warfare, etc., where the outcome usually ends up being violent.

Terrorism has three basic parts:

- the threat or use of violence
- a political goal such as changing the government, changing the people in power, or changing present social and economic policies, and;
- the targeting of innocent civilian victims for terrorist activities.

Terrorist organizations like this component because civilians are an easy target and tend to attract a lot of attention due to their naivety.

Terrorism includes a wide range of acts, targets, and actors; it has a significant psychological

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<sup>3</sup> Paul Hoffman, *Human Rights and Terrorism*, 26 HUM. Rts. Q. 932 (2004).

component, creating terror or fear among a directly threatened group as well as a wider audience in the hopes of maximizing political communication and achievement; it embodies the exercise and implementation of power, as well as the attempted redressing of power relations.

**(A) Human rights of the terrorists and the victims of terrorism:**

There are many different ways in which the various counter measures by different human rights organizations are taken and these mainly are on the basis that the none of the terrorist actions should in any way cause the violations of the basic human rights of the people.

On the other side, some human rights organizations argue that the rights of a terrorist who is suspected for committing a terrorist act should be protected. But this argument would mean the violation of the human rights of the victims of that terrorist attack by that person who violated the life, security and peace of these victims.

The main cause of concern arises here where there is a disagreement between the human rights organizations, advocates and governments, where some believe that there has to be same human rights given to the terrorists as the victims of the terrorist attack, but some are completely against this idea where they argue that the people who violate the human rights of other people must not be given the similar human rights as they are not fit to enjoy them.

For example, we can take the 9/11 attack and look at how the government of the United States at that time dealt with the terrorists. 1,200 men of Middle Eastern origin were arrested right away, with 775 of them being taken to the Guantanamo Bay detention complex in Cuba, however these figures have not been confirmed. They were not given the right to Habeus Corpus. This again caused a friction as many human rights advocates, scholars, etc. were not in agreement with this decision taken by the government of the United States.

**(B) Counter Terrorism measures with respect to Human Rights:**

One key point in the global debate over anti-terrorism legislation is whether a charter or bill of rights influences how a country responds after an attack. In a moment when the community is overwhelmed by terror and sadness, it's easy to downplay the importance and usefulness of such instruments. There are several instances from the United States and other countries that illustrate this. The similar argument occurs in Canada, but it's difficult to tell how the Canadian Charter of Rights and Freedoms has influenced the passage of anti-terrorism legislation without a benchmark.<sup>4</sup>

Terrorist groups will find it easier to attract supporters among the dissatisfied and

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<sup>4</sup> George Williams, *Anti-Terrorism Laws and Human Rights*, 19 REV. Const. Stud. 127 (2015).

disenfranchised, as well as among the relatives and friends of people whose human rights have been violated, if a state fails to adhere to basic human rights principles. Human rights crimes committed in the name of combating terrorism hinder attempts to react to terrorist threats, making the people less safe in the short and long term.<sup>5</sup>

Though counter terrorism measures are quite important to combat terrorism, the impact that it has on human rights must be considered as well. The main argument of this paper concerns the same; anti-terrorism methods or counter terrorism measures are very essential for every nation in order to protect itself and its citizens. However, while establishing the same, it must be also ensured that the human rights that are given to all the citizens in the world must not be harmed or taken away in the name of counter terrorism measures.

When trying to implement these counter terrorism measures, there are certain concerns might be raised as to the impact that they might adversely have on people and their rights.

One significant concern is the potential for racial or religious profiling. In the pursuit of identifying and apprehending terrorists, security agencies may disproportionately target certain communities or individuals based on their ethnicity or religious background. This can lead to discrimination and stigmatization, eroding the principles of equality and non-discrimination. Innocent individuals may face increased scrutiny, invasive surveillance, and even unwarranted detention, which can undermine their right to privacy and due process.

Another area of concern is the erosion of civil liberties in the name of security. Counterterrorism measures often involve expanding the powers of intelligence agencies and law enforcement, granting them broader surveillance capabilities, increased authority for arrests and detentions, and the ability to curtail freedom of speech and association. While these measures can be necessary in exceptional circumstances, there is a risk of abuse and overreach, with potentially negative implications for freedom of expression and assembly.

Furthermore, counterterrorism operations can lead to human rights violations in conflict zones. During armed conflicts, counterterrorism efforts sometimes involve military interventions or targeted operations in regions where terrorist groups are active. In such situations, civilians may become unintended casualties, or their rights may be violated due to indiscriminate or disproportionate use of force. The right to life, security, and basic necessities may be compromised, leaving civilians vulnerable to displacement, injury, or even death.

In order to strike a balance between counterterrorism and human rights, it is crucial to

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<sup>5</sup> Paul Hoffman, *Human Rights and Terrorism*, 26 HUM. Rts. Q. 932 (2004).

implement safeguards and oversight mechanisms. Governments should ensure that their counterterrorism policies comply with international human rights standards, such as the principles of legality, proportionality, and necessity. Independent judicial review, robust oversight bodies, and transparent accountability mechanisms can help prevent abuses and ensure that counterterrorism measures are applied fairly and lawfully.

Moreover, promoting dialogue, inclusivity, and community engagement can be effective in fostering trust between authorities and communities, mitigating the risk of discriminatory practices. It is important to recognize that respect for human rights can actually reinforce counterterrorism efforts by addressing the root causes of radicalization, promoting social cohesion, and encouraging individuals to cooperate with authorities.

The growing threat of terrorism in the globe today has prompted an equivalent growth in counter-terrorist operations. In reality, nations and countries throughout the world have a responsibility to defend their citizens against terrorism and secure their safety. Unfortunately, most counter-terrorism efforts harm the same liberties they claim to protect. Despite the fact that terrorism involves grave violations of human rights, this reality exists.

### **III. LEGISLATIONS**

Many countries have enacted anti-terrorism legislations in order to counter terrorism. However there arose many concerns as to the implementation of these legislations as it did have certain impacts on people's rights. Some of these legislations are discussed below:

#### **1. The Patriot Act in the United States:**

“Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism”, or The USA Patriot Act, is a statute that provided law enforcement agencies broad authority to investigate, indict, and prosecute terrorists immediately after the September 11, 2001, terrorist attacks in the United States. It also resulted in harsher sanctions for those who engage in and assist terrorist acts. Through expanded law enforcement and strengthened money laundering prevention, the USA Patriot Act deters and punishes terrorist actions in the United States and abroad. It also permits terrorist investigations to utilize investigative technologies meant for organized crime and drug trafficking prevention.<sup>6</sup>

With the enforcement of this act, suspected terrorists have been held without explanation or legal counsel in Guantanamo Bay, Cuba, and other locations, infringing on their right to due

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<sup>6</sup> James Chen, USA Patriot Act, Investopedia (July 12, 2023, 5:58 PM) <https://www.investopedia.com/terms/p/patriotact.asp>

process; some of the detainees have since been found to have no ties to terrorism. This clearly violates various human rights of these detainees.

Due to such inadequacies, the Act is no longer in effect.

## **2. Terrorism Act, 2002 in the United Kingdom:**

This act had given the power to the police officers in the United Kingdom to stop, search and arrest the people whom they suspect of being involved in terrorist activities, without the requirement of a warrant, and also allowed for extended periods of detention from 4-14 days instead of the standard 24 hours.

We can clearly see various forms of human rights violations in this act. The rights of the detainees, the rights of the people, all are clearly being violated in this case.

We can also see that the House did not sufficiently address the grave question of whether the Terrorism Act's stop and search power was used in a racially discriminatory manner.<sup>7</sup>

Therefore, subsequent amendments have been made to the act.

## **3. Unlawful Activities Prevention Act in India:**

Its key aim of this act was to provide authorities the authority to deal with acts that threatened India's integrity and sovereignty. The Unlawful Activities Prevention Amendment Act, which was recently amended, allows the Union Government to designate individuals as terrorists without any due process of law.

There are again clear inadequacies in this act seen as well, for example, the non-requirement of due process of law would be an easy way for misuse of the act.

A prisoner spent 7 years in prison after being convicted under this act, only to be acquitted later of all charges.

## **4. Anti-Terrorism Act (Canada):**

Canada enacted the Anti-Terrorism Act in 2015 to enhance the country's ability to prevent and respond to terrorist activities. The legislation expanded the powers of security agencies, allowed for increased surveillance, and strengthened measures to combat radicalization and terrorist financing.

However, this Act allowed for increased surveillance, detention, and the imposition of restrictive conditions on individuals suspected of terrorist-related activities, potentially impacting the right to liberty and fair trial. It was also argued that this Act lacked sufficient

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<sup>7</sup> Richard A. Edwards, *Stop and Search, Terrorism and Human Rights Deficit*, (2008).

independent oversight mechanisms to ensure accountability and prevent abuses of power. There were concerns that the expanded powers granted to security agencies were not adequately balanced with checks and balances to protect against potential violations of human rights.

#### **5. Counter-Terrorism Act (Australia):**

The Counter-Terrorism Act 2004 in Australia aimed to enhance the country's ability to prevent and respond to terrorism. It introduced measures such as control orders, preventative detention orders, and expanded powers for law enforcement and intelligence agencies to gather information and disrupt terrorist activities.

By the way of introducing control orders and preventative detention measures, which granted authorities the power to impose restrictions on individuals suspected of involvement in terrorism, even if they had not been charged or convicted of any crime, this Act limited an individual's freedom of movement, association, and communication, potentially infringing upon their rights to liberty and fair trial.

### **IV. CONVENTIONS**

The first international convention against terrorism is regarded as having been adopted in Tokyo in 1963 with the Convention on Offences and Certain Other Acts Committed on Board Aircraft. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the 1979 International Convention against the Taking of Hostages, and the 1979 Convention on the Physical Protection of Nuclear Material were all added during the 1970s. In 1988, three conventions were ratified:

1. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
2. Protocol to that Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
3. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Nearly fifty crimes are covered by these treaties, including ten against civil aviation, sixteen against shipping or continental platforms, twelve against the person, seven involving the use, possession, or threat of using "bombs" or nuclear materials, and two involving the financing of



terrorism.

The majority of these treaties also include provisions relating to the protection of human rights. These dispositions fall into one of three categories: general provisions stating that other international obligations of the state party are not affected by the obligations outlined in the treaty; provisions addressing the right to due process for those who are accused or in custody; and provisions establishing requirements for extradition and the transfer of prisoners.

Several of these treaties also acknowledge a foreign detainee's right to contact, and in some circumstances, to receive a visit from, his or her consular official. Similar to the right to due process, more recent treaties describe this right in more expansive language.

Therefore, from abovementioned and many other legislations, it can be inferred that the counter terrorism measures are not always in accordance to the human rights. They either affect and violate the human rights of the accused, or of the regular citizens. However, the treaties with respect to the same have a much better perspective with respect to the protection of human rights.

From a human rights standpoint, the main concerns are the rights of all individuals to be treated rationally, whether they are incarcerated or free; the rights of all individuals who have been detained to obtain any information on their arrests and also to be told the reason for their arrest; and the rights of all individuals to gain access to legal representation immediately following their arrest.<sup>8</sup>

The fundamental issue revolves around identification, namely the arbitrary labelling of a detainee or suspect as a terrorist or a victim of terrorism. While a victim of terrorism typically enjoys the full range of human rights afforded to ordinary law-abiding citizens, in certain cases, a normal law-abiding citizen can be suddenly having all their basic human rights taken away from them only because they were labelled a terrorist. They might not even be a terrorist, but their rights are completely taken away.

In other instances, some persons have been deported or expelled on terror allegations in other cases. When terror suspects are deported from their home countries, they most definitely will endure mistreatment or torture. Many terror suspects have been severely assaulted and wounded in an attempt to coerce them into providing information. When all other so-called legal measures fail, human rights advocates and organizations say that national security and counter-terrorism authorities prefer the use of torture as the most efficient means of extracting

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<sup>8</sup> Studycorgi, Human rights advocates v. terrorism victims, [studycorgi.com/human-rights-advocate-v-terrorism-victims/](http://studycorgi.com/human-rights-advocate-v-terrorism-victims/), (last visited 15/05/2022)

information from suspected terrorists. This prejudice almost guarantees that the human right to be free of torture will be violated.

In order to resolve challenges emerging from attempts to combat crime, international law must include prescriptions for striking a balance between human rights and counter-terrorism. These guidelines must emphasize the need of respecting the rights of both terror victims and perpetrators.

Human rights organization members on the Committee presented the required criteria to consider in order to promote human rights in the fight against terror. From that point on, UN human rights organizations continued to closely examine the impact of counter-terrorism measures on human rights from an international perspective.

The measures that can be taken for the same are discussed below:

**(A) What are the potential ways in which this issue of infringement of human rights by counter terrorism measures be resolved?**

1. Make Sure Counterterrorism Measures Comply with International Human Rights Standards: Governments should examine their counterterrorism policies to make sure they adhere to international human rights laws and commitments. This includes respecting moral standards including morality, necessity, proportionality, and nondiscrimination. Any measures that violate human rights should be carefully assessed and, if found to be incompatible, changed or abolished.
2. Establish Strong monitoring Mechanisms: Independent monitoring bodies should have the authority to keep an eye on and evaluate counterterrorism operations. Examples include human rights commissions or ombudsman offices. These organizations have the power to hold people accountable, guarantee adherence to human rights laws, and look into abuse claims. Their conclusions and suggestions need to be thoroughly considered and successfully carried out.
3. Enhance Judicial Review and Due Process: Judicial control is essential to protecting human rights. The legality and proportionality of counterterrorism measures should be evaluated by independent courts; thus governments should make sure that they are open to effective judicial scrutiny. For those impacted by counterterrorism measures, this entails guaranteeing their access to legal counsel, the right to a fair trial, and other due process rights.
4. Improve Information Sharing and Transparency: Governments should encourage

transparency by giving clear information on counterterrorism policies, strategies, and legal foundations. To promote awareness and address issues, they should have open discussions with affected communities, human rights activists, and civil society organizations. The effects of counterterrorism policies on human rights should be regularly reported on and made available to the public.

5. Better public awareness: In order to better protect against terrorism, security workers, members of law enforcement, and intelligence officers should all get in-depth training on human rights principles. This includes being aware of how crucial it is to uphold fundamental rights, refrain from discrimination, and make sure that powers are used lawfully and proportionately. Campaigns for public awareness can also assist in educating communities about their rights and the significance of balancing security and human rights.

## **V. CONCLUSION**

From all the above-mentioned information, we can see that the measures taken to counter terrorism in one or the other way do impact the human rights of the terrorists, as well as the regular citizens. But with the passing of time, many amendments have been made to various counter terrorism legislations and also many of these counter terrorism legislations have been removed from existence (for example the USA Patriot Act), in order to prevent the violations of the human rights of the people while countering terrorism.

Instances of human rights infringements arising from counterterrorism measures include increased surveillance powers, potential threats to freedom of expression, expanded security agency powers, weakened legal protections, and the risk of discrimination. These concerns highlight the need for robust oversight mechanisms, compliance with international human rights standards, strengthened judicial review, transparency, and engagement with affected communities.

Resolving the issues that arise due to the infringement of human rights by counterterrorism measures requires a multifaceted approach. It involves ensuring compliance with human rights standards, establishing independent oversight mechanisms, strengthening judicial review, enhancing transparency and information sharing, promoting human rights training and awareness, fostering community engagement, and fostering international cooperation.

By implementing these measures, governments can strive to strike a delicate balance that upholds security while respecting human rights. Such an approach will help preserve the dignity, freedoms, and liberties of individuals while effectively countering the threats posed by

terrorism.

To answer the research questions and the research hypothesis, the anti-terrorism legislations have been effective in eradicating terrorist activities to a certain extent, but this also comes with a lot of inadequacies, for example, innocent people have also been imprisoned wrongfully because they were suspected to have committed terrorist activities when they did not and this is a direct violation of the human rights. Therefore, the research hypothesis can be proved wrong to a certain extent.

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