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The Impact of Counter-Terrorism on International Human Rights

ABHARIKA CHOUDHURI¹

ABSTRACT

Terrorism has an extremely real and direct repercussion on human rights, with catastrophic penalties for the people concerning enjoying their right to life, liberty, and physical integrity. Such activities can subvert governments, destabilize civil society, endanger harmony and security, and jeopardize the development of the society as well as the economy, in addition to these distinct prices that a nation and its government have to pay. All of these things combined substantially affect citizens' ability to exercise their fundamental human rights. States must defend the human rights of their citizens and others by adopting proactive actions to safeguard them from the threat of terrorist attacks and bring those culpable to justice. These actions that seek to effectively combat terrorism are known as counter-terrorism methods. This research paper focuses on how these methods also end up violating human rights at a certain point.

The secondary source of data or doctrinal research has been used for the formulation of this research paper. That being said, various published papers and articles have been referred to, acknowledged duly, that have collectively resulted in the successful completion of this research paper on "The Impact of Counter-Terrorism on International Human Rights".

In the course of the formulation of this paper, the research gap that has come to light is the recurring question that if both terrorism and actions against it curtail human rights, then what must be done to put an end to such heinous violence?

Human rights and the rule of law must be the foundations of the struggle of all countries at large, against terrorism. This necessitates the formulation of national counter-terrorism plans aimed at preventing terrorist activities, prosecuting those responsible, and promoting and protecting human rights and the laws of the land. It entails actions to remedy the environment that is receptive to the propagation of terror attacks, such as a relative paucity of legal and human rights abuses, ethnocultural, federal, and religious marginalization, political repression, and socioeconomic exclusion; to encourage the direct engagement and governance of public life; to denounce violations of human rights, expressly forbid them in national legislation, evaluate and convict them swiftly, and help stop them; as well as to pay critical attention to terrorist activity.

¹ Author is a student at KIIT School of Law, Bhubaneswar, India.

Keywords: *Terrorism, Human rights, States, International Law, United Nations.*

I. INTRODUCTION

Terrorism is a result of the culmination of political motivation and a desire to induce fear through acts of violence and crime. It targets innocent people, i.e., the citizens of a community to unethically coerce authorities or governments to act as per the terrorists' will. Terrorist activities can be said to have pretty much been structured around the notion to violate fundamental human rights and the rule of law.

Terrorism and other violence can be demarcated based on their motive – the former is precisely intended to disintegrate governments, victimize and exploit civil communities, threaten a State's peace and the security of its citizens, and jeopardize development in terms of society and the economy, as a whole. It is a clear defiance of the law.

As a consequence of the terrorist attacks against the United States by the militant Islamic group, Al-Qaeda on September 11, 2001, popularly known as the 9/11 attacks², governments all across the world have made peace with ambiguous or vague and particularly broad definitions of the word "terrorism" and what exactly it encompasses. Governments, in a way to effectively respond to all sorts of threats posed by "alien groups", have resorted to targeting individuals, groups, and communities that are not worthy of the label of "terrorists". Such targeted communities and groups include indigenous people, political opposition parties and groups, separatist movements (although non-violent), trade unions, and defenders of human rights. For a very long time in history, authoritarian governments have labelled their political opponents as those involved with terrorism, and have, as a result, gotten away with oppressive practices aimed at exploiting the same.

In this regard, about differing definitions of "terrorism", the United Nations adopted several international treaties that identify the various practices undertaken to terrorize a land. These practices include nuclear attacks (like the Hiroshima and Nagasaki case³), bombings (like the 9/11⁴ or 26/11 attacks⁵), or taking citizens as hostages.

Even though we have come this far, an absolute convention countering terrorism is yet to be adopted by the states. One of the primary reasons for this is governments not being able to agree

² <https://hbr.org/2002/12/crisis-communication-lessons-from-911>

³ https://www.icanw.org/hiroshima_and_nagasaki_bombings

⁴ *supra*, note 2

⁵ <https://hbr.org/2011/12/the-ordinary-heroes-of-the-taj>

upon certain and comprehensive definitions of what terrorism is, and what it constitutes.

Following the events of the 9/11 attacks⁶, the UNSC or the United Nations Security Council has time and again urged member states to materialize measures to counter-terrorism, which are of great importance to the protection and promotion of human rights at an international scale. These urges and CTAs (call to action) have been in the form of insisting upon the need for States to allot a precise definition to the term “terrorism” and the activities it covers. States have also been advised to deduce the broad measures sanctioned and deemed necessary by the United Nations Security Council. The misinterpretation and misuse of the term “terrorism” and the lack of its accurate definition have led to an increase in the impending threat to the sanctity of human rights.

The United Nations or UN has, time and again, acknowledged and attended to the disparaging effects of terrorism on basic civil or human rights, and citizens’ security. The preamble to the UN Security Council Resolution 2396⁷, which had been adopted on December 21, 2017, states the following:

“Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever, wherever and by whomsoever committed, and remaining determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level,

Reaffirming that terrorism poses a threat to international peace and security and that countering this threat requires 11 collective efforts on national, regional, and international levels based on respect for international law and the Charter of the United Nations,

Emphasizing that terrorism and violent extremism conducive to terrorism cannot and should not be associated with any religion, nationality, or civilization....”

Going along the lines of the current guidelines set forth by international law, States must secure their citizens who fall under their jurisdiction against factors that attempt to threaten or cause turbulence in their enjoyment of their rights, or human rights. Specifically, these respective human rights are the right to security and the right to life. These rights are said to be the most important and distinct ones as, in a way, without their presence in the first place, all other rights could fall to dust or be futile. If one looks at terrorism with this specific perspective, one can see that it precisely aims at destabilizing governments concerning their abilities to safeguard

⁶ *supra*, note 2

⁷ [https://undocs.org/S/RES/2396\(2017\)](https://undocs.org/S/RES/2396(2017))

their people and social communities and cause the population to lose their confidence in the State in the long run.

If not anything else, terrorism attacks the human rights of the victims concerning how the terror attack violates their rudimentary rights to live in peace and without fear and enjoy the security of the State. It is relieving to see the gradually increasing support for such victims offered by several international organizations.

Nonetheless, if seen with a wider lens or a 360° perspective, counter-terrorism or actions against terrorism taken by governments or states also violate citizens' human rights to an extent. Particular steps undertaken to avert or put a stop to terrorism, and arrest the perpetrators themselves pose grave hurdles to the complete enjoyment, protection, and promotion of the human rights of the citizens – this remains true for both the culprits and the rest of the population as a whole.

The United Nations General Assembly or the UNGA has time and again, reiterated and given emphasis to the fact that the basic civil or human rights of those accused concerning the terrorist attacks ought to be considered during their apprehension and prosecution procedures. These civil rights include the right to a public trial, the right to not be subjected to third-degree or other forms of degrading torture, and to be held innocent until proven guilty in the eyes of the law. The UNGA stated that “*the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counterterrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism*” while embracing its vital “Global Counter-Terrorism Strategy” in 2006.⁸

The UNGA or United Nations General Assembly has been taking several resolutions about countering terrorism since 1972. Beginning in December 1992, the resolutions started directly covering the themes of terrorism and its relation with the human rights of people worldwide, along with measures to combat terrorism and their resultant impacts on the protection and promotion of human rights. The latter course of resolutions started coming in after the agreement upon Resolution 48/122⁹, titled “Terrorism and Human Rights” in late December 1992 and the implementation of the same. Both of these series or chains of resolutions encompass declarations regarding the urgency and necessity of counter-terrorism actions and proceedings to adhere to the standards set by international human rights law. The General

⁸ UNGA Resolution 60/288, Annex, UN Global Counter-Terrorism Strategy

⁹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/067/82/PDF/N9406782.pdf>

Assembly Resolution 50/186 of 1995¹⁰ directly and exactly reads: “*Mindful of the need to protect human rights of and guarantees for the individual in accordance with the relevant international human rights principles and instruments, particularly the right to life; Reaffirming that all measures to counter terrorism must be in strict conformity with international human rights standards ... Calls upon States to take all necessary and effective measures in accordance with international standards of human rights to prevent, combat and eliminate all acts of terrorism wherever and by whoever committed.*”

This angle of human rights violation as a result of counter-terrorism was understood correctly when the “Global War on Terror”¹¹ was declared in the aftermath of the 9/11 attacks¹². The “Global War on Terror” declaration resulted in the use of “*enhanced interrogation techniques*” and other forms of torture, as well as “*irregular rendition*” along with 13 prolonged *incommunicado* detentions wherein those in detention were not allowed to be in communication with anyone on the outside.

Later, the UNGA resolution of 2009 [A/RES/64/168]¹³ based on protecting human rights and freedom of citizens in pursuance of countering terrorism emphasized the vital significance of paying due attention to the protection and promotion of human rights, freedom, and the rule of law. It accentuated that member states must ensure that the measures they adopt to counter terrorism comply with their commitments as set forth by international refugee law, international refugee law, and international human rights law. It says that these three elements go hand in hand with one another and are of utmost importance while countering or combating terrorism, and give rise to a sense of collective belonging in a state. It added that the failure to adhere to these norms is one of the biggest reasons for increasing rebellion.

In the World Summit organized in 2005¹⁴, several world leaders established, acknowledged, and confirmed that states would have to come together from around the world, keeping in mind the international law frameworks. Such international law would include the United Nations Charter and more applicable or similar conventions, treaties, and protocols. The leaders agreed and reassured the citizens that all measures taken as part of a state’s respective counter-terrorism measures would be adhering to their duties under international human rights law, humanitarian law, and refugee law. This particular stance taken at the World Summit 2005 is

¹⁰ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N96/770/59/PDF/N9677059.pdf>

¹¹ <https://georgewbush-whitehouse.archives.gov/homeland/progress/full.html>

¹² *supra*, note 2

¹³ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/471/91/PDF/N0947191.pdf>

¹⁴

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

echoed and immortalized in resolutions taken by the UNSC or United Nations Security Council, UNGA or United Nations General Assembly, the Commission on Human Rights as well as the later-established UNHRC or United Nations Human Rights Council. This position is also embodied in reports put forward by the UNSC or United Nations Security Council's Counter-Terrorism Committee.

The United Nations Commission on Human Rights, replaced by the United Nations Human Rights Council or UNHRC in 2006, deemed the subject of the repercussions caused by counter-terrorism measures of substantial importance. These repercussions endangered the protection and promotion of the human rights of citizens worldwide. Resolutions by the Commission and its Sub-Commission on the protection and promotion of human rights confirmed that every state has a duty toward its citizens to protect and promote their human rights and fundamentally attained freedom. It added that all measures undertaken to combat terrorism ought to be in stern obedience to international human rights law.

The battle between combatting terrorism and the subsequent violation of human rights has been around for quite some time. It was first discussed along the lines of the Commission's annual resolution regarding terrorism and human rights. In another resolution¹⁵ adopted sometime later that month, the Commission on Human Rights reiterated that "*all states' measures or activities undertaken to counter terrorism must be in strict conformity with the parameters set forth by international human rights laws.*"

Finally, the Commission's "Resolution 2005/80" on "Protection of Human Rights and Personal Freedoms While Countering Terrorism"¹⁶, clearly mentioned in the first and sixth paragraphs that it: "*[re]affirms that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular, international human rights, refugee and humanitarian law... [re]affirms that all States must work to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law while countering terrorism.*"

The interrelation between counter-terrorism measures and the infringement of human rights has long been a topic of debate, discussion, and deliberation. As has been duly cited hereinabove, several international organizations have recognized the threat posed to human rights by way of the combat against the threat and acts of terrorism.

In today's day and age, when violence is rampant, it becomes increasingly necessary to narrow

¹⁵ <https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf>

¹⁶ <https://www.refworld.org/docid/429c57ad4.html>

down the definition of terrorism to a concise choice of words by International Organizations and Governments worldwide, to effectively distinguish between different acts of violence, and bring troublemakers and victims to justice.

(A) Literature Review

1. [Michelle Bachelet, “Virtual Dialogue with Human Rights and Civil Society Partners on Building a Better Paradigm to Prevent and Counter Terrorism”, 2021]¹⁷

Michelle Bachelet, the UN High Commissioner for Human Rights, in their video message addressed to member states, acknowledged the violation of human rights that takes place in the due course of terrorism as well as methods to combat the same. They laid out that states while implementing counter-terrorism mechanisms, should comply with the rule of law and must safeguard citizens’ human rights.

They took a stand for ostracized communities that fall prey to the government’s efforts to counter-terrorism.

In the end, as part of extending solutions to Member States concerning tackling terrorism, they urged states to take concrete measures to improve funding, and administrative and operational support for the Global Counter-Terrorism Strategy's fourth pillar, as well as to realize human rights amalgamation across all the four pillars.

2. [UNODC, “Human Rights and Criminal Justice Responses to Terrorism”, Counter-Terrorism Legal Training Curriculum, 2012]¹⁸

Various international conventions and protocols related to counter-terrorism, such as the United Nations Global Counter-Terrorism Strategy¹⁹, the International Convention for the Suppression of the Financing of Terrorism²⁰, and the United Nations Convention against Transnational Organized Crime²¹ have been discussed throughout the report. The report emphasizes the importance of upholding the right to a fair trial, the prohibition of torture and cruel, inhuman, or degrading treatment or punishment, and the right to privacy and freedom of expression.

The UNODC lays emphasis on the role of law enforcement and judicial authorities in counter-terrorism efforts, including the use of intelligence gathering, detention, and prosecution of

¹⁷ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27111&LangID=E>

¹⁸

https://www.unodc.org/documents/terrorism/Publications/Module_on_Human_Rights/Module_HR_and_CJ_responses_to_terrorism_ebook.pdf

¹⁹ *supra*, note 8

²⁰ <https://www.un.org/law/cod/finterr.html>

²¹ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

terrorism suspects.

“Human Rights and Criminal Justice Responses to Terrorism” highlights the need for counter-terrorism efforts to respect the fundamental rights of individuals and to be conducted within the framework of international human rights law.

(B) Research Methodology

The method of study used to complete this research paper is the doctrinal method of research. The secondary source of data or the internet, and publications on the internet including journals, articles, and theses have been utilized. These various sources of data used for the preparation of this research paper have been duly acknowledged in the following sections.

II. ANALYSIS

After analysing all pieces of evidence that validate the crux of this research paper and are found on the Internet in the form of published articles, journals, research papers, and theses, it can be recognized how several global leaders and international agencies and organizations have begun to realize the effects of a few counter-terrorism measures on international human rights on an increasing scale.

According to international and regional legislations and legal systems about human rights, States have both the obligation and the authority to safeguard those under their jurisdiction against terrorist activities. This arises from the fundamental duties of States to protect persons under their purview from intrusion concerning their enjoyment of human rights. This responsibility is mainly recognized as part of the onuses of States to promise respect for the Right to Life along with the Right to Security.

Detaining of citizens, the affliction of torture on the detainees, the conduction of excessive and unreasonable raids and warrants by the military, drone strikes that had not exactly been sanctioned by the rule of law, and the like, jeopardize the security of the state even more as terrorists target public sentiment during these times to gain followers for their motives. For instance, in the US, following the terror attacks of 9/11, Muslims or the followers of Islam were subjected to random detention and torture that was uncalled for – simply to identify those responsible for the attacks. This had led to a certain degree of Islamophobia in the West, which continues to this date in workplaces and social life in the form of disparate treatment and religious harassment. Congress had sanctioned for the military to use their influence against those accountable for the attack. However, this sanction and authorization led to a long-drawn battle between the authorities and the citizens, which also paved the way for the violation of

human rights.

Going along these lines, as is evident throughout each section of this research paper, the UNSC and UNHRC are individually, toiling endlessly to increase cooperation among different nations to resolve reasonable and respectful ways of combatting terrorism.

(A) Research Gaps

The following questions persist, irrespective of the various measures taken to combat the heinous crime of terrorism and limit its aftermath to a minimum:

- i) Whether the act of terrorism only encompasses catastrophic violence?
- ii) Whether hate speech against a Government and/or jeopardizing international peace and security constitutes a terrorist attack?
- iii) Whether counter-terrorism measures can be effective without infringing human rights?

III. WAY FORWARD

The Global Counter-Terrorism Strategy of the UN or United Nations, as discussed by Michelle Bachelet in her video message²² to member states, identifies the need for the promotion and protection of citizens' human rights while battling terrorism effectively. Likewise, States are required to adhere to the obligations set forth by international human rights law before going ahead with any action concerning counter-terrorism. These obligations have their root in customary international law, which applies to all states regardless of their membership, along with international treaties, which is only applicable to the states that have signed or are recognized as a party of such treaties.

The United Nations has reaffirmed to people all around the world that it will continue pressurizing governments to not let them deter from the absolute effect of the rule of law while they individually adopt all-inclusive strategies and measures to balance the security needs of the state with societal and economic factors influencing the same. The UN acknowledges the fact that shortcut methods or measures that violate international human rights can lead to the lack of "collective belonging" amongst people, which can prove to be further motivation for the propaganda of terrorist groups.

It recognizes the absence of faith between states on either side of the border and among competing organizations. Nevertheless, the United Nations strives to help states to coordinate and synchronize their stances with one another more effectively. In pursuance of building this

²² *supra*, note 17

trust, the UN aims to organize events at a regional as well as an international level, which would be directed towards improving the said cooperation and opening the doors for relevant brainstorming sessions conducted by global leaders. It expects that leaders will take the anecdotes and resolutions of such sessions back with them, and implement them effectively and reasonably such that no rights of any entity are violated whatsoever.

Lastly, the UN also offers to extend support to states by hosting education programs that will help in spreading awareness and tolerance in the people, and by conducting development projects which would in turn, help in refining administration and governance.

IV. CONCLUSION

The United Nations, in a chronicle released within 10 years of the horrific 9/11 attacks, recognized the need to correctly identify what counter-terrorism measures and what do not. For starters, as mentioned in the former sections, it stresses the point that states need to ensure that any measure they undertake should meet two criteria at all times:

- 1) they should have a close-knit network all across the globe that will back them when required.
- 2) the measures should not violate the fundamental freedoms and human rights of any citizen of the state or an international citizen in any way or any kind.

The UN is optimistic about the future that lies ahead of them and looks forward to jointly eradicating the threat of terrorism from the world altogether.

It is high time that governments recognize the faults in their counter-terrorism frameworks, work on the same jointly, and seek to defend the state and combat terrorism in ways that are justified, increase amicability among nations, and respect human rights in every way possible.
