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Counter Terrorism and the Protection of Human Rights in the Perspective of the Civil Society & Countering Global Terrorism

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"We resolve to undertake the following measures, we affirm that the promotion and protection for human rights for all and the rule of law is essential to all components of the strategy, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually enforcing, and stressing the need to promote and protect the rights of victims of terrorism." [1]

United Nation Global Counter-Terrorism Strategy

I. INTRODUCTION

In lay man's language, terrorism is the spread of terror through the use of guns, bombs, chemical weapons or any other form of violent, coercive, ambush. Counter Terrorism, on the other hand, is to retaliate and put a check to it is what we know and address terrorism.

At the UN level, the international community has adopted a number of international treaties that are designed to combat specific types of terrorism, such as the hijacking of aircrafts. However, till date there has been no agreement on a definition of terrorism. The recent attempt by the UN to define terrorism in UN General Assembly Report (28 January - 1 February) has been criticized for its lack of precision [2].

Of course, the topic of terrorism, which is both complex and emotive, cannot be circumscribed within narrow definitions. Terrorism is complex because it emanates from the womb of human experience, with politics, psychology, philosophy, military strategy and, history, in its DNA. Terrorism is emotive because those who see terrorism as justified often have strong feelings concerning the rightness of the use of violence. Hence, a key challenge in understanding terrorism is both acknowledging the human/moral outrage at terrorist acts, while at the same time trying to understand the rationale behind terrorism. Today it's a global threat that knows no border, nationality and religion; the manifestation of a rampant behavioral dysfunction that has caused such massive loss to human life and property that the world has come together to fight it through a different medium, Counter Terrorism.

II. MOTIVATIONAL AND CAUSATIVE FACTORS THAT ABET OR INSTIGATE TERRORISM

What motivates a vicious activity such as terrorism? What could possibly be the driving force behind such feelings of hatred and aversion which lead to slaughter of human lives without a blink? There does not appear to be one lone factor that leads people to engage in acts of terror. Scholars have categorized motivations for terrorism to include psychological,

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ideological, strategic, ethnicity, nationalism, separation, poverty, economic problem due to globalization, anti-democracy, dehumanization, religion etc. The most contested cause of terrorism is an aggrieved group resorting to violence for nationalist or separatist reasons. Thus far, only Mahatma Gandhi and his followers of the freedom movement have managed to liberate themselves from foreign occupation by peaceful means and not terrorism, whereas in most other colonized states, nationalism movements commonly turned to terrorism, this reveals an extreme nationalism, the main aims, for example to establish or assert language rights, religious beliefs and symbols, but there are also less significant factors like promoting civil and political rights and privileges and encouraging a regional-ethnic parity in the economy. What then generates perceptions of unfairness is competition, rivalry when an ethnic group is subordinated or disadvantaged in economic opportunity, social status, political voice and rights, or cultural expressions. However, the cited factors are not unique for ethnic minorities. To generalize it further, ethnic conflict arises from a "complex combination" of class, inequality, political opportunity, mobilization of resources and "ethnic strength". Another aggravating factor is poverty and the unequal deployment of resources. Over a period of time due to constant neglect and deprivation, people or a specific class or tribe looses their faith in the governance and picks up weapon to acquire their rights which lead to killing, ranging from public officials to common civilians. The Maoist activists in India are one such example. There have been several instances all over the world where counties are facing such internal conflicts from certain class or sect of people. Roughly 15 percent of the population consumes 85 percent of the resources. UN statistics show that citizens in the Third World are worse off than 30 years ago, while a small fraction in those countries enriched themselves. Another very interesting factor would be democracy. The factor of democracy as an instigator or facilitator for terrorism deserves exploration. A democratic government is supposed to represent the people and provide political means to voice grievance, hence essentially providing a sphere where terrorism has no place. Arguably, the democratic ideals have not been well implemented. Even though there is provision for the minority groups to voice the vices faced by them, but there is not sufficient votes to pass desired legislation. In such scenario, the extremist or fundamentalist groups exploit the openness and lack of censorship of the democratic system and can easily tamper with their specific areas of their interest. Another very poignant factor which greatly considered being the cause of terrorism is religion. Religion is an ardent and passionate component of a man's life. It defines his values and belief. Even though there is no religion in world that preaches violence and killing but some fanatics and fundamentalist groups, misrepresent the religious texts and brain washes the people using their weaknesses to comply and accept their ideology in the name of religion, in particular the Muslim fanatics in the Middle East. Research provides a simplification: democracy is declared un-Islamic by all ideologues of Islam terrorism, Islamists hate capitalism and believe in a new Caliphate [3] and oppose individualism. Statistics reveal two relevant intriguing facets. People believed that the some social factor that does have some detectable correlation with war is religion and nations that differ in religion are more likely to fight than those that share the same religion. Moreover, some sects seem generally to be more bellicose. With this increasing terrorist enterprises and affairs, there arises a sheer need for techniques, skills and procedure that can combat and counter these terrorist attacks which is named as counter terrorism.

III. THE CONTROL AND LIMITATION EFFORT TO CURTAIL ACT OF TERROR

For a long time, the UN was passively concerned with issues arising out of terrorism. But that changed after the devastating attack on the WTO Twin Towers on 11 September 2001^[4]. There are several resolutions formulated based on UN's current approach. Security Council Resolution 1269(1999), obligated states to co-operate to prevent and suppress terrorist attacks and to bring perpetrators to justice; Security Council Resolution 1373(2001), obligated states to implement more effective counter-terrorism measures at national level and to increase international co-operation in the struggle against terrorism, and creating a Counter-Terrorism Committee to monitor action; the Security Council Resolution 1456(2003) highlighted the need to accord with international law, in particular international human rights, refugee, and humanitarian law; the resolution of 2005 addressed the issue of differential treatment between civilizations in an effort to prevent the indiscriminate targeting of different religion and culture; the resolution of 2004, once again laid emphasis on the usage of international human rights, refugee and humanitarian law in combating or countering terrorism^[5]. The counter terrorism committee (CTC) which is an organ of the UN and is formed with the members of the Security Council and is mandated to review measure taken by sates to prevent and punish act of terrorism. The Security Council is not a human right body in itself but being an offshoot of the UN it is required to act compatibly with the UN Charter and human rights standards, and including cogent norms. Elsewhere within the UN structure, there have been

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additional developments from a human right perspective. For example, since 1998, the sub-commission on the Promotion and Protection of Human Rights has appointed an expert on human rights and counter-terrorism. In 2005, a United Nation Special Reporter on the Promotion and Protection of Human Rights while Countering Terrorism was appointed. Since, 11 September 2001, resolution have been adopted by the General Assembly and Commission on Human Rights explicitly calling on the relevant United Nation human rights mechanisms "to consider, within their mandates, the protection of human rights and fundamental freedoms in the context of measures to combat terrorism and to coordinate their efforts, as appropriate, in order to promote a consistent approach on this subject." Regional inter-governmental organizations have also committed themselves to defeating terrorism. The OSCE as a regional inter-governmental organization concerned principally with collective security, has made a number of politically binding commitments in relation to countering terrorism. OSCE states have the commitment to guarantee human rights, security, peace and stability. Human Rights as commonly understood emerged from the creation of the United Nations. The primary objective of UN is world peace and Human Right is considered to be a key factor in achieving it. The UN established a Commission on Human Rights, which was charged with the task of submitting proposals on an International Bill of Rights. The Draft declaration was adopted by the General Assembly in 1948 and came to be known as the Universal Declaration of Human Rights (UDHR). The UDHR is built on the fundamental principle that human rights are based on the "inherent dignity of all members of the human family" and are the "foundation of freedom, justice and peace in the world." It consist a long list of rights, some of which are right to life, liberty, security of person, right to freedom from torture and degrading treatment, right to adequate standard of living etc. Two principal instruments deriving from UDHR are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR forbids torture and inhuman or degrading treatment, slavery, arbitrary arrest and detention, propaganda advocating either was or hatred based on race, religion, national origin or language. Like the ICCPR, the ICESCR recognizes the right of people to self-determination. The UDHR has inspired a number of other human rights conventions. These include conventions to prevent and prohibit specific abuses, such as: genocide, racism, torture. Other instruments have been adopted to protect especially vulnerable populations or classes of persons, such as: refugees, women, and children. There also exist regional human rights systems, based on treaties whose membership is restricted to states within a particular region. These are, American Convention on Human Rights(ACHR) (1969) adopted by the Organization of American States, African (Banjul) Charter of Human and People's Rights (1981) adopted by the Organization of African Unity (now the African Union)^[6].

IV. EFFECTIVENESS, DEFENCE AND SUGGESTION

Sometimes, the measures, methods, operations and medium of counter terrorism are not adequate deterrents and the reformative methods used are not persuasive enough to hinder the advancement in terrorist activities. Here it is important to understand the concept of denunciation, the theory of punishment which targets society and society's response to crime prevention measures and its efficiency. The denunciation theory states that the objective of sentencing is to express society's disapproval of the crime that was committed. The crime in the criminal code of respective countries reflects the behavior that their societies disapprove of and is not accorded in their value system. As such, the theory is less about placing blame on the particular offender and more about defining the values and moral code that we expect people in the society to adhere to. This theory is likely the basis of having mandatory minimum sentences for certain offences. In this regard, if the state or the international bodies entrusted with the duty of counter terrorism fails to counter the attacks and terror spread by the terrorist, it will be failing the civilians and the trust bestowed on them. Thus, in a way directing civilians to take up their protection at an individual level which would undoubtedly create lawlessness, anarchic and chaotic situation. The key conciliatory role played by the United Nation, the Human Rights Commissions, World Peace Keeping force and other such bodies, have undoubtedly brought a lot of relief to victim nations but its aftermath has caused collateral dents and losses that are too expensive to pay and generation after generation appear to be paying the price of such intervention, as is apparent from the scenario of Iraq and Afghanistan today.

Counter terrorism cannot and should not function outside the guidelines of human rights principles. Which if it does, it dissolves the very difference between the act of state and terrorist to serve individual purpose. The balance that is to be maintained between counter terrorism methods and human rights is notably challenging before nations as well as international frontiers. Therefore, to counter terrorism by maintaining human rights without upsetting the civil societies,

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there have been several conventions and legislations in recent times. In spite of all the efforts, the civilians are still facing adverse outcome of counter terrorism methodologies. Terrorism aims at destruction of human rights through terror and violence employed against civilians, often by non-State actors. Terrorists attack democracy, the rule of law, and respect for humanity. This makes the counter terrorism method crucial, yet it may threaten core human rights. Hence, to regularize this, there have been several developments which will be dealt subsequently in this piece. The symbiosis between the guarantee of human rights and protection from terrorism cannot be over¬emphasized. Combating and ultimately overcoming terrorism will not succeed if the means to secure that society are inconsistent with human rights standards. This is not just applicable at international level but also at domestic level. Nations should be practicing effective mechanism of implementation and accountability of human rights. To ensure that human rights are effectively protected at the domestic level there must be in place proper systems of government, as well as good administration. Civilian oversight of the police and security forces in the context of counter-terrorism will ensure greater transparency of counter-terrorism policies and enhance public trust in the efficacy of those strategies.

V. INTERNATIONAL PERSPECTIVE

To understand the applicability of human rights in counter terrorism, a brief understanding of customary international law is necessary. Customary law is not laid down by treaties. This law is a result of general and consistent practice of states flowed out of a sense of legal obligation, so much so that it becomes customs. A particular category of customary international law, ius cogens, refers to a principle of international law so fundamental that no state may opt out by way of treaty or otherwise. The prohibitions of torture, slavery, genocide, racial discrimination and crimes against humanity are widely recognized as peremptory norms, as reflected in the International Law Commission's article on state responsibility. One rationale of human right is the guarantee of human dignity. It was for this reason that the drafter of the UDHR highlighted human dignity in the first paragraph of its preamble [7]. Enhancing human rights standards means that any response to an unlawful act must be carefully targeted to avoid violating human rights. This applies to counter terrorism proposal in the same way that it should apply to all public policy. Counter terrorism measures do not trump human rights. Only under extreme circumstances there may be requirement to lawfully derogate from human rights standards. At the same time, however, the requirement for a targeted or proportionate response may mean that it is inappropriate to adopt certain counter-terrorism or emergency measures. So, the only effective counter- terrorism strategy would be the one that has understood and integrated human rights and for that to happen, it requires an understanding of how human rights work. The application of human rights standards is not limited to citizens. Human rights are available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons who find themselves in a state's territory or subject of its jurisdiction. Two essential elements of democracy that act as guiding principles and need to be fully integrated into any counter- terrorism policy are equality before law and protection from discrimination. The UN human rights mechanisms have been particularly concerned about discriminatory response to terrorism. They have drawn attention to negative effect some counter-terrorism measures have had on equal treatment and freedom from discrimination. They have emphasized that states should be proactive in guarding against discrimination in the post- 11 September context. The Committee of HRC expressed its concern regarding the effect of those measures on the situation of human rights, pertaining to foreign extraction because of an atmosphere of latent suspicion toward them. The Committee of CERD was deeply concerned about provisions of Anti-Terrorism Crime and Security Act, which provided for the indefinite detention without charge or trial, pending deportation, of non- nationals who are suspected of terrorism related activities. While acknowledging the Sate party's national security concerns, the Committee recommended that the State party should balance those concerns about terrorism with the protection of human rights and its international legal obligations. The Committee was also gravely concern about the reported case of 'Islamophobia' following the 11 September attack. A study conducted by the European Monitoring Centre on Racism and Xenophobia found an increase in 'Islmophobia'. There was a significant increase in assaults on Muslims, vandalism of mosque, and 'Islamophobic' messages being transmitted via email, internet and telephone.

VI. DISTRESSED AND TROUBLED LIFE OF TARGETED CIVILIAN GROUPS

A counterfeited community had been constructed against a backdrop of anti-Irish racism. The community has suffered widespread violation of their human rights and civil liberties. As a consequence, the United Kingdom's reputation

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throughout the world in upholding human rights and civil liberties has been constantly compromised. This was one of the conclusions of an extensive study of Liberty which works on protection of civil and human rights, published in 1993, looking at the operation of the Prevention of Terrorism Acts. A decade later, Irish was substituted for Muslim and this could easily be read as an impact of Terrorism Act 2000 and Anti Terrorism Crime and Security Act 2001. Police powers have been used disproportionately against the Muslim population in the UK. The majority of arrests have been of Muslim, a large number of who were subsequently released without charge, or charged with offences unrelated to terrorism. All of those detained indefinitely have been Muslim men. The arbitrary and prejudiced uses of power have created isolation and animosity amongst many of the 1.6 million Muslims in the UK. There is disillusionment within a Government which, rather than protecting them for the backlash, is effectively criminalizing them as a community. The group as a whole is stigmatized, and Muslims have often described themselves as feeling under siege. There has been a serious impact on the targeted group of civilian due to the efficacy of anti-terrorism measures and render them to a large extent counterproductive. This strangles the relationship between the authorities and reduces the probability of co-operation from the community in tackling terrorism. Dr Ghayasuddin Siddiqui, Leader of The Muslim Parliament of Great Britain stated, "Muslims are one of the most marginalized and criminalized communities in Britain. By extending the provision of internment to British nationals on the basis of mere suspicion by intelligence agencies or the police will be seen by the community as a war on Islam, not a war on terror. This will serve no useful purpose except to fuel further extremism, which every sensible person wants to avoid. "A Metropolitan police survey found that the number of Asian stopped and searched by police rose 41 percent between 2000/01 and 2001/02, and searches on black people rose 30 percent compared to 8 percent for white people in the same period. A case which has been cited frequently in the press and by groups representing Muslims is that of a Muslim man who was detained by the police in London. He was forced to prostrate with his arms in cuffs, and asked 'where is your God now?' It is alleged that the detainee suffered over forty injuries including a black eye and severe bruising [8].

Both Irish and Muslim participants suffered verbal and physical abuse in everyday encounters. They have been criticized, accused and taboo was created against them by Media. The experience of discrimination while travelling internationally are common to both Irish and Muslim, who were subjected to extra or intrusive checks, particularly at ports and airports. Even young children were stopped and searched. There is a state of fearfulness, hatred, prejudice and diabolicalness attached to these targeted groups. On the other hand what we fail to comprehend that these measures which is taken to eradicate terrorism is not really eliminating terror but is forming grounds for the birth of new extremist groups who have been maltreated, abused and fallen prey of injustice at the hands of the authorities. They lose the feeling of belongingness. This increases the cohesion among the sufferers and they feel the need to belong and thus land up bring a part of those terror groups who use this situation to brain wash and manipulate them according to their needs.

VII. BUSTING THE CHAIN

What the international and national terrorism combating organizations are failing to understand is, terror and violence is a vicious circle. Violence gives rise to shock, which results in fear, which in turn creates grief, anger and bitterness. Thus giving birth is a feeling of revenge and retaliation which again results to violence and the phenomenon of terror continues. However, there are positive examples as to how this chain can be busted. An admirable example would be, Operation Trident ^[9]. This operation was a Metropolitan police initiative aimed at tackling crime amongst the UK's black community. The operation was proved successful in reducing crime and in promoting better relationships between the community and the police. The existence of an Independent Advisory Group encouraged the members of the community to come forward and assist the police.

VIII. THE HEALING TOUCH

Medical science today has accepted the significant role of non-traditional alternative healing methods. Cancers and tumors which did not die with the onslaught of chemotherapy are now seen to be melting away under the concentrated beams of positive visualization, Reiki, Pranayama, Ayurveda and so on. Similarly, counter terrorism needs a more human approach to bring about a quantum change in the psyche of terrorism. The authorities must make a concerted attempt to gain the trust and cooperation of the community, rather than alienating, subjugating and discriminating them. The target of change

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should not be superficial but a realization that takes birth in the conscience of all civilians to fight against the dreadful and hated act of terror. Instead of segregating people on the basis of cast, creed, colour and religion, separation should be on the basis of humanitarian behavior and inhuman behavior. Moreover, we should also understand that all those youths dying for the cause of spreading terror are not always the master of their own will. Mahatma Gandhi had said. "There are people in the world so hungry, that God cannot appear to them except in the form of bread." It doesn't require explanation as to how easy it is to manipulate these people in exchange to a basic living. People who die during attacks and those who die while causing the attacks were both innocent civilians before they were transformed into terrorists or labeled as one. We need mass chaitanya i.e. an elevated social consciousness, such as the one we saw in New Delhi in 2013, during the Nirbhaya uprising^[10]; the mass participation of Indian citizens in the movement against corruption initialed by Anna Hazare; the concerted campaign run by prominent Indian media groups against indifferent politicians who are completely cut off from burning issues like unemployment, lack of development and spiraling price rise; or the recent nationalist wave in India created by the Aam Aadmi Party that calls for more accountability on the part of politicians; transparency in governance; a fair hearing for all aggrieved groups and above all a time bound grievance redressal mechanism for the citizenry at large. If citizens of all nations have a Grievance Redressal Mechanism that responds in a time-bound, effective, sincere manner; if developmental issues are addressed in a transparent and time-bound manner without getting mired in corruption; if the masochistic arrogance and illegal intervention of the so called superpowers over other countries stops; if the open invasion into other countries territories by so called economic superpowers like U.S and China is not allowed to continue unchallenged; if the moral education taught right from school inculcates a feeling of respect for diversity, then, terrorism will be destroyed at its roots and find no soil fertile enough to bloom.

IX. CONCLUSION AND LAST THOUGHTS

Therefore, I personally feel that the time has come to create a New Age that is governed not merely by law but by the human touch; an Age in which we have to secure the world and not just a section of people living in it. Henry Kissinger said, "The desire of one power for absolute security means an absolute insecurity for all others." Therefore counter terrorism should be a perfect blend of deterrence, reformative and denunciation theory of punishment with compliance to the Human Right Standards established by various national and international legislations.

Today terrorism is not only a threat to a single nation but to the humanity itself and this can only be efficiently countered by mutual co-operation and united efforts of the nations. In India in spite of having a plethora of intelligence services like RAW (Research and Analytical Wings), AVC (Aviation Research Centre), NTRO (National Technical Research Organization), DIA (Defense Intelligence Agency), IB (Intelligence Bureau), we still fail to efficiently counter terrorism and the price is paid by innocent civilians like you and me. Even today we failed to get a centralized working body i.e. NTPC (National Counter Terrorism Centre) because of stiff opposition and internal turf war. On international level, the working of eminent intelligence agencies like MI6 of UK, CIA of USA, RAW of India, MOSSAD of Israel, MSS of China and even ISI of Pakistan must come together under one umbrella to give crushing blows to terrorism as it knows no border, language, gender or religion. The security of the world practically is in the hand of developed sovereign countries and counter terrorism forces must check the under developed countries and economically dependent states like of Euro Zone and protect them from the clutches of terrorism. In the process or means pursued as a way of countering terrorism, the pre-eminent presence of fundamental rights should be always upheld so that counter terrorism should not be a counterfeit terrorism behind the veil of state action. The recent Pathribal incident in Kashmir [11] where five civilians were shot dead by Indian Army and labeled as 'foreign militants' gives us the clear representation of the derogated human right standards. Assuming that one day counter terrorism refutes the practice of retribution and concedes with the objectives of Human Right standards and looks at terrorism objectively i.e. as a whole instead of associating it to a certain fraction, there could be a ray of hope that, our world and its civilians can live a life with peace, respect and brotherhood. As this world is ours and not theirs who thinks that power lies in vengeance, the following is a small piece that resonate the experience of terror and those who sees daily both terrorism and terrorism in the name of counter terrorism. And the quote follows:

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"Gone

Laughter's fading and the smiles, they disappear.

Contemplating that the end, might be here

Turning red the leaves begin to fall

The suns gone crazy,

There's fire on the ground..

Parcels fall from the sky like gifts,

Floating down a false sense of bliss.

As they touch

the world disintegrates,

What have we done

to deserve this fate?

What have we done? Where'd we go wrong?

The city is ruined and the laughter is gone.

How could this happen? How could this be.

You said you came, To set us free..

You said you came to set us free..

Life all around me is broken, Like charred concrete..

I can't help myself but there's something

Laughing in me. Someone please tell me,

Why everyone here is asleep.

I can't help myself

But there's something Laughing in me."

- Iman [12]

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