Terrorism and the Issue of Human Rights in India

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Wars simply do not end in the Third World Countries. Disputes regarding having hold over natural resources, extending the frontiers of a state, an access to potable water, for the purpose of irrigation or disgruntled distribution of earlier war booties have been some of the reasons leading to wars between different countries. However, for the last few decades the face of war has been undergoing a fast transformation. Most of the wars today though hit harder but are undeclared. Resort to terrorism instead of wars has become a way for satisfying the above discussed concerns. Terrorism has emerged as a multifaceted problem with ever evolving characteristics. Terrorism is both state sponsored as well as an individual or group activity. Nevertheless, whatever form it may have acquired its victims are always the people, who get killed or lose their loved ones. Hence, in recent past the phenomenon of terrorism has arisen to be one of the biggest crimes against humanity.

The states throughout the globe in joint endeavors and at their individual levels have tried to come out with various legislations and other united efforts for the curbing of the menace. Some of those have yielded results but majority have been in vain. The biggest problem with the issue of the terrorism is its definition. No consensus definition of terrorism has been possible to be derived out so far. The consensus moves up to the extent that it is extreme violence caused by a fundamentalist cause.[1] Terrorists use fear as a tool for sending out their message or purpose to the onlookers along with symbolic manifestation of the consequences if their demands are not met with. The *Encyclopedia Americana* has a long and more inclusive definition of terrorism.[2] According to it, terrorism is "the use or threat of violence that is limited in its physical

destructiveness but high in psychological impact because it creates fear and shock. Terrorism's effectiveness is political rather than military. A terrorist act is meant to communicate a message to a watching audience."For some it is the state which is the harbinger of terrorism while for others it is the individual or group perpetrators which are terrorists. Moreover, a terrorist for one state or a community may be a freedom fighter for another.Paul Wilkinson, Director of the Centre for the Study of Terrorism and Political Violence, University of St. Andrews, has drawn five major characteristics of a terrorist movement:

"1.   It is premeditated and aims to create a climate of extreme fear or terror.

2.   It is directed at a wider audience or target than the immediate victims of the violence.

3.   It inherently involves attacks on random and symbolic targets, including civilians.

4.   The acts of violence committed are seen by the society in which they occur as extra normal, in the lateral sense that they breach the social norms, thus causing a sense of outrage.

5.   And terrorism is generally used to try to influence political behavior in some way. It may be to force opponents into conceding some or all of the perpetrators' demands to provoke an over reaction, to serve as a catalyst for more general conflict or to publicize a political or religious cause, to inspire followers to emulate violent attacks, to give vent to deep hatred and the thirst for revenge and to help undermine governments and institutions designated as enemies by the terrorists."[3]The words terror, terrorise, terrorism have been derived from the Latin verb "*terrere*", which means to tremble or to cause to tremble, and *deterrere*, to frighten from. Etymologists are convinced that although the incidents of terrorism can be traced back to ancient times yet this term entered English vocabulary only after the French words *terrorisme, terroriste, terroriser*, which flourished in the period 1793 -1798 during the French Revolution. At that time, the word terrorist was used generally for those revolutionaries in France who sought to use terror systematically for accomplishment of their purposes. of community today can claim to be untouched or not having fallen victim to an incident or a movement of terrorism.When this problem has engulfed almost the whole of the planet earth, India is no exception to it. Contrarily, India has been one of the worst affected victims of terrorism both internal as well as external.

Presence of a wide range of religious, ethnic, linguistic, political, ideological and caste based groupings etc. make the region all the more vulnerable. The feelings of neglect, exploitation, step-motherly treatment lead to rise of disaffection among the people giving rise to a very fertile breeding ground to terrorism. 'Nip the evil in the buds' is an age old saying and the most suitable when it comes to curbing of the terrorism. The states should try to come out with such a type of planning and course of development where no community gets the feeling of being marginalized or left out. A sense of belongingness and share in the development of the nation will spare no room for hatred or discontent to grow and tread the path of violence or revolution.

However, despite being the world's largest and successful democracy India has been facing the brunt of terrorism for last almost five decades. In order to curb the menace India has also been a party to almost all the international legal instruments on the subject matter and has also initiated many at home. Undoubtedly, these legal documents have not proven sufficient so far in tackling with the issue. Scholars, academicians, bureaucrats and political leaders along with the various other Non-Governmental Organizations have more than often clubbed the issue of terrorism with that of the violation of Human Rights, violation of the rights of the both victims and the perpetrators facing trails. The present paper tries to highlight the link between the efforts to curb the terrorism and the violation of Human Rights.

The experts researching on the psychological reasons of the cause of terrorism believe that there are many different for the same, "Geopolitics, especially rich world attempts to control oil, help incite terrorist attacks on the rich by people from developing countries. But demographic and socioeconomic factors, especially poverty, inequality and large numbers of young men facing dim economic prospects, also are likely contributors to such terrorism."[4]

Terrorism so far has not been able to be separated from other forms of crimes and so its treatment. The scholars believe that terrorism may be approached from two different points of views:

1. Classicalists Free Will Conceptualization
2. Positivist Deterministic Conceptualization[5]

According to the experts believing in Free Will Conceptualization a terrorist enters into the phenomenon out of mere will and pleasure. The perpetrator is not under any type of psychic disorder that he is compelled to indulge into acts of violence but it is the pleasure which he/she drives out of killing others or destruction of property that they enter into such acts. Hence, there treatment also deserves harsh physical punishment so that their Hedonistic balance turns negative and in future acts as a deterrent to others. If only the pain inflicted on terrorists is greater than the pleasure derived by inflicting injuries on others, shall the terrorist resist such attempts in future and desist from indulging into such acts.

However, the positivists believe that it is not because of the free will of a person that he/she becomes a terrorist but it is because of the sum total of many outside factors like biological, social, economic, religious etc., beyond the control of one which leads one to such a path of violence. The situational marginalization of a person on any front where one has a feeling of deprivation or the feeling of an inferior treatment being met out to him may lead to such acts of destruction. The psychologists believe that in such circumstances it is not the individual who is responsible for resorting to such acts but circumstances surrounding the person. Therefore, such a person requires a different type of treatment i.e. like that of a patient suffering from a disease. As a result, what is required is the change of the basic conditions that breed such anti-social temperaments in people and drive them to embrace violence. Hence, the scholars argue that instead of opting for the commonly advocated mode of 'bringing the perpetrators to justice' in order to end of terrorism it is the elimination of the root causes of the problem which should be dealt with. Therefore, the solution as per them lies not in retributive justice but reformative justice.

Going by the logic there are some who based on the various case studies donot consider environmental conditions like poverty or hunger to be a reason for joining terrorism. There are many examples where engineers, doctors and other well educated people coming from higher strata of life joining terrorism because of their evil free will only and no other compelling reason.Osama bin Laden, in addition to many others, may be a very apt example in the immediate discussion. Hence, the countries under poverty conditions cannot plead the reason for continuity of poor conditions as a reason for sustained terrorism. This also gives teeth to the advocates of 'War on Terror' in their struggle.

On the other hand for some experts on the subject circumstances, out of which poverty is one is a very important reason for people indulging into terrorist activities. People do enter into violence for food, water and money. Hence it becomes a very fertile ground for the rise of terrorism where a movement is to work on a support base, safe heavens and regular supplies. Call for a just society with equal distribution of resources becomes an attractive slogan for the people, especially the deprived section to join the files in a sympathetic manner. The Marxian logic of criminal proclivities of the poor fits aptly here. Undoubtedly poverty may not be the essential root cause of terrorism but it definitely promotes violence.[6]Terrorism in Somalia, Nigeria, Rwanda, Haiti etc. may be cited as certain examples in the context.

Different reasons may be attributed to the rise of terrorism in different regions but whatever those may be the common consequence is that innocent people get killed in the struggle. Mass murders and assassinations are carried out in an attempt to put forth their concern by the terrorists. As the old Chinese proverb describing the phenomenon of terrorism goes 'Kill one and frighten ten thousand' the terrorists target certain prominent figures or buildings to send out their stern message. Bruce Hoffman defines terrorism as to be, "On one point, at least, everyone agrees: terrorism is a pejorative term. It is a word with intrinsically negative connotations that is generally applied to one's enemies and opponents, or to those with whom one disagrees and would otherwise prefer to ignore. What is called terrorism, thus seems to depend on one's point of view. Use of the term implies a moral judgment; and if one party can successfully attach the label terrorist to its opponent, then it has indirectly persuaded others to adopt its moral viewpoint. Hence the decision to call someone or label some organization 'terrorist' becomes almost unavoidably subjective, depending largely on whether one sympathizes with or opposes the person/group/cause concerned. If one identifies with the victim of the violence, for example, then the act is terrorism. If, however, one identifies with the perpetrator, the violent act is regarded in a more sympathetic, if not positive (or, at the worst, an ambivalent) light; and it is not terrorism."[7]

The attacks on various political, religious leaders or buildings like Parliament House of India or Taj Hotel are nothing else but a few of such examples. The menace has grown with the rising network of terrorists at global level along with the nexus with the drug traffickers and other criminals. Arrest of so many terrorists in Kashmir hailing originally from Mid-East, Morocco,

Nigeria, Sudan etc. vindicates the stance. The origin and spread of terrorism in India has got both domestic and international connotations.

Undoubtedly Democracies as compared to their counterparts are more vulnerable to terrorism but it doesnot mean that terrorism arises because of democracy. Under all circumstances a political system which invites participation of the people in its governmental affairs is much better than a dictatorship. However, the need is to study the systems of such democracies which have been able to keep terrorism away. One thing which can be said with surety is that those democracies which are able to maintain the political and social rights of its citizens along with their heterogeneous character are less likely to be infested with the scourge of terrorism. A democratic responsible government is to protect its citizens against genocide, was crimes, ethnic cleansing etc. emphasizing on the issue The U.N. High Commissioner for Human Rights, Louis Arbor remarked, "I think, in fact, it's full and much richer understanding of what state sovereignty is about, moving from the concept of a shield against accountability and scrutiny into the bundle of responsibility that comes with the privilege of governing."[8]

The Naxalite Movement, a left-wing violent protest campaign, in India has given rise to such a situation where the social fabric has been destroyed to a great extent with the high rise of sense of insecurity and depleted faith in the institutions of state. As the movement aims at overthrowing democratically elected governments for which many different types of violent acts are carried out, the rights of the people become the first causality.Not only the rights of the people have been violated by the movement but its spread in over two hundred districts of eastern and southern districts of India has posed a lot of insecurity to the country itself. However, a firm resolve of the Government of India to fight out this menace without compromising with the rights and security of the citizens of the country has infused a lot of confidence in the determination of the people to carry out their daily courses unfeigned by the Naxalites. Every, separate problem of terrorism warrants a separate solution as are the causes of its origin and its manifestations. Though the State and the people were able to grasp the problem of terrorism in Punjab which was accordingly successfully curbed yet the same has not been possible to do in Kashmir valley. The security forces and the consecutive governments in India have been not able to yet sense the pulse of the issue and take appropriate steps towards the curbing of the menace.

As has the terrorism gained significance at the beginning of the Twenty First Century so has the issue of Human Rights. More often, the Non-Governmental Organizations and other national and International institutions which have taken the onus of the protection of Human Rights are found to be standing more with the so called terrorists than with the victims of the various acts of terrorism. For them the main focus is that a proper trail should be carries out of the suspects, however obvious, be carried out before the pronouncement of a judgment. An act of terrorism should not be treated any different from those of other violence related crimes.[9]As many argue, following concerns may be drawn which go against due process of law,overly broad and ambiguous definitions of terrorism that fails to satisfy the principle of legality; pre-trial investigation and detention procedures which infringe upon due process, personal liberty, and limits on the length of pretrial detention; use of special courts and procedural laws that infringe upon judicial independence and the right to a fair trial; provisions that require courts to draw adverse inferences against the accused in a manner that infringes upon the presumption of innocence; lack of sufficient administrative or judicial oversight of police and prosecutorial decision-making to prevent arbitrary, discriminatory, and dis-uniform application; and broad immunities from prosecution for government officials which fail to ensure the right to effective remedies.[10]

In India the Human Rights protectionist groups argue that there is no necessity for the separate legislation on terrorism as the provisions of the Code of Criminal Procedure, the Indian Penal Code and the Evidence Act, if executed in a proper manner, are enough to deal with the issue. However, going by these there is a very low conviction rate of the terrorists as the police are not able to investigate properly and build up a strong case in the courts of law. In the special legislations like TADA and POTA a confession in police custody is permissible in the court, however, it is no secret that what measures may be adopted by the police officers in police stations while extracting those confessions from the apprehended person. The moot point is that in the name of curbing terrorism should the Human Rights of people be sacrificed while legislating such draconian laws. If an actual offender is actually punished it is fine, but what happens if an innocent somehow happens to be dragged in from nowhere. What about the Human Rights of such a person? A reason put forward by the establishment is when the laws are being framed by the legislators duly elected by the majority people with a faith that they are going to work in their interest there is no harm in such strict legislations as this becomes the duty of the

representatives to look after the best interests of the electorate. Moreover, undoubtedly these legislations are in no way a final solution to the problem but simply measures providing interim reliefs. Unless the root causes of the terrorism are understood and measures taken to eliminate them no permanent solutions can be found.

For the terrorism to be checked the root cause of the terrorism and the nurseries where it is being groomed up both within the country and outside are to be demolished. The financing of the terror outfits is the oxygen for them to grow. Therefore, even the United Nations Security Council taking special notice of this aspect in its Resolution No. SC/7158 laid down that the States should prohibit their nationals or persons or entities in their territories from making funds, financial assets, economic resources, financial or other related services available to persons who commit or attempt to commit, facilitate or participate in the commission of terrorist acts. It further says that the States should also refrain from providing any form of support to entities or persons involved in terrorist acts; take the necessary steps to prevent the commission of terrorist acts; deny safe haven to those who finance, plan, support, commit terrorist acts and provide safe havens as well.

Besides this the resolution further said that the Council decided that all States should prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other countries and their citizens. States should also ensure that anyone who has participated in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. They should also ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served.

The growing devastating capacity of the weapons available with the terrorists has also become a big concern for the disease to be tackled with. More than often it is found that the terrorists have more sophisticated weapons at their disposal than the agencies engaged in fighting them out. Moreover, the element of surprise which is always available with the terrorists for carrying out an attack also gives them an edge over the security forces. The police and other paramilitary forces also being the State responsibility deserve better weaponry and sharing of information with the intelligence agencies. Reduction of the fatality rate amongst the armed

security forces fighting terrorism will obviously lead to the rise of their confidence and act as a discouragement to the terrorists while further carrying out their acts.

The issue of the declaration of "War on Terror", the very phrase in itself leads to giving an equal status of a state to the terrorists as the Wars as understood conventionally are fought between the states only. Hence, declaration of a war on terror in itself raises the status of the perpetrators. The argument of Human Rights groups of terrors defending themselves in self defence also gives a shot in their arm as the right to self defence is also generally understood to stand against a state attack only. The appeal for International Humanitarian Law to be applied on such terrorists also raises their status giving them a status of a Prisoner of War. The biggest harm is done when a state enters into diplomatic discussions with terrorist outfits. This brings such outfits at par with a sacred institution like state.

Hence, a proper reform in police mechanism is the utmost demand of the day where they are taught to deal sensitively with such issues and provided with the latest of the weapons to keep their lethality at an advantageous position over the terrorist. Every separate movement of terrorists is to be tackled separately. No two different agitations can be clubbed together as their causes are different and so are their solutions. The tools of information technology should be exploited to the maximum potential in identifying the perpetrators and eliminating or discouraging them. Of course an accountable and responsible media can play a great role in curbing the menace by acting as appositive link between the establishments and the terrorists. Judicial Reforms are also required, where a proper opportunity is provided to the alleged offenders and free and fair trials are carried out at fast pace. So that the innocent does not suffer unnecessarily and the real guilty cannot toy with the procedures of the law.

The Minorities in the state should also be given an equal treatment and a suspicion free environment should be tried to be set up in the state. This way every inhabitant shall have an equal feeling of belongingness and no room will be available to the opportunists to breed in mistrust amongst the different populations. Along with this a proper identity database of the citizens is also required which will practically help a long way in deterring people from playing with law. Well established identities will discourage perpetrators as it will not leave anyone go unidentified. Above all a proper sealing of the international borders is must so that no infiltration or cross border terrorists are allowed to cross the borders and carryout cats of destruction and

devastation. Resorting to such measures can go a long way in curbing the terrorism without compromising with the Human Rights of the innocent populations.

Endnotes

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