



Human Rights, Terrorism And Counter-Terrorism: The Complex And Multi-Faceted Relationship

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Abstract

The relationship between Human Rights, terrorism and counter-terrorism is a complex, three-way interaction. It is often described as a “delicate balance” where each element directly impacts the others, sometimes in reinforce ways and other times through conflict. Human rights are the legal boundary and the moral framework within which counter-terrorism must operate to be effective and legitimate. Terrorism is a violation of human rights. Counter-terrorism is a duty of the state to protect human rights.

Keywords- Human Rights, Terrorism, Counter-terrorism, Constitution

Human Rights

Human Rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. These rights sometimes can be restricted if a person breaks the law, or in the interest of national security. Human Rights protect us in many areas of our day-to-day life like express your own opinions, right to an education, right to a private and family life, right not to be wrongly punished by the state etc.. The Six Fundamental Rights recognised by the Indian Constitution are influenced by the concept of Human Rights. Part-III of Indian Constitution i.e. Fundamental Rights and part-IV of the Constitution i.e. Directive Principles of State Policies are the inclusion of important provisions of UDHR (United Nation Declaration of Human Rights). States have a duty to protect, respect and fulfil Human Rights.

Terrorism

Terrorism clearly has a devastating impact on Human Rights. It results in destruction of the enjoyment of the right to life, liberty and all other basic rights of victims. Along with these individual harms, terrorism destabilise government, undermine civil society, compromise peace and security and threaten social and economic development of nation. A fundamental responsibility of government is to protect the basic human rights which include security. Therefore States have to take positive measures to protect them against the threats of terrorist acts and bring the offenders of such acts to justice. Terrorism is commonly understood to

refer to acts of violence that target civilians in the pursuit of political or ideological aims. Respect for Human Rights and the rule of law must be the bedrock of the global fight against terrorism.

Terrorism clearly has a very real and direct impact on Human Rights. The relationship between human rights and terrorism are very complex and multi-faceted. Violation of Human Rights is one of the conditions conducive to the spread of terrorism but the Security Council recognised that terrorism would not be defeated by military force, law enforcement measures, and intelligence operations alone, but underlined interalia, the need to strengthen the protection of Human Rights and rule of law. Human Rights grievances are among the 'Structural Causes' of terrorism by creating a recruitment ground for potential terrorism. An individual or family based experiences of Human Rights violation may often be the main cause that turns general resentment into an individual decision to adopt to violence.

International and regional Human Rights law makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. The general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of Human Rights. More specifically, this duty is recognized as part of States obligations to ensure respect for the right to life and the right to security. The right to life, which is protected under international and regional Human Rights treaties, such as the International Covenant on Civil and Political Rights, has been described as "the supreme right" because without its effective guarantee, all other Human Rights would be without meaning. As such, there is an obligation on the part of the State to protect the right to life of every person within its territory and no derogation from this right is permitted, even in times of public emergency. The protection of the right to life includes an obligation on States to take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction. As part of this obligation, States must put in place effective criminal justice and law enforcement systems, such as measures to deter the commission of offences, investigate violations where they occur, ensure that those suspected of criminal acts are prosecuted, provide victims with effective remedies, and take other necessary steps to prevent a recurrence of violations. International and regional Human Rights law has recognized that, in specific circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of another individual, which certainly includes terrorists. Also important to highlight is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist.

Counter-terrorism

In order to fulfil their obligations under Human Rights law to protect the life and security of individuals under their jurisdiction, States have a right and duty to take effective counter-terrorism measures, to prevent and deter future terrorist attacks and to prosecute those who are responsible for carrying out such acts. At the same time, the countering of terrorism poses grave challenges to protection and promotion of Human Rights. Terrorism has direct impact on the enjoyment of Human Rights. So States have a duty to take effective counter-terrorism measures. Just as terrorism impacts on Human Rights and the functioning of society, so too can measures adopted by States to counter terrorism. As mentioned above, because terrorism has a serious impact on a range of fundamental Human Rights, States have not only a right but a duty to take effective counter-terrorism measures. Effective counter-terrorism measures and the protection of Human Rights are complementary and mutually reinforcing objectives which must be pursued together as part of states' duty to protect individuals within their jurisdiction. The action taken by states in countering terrorism like arrest, detention, trial, surveillance, use of force fulfil with a state's Human Rights obligations.

The Security Council acted swiftly, following the terrorist attacks on 11 September 2001, to strengthen the legal framework for international cooperation and common approaches to the threat of terrorism. The international community has committed to adopting measures that ensure respect for Human Rights for all and the rule of law as the fundamental basis of the fight against terrorism, through the adoption of the

United Nations Global Counter-Terrorism Strategy by the General Assembly in its resolution 60/288. Counter-terrorism has also promoted compliance with Human Rights as an integral part of assistance to states in the development and implementation of counter-terrorism-related legislation and policies. The objectives of the counter-terrorism are to raise awareness on the rights of victims of terrorism and to examine how states can strengthen their national legislation, procedures and practices to better protect and support victims, their communities and their families.

The United Nations Global Counter-Terrorism Strategy reaffirms the inextricable links between Human Rights and security, and places respect for the rule of law and Human Rights at the core of national and international counter-terrorism efforts. Through the Strategy, Member States have committed to ensuring respect for Human Rights and the rule of law as the fundamental basis of the fight against terrorism. To be effective, this should include the development of national counter-terrorism strategies that seek to prevent acts of terrorism and address the conditions conducive to their spread; to prosecute or lawfully extradite those responsible for such criminal acts; to foster the active participation and leadership of civil society; and to give due attention to the rights of all victims of Human Rights violations. Not only is the promotion and protection of Human Rights essential to the countering of terrorism but States have to ensure that any counter-terrorism measures they adopt also comply with their international Human Rights obligations.

The Security Council has called States to ensure that counter-terrorism measures comply with international Human Rights law, refugee law and humanitarian law in several in its resolutions. In theory it ought to put a brake on the abuse and misuse of counter-terrorism norms to nefarious ends, including discriminatory targeting; crackdown on legitimate public protest, dissent and political view point; and indiscriminate use of force and extra-judicial execution. In practice on going and persistent violation of Human Rights associated with counter-terrorism regimes in national systems, are not a permanent solution of protection of Human Rights.

In addition to the general obligation of States to act within a Human Rights framework at all times, it should be noted that the universal treaties on counter-terrorism expressly require compliance with various aspects of Human Rights law. In the context of the International Convention for the Suppression of the Financing of Terrorism, for example, this is illustrated in article-15 (expressly permitting States to refuse extradition or legal assistance if there are substantial grounds for believing that the requesting State intends to prosecute or punish a person on prohibited grounds of discrimination); article-17 (requiring the “fair treatment” of any person taken into custody, including enjoyment of all rights and guarantees under applicable international Human Rights law); and article-21 (a catch-all provision making it clear that the Convention does not affect the other rights, obligations and responsibilities of States).

The Interdependent Triangle

The relationship can be visualized as a cycle where each part influences the others:

Relationship Link	Primary Interaction
Terrorism— Human Rights	Direct violation of right to life and security
Terrorism—Counter-terrorism	Acts of terror trigger state security responses and legislation
Counter-terrorism—Human Rights	Security measures can either protect rights (safety) or infringe upon them
Human Rights —Terrorism	Violations of human rights (like marginalisation) can create “breeding grounds” for terrorism

As a general matter, given the impact of terrorism on Human Rights, security and the functioning of various aspects of international and domestic societies, there is no doubt that the countering of national and international terrorism is an important objective which can, in principle, permit the limitation of certain rights. Assuming that the right is capable of limitation and that the limiting measure is imposed within the bounds of certain procedural requirements, it must be necessary to achieve a particular counter-terrorism objective. To be necessary, a rational link must exist between the limiting measure and the pursuit of the particular objective. Government have a responsibility to protect those within their jurisdiction from extremist attacks but must ensure that all counter-terrorism measures respect Human Rights. Human Rights watch monitors action by governments and inter-governmental bodies against violent extremism to ensure they do not infringe on the rights to life, to protection from torture and ill-treatment, to a fair trial. Government can not target minorities or stifle the rights to free expression, association and peaceful assembly in the name of security. Such measures are not only unlawful under international law, they are also counter-productive.

Reference and Notes

- United Nations Counterterrorism Strategy
- Office of the UN High Commissioner for Human Rights
- The United Nations Security Council Counter- Terrorism Committee
- The Charter of the United Nations, Art.55 (c), the Universal Declaration of Human Rights, Art. 2, and the Vienna Declaration and Plan of Action.
- Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law*
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Humanitarian Law (Cambridge, Cambridge University Press, 2005), as well as case law of the International Criminal Tribunals for Rwanda and the former Yugoslavia.

- UNHCR, “Note on the cancellation of refugee status” (22 November 2004)
- In the context of terrorism offences, these requirements have been emphasised by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98, para. 49).

