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## Different treatment of terrorism as a crime in different countries

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*The promotion and protection of national security and human rights are the primary and essential objectives for any nation. However, terrorist attacks and terrorist organizations directly impact the national security and human rights of individuals. Not just affect the national security and human rights of an individual but also affect the stability of the government and socioeconomic development of the nation. There are certain basic human rights for all individuals i.e., their security. And the state has a duty to ensure the security of an individual by taking certain positive measures for the protection of nationals against the terror threat. Accordingly, terrorism and the measures which are adopted by the government to counter terrorism both bring serious issues to the rule of law and to human rights.*

**Keywords:** *terrorism, counter-terrorism, rule of law, human rights, national security.*

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### INTRODUCTION

Terrorism is not a threat to any specific country it is a threat to the entire world and the cost of terrorism has been felt by the world repeatedly. Terrorism cannot be specifically defined; it can be defined as the use of violence and force against the citizens of any area or country to achieve political and social objectives. Terrorism not only affects human rights i.e., the right to

life and liberty<sup>1</sup>, and physical wellbeing. It also weakens the stability of government, risks peace and security of the nation and individual, and is a threat to social and economic development. The basic human right includes the security of the individual. Accordingly, it is the obligation of the government to protect the basic human rights of individuals. From the year 1999 to 2019, India has faced many major terror attacks namely, Kandhara Hijack in 1999 by the Harkat-ul-mujahideen group, Parliament attacks on 13<sup>th</sup> Dec 2001 by 5 terrorists of Lashkar-e-Taiba and Jaish-e-Mohammad group, Mumbai terror attack on 26<sup>th</sup> Nov 2008 by 10 members of Lashkar-e-Taiba group, Uri attack on 26<sup>th</sup> Sept 2001 by Jaish-e-Mohammad group and Pulwama attack on 14<sup>th</sup> Feb 2019 by Jaish-e-Mohammad group. However, after all these major terror attacks, India has adopted various effective measures to counter-terrorism. The measures include the operation Sagar Kavach, NATGRID and Elite commando force. India has also strengthened its diplomatic relations and national security.

## TERRORISM AND COUNTER-TERRORISM

On the International level, Terrorism is condemned as a manifestation and use of the political system unlawfully. Conceptually, terrorism may be differentiated from some different modes of harsh violence and conflict by written elements – it is planned and designed to create an environment of big fear, it inherently attacks random or innocent targets, and it is known by the state in which it is considered as ‘extra- normal’ which is violative of norms of the state. There are many more definitions of Terrorism, but none of the definitions is like each other in short there is no universal definition now. Noam Chomsky said: - Terrorism word is used first at the end of the 18th century which shows the acts the violation by the ruling party to ensure that people will obey the government. Walter Reich said that: - terrorism is a strategy of violence which has been made to gain certain ambition from an individual or group of individuals by means of terror to frighten the public at large. Simultaneously, Brian Jenkins said that: - terrorism is the Unlawful use of force designed to achieve political purposes.

Terrorism is a criminal offence, an offence against humanity. The attack on 11 September affects the nation and damaged both the buildings and the people’s life. Terrorism is known as

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<sup>1</sup> Constitution of India 1950, art 21

an act of violence that gives the fear of terror among civilians. Hijacking & crashing of aircraft build fear in the hearts of the citizens, especially the victim who is directly or indirectly attached. For example, Abu Sayyaf who was the kidnapper spread terror by beheading their hostages. To resolve the issue of Terrorism, counter-terrorism agencies were made, and its office is in United Nations. Counter-terrorism incorporates the practice, and strategy that the government of the state, military, and various business agencies use to reduce terrorism. It is a motivation of the government to use the various policies and products of national power to capture terrorists. Counterterrorism methods are grounded in an efficient and clear criminal law system that maintains the principle of the rule of law and human rights, they can try to maintain a graceful environment in the country.

#### **LAWS IN RELATION TO THE PREVENTION OF TERRORISM IN INDIA**

**TADA - Terrorist and Disruptive Activities Act<sup>2</sup> (1985-1995):** TADA was enacted to control terrorist activities, especially in Punjab. The provisions of TADA were powerful, and they strongly override the provisions of CrPC and the Constitution. Through TADA various new offences were introduced, and the power of police was increased such as the confessions made to police by an accused were admissible in courts, and it reduced the rights and safeguards of an arrested person. From 1985 to 1995, around 70,000 arrests were done and because of this using the sunset clause of the act, it ceased in 1995.

**POTA - Prevention of Terrorism Act<sup>3</sup> (2001-2004):** Because of various events such as Kandahar Hijack on 24th Dec 1999, WTC Attack on 9th Nov 2001, and the attack on the Indian Parliament on 13th Dec 2001 the need to strengthen the Anti-terror law was felt and there enacted POTA 2001. The provisions of the POTA were a reflection of TADA and because of misuse and rigid provisions, it also became inoperative by using the sunset clause of the act, in 2004.

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<sup>2</sup> Terrorist and Disruptive Activities Act 1985

<sup>3</sup> Prevention of Terrorism Act 2001

**UAPA - Unlawful Activities Prevention Act <sup>4</sup>(1967-Till Date):** The act was passed in 1967 by the committee set up by the national integration council. After the recommendation of the committee, the 16<sup>th</sup> amendment act of the constitution is passed. And through 16<sup>th</sup> amendment reasonable restrictions were imposed on three fundamental rights.

These fundamental rights are:

- Freedom of speech and expression<sup>5</sup>.
- Right to assemble<sup>6</sup>.
- Right to form association and union<sup>7</sup>.

UAPA is an Anti-terror legislation, and the enforcement body of this legislation is NIA (National Investigation Agency), which is India's central counter-terrorism agency. Which deals in the prevention of unlawful activity mean the action of an individual or organization whose intent is to bring cession or separation, or which questions the Sovereignty/Territorial integrity of India or disrupts it?

**UAPA - Unlawful Activities Prevention Amendment Act<sup>8</sup> (2004):** Through the 2004 amendment in UAPA, Parliament has introduced certain dedicated chapters for punishing terrorist activities. As POTA is replaced in 2004 and it created a vacuum, and a need for amendment is felt in UAPA through this amendment certain features are introduced in UAPA. Because of this UAPA is also known as POTA 2.0. Due to changing technique and patterns of terrorism, UAPA is also amended many times. From which the recent one is 2019 amendment of UAPA.

**UAPA - Unlawful Activities Prevention Amendment Act (2019)<sup>9</sup>:** The major changes through the 2019 Amendment Act -

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<sup>4</sup> Unlawful Activities Prevention Act 1967

<sup>5</sup> Constitution of India 1950, art 19(1)(a)

<sup>6</sup> Constitution of India 1950, art 19 (1)(b)

<sup>7</sup> Constitution of India 1950, art 19 (1)(c)

<sup>8</sup> Unlawful activities Prevention Act 1967

<sup>9</sup> Unlawful Activities Prevention Act 1967

- Before 2019 this act was applicable only to the organization but after 2019 both individuals and organizations came under the ambit.
- Under Section 35<sup>10</sup> and 36<sup>11</sup> of Chapter 6 - The government has been given power to declare any group as a terrorist group if:
  1. It participates in acts of terrorism.
  2. Prepares or promoted terrorism.
  3. Involved in terrorism.
- The second change is in detention provisions, a person can be detained for 180 days under the UAPA act without filling any charge sheet and this period can be extended further till then Right to Bail of the person cannot be raised. In the normal criminal law system, Under Section 167<sup>12</sup> of CrPC, allows a maximum period of 90 days after the 90 days Right to Bail arises. However, Under Section 43-D<sup>13</sup> of the UAPA Act, if the investigation is not complete then any person can be detained for 180 days and further without a charge sheet and the Right to Bail cannot arise.
- The third change related to the 4<sup>th</sup> Schedule, through 2019 amendment 4<sup>th</sup> Schedule is introduced in UAPA. This gives power to the government to declare any individual as a terrorist and can add the name of the individual in the 4<sup>th</sup> Schedule. The problem is there is no due process to add a name in the 4<sup>th</sup> schedule. However, within 45 days the individual can make an appeal to the government for the removal of their name.

## **CHALLENGES WITH TERRORISM AND COUNTER-TERRORISM**

There are four pillars of counter-terrorism, prevent, protect, pursue, and respond, by following these pillars counter-terrorism agencies respond to the international terrorism threat. And the challenge of counter-terrorism is how to protect human rights against terrorism. Terrorism is a

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<sup>10</sup> Unlawful Activities Prevention Act 1967, s 35

<sup>11</sup> Unlawful activities Prevention Act 1967, s 36

<sup>12</sup> Code of Criminal Procedure 1973, s 167

<sup>13</sup> Unlawful activities Prevention Act 1967, s 43D

crime against humanity, and its aim is to destroy law and order and our democracy, and the rule of law. It harms the reputation of the charter of the UN. and other foreign bodies; Terrorism has a direct impact on the enjoyment of several human rights, to Article 21<sup>14</sup> of the Indian Constitution which is the Right to life, liberty, and physical integrity. All the activities of terrorism have an effect on the fundamental human right of the citizens directly Law made on the international level has been clear that States have both a right and a duty to protect the rights of the individuals who are under their supervision, from terrorist attacks. And the challenge of the agencies to counter terrorism is to make the measures that how agencies and the constitution protect the rights of citizens.

## **TERRORISM AS A CRIME IN INDIA, US & UK**

### **TERRORISM AS A CRIME IN INDIA**

Terrorism aims to overthrow the existing government by altering the status quo. India in the past decades faced several attacks. Amarnath Yatra attack in 2017 in Jammu & Kashmir, the Uri attack in 2016, Mumbai attacks in 2008 were some of the most violent attacks in India by terrorist agencies to spread intimidation among citizens. Terrorism in India includes ethno-nationalist terrorism, narco-terrorism and cross-border terrorism.

#### **Effects of terrorism on Economic, Social and Cultural rights:**

1. The impact of terrorism is always to be negative for Indian society. Terrorists sometimes target the productive resources that might be generated various effective and valuable goods. The target of the terrorist includes mining infrastructure, telecommunication towers, railways, roads, government properties, bridges etc. By committing attacks on the building or road construction or attacks on security forces and damaging the roads and transport vehicles used in the work. Recently the attack on CRPF personnel on 13 March 2018 in Sikma in Chhattisgarh
2. In 2008, a Terror attack was experienced by India in its Financial and Entertainment capital in Mumbai. There were killing of 164 and injured several hundred citizens. After these attacks,

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<sup>14</sup> Constitution of India 1950, art 21

there was a huge and rapid decline in the number of foreign tourists to 3.3 % in 2009 which impacted the Indian Economy.

3. For implementing their goals, terrorist uses iconic structure to destroy them, in the Mumbai attack also destroy buildings of the Taj Mahal palace, and the Oberoi Trident Hotel, threatening cultural spaces and cultural rights.

#### **Causes of terrorism noticed in India:**

- **Political causes:** As per the perspective of Assam, due to the failure of the Tripura government to control the illegal immigration of Muslims from Bangladesh which was occurring on a large- scale to fulfil the demand of economic needs.
- **Economic Cause:** As per the contest of Andhra Pradesh, MP, Chhattisgarh, Odisha, Bihar, and the government of West Bengal are prime examples. There is the absence of land reform, exploitation of landless labourers, rural unemployment etc. This absence of economy and gross social injustice has pushed these high-level terrorist groups such as Maoist groups to operate under many different names.
- **Ethnic cause:** With regards to the state of Nagaland, Mizoram, and Manipur, ethnic separateness is the major reason why terrorist groups like ULFA rises.
- **Religious Cause:** During 1970 some Sikh leaders alleges that the Sikhs were being ignored in the Indian society and due to this reason, a rebellion took place which was violent by the time

India has repeatedly formulated laws to deal with terrorism. Currently, the primary law related to terrorism is the UAPA which stands for Unlawful Activities Prevention Act, 1967. In 1967, Parliament enacted this law, and the purpose is to enable the burden of sufficient restrictions on the rights to freedom of speech and expression, formation of an organisation or

a peaceful assembly or union with regards to sovereignty of India. After the amendment of UAPA, it includes the definition of the word terrorist act under section 15<sup>15</sup>.

On 14 February 2019, in Pulwama, in the state of Jammu & Kashmir a suicide bomb terrorist from a high-level organization killed 40 Indian Soldiers from the Central Reserve police. Then on 9 April 2019, a Maoist terrorist made a bomb, killing an eminent member of the Bhartiya Janata Party in the Chhattisgarh legislative assembly as well as 4 other people. To tackle the situation, in regard to making it possible to label people as a terrorist, the 1967 Unlawful Activities Prevention Act was amended in 2019. The NIA Act of 2008, which is related to the Investigation agency, granted the NIA the authority of looking into terrorism-related matters. In future, terrorism cases in the state of Jammu & Kashmir, cases involving what India referred to as left-wing extremists and cases including insurgency in India's northeast will evaluate the impact of the recently modified legislation. Indian State level law organizations are essential for preventing, determining, and discouraging crime and offences. These agencies' levels of competence vary.

## **TERRORISM AS A CRIME IN US**

The U.S divides terrorism into international terrorism and domestic terrorism. International terrorism is defined as violent crimes conducted by people or organisations that have ties to or are motivated by a recognised overseas terrorist organisation. Domestic terrorism is the term used to describe violent, criminal acts conducted by both individuals and groups with the intention of advancing ideologies that have domestic roots, such as political, religious, and environmental ones. The 6 January attack on the US, a protracted debate on whether the United States need a new domestic terrorism law has gained new life because of the Capitol. The absence of a stand-alone statute that criminalizes domestic terrorism which is seen by many as a gaping hole in the law, is where a dispute begins. There is no comparable law in other countries that classifies domestic terrorism as a federal crime, even though some of the Acts that domestic terrorist commit may be against the law. According to the U.S., it is unlawful to give support to an international terrorist organization.

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<sup>15</sup> Unlawful Activities Prevention Act 1967, s 15



Section 802 of U.S.A. PATRIOT Act<sup>16</sup> includes the definition of the word terrorism to cover “domestic”, as opposed to international terrorism. It expanded that: - a person involved in domestic terrorism if anyone does such act which is “dangerous to human life” that is violent of all the criminal justice provision made by a state or the United States if act intents that; (1) any person who threatens the civilian population, (2) influences the policies of a government (3) try to affect the conduct of a government by kidnapping, mass destruction or assassination. This behaviour cannot be considered domestic terrorism. It does broaden the range of behaviour that the government can investigate when looking into terrorism. This Act increased governmental authority to investigate terrorism, some of which apply to domestic terrorism. An illustration of this can be found in the Vieques Island protests, where many people engaged in civil disobedience in a military facility where the US government has been conducting regular military drills that these protests oppose.

### **TERRORISM AS A CRIME IN THE UK**

Terrorism was defined in The Terrorism Act 2000<sup>17</sup> both inside as well as outside of the U.K., as the use of threat involving one or more of the following actions taken too seriously interfere with or seriously disrupt an electronic system; serious violence against a person; serious property damage; action taken too seriously endanger a person's life; action taken too seriously endanger the health or safety of the public or some segment of it. Additionally, these define as terrorism that transcends national borders, the targets of the terrorist attacks, and the allocators were intended to scare the public or exert influence over the government or an international government. Al Qaida and other terrorist organizations have the potential and the purpose to launch strikes against the West from their bases in Syria and Iraq. In recent conflicts, people from the UK have travelled abroad not just to join terrorist organizations but also to take part in the battle. UK court always has extra-territorial authority over several terrorist offences, including terrorist attacks which were previously planned, supporting terrorism, and engaging in terrorist training. Some overseas Jihadists have been active online, reaching out to radicalize people in the UK agency.

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<sup>16</sup> U.S.A Patriot Act 2001, s 802

<sup>17</sup> Terrorism Act 2000

## CONCLUSION

Terrorism in different countries have different definition but there is no universal definition of terrorism till now, even the United Nation organization have not succeeded in creating a universal unique definition which is the same for every country. Terrorism simply means coercion of a central government; it is a form of violence intended to instill dread in the minds of the public to elicit wants from a person. Acts of terrorism can be classified as crimes against humanity if they are conducted regularly or widely, or as organized attacks on civilians by states or non-state actors. Many nations classify acts of terrorism as regular crimes, yet these regular crimes have claimed the lives of numerous uninvolved innocent civilians and military personnel who are organized by State or non-State actors and constitute crimes against humanity. In these concluding sections, researchers also suggest some things. Every non-participant country of the ICC statute should sign the Rome statute immediately for the purpose of prosecution of terrorists in the ICC. Second, International Criminal Court must amend the Acts of terrorism as an offence against humanity.