

## TERRORISM: CAUSES AND REMEDIES

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### Introduction:

The word 'Terrorism' is derived from the Latin word '*Terrere*' which means to frighten. Terrorism is perhaps one of the most challenging problems of the day. Terrorism has gone global and every citizen across the world is equally susceptible and vulnerable. India has been fighting the menace of cross-border terrorism in the State of Jammu & Kashmir for over the years. Development, stability, good governance and the rule of law are inextricably linked and any threat to peace poses an obstacle to the objective of sustainable development of the country. Terrorism not only subverts the political and social climate but also threatens the economic stability of the country, undermines democracy and even deprives ordinary citizens of their fundamental rights, including their right to life.<sup>38</sup> Article 1 of League of Nations Convention for the Prevention and Punishment of Terrorism (1937) defines acts of terrorism as "all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public. "Terrorism' has different meanings for different people. Terminology is always a matter of agreement for the purpose of common understanding. There is no point in searching for logic-based definitions of terms which belong to the realm of political or social science, especially when the term in question carries a negative emotional connotation.<sup>39</sup> The impact of modern technology, particularly communication technology combined with increasing globalization, rapidly increasing trade in goods and services as well as faster movement of people across borders means that terrorism in the 21st century has acquired newer and deadlier dimensions. The accessibility to material and technology that have much greater destructive potential compared to the past also magnifies the nature of the threat posed by terrorism.<sup>40</sup> In fact it is said that the truth is, terrorism has emerged as the gravest threat, not only to individual nations, not, indeed, just to the entire

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<sup>38</sup> <http://unpan1.un.org/intradoc/groups/public/documents/cgg/unpan045484.pdf>, accessed on 17/06/2015

<sup>39</sup> ARIEL MERARI, Terrorism as a Strategy of Insurgency, Terrorism and Political Violence, Vol.5, No. 4 (Winter 1993), pp.213- 251 PUBLISHED BY FRANK CASS, LONDON, retrieved from <http://skyjack.co.il/pdf/Terrorism-as-a-strategy-of-insurgency.pdf>, accessed on 17/06/2015

<sup>40</sup> <http://unpan1.un.org/intradoc/groups/public/documents/cgg/unpan045484.pdf>, accessed on 15/06/2015

civilized world- as I finally acknowledged now- but, possibly, even to the long - term survival of the human race itself.”<sup>41</sup>

### **Insurgency and Terrorism:**

A violent struggle to throw the existing constitutional government is the common factor between terrorism and insurgency. However, so far as insurgency is concerned, it is confined within the national boundaries and is operated with the support of a section of local people, whereas, terrorism can be cross border with or without the support of local people. The roots of insurgency in Jammu & Kashmir can be traced to the later part of the 1940s when Pakistan attacked India with a view to capture Jammu & Kashmir. Insurgent violence may take various forms. These include revolution, coup d'état, guerrilla, terrorism and riots. In recent years the term intifada gained publicity, referring to the Palestinian uprising in the Israeli-administered territories. With the exception of riots, these forms of political violence can be also viewed as strategies of insurgency.<sup>42</sup>

### **Laws in India to Deal with Terrorism:**

League of Nations Convention for the Prevention and Punishment of Terrorism (1937), required signatory States to enact laws making such acts extraditable offenses in the event one of their nationals committed an act of terror in a foreign country. However, the convention never came into effect, in part because disputes among the member states over the articles on extradition prevented ratification.

Section 121 of IPC deals with conspiracy to wage war or to throw an elected government through criminal force,<sup>43</sup> whereas section 122 deals with preparation to wage war against

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<sup>41</sup> K. P. S. Gill, *The Global Threat of Terror Ideological, Material and Political Linkage*, Edited by K. P. S. Gill and Ajai Sahni, 1st edn. 2003, New Delhi, Bulwark Books & Institute of Conflict Management, p.1

<sup>42</sup> ARIEL MERARI, *Terrorism as a Strategy of Insurgency, Terrorism and Political Violence*, vol.5, No. 4 (Winter 1993), pp.213- 251 published by Frank Cass, London, retrieved from <http://skyjack.co.il/pdf/Terrorism-as-a-strategy-of-insurgency.pdf>, accessed on 17/06/2015

<sup>43</sup> Section 121 of IPC-Whoever, wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death or imprisonment for life-and shall also be liable to fine.

government of India.<sup>44</sup> Section 124 A provides punishment for sedation.<sup>45</sup> In *State v Nalini*,<sup>46</sup> Supreme Court held that if a person killed, bound by oath or public servant it amounts to an offence under IPC, but such killing is not a disruptive activity. In the present case since Rajiv Gandhi was not under oath it can no way attract TADA. In another case<sup>47</sup> the Supreme Court expressed the view that same confessional statement cannot be used for convicting for an offence under the IPC which was recorded during investigation under TADA which have failed.

The Maharashtra Control of Organised Crime Act, 1999 was initially passed to control criminal activities by the organised crime syndicate or matters connected with or incidental thereto, subsequently extended to the State of Delhi. National Security Act, 1980 empowers the Government of India to detain any person if the government is satisfied that the acts of such person are prejudicial to the defense, foreign relation or security of India. Terrorist and Disruptive Activities (Prevention) Act, 1987, popularly known as TADA, came in force on 24<sup>th</sup> of May, 1987. Section 3 of this Act defines terrorist as whoever with intent to overawe the government established by the law or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or gases or other chemicals or any other substances (whether biological or otherwise) of hazardous nature in such manner as to cause or likely to cause death, or detain any person or loss or disruption of any property or disruption any supplies or services essential to the life of the community, or detains any person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act. ‘Disruptive Activities’ as defined under section 4 have been frequently misused. This Act ceased to be in force in 1995, when it was not further extended. “It is fair to say that at the end of the day TADA did play a deterrent, albeit in much a different way than intended and ended up doing more harm

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<sup>44</sup> Section 122 of IPC- Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

<sup>45</sup> Section 124 A of IPC- Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in-India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

<sup>46</sup> (1999) 5 SCC 253

<sup>47</sup> *Gurprit Singh v State of Punjab*, AIR 2002 SC 2390.

than good.”<sup>48</sup> However, due to surging cross-border terrorism, Indian Government enacted another legislation, Prevention of Terrorism Act, 2002 on the line of TADA but less prone to misuse. As Preamble stated this was passed to make provisions for the prevention of and for dealing with terrorist activities and for matters connected therewith. “In 2001 Government felt the need once again and brought in POTA, which is nothing more than the re-incarnation of TADA with largely cosmetic changes.”<sup>49</sup> In view of a lot of hue and cry, ultimately POTA was also repealed in 2004. There was widespread criticism over the way in which terms of the Prevention of Terrorism Act, 2002 were used and misused, and the enactment was revoked in 2004.<sup>50</sup> In *Hitendra Vishnu Thakur v State of Maharashtra*,<sup>51</sup> while pointing out distinction between criminal act and a terrorist act, the court held that all the terrorists are criminal but all the criminals are not terrorists. What distinguishes terrorism from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation.

Anti- Hijacking Act, 1982 was passed to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft and for matters connected therewith. Section 3 (1) of the Act defines hijacking<sup>52</sup>, whereas sub-section (2) of section provides that attempts to commit any of the acts referred to in sub-section (1) in relation to any aircraft, or abets the commission of any such act, shall also be deemed to have committed the offence of hijacking of such aircraft.

The present laws as enumerated hereinabove in different codes were stringent no doubt but they were unable to prevent terrorist attack. These laws were helpful in the investigation and prosecution of the cases but they couldn't restrain the terrorism. Hence, the need for special laws to combat terrorism was the need of the hour. In 2008, the two key bills were passed within the four days of their introduction, the Unlawful Activities (Prevention) Amendment Bill, 2008 and the National Investigation Agency (NIA) Bill, 2008, which shows the government initiatives to fight against the terrorism in order to protect the national integrity and sovereignty. In order to protect sovereignty and integrity of the country, the Indian Parliament passed Unlawful Activities (Prevention) Act, 1976 thereby putting reasonable

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<sup>48</sup> Dr. Surat Singh & Hemraj Singh, *Law relating to Prevention of Terrorism*, 1st Ed., 2003, New Delhi, Universal Law Publishing Co. Pvt. Ltd., p.4

<sup>49</sup> *Ibid*

<sup>50</sup> Krishna Prasad, *Anti-terror Laws-or An Implementation Of Failure?*

<http://www.manupatrafast.in/pers/Personalized.aspx>, accessed on 29/05/2015

<sup>51</sup> AIR 1994 SC 2623

<sup>52</sup> Anti-Hijacking Act, 1982 Section 3 (1)- Whoever on board an aircraft in flight, unlawful, by force or threat of force or by any other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft.

restrictions on the freedom of speech and expression, the right to assemble peacefully or form unions. Thereafter, Unlawful Activities (Prevention) Amendment Act, 2008 made a number of procedural and substantive changes thereby empowering the NIA, 2008 effective and decisive on terrorism. A new Section 43 D has been incorporated in the Amendment Act, whereby the period of custodial interrogation is enhanced from 90 days to 180 days.<sup>53</sup> Extension of detention period was justified on the ground that the longer period will facilitate to collect evidence internationally which would ultimately help in extradition of criminals. Section 43E deals with presumption as to offence under section 15 in a prosecution for an offence under section 15.<sup>54</sup> Thus, if a person is found with the weapon specified in Section 15, the burden of proof would be upon him to prove that he is not guilty.

The National Investigation Agency (NIA) Act, 2008 was enacted to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organizations.<sup>55</sup> The Act was made applicable to whole of India, including citizens of India residing outside India, in service of the Government wherever they may be and persons on ships and aircrafts registered in India. Section 3 of the Act provides for the constitution of the National Investigation Agency for investigation and prosecution of offences specified in the Schedule under the Act and confers to officers of the Agency all the powers, privileges and liabilities which the police officers have for investigation of any offence. Section 6 deals with investigation of scheduled offences and section 7 gives power to transfer investigation to State Government.<sup>56</sup> Section 8

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<sup>53</sup> Unlawful Activities (Prevention) Amendment Act, 2008 section 12- Insertion of new section 43 E to 43 D- section 43 D (2) (b) Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days.

<sup>54</sup> Unlawful Activities (Prevention) Amendment Act, 2008 section 12- Insertion of new section 43 E to 43 D- section 43 E- if it is proved --(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or (b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence, the Court shall presume, unless the contrary is shown, that the accused has committed such offence.

<sup>55</sup> Preamble of National Investigation Agency Act, 2008

<sup>56</sup> National Investigation Agency Act, 2008 Section 7- While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may--(a) if it is expedient to do so, request the State Government to associate itself with the investigation; or (b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.

authorizes the agency to investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence. Section 9 requires the State Government to extend all assistance and co-operation to the Agency for investigation of the Scheduled Offences.

Section 11 of the Act empowers the Central Government to constitute special courts and provides for the constitution of one or more special courts for the trial of Scheduled Offence by a Judge of the level of Sessions Judge or Additional Sessions Judge, to be appointed by the Central Government on the recommendations of the Chief Justice of the High Court. Section 13 of the Act deals with the jurisdiction of the special courts<sup>57</sup> whereas section 14 with the powers of Special Courts with respect to other offences, and section 15 appointment of Public Prosecutor, and qualification of Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor. Section 16 deals with the procedure to be adopted and powers to be exercised by the Special Court for trial of the Scheduled Offences, provides that offences punishable with imprisonment for a term not exceeding three years or with fine or with both, may be tried summarily and the Special Court will have all the powers of the Court of Sessions under the Code of Criminal Procedure for the purpose of trial of any offence under this Act. Section 17 affords protection to the witnesses.<sup>58</sup> Section 18 makes it mandatory to take previous sanction of the Central Government before institution of any prosecution, suit or other legal proceeding against any member of the Agency or any person acting on his behalf in respect of

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<sup>57</sup> The National Investigation Agency Act, 2008 section 13- (1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.(2) If, having regard to the exigencies of the situation prevailing in a State if,--(a) it is not possible to have a fair, impartial or speedy trial; or (b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or (c) it is not otherwise in the interests of justice.

<sup>58</sup> The National Investigation Agency Act, 2008 section 17-(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires. (2) On an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, if the Special Court is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret. (3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include--(a) the holding of the proceedings at a place to be decided by the Special Court;(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

anything done or purported to be done in exercise of the powers conferred by this Act. Section 20 provides power to the Special Court to transfer cases to the regular courts.<sup>59</sup>

### **Strategy to Counter Terrorism:**

Religious Terrorism is more destructive in nature and motivated largely by religious imperatives. State-sponsored Terrorism which India has been facing this problem from Pakistan since Independence. “Terrorist groups normally describe themselves as national liberation movements, fighters against social, economic, religious, or imperialist oppression, or any combination of these. On the other side of the barricade, in an understandable attempt to degrade terrorism, politicians have presented the terms 'terrorists' and 'freedom fighters' as contradictory.”<sup>60</sup> Terrorists attempt not only to create panic but also to weaken confidence in the government and the political leadership of the target country. Terrorism therefore is designed to have psychological effects that reach farther beyond the impact on the immediate victims of an attack. Terrorists mean to frighten and therefore scare a wider crowd, such as a rival ethnic or religious group, an entire country and its political control, or the entire international community.<sup>61</sup>

A multi-pronged approach is needed in order to tackle the menace of terrorism. Various terrorist groups promise wealth and equity to the vulnerable section of the society, therefore, socio-economic development of this section of the society will be able to prevent them from falling to the prey of such false promises by the terrorist groups. Long standing grievances of people lead to frustration in the society, thus exposed to be exploited by terrorist groups. Government mechanism should be prompt enough to resolve their legitimate and long standing grievances. “Government of India has been endeavoring to tackle the problems of the troubled State through a multi-pronged strategy with a holistic approach calculated to address areas of concern on the political, security, developmental and administrative fronts. On the political

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<sup>59</sup> The National Investigation Agency Act, 2008 section 20-Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

<sup>60</sup> Supra note 2

<sup>61</sup><http://libpind.blogspot.in/2010/01/terrorism-causes-remedies.html> [accessed on 15/ 06/2015]

aspect, primacy has been given to political dialogue with emphasis on political-democratic processes and emphasis on the rule of law.”<sup>62</sup>

While examining the Prevention of Terrorism Bill, 2000, the Law Commission in its 173<sup>rd</sup> Report, was of opinion that a legislation to fight terrorism is today a necessity in India. It is not as if the enactment of such legislation would by itself subdue terrorism. It may, however, arm the State to fight terrorism more effectively. Undoubtedly there are sufficient provisions under Indian Penal Code, but the same were not designed to fight or to check organised crime of the nature we are faced with now a days. There are organised trained groups motivated and supported by fundamentalists and anti-Indian elements, who are trying to destabilize the country. Developed countries give financial assistance to the developing countries for their economic development, however, these financial aids is being used to fund the terrorist activates. Thus, such aids should be monitored and the recipient countries should be made accountable, as to how they have utilized this money.

In *D. K. Basu v State of Bengal*<sup>63</sup> Supreme Court has expressed the view that the challenge of terrorism must be met with the innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism, which would be bad for the State, community and above all for the rule of law. The State must, therefore, ensure that the various agencies deploying by it for combating terrorism act within the bounds of law and not become law unto themselves. Over the last several years, India has lived through terrorism in one form or other, mostly sponsored from across the borders. The terrorist attacks which used to be confined to militancy and insurgency affected areas have spilled over into various parts of the hinterland and major cities. India is at sea fighting terrorism. There is a problem, not because its legal arm is weak but for the fact that there is a lack of political will and understanding to implement those laws or give power to its law enforcement agencies. Strong preventive measures alone only will curb this menace.<sup>64</sup>

### **Conclusions & Suggestions:**

There is no religion or faith of terrorists; they attack democracy of a civilized society and often target innocent civilians. A country requires arms, weapons and trained people and ultimately

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<sup>62</sup> <http://unpan1.un.org/intradoc/groups/public/documents/cgg/unpan045484.pdf>, [accessed on 15/06/2015]

<sup>63</sup> AIR 1997 SC 610

<sup>64</sup> Krishna Prasad, Anti-terror Laws-or An Implementation Of Failure?  
<http://www.manupatrafast.in/pers/Personalized.aspx>, accessed on 29/05/2015



a lot of funds to combat the problem of terrorism. Many countries have comprehensive legislation dealing with terrorist activities including counter terrorist measures. A comprehensive and effective legislation to combat terrorist activities is the need of the hour, at the same time it should have adequate safeguard to prevent its misuse and ensure that no innocent is falsely implicated and power given to the authorities should not be misused. For example, there should be clear and unambiguous definition of the criminal acts amounting to terrorism. There should be provision for the constitution of special fast track courts with exclusive jurisdiction to conduct trials of terrorism related cases.

Literacy, employment, and eradication of poverty are some of the solutions to subside the problem of terrorism. Besides that effective national security strategy, global cooperation, blocking supplies of financial support, and atmosphere of strategic reconciliation could be effective tools to combat terrorism. Media also can play important role by spreading awareness to build the capacity of citizens in dealing with any kind of public disorder, particularly terrorist violence. Therefore, media should realize their responsibility to evolve a self-regulating code of conduct to see that publicity arising out of terrorist should not be such which helps the terrorist in their anti-national designs.