CONTENTS

(Nominal)

1. Introduction 1

2. Origin and Evolution of Human Rights and Terrorism 41

3. International Parameters on Human Rights view of Anti-terrorism 109

4. Indian Perspective of Human Rights and Anti-Terrorism Law 162

5. A critical Study on Implementation of Anti-Terrorism Laws in India and Role of Judiciary in India 201

6. Conclusions & Suggestions 275

BIBILOGRAPHY 289

APPENDICES 302

Annexure-I 302

Index of Cases 303
CONTENTS

(Detail)

Chapter 1 ........................................................................................................................................... 1
1. INTRODUCTION ................................................................................................................................. 1-40
  1.1 INTRODUCTION .............................................................................................................................. 1
  1.2 BACKGROUND ................................................................................................................................. 5
    1.2.1 Universal Declaration of Human Rights 1948 ................................................................. 9
    1.2.2 The Protection of Human Rights Act, 1993 ................................................................. 12
  1.3 RATIONALE OF THE PROBLEM ............................................................................................. 13
  1.4 SIGNIFICANCE OF THE STUDY .............................................................................................. 17
  1.5 OBJECTIVES OF THE STUDY .................................................................................................... 20
  1.6 HYPOTHESIS ............................................................................................................................... 21
  1.7 SCOPE OF THE STUDY ................................................................................................................. 21
  1.8 METHODOLOGY USED ................................................................................................................. 23
  1.9 DEFINITIONS ................................................................................................................................. 24
    1.9.1 Human Rights .......................................................................................................................... 24
      1.9.1.1 The views of the scholars ............................................................................................. 25
    1.9.2 TERRORISM ........................................................................................................................... 29
  1.10 REVIEW OF LITERATURE ......................................................................................................... 35
  1.11 SCHEME OF THE STUDY ............................................................................................................. 38

Chapter 2 ............................................................................................................................................. 41
2. ORIGIN AND EVOLUTION OF HUMAN RIGHTS AND TERRORISM ...................................................... 41-108
  2.1 INTRODUCTION ............................................................................................................................. 41
    2.1.1 The Mighty Revolutions ......................................................................................................... 44
    2.1.2 Various Perspectives of Human Rights .................................................................................. 49
  2.2 HUMAN RIGHTS IN ANCIENT TIMES ....................................................................................... 54
  2.3 NATURAL LAW AND NATURAL RIGHTS IN MIDDLE AGES ..................................................... 56
    2.3.1 Philosophical Approach: ......................................................................................................... 56
      2.3.1.1 The natural right theory ............................................................................................... 56
        2.3.1.1.a Human rights are said to be recognized ................................................................. 57
        2.3.1.1.b Human rights are said to be inalienable, natural and inherent .................. 58
        2.3.1.1.c All human beings are said to be essentially equal ........................................... 58
      2.3.1.2 The legal right theory ..................................................................................................... 59
      2.3.1.3 The historical theory of rights ....................................................................................... 60
      2.3.1.4 The social welfare theory of right .............................................................................. 61
      2.3.1.5 The idealistic theory of rights ...................................................................................... 62
      2.3.1.6 Pragmatic approach .................................................................................................... 63
      2.3.1.7 The social contract theory .......................................................................................... 65
2.3.1.8 American revolution ................................................................. 66
2.3.1.9 The French revolution.............................................................. 66
2.4 NATURAL LAW AND NATURAL RIGHTS IN 17TH AND 18TH CENTURY 69
2.5 NATURAL RIGHTS AND DOCTRINE OF HUMANITARIAN
INTERVENTON IN 19TH CENTURY ................................................ 70
2.6 NEW ATTITUDE TO THE CONCEPT OF HUMN RIGHTS IN 20TH
CENTURY. .................................................................................... 72
  2.6.1 Human Rights and the Indian Constitution............................... 72
    2.6.1.1 Evolution of fundamental rights during freedom struggle...... 73
2.7 HUMAN RIGHTS AND TERRORISM ................................................. 75
  2.7.1 What Are Human Rights........................................................... 75
    2.7.1.1 universal and inalienable .................................................. 76
    2.7.1.2 Interdependent and indivisible ......................................... 76
    2.7.1.3 Equal and non-discriminatory .......................................... 77
    2.7.1.4 Both rights and obligations .............................................. 77
  2.7.2 The Nature of Human Rights ................................................... 78
    2.7.2.1 International human rights law ....................................... 78
    2.7.2.2 The nature of states’ obligations under international human rights law 80
2.8 HUMAN RIGHTS DIMENSIONS OF TERRORISM ............................... 82
  2.8.1 The Impact of Terrorism on Human Rights ................................. 90
  2.8.2 Human Rights and Enforced Disappearance ................................. 91
    2.8.2.1 Definition of enforced disappearance: ............................. 93
    2.8.2.2 Advantages of enforced disappearance: ............................ 93
    2.8.2.3 Human rights violations involved in enforced disappearance 94
    2.8.2.4 Violations of the victim’s rights ....................................... 94
    2.8.2.5 Violations of the rights of the victim’s family: .................... 95
    2.8.2.6 International Response to Enforced Disappearance: ............ 95
2.9 THE MAJOR INTERNATIONAL INSTRUMENTS ON TERRORISM ...... 99
  2.9.1 Convention on Offences and Certain Other Acts Committed on Board
    Aircraft ......................................................................................... 99
  2.9.2 Convention for the Suppression of Unlawful Seizure of Aircraft...... 100
  2.9.3 Convention for the Suppression of Unlawful Acts against the Safety of
    Civil Aviation ............................................................................. 100
  2.9.4 Convention on the Prevention and Punishment of Crimes against
    Internationally Protected Persons Including Diplomat Agents ........ 100
  2.9.5 International Convention against the Taking of Hostages ............. 100
  2.9.6 Convention on the Physical Protection of Nuclear Material .......... 101
  2.9.7 International Convention for the Suppression of Terrorist Bombing ... 101
  2.9.8 International Convention for the Suppression of the Financing of
    Terrorism ..................................................................................... 101
2.10 Role Played By the Principal Organs of the UNO ............................ 102
  2.10.1 Accountability and the Human Rights of Victims ....................... 106
Chapter 3 ........................................................................................................................................109
3. INTERNATIONAL PARAMETERS ON HUMAN RIGHTS VIEW OF
ANTI-TERRORISM .................................................................................................................109-161
3.1 INTRODUCTION .................................................................................................................109
3.2 THE LEAGUE OF NATIONS AND HUMAN RIGHTS .......................................................111
3.3 THE UNITED NATIONS CHARTER AND HUMAN RIGHTS ...........................................112
  3.3.1 United Nations Charter 1945 .........................................................................................117
3.4 IMPORTANT INTERNATIONAL CONVENTIONS ON HUMAN RIGHTS 119
  3.4.1 International Covenants on Human Rights and (First) Optional Protocol ..................120
  3.4.2 International Conference on Human Rights or Tehran Conference (22
April to 13 May, 1968) ........................................................................................................121
  3.4.3 World Conference on Human Rights, Vienna (14 to 25 June, 1993) or
Vienna Conference ..............................................................................................................121
  3.4.4 Convention on the Prevention and Punishment of the Crime of Genocide 122
  3.4.5 Conventions Relating to International Humanitarian Laws of War ......................123
3.5 EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN
RIGHTS (1950) ..........................................................................................................................124
  3.5.1 European Commission of Human Rights ......................................................................124
3.6 EUROPEAN CONVENTION FOR THE PREVENTION OF TROTURE
AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (1987) 125
  3.6.1 European Committee for the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment ......................................................................................126
3.7 AMERICAN CONVENTIN ON HUMAN RIGHTS (1969) ..............................................126
3.8 INTERNATIONAL CONVENTIONS AND CONFERENCES ON
TERRORISM ..................................................................................................................................127
  3.8.1 United Nations Conventions on Terrorism .................................................................127
    3.8.1.1 Convention on the Prevention and Punishment of Crimes against
Internationally Protected Persons Including Diplomatic Agents, adopted by
the General Assembly of the United Nations ......................................................................127
    3.8.1.2 International Convention for the Suppression of Terrorist Bombing,
adopted by the General Assembly of the United Nations. On 15th December
1997 ........................................................................................................................................128
    3.8.1.3 Draft International Convention for the Suppression of Acts of Nuclear
Terrorism, adopted by the General Assembly of the United Nations. On 2nd
October 1998 ..........................................................................................................................128
    3.8.1.4 International Convention for the Suppression of the Financing of
terrorism, adopted by the General Assembly of the United Nations on 9th
December 1999 ......................................................................................................................129
  3.8.2 Non-United Nations Conventions on Terrorism .........................................................130
    3.8.2.1 Convention for the Suppression of Unlawful Seizure of Aircraft,
Signed at The Hague on 16 December 1970 .....................................................................130
    3.8.2.2 Convention for the Suppression of Unlawfully Acts against the Safety
of Civil Aviation, signed at Montréal on 23 September 1971 ...................................130
3.8.2.3 Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988.................................131

3.8.2.4 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 1988.................................132

3.8.3 REGIONAL CONVENTIONS ON TERRORISM .........................133

3.8.3.1 Arab Convention on the Suppression of Terrorism ....................133
Signed at a meeting, Secretariat of the League of Arab States in Cairo on 22 April 1998. Article 1 Each of the following terms shall be understood in the light of the definition given..............................................................133
3.8.3.1.a Terrorism: ............................................................................133
3.8.3.1.b Terrorist offence: .................................................................133

3.8.3.2 Convention of the Organisation of the Islamic conference on Combating International Terrorism, adopted at Ouagadougou on 1st July 1999..............................................................................................................133

3.8.3.3 European Convention on the Suppression of Terrorism, concluded as Strasbourg on 27 January 1977.................................................................135

3.8.3.4 OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C. on 2 February 1971.........................................................................................................................136

3.8.3.5 OAU Convention on the Prevention and Combating of Terrorism, adopted at Algiers on 14 July 1999.................................................................136

3.8.3.6 SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987.................................................................137

3.9 TERRORISM AND OTHER ASPECTS OF INTERNATIONAL LAW ......137

3.9.1 Terrorism and International Humanitarian law................................137

3.9.2 Terrorism and International Law ..................................................141

3.9.3 Human Rights and the UN Charter...............................................144

3.10 COMPARATIVE STUDY OF ANTI-TERRORISM LAWS IN INDIA, UNITED STATES AND UNITED KINGDOM........................................148

3.10.1 Pota and the right to privacy ..........................................................152
3.10.1.1 Right to freedom of speech and association and the anti-terror legislation ...........................................................................................................152

3.10.1.2 Patriot Act and the first amendment ............................................153

3.10.1.3 POTA and the right to free speech .............................................156

3.10.1.4 Lessons from the United Kingdom .............................................158

3.10.2 Anti-Terrorism Law and Human Rights in the United Kingdom ......160

3.10.2.1 Anti-Terrorist Law in the United Kingdom Prior to September 11...161
Chapter 4 .............................................................. 162

4. INDIAN PERSPECTIVE OF HUMAN RIGHTS AND ANTI-TERRORISM LAW .................................................. 162-200
4.1. CONSTITUTIONAL MANDATE OF BASIC RIGHTS ............... 162
4.2 RELATIONSHIP BETWEEN INTERNATIONAL COVENANTS ON HUMAN RIGHTS AND THE INDIAN LAW ..................... 166
4.3 GENERAL LAW ON ANTI-TERRORISM .............................. 167
  4.3.1 The Indian Penal Code, 1860 ...................................... 167
    4.3.1.1 Criminal Conspiracy ....................................... 167
      4.3.1.1.a Conspiracy under the code ............................ 168
    4.3.1.2 Offences against state .................................... 169
      4.3.1.2.a Waging War ............................................. 170
    4.3.1.2.b Conspiracy to wage war against Government ........... 171
    4.3.1.2.c collecting arms to wage war ........................... 171
    4.3.1.2.d Concealing design to wage war against Government ... 172
    4.3.1.2.e Assaulting President, Governor, etc .................... 173
    4.3.1.2.f Sedition ............................................... 173
      4.3.1.2.g Meaning of Sedition .................................. 173
    4.3.1.3 Unlawful Assembly ......................................... 174
  4.3.2 The Criminal Procedure Code, 1973 ............................ 175
    4.3.2.1 Dispersal of unlawful or potentially unlawful assemblies ... 175
      4.3.2.1.a By use of Civil force ................................ 176
      4.3.2.1.b By use of armed forces ............................... 178
  4.3.3 Legal framework for custodial justice .......................... 180
  4.3.4 Judicial guidelines ............................................ 181
4.4 SPECIAL LAW ON TERRORISM ....................................... 184
  4.4.1 PREVENTIVE DETENTION ACT, 1950 ............................ 184
  4.4.2 THE ARMED FORCES SPECIAL POWERS ACT, 1958 ............ 187
  4.4.3 THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 ......... 187
  4.4.4 THE MAINTENANCE OF INTERNAL SECURITY ACT, 1971 ........ 188
  4.4.5 THE TERRORIST AFFECTED AREAS (SPECIAL COURTS) ACT, 1984 189
  4.4.6 THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1985 ................................................ 190
  4.4.7 THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987 ................................................ 190
  4.4.8 THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1993 ................................................ 191
  4.4.9 THE CHEMICALS WEAPONS CONVENTION ACT, 2000 ........... 191
  4.4.10 THE PREVENTION OF TERRORISM ACT, 2002 .................. 192
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4.11 Unlawful Activities (Prevention) Amendment Act, 2004</td>
<td>192</td>
</tr>
<tr>
<td>4.4.12 UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2008</td>
<td>193</td>
</tr>
<tr>
<td>4.4.13 THE NATIONAL INVESTIGATION AGENCY ACT, 2008</td>
<td>193</td>
</tr>
<tr>
<td>4.5 PERSONAL LIBERTY AND PREVENTIVE DETENTION IN INDIA, UNITED STATES</td>
<td>193</td>
</tr>
<tr>
<td>4.6 PREVENTIVE DETENTION LAWS IN INDIA</td>
<td>194</td>
</tr>
<tr>
<td>4.7 UNITED KINGDOM</td>
<td>198</td>
</tr>
<tr>
<td>4.7.1 British Approaches to Counterterrorism</td>
<td>198</td>
</tr>
<tr>
<td>4.7.1.1 Pre-charge detention</td>
<td>198</td>
</tr>
<tr>
<td>5. A CRITICAL STUDY ON IMPLEMENTATION OF ANTI-TERRORISM LAWS AND ROLE</td>
<td>201-274</td>
</tr>
<tr>
<td>OF JUDICIARY IN INDIA</td>
<td></td>
</tr>
<tr>
<td>5.1 TERRORISM AND HUMAN RIGHTS</td>
<td>201</td>
</tr>
<tr>
<td>5.1.1 State Violations</td>
<td>202</td>
</tr>
<tr>
<td>5.1.2 The Constitution of India and Terrorism</td>
<td>204</td>
</tr>
<tr>
<td>5.2 VARIOUS REPORTS ON IMPLEMENTATION OF DRACONIAN LAWS VIS-À-VIS VIOL</td>
<td>205</td>
</tr>
<tr>
<td>ATION OF HUMAN RIGHTS</td>
<td></td>
</tr>
<tr>
<td>5.2.1 Law Commission 173rd Report</td>
<td>205</td>
</tr>
<tr>
<td>5.2.2 Amnesty International Reports on India</td>
<td>207</td>
</tr>
<tr>
<td>5.2.3 Reports of People’s Union for Civil Liberties</td>
<td>216</td>
</tr>
<tr>
<td>5.2.4 Reports of People’s Union for Democratic Rights</td>
<td>218</td>
</tr>
<tr>
<td>5.2.5 Reports of Citizens for Democracy</td>
<td>220</td>
</tr>
<tr>
<td>5.3 NATIONAL LEGISLATIVE POLICY RELATING TO TERRORISM</td>
<td>222</td>
</tr>
<tr>
<td>5.3.1 The Armed Forces Special Powers Act, 1958</td>
<td>222</td>
</tr>
<tr>
<td>5.3.1.1 Concerns regarding the human rights implications of granting</td>
<td>225</td>
</tr>
<tr>
<td>the armed forces powers under the UAPA</td>
<td></td>
</tr>
<tr>
<td>5.3.2 Prevention of Terrorism Ordinance</td>
<td>227</td>
</tr>
<tr>
<td>5.4 INDIA’S ANTI-TERRORISM LAWS AND ROLE OF JUDICIARY</td>
<td>228</td>
</tr>
<tr>
<td>5.4.1 Judicial response in matters of terrorism</td>
<td>232</td>
</tr>
<tr>
<td>5.4.1.1 Impact of POTA</td>
<td>237</td>
</tr>
<tr>
<td>5.4.1.2 AFSPA ruled in North-East</td>
<td>240</td>
</tr>
<tr>
<td>5.4.1.3 Khalistanis Movement in Punjab</td>
<td>242</td>
</tr>
<tr>
<td>5.4.1.3.a Operation Blue Star and Assassination of Prime Minister Indira Gandhi</td>
<td>244</td>
</tr>
<tr>
<td>5.4.1.5 LTTE and assassination of Rajiv Gandhi</td>
<td>248</td>
</tr>
<tr>
<td>5.4.1.6 Insurgency in Kashmir</td>
<td>251</td>
</tr>
<tr>
<td>5.4.1.6.a The Role of Pakistan</td>
<td>251</td>
</tr>
<tr>
<td>5.4.1.6 b Human rights violations by militants</td>
<td>253</td>
</tr>
<tr>
<td>5.4.1.7 Consequences of 26/11 attack</td>
<td>255</td>
</tr>
<tr>
<td>5.4.1.7.a Release of Lakhvi</td>
<td>256</td>
</tr>
</tbody>
</table>
5.5 NECESSITY OF A NATIONAL INVESTIGATION AGENCY ACT 2008 ..258

5.5.1 Important provisions under the Act ........................................260
  5.5.1.1 Constitution of National Investigation Agency ........................260
  5.5.1.2 Superintendence of National Investigation Agency ..............261
  5.5.1.3 Investigation of National Investigation Agency ......................261
  5.5.1.3.a Investigation of Scheduled Offences..................................261
  5.5.1.4 Power to transfer investigation to State Government ............263
  5.5.1.5 Special Courts .....................................................................263
  5.5.1.6 Procedure and powers of Special Courts ...............................264

5.5.2 Issues Raised by the Creation of the National Investigation Agency ..266

5.5.3 Constitutional Validity of the NIA ...........................................267

5.5.4 Functioning of the NIA ............................................................270
  5.5.4.1 Powers focus only on investigation, not prevention ..............270
  5.5.4.2 Failure to define “superintendence” .....................................271
  5.5.4.3 Delay is institutionalized ....................................................272
  5.5.4.4 Scope of the NIA ...............................................................273

Chapter 6 ...........................................................................................275

6. CONCLUSION AND SUGGESTIONS ...........................................275-288

6.1 INTRODUCTION ...........................................................................275

6.2 Failure of Anti-terrorism Laws to Tackle with the Terrorism .........275
  6.3 Repeal of Draconian Laws ..........................................................277

6.4 SUGGESTIONS .............................................................................281
  6.4.1 Condemn Terrorism .................................................................282
  6.4.2 Childhood care shall be taken ..................................................282
  6.4.3 The Law shall be Stringent .........................................................282
  6.4.4 The Implementation Mechanism shall be strengthened Instead of Normal Police Agency ..........................................................283
  6.4.5 The Judiciary shall be Stringent ..................................................283
  6.4.6 Strong Legislative Policy and Effective Implementation ...........283
  6.4.7 Separate Procedure for Terrorism in Substantive Law is necessary ...284
  6.4.8 Special Force ...........................................................................284
  6.4.9 Need of Police Reforms ..............................................................285
  6.4.10 Provide Adequate Safeguards for Detainees ..............................285
  6.4.11 Strengthen and Support the National Human Rights Commission and Other Statutory Bodies .........................................286
  6.4.12 Establishment of Mohalla Committees ......................................286
  6.4.13 To Cut off the support ...............................................................286
  6.4.14 Responsible Media and Role of NGO’s ......................................287
  6.4.15 Provide Human Rights Training and Education to Security Forces ....287
  6.4.16 Strengthen the Security in the Educational Institutions ............288