CHAPTER - VII

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The International obligation coupled with the national responsibility of the state towards protection of human rights arises out of the charter of the United Nations 1945. State as the sole subject of the international law has been changed and individual emerged as the complementary subject of international law by shifting its classical role as the object of international law. The United Nations High Commissioner for Human Rights has stated in its report that the primary responsibility for promotion and protection of human rights lies with the national governments compounded with the international community’s commitment to foster the implementation of human rights and prevent the gross violation and abuses of it. The emerging concept of the indigenous people and the development of international criminal law jurisprudence has enlightened the position of the individuals under the international law. The state parties to the international multilateral treaties of human rights have the obligation to comply with the mandate of the treaties. The enactment of the domestic law in consistent with the international standard is of paramount importance for the effective promotion and protection of human rights.

The government of India has either signed or ratified more than fifty international human rights treaties so far and obliged to submit its periodical reports to the U.N. Human rights committee establishing its own accountability toward preservation of human right. The treaty is not self executing in India. The parliament of India is the competent constitutional authority to legislate laws so as to ensure the implementation of the international treaties in the domestic legislation. The government of India is under constitutional obligation to assimilate the international standard and norms of human rights into national legislations.

The object of every legislation is to serve the maximum happiness of the people. The law shall be an expression of the will of community. Every ideal state requires just and fair law to render justice to all. The state is to protect the lives of
people. The part III and IV of the constitution are the conscience of the constitution of India pertaining to the promotion and protection of human rights and fundamental freedoms. Security legislations are very much essential for preserving integrity of any nation and protection of the individual life. Article 21 says: "No person shall be deprived of his right and liberty except according to procedure established by law."

The procedure of law should be reasonable, fair and just. India has reached from the era of judicial interpretation, "procedure established by law" to 'due process law" where enough care has been taken to dignify the human life.

The security law should not overstep the article 14 and 21 of the constitution. The fundamental rights are available against the state. No organ of the state can act in contravention to such rights as it is a part of the basic structures of the constitution. Fundamental rights are subject to the reasonable restrictions as they are not absolute. The reasonable limitation may be imposed by the state in the interest of common good and welfare of people. These right are the principles of governmental and social conduct which are deemed to be appropriate for judicial review.

The Constitution contains provisions for the prevention detention laws. The central as well as the state governments may enact the preventive detention laws in their respective jurisdictions. The preventive detention law is different form the general criminal legislation both in respect of their purposes and jurisdiction. The preventive detention law is not to punish an individual for committing an act that he has done but to intercept and prevent him from committing an offence. The preventive detention Act 1950 was enacted by the parliament of India with an object to prevent any person from acting in a manner prejudicial to the defence of India, the security of India or a state and also for the maintenance of supplies and service of essential commodities to the community.

Terrorism is one of the dreadful phenomena turned into a real threat to mankind. In the unprecedented move in the history of United Nations, 168 member states to participate of a single agenda international terrorism on 1st October, 2001 demonstrating the seriousness of the problem. On 28 September 2001 the security council adopted resolution 1373 under chapter VII of the United Nations charter obligating the states to implement more effective counter terrorism
measures at the national level and to increase cooperation among an international community to fight against terrorism. The resolution created Counter-Terrorism Committee (CTC) to monitor action on this issue and to receive reports from states on measures taken. The secretary general, Kofi Annan stated at a special meeting of the security council's counter-terrorism committee with International, regional and sub regional organisations on 6th March, 2003.

Our responses to terrorism as well as our efforts to thwart it and prevent it should uphold the human rights that terrorists aim to destroy, respect for human right, fundamental freedoms and the rule of law are essential tools in the efforts to combat terrorism, not privileges to be sacrificed at a time of tension.

"The best the only strategy to isolate and defeat terrorism is by respecting human rights fostering social justice, enhancing democracy, and upholding the primacy of the rule of law" as stated by Mr. Viera de mello, speaking to the counter terrorism committee in October 2002.

In resolution 1456 (2003), the security council declared that 'States must ensure that any measure taken to combat terrorism comply with and should adopt such measures in accordance with international law, in particular international human right refugee and humanitarian law'. Human right law has sought to strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms.

Threats to national security under specific conditions lead to a state of emergency where certain rights are subject to derogation. Office of the High Commissioner for Human Rights action on the issue of human rights and terrorism in guided in part by General Assembly and Commission on Human Rights in protection of human rights and fundamental freedoms while countering terrorism. These resolutions call on the High Commissioner's office to

(a) to make perusal on the question of human rights and fundamental freedoms while countering terrorism taking into account reliable information from all sources.

(b) make general recommendations concerning the obligation of states to promote and protect human rights while taking actions to counter-terrorism.
(c) Provide assistance and advice for protection of human rights while countering terrorism.

Justice Krishna Iyer admitting the dangerous potentiality has warned that in the semblance of anti-terrorist enactment, everything precious in our constitutionally sanctified criminal justice could not be subverted.

National Human Rights Commission’s Guidelines Regarding Arrest.²

Arrest involves restriction or temporary suspension of liberty of a person arrested and therefore infringes the basic human rights of liberty. The international human rights law, national criminal laws as well as constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible. Article 22 (1) of the constitution provides that every person placed under arrest shall be informed as soon as may be the ground of arrest and shall not be denied the right to consult and defend himself by a lawyer of his choice and section 50 of the code of criminal procedure, 1973, require police officer arresting any person to forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. In order to maintain human rights of the people and prevent the misuse of the police power at the time of arrest, and to narrowing the gap between law and practice, the prescribed guides of arrest given by supreme court should be followed. At the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and the proper investigation.

The supreme Court in Joginder kumar’s pronouncement clarifies the question under section 54 of Cr. P.C. whether the power of arrest has been exercised reasonably or not.

The use of shackles or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgement of the supreme court in P.S. shukla V. Delhi. Administration and Citizen for Democracy V. State of Assam. challenges to TADA was also taken up in shaheen welfare Association V Union of India, the supreme court observed that ... when stringent provisions have been prescribed under an Act such as TADA for grant of bail and a conscious decision has been taken by
the legislature to sacrifice to some extent the personal liberty of an under trial accused for the sake of protecting the community and the nation against terrorists and disruptive activities or other activities harmful to society. It is also necessary that investigation of such crimes is done efficiently and adequate number of designated courts are setup to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.

Constitutional validity of prevention of Terrorism Act 2002 was challenged in people's Union for Civil liberties V union of India, supreme Court observed that terrorism affects the security and sovereignty of the nations and it should not be equated with the law and order or public order problem which is confined to state alone. Court felt the need of collective global action and therefore upheld the competency of the parliament to enact and enforce this Act.

**Rights of Terror Victims under the Indian Judicial system.**

Modern victimologist believe that in India more emphasis is given to a person who is accused of crime and proving his guilty and this is unfair on the part of the victims who are the real sufferer of loss of life and property. The General Assembly of the United Nations adopted the Declaration of Basic Principles of Justice for victims of crime and abuse of power, on November 29, 1985. This Declaration constituted to recognise the need to set norms and minimum standards in international law for the protection of victims of crimes. The United Nations Declaration recognise four major components of rights of victim. Those are access to justice and fair treatment, restitution, compensation and assistance. The victim of crime sets the criminal justice mechanism in motion by giving information to the police which is expected to reduce it to writing. Where the officer in charge of a police station refuses to act upon such information, the victim can write to the superintendent of police who is then expected to direct investigation into a complete. Failing to these provisions victim can give a complaint to a magistrate, who examine the victim on oath, can enquire into the case and direct the investigation by the police before taking cognizance. The victim does not participate in the investigation except by being called to confirm the identity of the accused or material objects if any thing recovered during investigation. The right of the victim of crime to receive compensation could be
granted even where the accused is not sentenced to fine.

In the absence of an efficient legal regime for compensation the courts in their constitutional law jurisdiction had to generate new tools to give effect to the right of victims of crime to be compensated. The constitutional right of a victim of custodial crime to receive compensation was reiterated by the Supreme Court in Nilabati Behera v. State of Orissa. AIR 1993 Sc 1960.

Delhi High Court in Kamala Devi v. Government of NTC Delhi w.p.(c) 173/1997 Judgement delivered on 10.09.2004 awarded Rs. 50,000/- compensation for death in bomb blast in Delhi, through the SDM's office. Delhi High Court has ruled that the state should provide compensation to victims of crime including riots and terrorist attacks even in 'no-fault' situation. He further said: “The state has failed to live up to its guarantee that no person shall be deprived of his life except according to procedure established by law. The state failed to prevent the terrorist from harming innocent citizens like the victim in this case. Terrorism itself is indica of the inability of the state to curb resentment and to quell fissiparous activities. Social malaise in itself is reflection of the state's inefficiently in dealing with the situation in a proper manner”. The Government of India Constituting the committee on Reforms of criminal Justice system chaired by Justice V.S Malimath, popularly known as “Malimath committee” sincere in its expression that, “people by and large have lost confidence in the criminal justice system and victims feel ignored and are crying for attention and justice”. He also recommended that, the system must focus on justice to victims. Government of India in the Code of Criminal Procedure (Amendment) Act 2008 passed on 18th December 2008 has defined victims and has provided that the state Government in coordination with the central government shall prepare victim compensation scheme. When the court recommends compensation the District Legal Service Authority is empowered to decide the quantum of compensation. In those cases after trial has been completed and the court is not satisfied with quantum of compensation awarded shall make recommendation for compensation. In those cases the wrongdoer could not be identified and trial could not take place victim or heirs of victims can directly approach the State or District legal Services Authority for compensation. On receipt of such application and after inquiry adequate compensation is to be awarded within two month.

Article 32, 136 and 142 of the constitution has provision for compensation
for victims.

In Hair Kishan and state of Harayan V Sukhbir Singh, the Hon’ble supreme court stated 4

Section 357 (Cr. P.C.) is an important provision but court have seldom invoked it, perhaps due to the ignorance of the object of it. It empowers courts to award compensation to victims, while passing judgement of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. This power was intended to do something to re-assure the victim that he or she is not foregotten in the criminal justice system. We therefore recommend all courts to exercise that power liberally so as to meet the ends of justice in a better way. The rule of law should be allowed to prevail and the grief of innocent victims of the society must be redressed. India being a social welfare state should compensate the victims of the crime who was poor and helpless to protect the dignity of their lives.

The efforts of one nation to eradicate a terrorist threat or terrorism may prove to be insufficient because of limited strength of that particular country. In present time most of the terrorist threats are international or global in nature. Now-a-days the base and the links, involvement of terrorists extend to different countries. One nation’s criminal law can not be enforced or not helpful to nab terrorist in another country. Collective efforts & co-operation is required in the international plane. Irrespective of political structure governments may have to share the common bond of being legitimise governing entities. The practical possibilities for cooperation are limited. One man’s brutal violence is another man’s liberation heroic action. The seizure of an aircraft is an act of piracy or a fight of freedom, depending on one’s political perspective.5

Avoiding the definitional issue active attempts to achieve agreement or consensus on practical approaches to terrorist threats should be made by as many as potentially interested parties. In stead of searching for a common definitions cooperating states should focus on controlling specific act already considered criminal under domestic law as well as under international law. States should come forward to fight this menace of terrorism on generally accepted principles such as protecting innocent third parties and not accepting threats of mass national disruption and not allowing to break the fabric of International world
Terrorism is more than a persistent threat to the world community and to specific state's national interest. It is a moral challenge to the legitimate political and social life. To combat it requires a consistent sober and sometimes forceful response by all nations which should observe a policy of "no concessions to terrorism". A wide range of counter measures are available and all deserve appropriate to use. All those include the legal punishments by international law and multilateral treaty, economic sanctions and political sanctions sometimes military strikes become inevitable in unusual cases where it make sense as self defence of the country against further aggression. This include aggressive activity against known individuals for extradition and prosecution, also covert action to preempt and disrupt terror group activities.

All these operations depends upon expensive and laborious intelligence work. Counter terrorism is infused by political will and shaped by Political leadership.

International terrorism are inherently and always require a response at the highest level of state ranging from international arbitration to military retaliation. Many terror acts are never claimed by the true sponsor. Acting in ambiguity is a leading feature of terrorism, part of the intent is to make retaliation difficult, often the strategy works.

Political will, new laws directions in international politics is the most important component of an enhance effort against foreign-supported terrorism. The problems of terrorism reveals in many ways. Government as well as the corporations frequently make decisions about whether to give in to extortion and kidnappers or to resist.

It is very difficult to resist, but to do otherwise is to invite further terrorism. Many sovereign states are struggling with border crossing terrorist groups and very often destroy the spirits of friendly competition and self protection about "Sources and methods" of intelligence. There is no designated centerpiece of international intelligence collection on terrorists, except the International criminal police organisation based in Lyon in France. INTERPOL’s main divisions do not include one focused on terrorism, as there is focus on organised crime. INTERPOL has not always gratified victimized governments by the swift provision of key intelligence on a transnational attack. By its character the organization
has no enforcement powers. It merely issues warrant which others may or may not use. The European state more reliant on the EUROPOL based at the Hague operating since February 1994 to overcome barriers to intelligence exchange.7

Pre-emption is another category of covert action. It is difficult on the part of many countries to follow this type of action. This has a basis in US law and some recognition in US polity. Under the Reagan and Bush administration there came to be formally approved a principle of self-defensive action used by the state for pre-emption of terrorist acts. One has to heavily depend upon human intelligence. This route is with great potential. Premption is commended by common understanding of a person.

Effective counter terrorism action depends critically on intelligence sharing, timely warning in order to prepare, terrorists attack and movements and other information sharing arrangements are of great importance. The intelligence sharing for data on terrorists, mode of operation, identification and prosecution agreements relating to extradition to strike a delicate balance between encouraging nations to cooperate and actively resist terrorist attacks.

Another preventing method is an arms control initiative that can be taken one which is specifically aimed at countering terrorism "The manufacturing, selling and proliferating the sophisticated missiles antitank weapons and other lethal weapons of mass destructions should be strictly controlled. In this case multilateral agreements would be better." 8

It should be apparent after several decades of dealing terrorism, that when a foreign group is the cause of a long train of abuses of innocent parties, that pattern of aggression merits and need a strong response. The strong response may indeed require a covert action that strikes at the cohesion membership, political credibility or operational capacity of terrorist group.

Military approach to Solve International Terrorism is a failure9

Stephen Zunes of University of sanfransisco says "US is trying to find out Unilateral military solution rather than political solution to terrorism. Terrorism is more rooted in political problems." Cross boarder terrorism kills hundreds is violation of human rights and can not be checked by military or political solution.

Following examples show how military approach fails to eradicate international terrorism.

1) 1986 – US bombed two libyan cities in retaliation of suspected libyan
involvement in a terrorist attack against a Berlin discotheque killing two Americans and 60 civilians

2) April 1993 – US. bombed Baghdad neighbourhood because there was U.S. allegation that senior Bush, former president was attempted to be assassinated.

3) April 1998 – U.S. bombed Sudan's pharmaceutical plant because it claimed that it was producing chemical weapons and was controlled by terrorist. President Clinton refused independent U.N. investigation.

Libyan agents were alleged by U.S. to have blown Pan Am 103 over Scotland due to which Libyans, Iraqis, Palestinians became hostile.

2001 : US. after September 9/11 attacked Afganistan without prior authorization by U.N. Osama Bin Laden was not captured. Al Qaeda was not uprooted. Later on captured in Pakistan and killed.

2003 : US. under the name of war against terrorism and for the protection of human rights of people in Iraq attacked Iraq under the name of wiping out Sadam's regime but ended by capturing oil fields. Saddam was not captured but subsequently came to end due to coercive diplomacy and enemies of his own country danced at the direction of US. Same US is telling India not to attack terrorist training camps in Pakistan beyond the line of control or in Pakistan. Pakistan is not extraditing terrorists wanted by India.

Neither US itself has not become a member of International Criminal Court, not put pressure on Pakistan, the hub of international terrorists to become a member of International Criminal Court which will be creating deterrent in the minds of terrorists. Instead US congress has made a resolution that a country which will become a member of International criminal court shall not be given any aid. Rather US will apply economic sanctions against that country.

Political approach has also failed

Political approach means approach of eradication of international terrorism by reference to negotiation, mediation, conciliation under article 33 of UN charter. International criminal court has been established by UN vide Rome statute 1998. We admit that merely by making the Jurisdiction of International criminal court compulsory and binding to all terrorist organisations like Al Qaeda, a Huriyat conference or Laskar-Toiba or Hamas is not enough. These organisations are not going to leave their job of terrorists attacks on their objectives. Still new recruits
in terrorist organisations might become a bit afraid to join. At present all terrorists organizations are protected and financially supported by some state or other. Terrorism is always mostly state supported. Since UN was born, war as an instrument of national policy has been banned. Under article 51 of the UN charter state can start defensive war but not offensive war. Even defensive war cannot be for indefinite time. It can be continued till security council decides as to who is an aggressor. We have observed in many case UN security council does not hold meeting and the attacker continues its attack with the result as it has happened in the Iraq case. Security council received a "fate accompli" and had to approve attack of US on Iraq as "Legal."

Restoring democracy in Iraq will not give hands feet or family happiness to those deft and dumb who are victims of bombing due to US aggression. victims are deprived of their right to life. Right to life always means right to live happily.

War or the means of peaceful settlement of disputes in negotiation, mediation, conciliation hardly succeed in stopping International terrorism. Whenever we find and analyse that Negotiation or Mediation under article 33 of UN charter has succeeded, the supporting state and the sufferer state were under pressure to negotiate by third superpower who mediates, as in the case of Tashkant agreement or negotiations succeed only after long drawn violence as is seen in the case of LTTE. The inference may be taken as the political approach has failed to put down international terrorism.

Legal approach to International terrorism is foreciable and acceptable free from more colateral damages. Today there are two camps in the world on the issue of terrorism. Fernecz school of thought has taken the approach that USA must become the member of International criminal court established by UN under Rome statute, and the jurisdiction of the fact finding commission established by UNO must be made binding and compulsory over all states and UN must take lead in getting thing done.

There is another school of thought of Stephen Zunes of University of Sanfransisco who argues that when military approach to International terrorism failed to prevent and contain international terrorism, USA should not take unilateral action. U.S. must take the cooperation from all nations and agencies in her fight against terrorism.

The policy of encirclement of USSR and digging firm feet in Middle east
or to become a watchdog on south east Asiatic politics USA desire to become a checkmate USSR India-China's power is no more a reality. The reason is asiatic power has risen and gaining momentum of development and experiencing global diplomacy.

In this circumstances the best approach towards international terrorism would be to try legal approach. Since state terrorism creates violations of human rights, perpetrators of crimes against human rights can be punished by international criminal court. Unless Judicial approach is exhausted military approach should not be resorted to.

Due to lack of rationalism and balanced attitude of few politicians outwardly show lip service to international law but inwardly follow militarist policies to become most powerful persons in their own country as well as in the world. National/State politicians would psychologically change there stands and accept the position that compulsory jurisdiction of International criminal court is not antithetical to doctrine of sovereignty or diplomatic immunity. This is because of fundamental human right to happy life of 99% innocent citizen's who are not concerned with politics is more important than 1% politicians who decides all questions according to their "Power and prestige."

Contravention of fundamental rights and providing legal safeguards by the anti-terrorism law is another area which is required a good monitoring work. It is important to note that the existing legal and judicial system is already equipped to a deal with all the offences referred to the terrorist act. The problem then seems to be lack of implementation, not a lack of laws. Amnesty International believes that recourse to a law which explicitly dispenses with Constitutionaly secured fundamental rights will not in the long term secure the rule of law. Reforming the Police, strengthening the strict implementation of the existing law are to restore respect for the rule of law and secure fundamental rights for all citizen of the world.

The vicious circle of terrorism can be broken by comprehensive strategy combined with enforcement of rule of law. With imaginative political initiatives and dedicated economical development free from corruption. The judicial officers took the easy way out not issuing injunctions against the terrorists, show apathy to public complaints. The consequences of this short-sighted policy
have been grave. This could be avoided by strict undaunted principle and commitment to every member of the society.\textsuperscript{10}

More human rights violations take place when the counter terrorism strategy is dominated by the army or the paramilitary forces. Terrorism no doubts thrives when the government is weak and floundering. The government should refrain from making under, political and economic concessions in dealing terrorism. Giving in to unjustified demands only encourages more demands. As long as the terrorists remain in command of the situation they were not interested in finding a political solution. When they are under pressure and retreat that they expressed their willingness to discuss their demands. Otherwise they find way to abort the negotiations by making impossible demands.

Foreign sponsored terrorism can not take much headway if the internal environment in the country does not support it. A thriving economy which gives hope to people is more likely to defeat all types of extremist movement than any other strategy. Violent extremist movements grow more rapidly under conditions of poverty and misrule. Rampant corruption and nepotism have provided breeding ground for the growth of terrorist movements in India.

All the different security concerned institutions have their expertised skill and knowledge with separate domain and have their respective independent experience. A composite force, the police, paramilitary, army organised along the line of NSG has proved to be most effective in dealing with terrorism. Indian policy makers have no option but to confront this menace squarely. Appeasement with terrorist only increases the terrorists appetite for more blood.

India's experience in tackling terrorism is mixed India succeeded in Punjab and Mizoram and failed in Jammu Kashmir and in north East India. India as a state willing to do more with the international Community to control terrorism. It has signed a number of bilateral agreement with many countries and building confidence among the countries in the United Nations. India neither give shelter to the terrorist nor do expect the same from the neighbours.

In resolution 1373 the security Council of the United Nations has adopted wide-ranging measures to combat terrorist acts. The Council has called on
states to take steps to suppress the financing of such acts, to refrain from supporting them, to ensure that those participating in them are brought to justice and take special measures in respect of asylum seekers. The resolution was adopted under chapter VII of the United Nations Charter and is therefore binding on all UN member states.

Amnesty International has specifically reaffirmed that threats to international peace and security caused by "terrorist act" have to be combated by means that must meet UN charter obligations. The security Council has also reaffirmed that action against terrorist must be done within the framework of the UN Charter which requires respect for and observance of human rights without any distinction with the International standards.¹¹

The resolution requires states to ensure that "terrorist act" are established as serious criminal offence in domestic laws and that the punishment must be given duly reflecting the seriousness of the act except death sentences to which Amnesty International opposes.

The country criminal justice system needs to have the requisite deterrent effect to tackle the menace. The weakness of the Indian system as identified by well known expert on terrorism Paul Wilkison that democracies can not afford any dilution of rule of law and a professional approach is required to the criminal justice system. He rightly observed that "Indian needs an effective and pro-active criminal justice system supplemented by an elaborated intelligence network. The primary function of criminal justice system is to administer criminal justice with a view to prevent and control crime in society and to reform the errand individuals. The modern criminal justice system has come to consists of four main wings or components: the law givers, the law Enforcers, the Adjudicators of guilt and the correctional administration. All these wings must work with an objective to provide adequate safeguards to ensure that the Human Rights of the accused and victims are protected".¹²

For the eradication of terrorism in its own soil India can visualise the strength that it can derive from the brotherhood and more tolerant attitude among the majority and minority groups instead of wasting and weaken them being driven with communal forces and feelings. Over ninety five percent of Muslims in the Indian peninsula are the progeny of Hindu forefathers. The Muslim invaders did not bring women with them and the practice common
to all levels of marrying Hindus introduced Hindu society practices into Muslim families. Indian Muslims ethically and culturally are not different from the Hindus. Through conversion and inter-marriage, other social elements were constantly added through the centuries to form mixed culture of today in an inseparable state. Both Muslims and Hindus must realize their historical deep rooted relationship and should not be bias and mistrust towards each other. They should forget enmity and embrace each other to fight against common menace of terrorism as they did in the time of independence of their motherland with concerted efforts. To combat terrorism in the largest democratic country like India the useful that we can do that to keep democratic systems in good political and economic repair. We should try to respond positively to the changing needs and demands of the people. This requires balanced and effective structures of representative democracy at both local and national level. The ultimate control must be by the hands of elected bodies over bureaucracy, armed forces, security services ensuring full accountability.13

An independent judiciary is a pre requisite for the maintenance of the rule law, The "Constitutionality" is a vital ally of the elected government and legislature in ensuring democratic control and accountability. In a terrorist situation it is essential that the authorities and security forces act entirely within the law. Extra legal action will only tend to undermine democratic legitimacy and destroy public confidence. Any violation of legality will be exploited by the terrorists to show the hypocrisy of the government as well as of the security forces. Thereby to persuade the people that the government is not worth supporting.

Operating outside the strict rule of law is morally wrong and counter-productive. Observing these legal constraints the democratic government must make the people understand that the terrorists were punished not because of their professed political beliefs but because of their serious criminal offence that they have committed. It is also equally important for democratic government to strive for a sound and healthy economy by adopting right policies to deal with particularly the run away inflation and high unemployment. In a climate of massive recession and industrial collapse it is inevitable that the fear and frustration generated among the working population will give rise to militant and violent confrontations.
Any kinds of over reactions with this menace of terrorism may have adverse economic and political survival. In certain cases, emergency or special power normally not only be unjustified and unnecessary, they would be counter productive.

The cross borderer terrorism is more concerning area to curb international terrorism. In order to punish those terrorists who slips away from the victim country extradition is necessary. Extradition is a highly complex and unpredictable process. Many states do not have extradition agreement and exclude extradition of terrorists on the banner of “Political offence” which is frequently liberally construed.

A proposal for compulsory extradition treaty among the UN members would be very useful to check the growth of terrorism. The terrorists are quick in crossing the frontiers in search of a shelter in another country, as they can not be sent back unless the nations concerned have extradition treaty with each other.

Till date extradition comes under the sphere of bilateral negotiations. So far, no international efforts has not been made on the issue. The terrorist exploit this situation as they find comfortable to escape to the countries which do not have extradition compulsory among the member nations. This is possible if a more positive attitude shown by the members states with the patronisation of United Nation. Most of the member states will agree, because of the reason that the basic aim of extradition is the prevention of the crime like international terrorism. Compulsory extradition would prevent the activities of terrorist as it would create a constant fear in the minds of the terrorits of being caught and punished. “Extradite or punish” principle should be the mainstay of international relation among the member countries in response to terrorism.14

The terrorist must either be punished by the state of refuge or surrendered to the state which can or will punish him. For speedy trial it is always easier to bring the criminal back to home country than to carry all the evidence to a foreign country where the law of evidence as well as other procedural law may be different. With changing international equations extradition treaties having a wide spread tendency towards creating legally enforceable obligations among the different countries.
The main obstacle for signing the extradition treaty is the liberal interpretation to the word "Political offence". There is no other aspect of extradition law which has undergone such a metamorphosis as the principle and practice regarding political offenders. Among the west European countries French Revolutuion was the starting point to revolt against despotism in nineteenth century. The term political crime or political offence arose or coined at that span of time and countries began to grant asylum to foreigners exciled from their home country for the cause liberty. With the emergence of democratic government in most parts of the world who keeps some soft provisions to extradite the political offenders. Time has changed. Modern international terrorism in different scale and intensity ravaging the people of the world.

In a measure of international recognition, India being a member of commonwealth with simple extradition provision is required to put further pressure through organisations like NAM and SAARC to evolve uniform practice of extradition through compulsory multilateral comprehensive treaties.

In case of state of karnataka V. B. Padmanabha Beliya Court took the view that if the death were caused without justification due to unlawful firing of the police, the state would be responsible for such consequences including payment of compensation to the victims. The court in Ram adhar Yadav V. R. Misra held if a complaint is made against any officer alleging that while acting or purporting to act u/s 129 committed the offence complained of the court will not entertain the complaint unless it appears that the state Government had sanctioned the prosecution of the officer concerned. Similarly in case of Nagaraj V. State of Mysore, if the complaint does not indicate such facts then the question of sanction will not arise and the court can not refuse to entertain complaint.

In Dulus V. Turkey it has been established that the destruction of homes and property carried out during an anti terrorist operation in a brutal manner and leading to a suffering of a sufficient intensity can be interpreted as inhuman and can engage state responsibility. The Inter-American Court of Human Rights has declared that during questioning any psychological and moral suffering accompanied by psychic disturbance deemed to be inhuman treatment deciding Loayyo Tamayo case. The human right savior supreme court has protected the prisoners from all types of torture by adjudging in D.K. Basu V. State of West Bengal that
the right to interrogate the detenues, culprits or arrestees in the interest of the
nations must take precedence over an individual right to personal liberty.

The European court of Human Rights in case of Ocalan v. Jurkey observed
that the state must ensure that a person in detained in conditions which are com-
patible with respect for his human dignity. The Apex court of Turkey in respect of
the terrorism in case of Kurl v Turkey observed that very strong interference might
be drawn from the Government’s claim and the courts considered that it had suf-
ficient evidence to conclude beyond reasonable doubt that the suspected terror-
ists had died following their detention and apprehension by security forces.\textsuperscript{15}
1. C. Harman - *Counter Terrorism and Law* - pp 235, 267
3. Ibid p- 156
4. Dr. Peswae - *International law and Terrorism* p- 4
5. ibid- pp-8,9.
12. Supra note 8, p-15.