ABSTRACT

Terrorism is the most frequently discussed theme of national and international concern of the twenty first century having global implications posing a challenge to the civilized life all over the world. The monster of terrorism effects every aspect of human life irrespective of diversity among the individuals and plurality in groups of individuals. To enumerate all the root causes of emergence of terrorism in the various parts of the world is a herculean task. It is also equally difficult to implement the international norms and standard to combat international terrorism so as to protect and preserve the human rights for the peoples of the world.

The international conventions, instruments, treaties and principles of international law in their comprehensive form, scope and Jurisdiction provide international enforcement machineries as an obligatory duty on the part of the individual sovereign country to undertake voluntarily to prevent and contain international terrorism. Showing respect for universal brotherhood and respect for their motherlands, and peaceful co-existence is the need of the time that we are passing through. The ambition of the greatest man of our generation the father of the nation, Mahatma Gandhi has been to wipe every tear from every eye. There is urgent need for the international community that to work concertedly to achieve the goal to stop human suffering is warranted by the impending danger perpetrated by international terrorism.

The Government of India has the national obligations coupled with the international obligations, in compliance to which the parliament enacted different antiterror laws in its domestic domain and signed almost all international treaties against international terrorism. The regional conventions on terrorism and human right adopted at different regional levels of the continents have also reaffirmed the minor regional modifications as per their
need and demand. The International obligations under the Charter of the United Nations, different international conventions relating to prevention of terrorism, binding of international organisations code of conduct like resolutions and declarations are important instruments that are available today.

It has been found during the course of investigation that the Government of India has enacted adequate antiterror legislations with a watch on human rights and equal emphasis on security of the nation. Sometimes, the antiterror laws cross the boundary of security and encroach upon demacrated boundary to attack on the civil rights or the human rights of the people. The security personnells misuse the powers given to them to protect the life of the people in doing antihuman right activities. All the acts in general must be applied with the object for which that has been enacted with all its positive values. The evil part if at all present must be interpreted and utilized for the betterment of all of the people outrightly rejecting that evil.

That national and international human right instruments must be compatible with the security legislations of the domestic and international forum.

The National Human Rights Commission believes that systemic reform of the police administration is needed to prevent human rights violations by the forces, through awareness and instructions.

It is indeed unfortunate that the draft comprehensive convention on International Terrorism of the United Nations – a key antiterrorism project initiated by India faced roadblocked even after the incidents of terrorist attacks on the United States on September 11, 2001 and on the Indian parliament on December 13, 2001. The irony is that one of the objectives to the draft convention was that United States sets in motion the global war against terrorism and the other member state being Israel.

The draft which outlaws attacks on civilians regardless of motive and establishes "Prosecute or extradite" obligation for states has been approved
by all the states except the United States of America and Israel. The two countries are opposing a provision in the draft which will exclude the PLO and Hamas attacks on Israeli soldiers in the west bank and Gaza from the ambit of terrorism. The two countries are also worried about the wording which implies that any conduct by their own armed forces which violates the international humanitarian law might be considered terrorism. The draft Convention clearly and categorically outlaws violence against civilians such as bombing etc. The Arab countries wanted to ensure that attacks on Israeli forces in the West Bank and Gaza Strip would not be considered terrorism, rather as liberation wars. The contentions clause that has raised the hackles of the United States and Israel is clause 18 (2). Even after an Egyptian amendment the clause reads as “The activities of armed forces during an armed conflict, including in situations of foreign occupation, as those terms are under international humanitarian law are not governed by this Conventions.

The implication of this would be that attacks on Israeli military targets by the PLO, Hamas or Islamic Jihad Considered to be “armed forces” under article 43 of the First Optional Protocol of the Geneva Conventions of 1949 would stand automatically excluded from the ambit of the Terrorism Conventions. Therefore, it is hardly surprising that however fair and rational this provision might be in the holistic context of terrorism it will remain a repugnant provision as far as Israel is concerned. As for the United states, Washington must be worried that even the “accidental” or deliberate bombing of civilian targets by the US in Yugoslavia, Iraq, Sudan and Afganistan, since they are not legitimate military activities under International Humanitarian law—would be technically outlawed. But this is as things ought to be, since the world community can hardly take the stand that acts of terrorism would be permissible particularly if they are initiated by a superpower that the United Nations or the other states committed to anti terrorism initiatives might not be able to prevent.
India did not quite envisage this exclusion in its original draft, it has reasons to be quite at ease with the revised wordings.

Kashmir is not under “foreign occupation” and the same is not even considered as such by the United Nations. In any case the groups like the non state actors of terrorism, the Lashkare-Toiba are not “armed forces’ as envisaged by 18(2) of the draft comprehensive Convention on international terrorism, so that if they attack our security forces that will still be considered terrorism. At some point or the other, both the United States and Israel must begin to appreciate that in seeking to give shape to such a Convention on International terrorism, it is impossible to have a separate set of rules for one or two countries that have, in a sense, indulged in the form of state terrorism.


The conventional standards of some of these laws, especially the rules of evidence embodied in S. 111-A the Indian evidence Act as brought into existence, by section (5) of the Terrorist Affected Areas (special courts) Act, 1954 and section 5(2) of the Terrorist and Disruptive Activities (Prevention), Act, 1987 may appear to be somewhat arbitrary and in derogation of the rule of law and human rights. Even so, it has to be admitted

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that when a house is on fire one cannot be far too discriminating about necessities of law and may even be obliged to pull down adjoining houses of innocent people so that the fire does not spread devouring all the houses of the community at large. When the very existence of the State as a sovereign entity is at jeopardy, it is hard to blame the State for assuming extraordinary power or to the armed forces for dealing with violent activities of terrorist groups in its bid to preserve the integrity of the nation. In justifying the law of detention without trial (i.e. preventive detention) the Supreme Court held in Fagu shaw’s case that though detention without trial was a serious matter, yet it could not be helped as “Drastic diseases call for drastic remedies”. (Fagu shaw V. state, Air 1974 Sc 613, 1974 Cre LJ 486). This is not the only law in which the onus is thrown on the accused for the first time in our criminal law jurisprudence. There are quite a few socio-economic offences in which the onus has deliberately been shifted on to the shoulders of the accused in keeping national interest at the top on priority basis.

To preserve the sovereignty and integrity of the nation we must make an utmost and sincere effort and be prepared to sacrifice excess liberty, whose very existence is dependant on security.

Having once paid the price of liberty in the form of partitioning the country mother India, it may further been ill afford to break the idea of a further partition of our country. To fight insurgency and terrorism with all our might, we must be prepared to fight a relentless civil war as the Americans did under Abraham Lincoln, to preserve, protect and uphold the nation. The situation had not yet gone to an irrevocable state. The forces, of unity, integrity and cohesion are steadily gaining ground over the forces of disunity and disruption.

To put out deliberations on the other side of the investigation, laws to protect human rights, the status of human right is fairly high under the Constitution, where part III thereof prescribes and protects fundamental
rights and empowers the Supreme Court (Article-32) and the High Courts (Article-226) to enforce these rights and command the State to respect people's fundamental rights. India had also acceded to the two great international Covenants on Economic, Social and Cultural rights (ICESCR) and on civil & political rights (ICCPR). Articles 51 (A) imposes a fundamental duty on every citizen as in clauses to promote harmony and the spirit and common brotherhood amongst all the people of India, transcending religious, linguistic and regional or sectarian diversities. When the State and its police, paramilitary and military persons has commit penal outrage (for instance AFSPA, 1958) the people are left without recourse because the State has the monopoly to enforce law. It is very difficult to police the police and monitor the authoritarian power operators.

As the human rights are the cornerstone of the human order whoever be the violator must be condemned and punished.

The nations of the world have failed so far to negotiate successively a multi-lateral Convention to combat, "international terrorism", There are several multilateral Conventions in effect that deal with certain specialized forms of international terrorism. A perusal of the debates on the sixth legal committee of the United Nations in 1972 draft Convention on International Terrorism shows clear divergence of perception of "international terrorism", among Member States. The latest efforts for a comprehensive draft Convention of UN, initiated by India could not be successful due to disagreement of superpower America on certain clauses of the provisions on distinction to be drawn between the concept of international terrorism and the use of force in the struggle of peoples for their freedom.

The present investigation shows that the real hurdle in negotiating a multilateral Convention to combat international terrorism is the disagreement among the nations on the definition and connotation of the term "International Terrorism." It has to be appreciated that whatever may be the difficulties on agreeing on a definition of "International terrorism" the scholar find the.
opposite to be true on other counts.

Even though there are different planes to combat international terrorism the research work concentrates on the international Legal regime. The utility and honest application of the international conventions signed by the member states of united Nations has always been a burning issue. There are quite a large number of states who voluntarily submit their sovereign egos and ready to accept the authority of United Nation as a central body mechanism to bring international legal order. But few authoritarian states comes on the way as obstacle to give more power and status to United Nations to implement and prove its efficacy to resolve the international issues. However for better clarity on the issues and objectives like (i) the definitional infirmity of international terrorism (ii) the various problem faced by the member states to implement the already signed and available international conventions (iii) the efficacy of UN working mechanism and (iv) the international criminal jurisdiction of international criminal court to punish the perpetrator of international terrorism, the present thesis work has been divided into eight chapters for a systematic analysis and to highlights the norms involved in respect of area of research.

The chapter one introduces the subject to bring out the conceptual framework on international terrorism including historical evolution. Out of hundred definitions a single legal functional definition is required to be accepted. The chapter two discusses different kinds of terrorism including the area of overlapping and difficulties faced to separate them to a distinct level. The chapter three enumerates the different causes responsible for the growth of international terrorism and helps to understand the directions where measures are to be taken to control international terrorism.

The chapter four concerns with international legal regime and discusses whether international terrorism can be prevented in its present shape and form altogether through available international norms and instruments.
The chapter five deals with different international conventions convened by the United Nations and other international organisations to set standard norms in pursant to combat international terrorism.

The chapter six makes a brief discussion on the different antiterror laws enacted in India both in central and state levels. The chapter seven deals with the delicate issue of protection of human rights of the citizens at the time of implementing the security legislations aimed to combat terrorism. The chapter eight the concluding one, carries the observations by brief discussions on problems, contradictions, conflicts of the shortcomings of the study and possible suggestions and recommendations made thereby.

Then finding observations are also made by the investigator for a legal functional definition of international terrorism is to be commanded by the security council of United Nations in order to bind all the member states in the line of its resolution 1373 of 2001.

Each kind of international terrorism is of different background. Efforts are to be made to understand the root causes and to digonize it before dealt with any particular means. In the international plane to deal international crimes like war crimes, international terrorism, international drug trafficking different set of Legal norms accepted, yet there is a need by the states to accept a regime of obligation beyond general obligation to extradite and submit the offenders to competent national authorities for trial. A more vigilant introspection of the Armed Forces, Paramilitary forces is required in respect to their way of functioning with the common people and the perpetrator of the act of terrorism. A fine blend of honest approach to antiterror laws and the preservation of human rights of the people is required without compromising with the rule of law and democracy of the state.

In order to combat international terrorism some suggestions are useful.

i) International Criminal Jurisdiction should be accepted by all members
states of United nation by ratifying the Rome Treaty. ii) More power and support should be given to United Nations to deal international terrorism as a Central body mechanism relying more on UN sponsored peacekeeping force deployment iii) The principle of 'prosecute or extradite' must be followed strictly. iv) The international conventions relating to terrorism should be abide with letter and spirit by all member states. v) All the nation states should ban the foreign funding to the terrorist organisations through their revenue intelligence authorities.

It has been recommended that India should ratify the Rome Treaty without further delay. A separate clause should be incorporated to the Article 21 of the constitution specifically followed to 21 (A) as Article 21 (B) to protect the dignity of peaceful life of the people free from terrorism. The draconian law i.e. Armed Forces Special Power Act should be repealed immediately. The recommendations made by the Justice Verma commission’s report should readily accepted by the legislators.

It is submitted that in international jurisprudence relating to terrorism there are sufficient material or instruments to reach an agreed definition of international terrorism and there is an urgent need of strict application of twelve different relevant international Conventions on terrorism other than regional Conventions. A fresh initiative to finalise a multilateral Convention to combat international terrorism under the auspicious of United Nation is bound to succeed. The challenge before the humanity has to be met at the earliest to justify the death of the innocent and terrorism is the slaughter of the innocent.

The present doctoral work provides scope for policy makers, research scholars, enforcement officials, human right activists as well and also provides present directions and dimensions to combat terrorism in its international legal plane as well as in the national ambit to provide relief to the victims.