INTRODUCTION

Terrorism is a special form of political violence or threat of violence that has been used throughout history by both states and non-state organisations and groups to sustain a wide variety of causes.

Terrorism is the worst abuse of human rights. Terrorism emanating from various sources such as individuals, political, religious, fundamentalist groups and sometimes even States poses the greatest threat to world peace. Terrorism has been an age-old problem and it demands a plausible solution. Until we can curtail it, there shall be no freedom and no justice and peace in the world.

Terror war has come to the world but not in the form that is universally recognised. There are no hostile warplanes appearing over the targets, and the enemy does not manifest itself, nor does it openly claim the strike. Instead we just see the horrifying images of the dead and injured innocent victims lying amidst the debris in the aftermath of bombings and shootings, of planes being hijacked, buildings crumbling to the ground, which have caused widespread panic and fear. This unique form of attack has been labelled ‘terrorism’. It is not war initiated by one state against the other but a new form of terror war. Today the enemy may not be a state but a small network of terrorists based primarily in developing countries. They do not wear uniforms, yet are skilled in combat. They are ready to die for their cause. They are, therefore, clearly beyond the capabilities of the police force and are too elusive for the military forces. Conventional forces are designed for battlefields and not for peacetime unexpected situations.

Terrorists seek the maximum publicity for their attacks and no terrorist actions have achieved more publicity than those carried out on 11 September 2001. Similar was the case with the attacks on the Indian Parliament on 13 December 2001. In both cases the terrorists knew they were hitting national symbols and believed that the destruction would demonstrate the weakness of their enemies. Yet neither the Twin Towers, nor the Pentagon, nor the Indian Parliament were centres of gravity or even of weakness. Their destruction or damage simply aroused national and international outrage.
The scale and scope of terrorist violence is expanding everyday. Recently again the terrorists made London and India as their targets. The attacks perpetrated against civilians can’t find one justification. The perpetrators of these crimes must be brought to justice. It is now that the governments around the world seem to be waking up to the threat of terrorism, albeit a trifle late.

To perceive the urgency of a consensus on the issue of terrorism requires an understanding of the impact and nature of terrorism. It is a paradox that although the actual toll attributable to terrorism worldwide is miniscule compared to the lives lost as a result of war and insurgency. This is due to the fact that terrorism is progressively being used as a form of surrogate warfare. It has proved to be a strategic form of warfare, as it is cheap and deadly. It is often state sponsored whereby states carry out their vendetta against another state by supporting terrorist outfits. Not only does this method ensure the debilitation of the enemy state, the surreptitious manner employed makes it difficult to pin responsibility. This trend also indicates the appalling shift of modern day warfare from the battleground to civilian homes.¹

The world at this moment is poised at a historical moment in the process of a major change. Our actions in response to the threat of terrorism will leave a legacy for the generations to come. We must therefore look before we leap. We must tread with abundant caution. In the process of combating terrorism we should not be swayed by our emotional quotient. In our fight against terrorism we must respect the human rights that we have laid down for ourselves. Justice must overcome the temptation of revenge.

The object of the terrorist is to shake the faith of the man on the street in the Government and in its local representatives, especially the police, so that in the end a desperate population will seek security, not from the authorities, but from the terrorist and its political allies. Terrorism is a protection racket on national scale.

The governments of different countries at this juncture are enacting different anti-terrorism laws under which the freedom of the individual has

been curtailed. There is an increase in the government scrutiny and an encroachment on the privacy rights of the citizens. The question that arises is that do these laws, which curtail our freedom, actually have the teeth to do so? There is a need to examine the efficacy of the sudden plethora of the legal measures enacted by the governments.

International terrorism has a tendency to use third states as targets, regardless of whether the third party is directly or indirectly involved in its cause or completely 'innocent'. Terrorist acts usually harm innocent victims. It aims to gain the attention of the media so as to broadcast its political cause.

Today we have a number of enactments curbing and repressing terrorism. But why is it that none of them have met the real need of humanity. "It is shocking that of late, there is no single multilateral treaty that can claim to control, if not stem, the rise of international terrorism."\(^2\)

In addition to this is the problem of implementation. There are 12 major multilateral Conventions and Protocols related to states' responsibilities for combating terrorism. But many states are not yet party to these legal instruments, or are not yet implementing them. It has been said, "the United Nations has set the basic agenda and has sponsored innumerable prescriptions for the elimination of terrorism......The problem lies with the implementation."\(^3\)

To use a cliché, the world has grown smaller and much more interconnected. Satellites, mobile phones, and the Internet allow for rapid communication to all parts of the globe. They have extended the reach of information and ideas and unavoidably magnified the scope and range of terror. Keeping this in mind, we need initiatives to improve the security of the global information environment. Although terrorist groupings may for the present be averse to cyber attacks since they do not appear to provide the same kind of immediate media publicity that more conventional attacks usually generate. However, a more sophisticated generation of computer


literate terrorist may emerge in the next 10-15 years who may be far more attracted to trying to wage an information war.\textsuperscript{4}

Amalendu Guha in his paper on \textit{Redefining Terrorism: Preventive and Combative Measures}\textsuperscript{5} says, “Terrorist violence, whether from the Muslim or the Jewish side, whether from the Christian or the Hindu sides, whether from the Chinese or the Russian side, whether from the United States or the Iraqi/Iranian side, whether from the Libyan or the IRA side, etc. inflict inhuman physical and psychological harm with ruthlessness and cruelty on unknown victims.”

Terrorism is born out of the real or perceived alienation, isolation, subjugation of a minority community, which is distinct in its culture and practices. The community has a deep sense of resentment and insecurity as a result of this isolation and subjugation. This resentment is fuelled initially by the political leadership of the minority community for their vested interests. Upon the attaining of critical mass by the movement, support starts pouring in from a number of agencies again having vested interests. This support is both financial as well as political and is almost always aimed at harming the interests of the majority community dominated government. In the process the initial cause of resentment is once again alienated and the focus is on the acts of terrorism and not the cause of initiation.

Terrorism is not simply about deaths, however tragic – or of incidents, however spectacular. Terrorism is about a slow erosion of the might of a country, the threatening of its core ideals, and above all a psychological war that is aimed at wearing away even the most battle hardened troops in a war where the enemy is often invisible and where the victims are always their own people.\textsuperscript{6}

Rubina Saigol points out that “in the post Nazi era, at the end of World War II, the regime of rights and international norms and principles that were agreed upon by states, protected individuals against the state and ensured certain rights as inalienable, inviolate and universal. The globalisation of the

\textsuperscript{6} Tara Kartha, “Terrorism – A New Face of War?” \textit{World Focus Journal}, 241, Jan 2000, p. 3.
war on terrorism seems to have changed all that. Right and wrong, legal and illegal have come to be defined by each state, separately.\textsuperscript{7}

However the Report of the Policy Working Group on the United Nations and Terrorism says “International action pursued within the framework of the international legal instruments represents the most effective and legitimate response to that threat.”\textsuperscript{8}

These are trying times, where we don’t know one day from the other. While we have the responsibility to those people who have died in these heinous acts, it is also important that we start thinking what we need to do to combat such situations.

David Charters says, “a central problem for democracies lies in accurately assessing the nature and extent of the terrorist threat facing them and in constructing rational, appropriate, and consistent countermeasures that deal with the threat without fundamentally undermining or changing the democratic practices and traditions that the measures are designed to protect.”\textsuperscript{9}

The need of the hour is to protect ourselves from the temptation of meeting terrorism with terrorism. We must meet the worst of humanity with the best of humanity. A day will come when out of the ashes we will discover a new kind of solidarity.

\textbf{Problem Profile}

What is happening in the world causes us all to reflect. What is terrorism and why, more than fifty years after the signing of the Universal Declaration of Human Rights, do such things still happen? The conflicts are so acute that there are no short-term remedies. We have to make an in depth analysis of the origin of terrorism to come up with a solution to this problem.

There are many problems with the legal response to terrorism, like the absence of a clear definition of the concept, insufficient states signing the

conventions; the lack of enforcement mechanism; the ambiguity of
conventions and the lack of political will of states to deal with terrorism.

There are as many definitions of the word terrorism as there are
methods of executing it. The term means different things to different people
and trying to define or classify terrorism to everyone’s satisfaction proves
impossible.

Further because of the globalisation the world has shrunk. These new
terrorist organisations live and operate in a world made smaller by cheap
airline tickets and planes that circumnavigate the globe in hours. Cyberspace
has also made their job easier as the communication takes place in absolutely
no time with the added advantage of the protection of the identity.

The arms available to terrorists, the skill with which they use them and
not the least, the organisational techniques with which these weapons and
skills are deployed are all improving at a fast and accelerating rate – a rate
much faster than the countermeasures available to civilised society.

In all countries where terrorism prevails, there is a dispute between the
police and State security agencies. The former treat it as a law enforcement
problem and the latter takes the view that terrorism is a war against an
established state. To avoid such a dispute, we need to have an integrated
strategy to mobilise both the law enforcement and state security organisation.

This work will focus on some of the key issues related to the enactment
of various laws international and national, in the context of terrorism and the
security of the State. It will deal with the legal control of terrorism and try to
analyse that why are we still unable to control this menace. This thesis will
explore different arenas for an answer to such questions.

**Research Hypothesis**

Our response to terrorism in the form of national security laws or
practices related to security has to be weighed in the balance sheet of
effectiveness. Certain questions arise in such a situation, which need to be
dealt with:

- What is terrorism and how can it be defined?
- What are the challenges faced in protection against and responding to
acts of terrorism?
- Are the laws enacted to control terrorism adequate and effective?
- The problem of conflicting laws on terrorism and the jurisdictional limits imposed by international and national legal regimes.
- What is the extent to which an individual's liberty can be restricted under international law for orderly international community?
- What is the nature of obligations on States under international law and standards, which are to be kept in view while enacting and implementing anti-terrorist legislation, at the same time maintaining the primacy of the rule of law?
- What is the role of judiciary with regard to public safety laws?
- What is the role of the enforcements agencies with regard to the control of terrorism?

**Research Methodology**

The study is based on documentary, historical, analytical and descriptive methods. It is a universal, empirical and theoretical study. Data will be collected from primary as well as secondary sources. Primary data will be collected on the basis of unstructured interviews and an interview schedule. Sample technique will be used. A small sample of about 20 respondents will be drawn from judges, lawyers, social activists, teachers, members of the police forces and the armed forces. These responses shall be collected on the basis of personal unstructured interviews and questionnaires.

Secondary sources include books, law journals, magazines, newspapers, articles and information from the Internet.

**Appraisal of Literature**

No study is complete without a review of the existing literature. Some of the available literature on the subject has been scanned.

In the book *Terrorism in India*[^10] edited by S. Omprakash, the causes of terrorism in India have been analysed. How has terrorism been handled especially in Kashmir and Punjab and what is the genesis of the problem; are some of the questions, which have, been discussed. It also deals with

measures suggested to contain the problem of terrorism. This book has been enriched by contributions from eminent and distinguished persons like Dr. Karan Singh, Pradeep Nair, Kuldeep Nair, K. Subramanyam, B.S Bedi, Prakash Singh, (late) Prof. Raj Narain.

How to effectively deal with terrorism is what we hope to learn. Unfortunately few good works actually exist on the subject. *Combating Terrorism: Strategies of Ten Countries* edited by Yonah Alexander examines the successes and failures of states threatened by terrorism. The contributors examine counter-terrorism in US, Argentina, Peru, Columbia, UK, Japan, India, Israel and turkey. The book contains essays on combating terrorism offering an evaluation of the counter terrorism policies of these countries. The essays address certain questions like:

- What is the governmental and public perception of the sources of terrorism?
- How successful have government policies been in combating both domestic and international terrorism?
- What factors influence a government’s willingness or ability to co-operate with other countries in combating terrorism?
- What are the lessons of past experiences for future counter terrorism responses at the national, regional and global levels?

This book provides a valuable insight into a wide array of issues that face governments and conveys possible solutions to one of the foremost threats to world peace. Unfortunately, since most of the counter-terrorism campaigns are on going we still don’t know whether the methods of countries such as Turkey, India or Israel can truly be deemed successful. Britain has enjoyed considerable success against the Provisional Irish Republican Army, but peace has come through compromise. Still this book contains a wealth of useful information on the nature of terrorism and the variety of ways states respond to it.

The book *Countering the New Terrorism* contains articles by Ian O.Lessor, Bruce Hoffman, John Arquilla, Michelle Zanini, and David Rohfeldt.

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12 Rand Publications, USA, April 1999.
Ian O.Lessor in his introduction points out that terrorism affects our national interest directly and indirectly and can constrain our international freedom of action. The potential enormous increases in lethality and disruption as the result of unconventional terrorism reinforces the importance of counter terrorism as a part of our national security strategy. The stakes go beyond the protection of American lives and property and our capacity for global engagement and involve the reasonable expectation that the government will keep its citizens from being terrorised.” Therefore the need to devise adequate law to control this menace.

Dr. Surat Singh in his book, _Law Relating to Prevention of Terrorism_\(^\text{13}\) has given a collection of laws relating to terrorism passed by the Indian Legislature from time to time and also by international agencies. These laws deal with the prevention of terrorism while safeguarding human rights. The author has quoted Abraham Lincoln, “Every man when driven to the wall by a murderous assailant will override all laws to protect himself, and this is called the great right of self defence.” He says that it is this ‘great right of self defence’ of Mr. Lincoln from which the moral justification to all anti-terrorism laws is derived. And many a time the legislative - and later the executive - oversteps the thin line that demarcates a legitimate democratic enactment from a dictatorial exercise of legitimate power.

_Understanding Terrorism and Managing the Consequences_\(^\text{14}\) authored by Paul M. Maniscalco and Hank T. Christen provides a road map for the practitioner for dealing with a mass – casualty terrorist event. This book is about meeting the challenge of terrorism.

In _War Without End: The Rise of Islamist Terrorism and Global Response_\(^\text{15}\), Dilip Hiro talks about the history of Islam and describes and analyses the response to these acts of terror by America and the rest of the world.

S.K. Ghosh in his book _Terrorism: World Under Siege_\(^\text{16}\) illustrates the acts of terrorism around the world and in India. He also discusses the concept of terrorism. He says, ‘the most important development is that international
terror is aided, protected and financed by a number of governments who provide safe havens for terrorists and false passports.'

*Global Terrorism: Socio-Politico and Legal Dimensions*[^17] edited by B.P. Singh Sehgal contains contributions by various authors on the genesis of terrorism, terrorism and terrorism and the law. B.P. Singh says, "The main objective of terrorists is just to create terror in the public by unlawful method may be by using weapons both lethal as well as chemical, hijacking, kidnapping, destruction of property, disruption of services essential to the life of people or any other act not conforming to humanitarian norms."

Noted security analyst Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*[^18] discusses terrorism and the history, terrorist motives, religion and terrorism and terrorism of the future. He says that religiously motivated terrorism has become the most prevalent and the most dangerous threat to international peace and security. He points out that no great world religion is without fanatics willing to distort its theology to justify anything. He further tells us that, "Counter – terrorism naturally goes hand in hand with terrorism, but over the ages it has become less successful for a variety of reasons. Modern technology in this area has made enormous progress; for eg. It can trace the movements of even small units and single tanks over a wide area day and night. But it cannot keep track of the movements of single individuals in a town carrying miniaturised bombs."

In *Transnational Terrorism in a Globalising World*[^19] authored by P.N.Mishra, the emerging threat of transnational crime to international stability is discussed. The author goes on to say that our failure to recognise this threat and respond appropriately might create long term problems. Also discussed is the evolution of the concept of international co-operation against terrorism with an added report of the UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime.

[^19]: Authors Press, Delhi, 2003.
L.R. Reddy in *The Worst of Global Terrorism*\(^{20}\) discusses the issues of terrorism in the world today i.e. the problem of international terrorism, terrorism in USA and India.

Discerning historical trends in terrorist trends is crucial to combating them. Bruce Hoffman, director of RAND Corporation, USA and head of its terrorism research unit outlines the pattern of present and future growth of terrorism in his latest book *Inside Terrorism*\(^{21}\). He traces the evolution of terrorism throughout the twentieth century, recognising a decided shift from locally based to international terrorism during the last few decades. He also provides a detailed analysis of terrorist organisation and their tactics. He predicts the future of terrorism, which should be taken seriously by people who want world peace.

Cindy C. Combs in her book *Terrorism in the Twenty First Century*\(^{22}\) takes us through the chronology of events of terror and then proposes some legal initiatives to counter terrorism. The book provides a valuable insight into different aspects of the term, its history and its effect on the people. She also discusses the legal war fought by various countries with terrorism.

The book *The Deadly Sin of Terrorism*\(^{23}\) edited by David A. Charters contains articles by different authors on the sin of terrorism and how to control it within the legal and democratic framework.

Cindy C. Combs and Martin Slann in their *Encyclopedia of Terrorism*\(^{24}\) present brief descriptions and analysis of what are considered the most serious and influential terrorist personalities and organisations, and the most significant motivations and victims of terrorism. Some 300 entries, organised in alphabetical order, include occasional references to historical examples. But the emphasis is on modern terrorism. The appendixes include statistical data on terrorism, a chronology of major acts of terrorism from 1946 to 2000, and a detailed, daily account of U.S. and international reaction to September 11, 2001.

\(^{22}\) Prentice Hall, New Jersey, 1997.
\(^{23}\) Published under Auspices of the Centre for Conflict Studies, University of New Brunswick, Greenwood Press, London, 1994.
Terrorism and The Global Security: The Nuclear Threat\textsuperscript{25} by Louis Rene' Beres contains an overview of the nuclear terrorism. The author says that terrorism is not a recent phenomenon. It is older than the ancient civilisations of Greece and Rome. By manipulating fear in a special way, terrorists have been able to affect political behaviour in a fashion totally disproportionate to their numbers.

On May 30, 2002, Rights and Democracy organised a one-day Think Tank in Ottawa on Promoting Human Rights and Democracy in the Context of Terrorism\textsuperscript{26}. Iris Almeida, who prepared the paper on the subject, says that there is international consensus to condemn terrorism, enhanced by 19 international treaties on the subject and these treaties contain divergent definitions of the term 'terrorism.' Some key issues discussed in this paper are:

- understanding the environment behind terrorism
- the relationship between law, human rights and security
- US unilateralism and the role of the United Nations
- Establishing mechanisms for justice and accountability

In the article The Evolution of International Law and the War on Terrorism\textsuperscript{27} Alan Baker says that there are several international conventions that define war crimes, but there is no internationally accepted definition of terrorism. He further says that terrorism is no longer just a theoretical issue. It affects every one of us in this part of the world. We need to adapt our thinking and find a way to reach the correct balance between protecting human rights, protecting civilians and allowing governments the freedom to deal with those terrorists, because people who are fighting without reference to the rules don't deserve any protection.

Clark L. Staten in his article Asymmetric Warfare, the Evolution and Devolution of Terrorism: The Coming Challenge For Emergency and National

\textsuperscript{26} One Day Think Tank for Rights and Democracy, paper prepared by Iris Almeida, Director of Programs of Rights and Democracy and Lloyd Lipsett, LL.B. researcher, Montreal, Canada, September 3, 2002. On the Internet at http://www.ichrdd.ca/english/prog/
Security Forces\textsuperscript{28} says that in the recent years terrorists and insurgent movements have discovered that they can multiply fear in a civilian population by undertaking even more violent and deadly tactics. He says that studies show that there are fewer number of incidents, but that those that do occur are more deadly.

Dennis Florig in his article \textit{Myths and Realities about the 'New' Terrorism}\textsuperscript{29} says that in fighting terrorism what matters is not whether terrorist actions seem rational to the rich, comfortable, white West, but whether these actions seem rational to relatively poor, bitter and desperate, non-white people who have been repressed by the powerful nation states and ignored by the international community.

The article \textit{Countering Terrorism: Can there be a blueprint for peace}\textsuperscript{30} by Hari Jaisingh raises a question: can democratic regimes withstand the onslaught of deadly terrorist activities that derive sustenance from the well-focussed forces of Islamic fundamentalism? He then says that there are no shortcuts to fighting terrorism. Talking about India he says that his is a long battle which has to be fought with full determination and resources at our command.

The problem that we face today is that there is a total lack of consensus on either the cause or the cure of international terrorism. We have many international treaties and conventions dealing with the problem of terrorism. The pre-war League of Nations gave us the Convention on the Prevention and Punishment of Terrorism. At present we have 12 United Nations conventions and 7 regional conventions directly pertaining to the subject of international terrorism. The latest among them is the International Convention on the Suppression of Financing of Terrorism, which entered into force on 10 April 2002. Infact the United Nations has recently adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in April 2005, but it is not yet ratified by the nations of the world. The regional conventions are also strategic in the sense that they offer solutions to

problems relating to specific regions. For example the SAARC Regional Convention on Suppression of Terrorism, 1987 has resolved to take effective measures to ensure that perpetrators of terroristic acts do not escape prosecution and punishment by providing for their extradition or prosecution within the countries it covers. In January 2004 the SAARC member countries, signed an additional protocol to the SAARC regional convention. The definition of terrorism was left to the individual countries to decide. The United Nations has further set up a counter-terrorism committee to combat the problem of terrorism. The Policy Working Group on the United Nations and Terrorism has also submitted its report. This is also discussed in this research work.

However devising a strategy to counter this complex and pervasive threat will require a mustering of experts from a variety of fields. This research is only a drop in the ocean.

Plan of Study
Terrorism: The Conceptual Dimensions

"Many governments have failed to appreciate the extent and implications of the terrorist threat to modern societies. As a result a large number of countries, including Western democracies have not developed strong commitments to deal effectively with the challenge. A major reason for this failure is the definitional and moral confusion over what constitutes terrorism."31 To deal effectively with terrorism, the first step is to understand the phenomena of terrorism.

One of the important challenges is to understand the environment behind terrorism, particularly the root causes of terrorism. The motivation to understand the phenomenon of terrorism is not to justify it, but rather to ensure the prevention of future terrorist attacks.

Of particular concern in the context of global terrorism are the severe poverty in Afghanistan, the growing tensions in the Middle East due to the spiralling Israeli-Palestinian conflict and the grave consequences of economic sanctions on the lives of ordinary citizens in Iraq. Lack of democracy,
disrespect for human rights, armed conflicts, underdevelopment, poverty etc. may all provide the setting for the discontent and frustration that lead to terrorism.

Unfortunately, terrorism has become such a diverse phenomenon that either it disappears under a host of precise definitions or it is covered by too broad an umbrella. Experts have offered more than a hundred definitions of terrorism. There is no clear consensus about terrorism. The definition of terrorism varies widely between scholars and academics, as well as between nation-states and their agencies and even terrorists themselves. But the question still remains - what is terrorism? Have we reached some sort of a consensus on the definition of terrorism? The concept of terrorism is discussed in detail in this chapter.

**Terrorism: A Historical Perspective**

One of the most important challenges today is to understand the environment behind terrorism? How terrorism took birth? What is the course that history followed in respect of terrorism?

Historically, terrorism refers to the use of terror as a method to undermine just struggles, whether armed or unarmed. The word terrorism was first used by the French to explain the situation in 1798 as “système, régime de la terreur.” Terrorism, in various forms has been practiced throughout history and across a wide variety of political ideologies. Whether for retribution or intimidation, clandestine and premeditated acts of murder have commonly dotted our world’s history. Political separatists and religious extremists, often relying on bands of marauders and hired killers, have terrorised humanity since the earliest civilisations. Even in India assassins were used by kings to destabilise the neighbouring kingdoms in the ancient Indian history.

Terrorism that is prevalent today is qualitatively different from the one we have known. Today’s terrorism constitutes a new genre of violence, which is totally bereft of moral values. It is a fact that terrorism in the twenty first century is very different from the terrorism of the twentieth century. Anger,

alienation and the search for simple solutions in a complex and troubled world are motivating violence and terrorism.

Terrorism today has come to be accepted as a reality of this century. It exists and persists and is taking a new form and shape everyday. Answers to the present trend of terrorism can be based on an understanding of past patterns of behaviour. For this reason a study of terrorism is imperative. This chapter traces the history of terrorism in the world.

Terrorism: International Legal Control Regime

Countries all over the world have turned, at one time or the other, to international law as a refuge against terrorism. The rise of terrorist practices in the nineteenth and twentieth centuries led to the realisation of the need for international co-operation to combat it. The League of Nations in 1937 took the first step in this regard by adopting a special convention for the punishment and prevention of terrorism.

The end of World War II marked a beginning of a new era. The United Nations came into existence to safeguard global peace and security. Since then the United Nations has enacted various legislations to combat the threat posed by international terrorism. International instruments to curb terror now exist for e.g. the Genocide Convention, the Nuremberg principles, the Geneva Convention etc.

"The dictates of humanity require that all forms of terrorism be subjected to international legal regulation, irrespective of whether the terror emanates from a State or from a liberation movement. Precise rules, with adequate machinery for enforcement are the ultimate goal."32

Considering the political nature of the terrorist attacks, no international convention that came into force defined the crime of international terrorism. The approach has been sector-based, aiming at isolating certain acts of terrorism such as the taking of hostages or terrorist bombings.

For the last 25 years terrorists have operated in many countries. Preventing the spread of terrorism is a global agenda requiring the attention of the entire international community. Presently the Counter-Terrorism
Committee, an arm of the United Nations is making efforts to find measures to counter terrorism. What was the international law regarding terrorism at the first instance? What is the law at present? The chapter presents an overview into the international legal regimes in the past and at present.

Terrorism: National Legal Control Regime in United States and United Kingdom

Until the attacks on the World Trade Centre and the Pentagon in 2001, the United States had suffered less from terrorism than many other nations. However violence is not new in that country. The battle over slavery gave rise to terrorism, which required the government’s legal intervention. Since then the threat to the most powerful country in the world has never been taken lightly. In fact America’s war on terror has made it the world’s policeman.

National security is a grave concern for the people of the country, which believed that no power could threaten them. With the enactment of the US Patriot Act, 2003 the anti-terrorism strategy has been defined.

“Terrorism has been an issue in the United Kingdom for many years. Between the late 1960s and late 1990s about 3300 people died in Northern Ireland and a further 121 in great Britain directly as a result of political violence relating to the constitutional settlement in Northern Ireland.”

The violence in Northern Ireland is now significantly reduced. However the view of the government is that the threat of terrorism requires special legislative powers. The Terrorism Act, 2000 and the Anti Terrorism, Crime and Security Act, 2001 were the latest outcome of the threat. Now after the recent London bomb blasts on the 7th of July, 2005, the government is planning to introduce a new anti-terrorism law to increase the effectiveness of its legal machinery.

This chapter analyses the problem of terrorism faced by the United States and the United Kingdom and their legal response to it.

Terrorism: The Indian Scene

Terrorism in India has been a constant threat ever since we recall. We have been grappling with all kinds of terrorism. Different parts of the country have continued to remain disturbed for a long time. Thousands of innocent men and women have been murdered and tons of arms and ammunition recovered. In Punjab we could curtail terrorism whereas Kashmir and the North-East are glaring examples of our failure.

In India about 50,000 people have been estimated to have lost their lives in the violence and mayhem inflicted by terrorists in Punjab and Jammu and Kashmir, at the instigation and with the active support from across the border. The North-eastern terrorism is mainly due to the ethnic conflict prevailing in those states because of the large influx of the immigrant population due to which the original inhabitants have lost their majority.

"After independence, India is plagued with insurgency and secessionist movements launched by the tribals in the North East region at the instigation and support of foreign powers....There was an outbreak of communist led terrorism in Telengana region, Andhara Pradesh, in the late 40s and early 50s. From 1967 onwards West Bengal was in the grip of Naxalite terrorism for several years and it spread to other states."34

Nowhere has violence been more continuous and more dangerous than in India’s borderland states i.e. Kashmir, Punjab and the North-East. The violence in Punjab is over but there seems to be no end to the troubles in Kashmir and the North-East. Recently Delhi was hit by the terrorists on 29 October, 2005, when three heavily populated areas of Paharganj, Govindpuri and Sarojni Nagar were blasted by bombs. This just shows how imperative it is for us to step up our measures against terrorism.

This chapter isolates the specific areas affected by terrorism. The distinguishing aspects of the problem in each of these areas will be discussed separately.

Terrorism: Emergence and Growth of Anti Terrorism Regime in India

There are both external and internal threats to public safety. Terrorism is one of them. For the protection of public safety against the scourge of terrorism various types of legislation have been enacted in India. In our own wisdom we have succeeded and failed in certain respects. In order to effectively counter terrorism urgent measures to improve the domestic security are essential, especially in countries such as India, which has porous borders with hostile neighbours. But to effectively wipe out state sponsored terrorism requires a wider political consensus.

National Security Legislation is not just a question of definition of crimes or new patterns of criminal conduct and the prescription of penalties. It relates to the entire system, institutional structures and processes that are required to prevent and penalise such crimes, to preserve order, and secure the sphere of governance. The State and the Centre have periodically promulgated various statutes, yet, the evil has not been eradicated. The mounting failure on these counts is clear evidence that the system has deficiencies – and this should be a sufficient ground for a pragmatic and comprehensive reassessment.

The first Indian legislation to address the problem of terrorism was the National Security Act, 1980. The first act to define ‘terrorism’ was the Terrorist Affected Areas (Special Courts) Act, 1984. Under this act the government had the power to define the affected areas thereby curtailing the implementation of this act only to those areas. The most controversial legislation was passed in 1987, the Terrorism and Disruptive Activities (Prevention) Act, 1987. TADA in its own way did play a deterrent role but probably did more harm than good.

India’s response to threats of terrorism intensified in the wake of an attack by the militants on the parliament in December 2001. On March 26, 2002, the long debated Prevention of Terrorism Act (POTA) was enacted. After TADA and POTA demands were made for a stringent but a more humane law for dealing with terrorism related offences. The Congress government has now come out with the Unlawful Activities Prevention Ordinance, 2004. This Act, is a re-incarnation of the old Unlawful Activities Prevention Act, 1967 with some modifications.
This chapter discusses the concept of public safety and the anti-terrorism laws present in India. It will further detail the measures adopted by successive governments, to counter terrorism and analyse the extent of the success and failure.

**Terrorism: A Functional Evaluation of Efficacy of Legal Control Mechanics**

The strength of the rule of law is tested in challenging times. Fundamental human rights and freedoms have been enshrined in national constitutions and international covenants so that they will not be eroded or discarded at the whiff of a crisis. There are serious concerns that the rule of law and its integral principles such as equality before law; consistency in application of law; transparency of law are being trampled upon as a result of these new anti-terror legislations.

The Indian Constitution upholds the noble ideals of individual dignity and social justice and attempts a happy reconciliation between the worth of the human being and a just social order. The Indian judiciary is the custodian of the individual dignity and a dynamic defender of his human rights.

The government makes laws, which curtail these rights to a certain extent to combat the threat of terrorism. The judiciary in turn affects the freedom of the individual when it upholds the order of preventive detention in the interest of public safety. Justice V.R. Krishna Iyer says: “There can be no gainsaying that freedom of an individual must yield to the security of the State...The action of the State however, must be right, just and fair.”

Therefore the role of the judiciary has to be carefully monitored as a decision of a single judge or court can have national consequences for ordinary citizens.

It has been said that “as a legal concept terrorism lends itself far too generously to interpretation.”

This chapter analyses the role of judiciary in upholding the rule of law and curtailing terrorism in the country. Also an evaluation of the legal control of the various aspects of terrorism has been conducted. An empirical study in

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the form of an Interview Schedule has been conducted to decipher the perceptions of people from various categories. The Interview Schedule deals with various aspects of growth and the legal control of terrorism. Responses from various judges, lawyers, teachers and members of the police forces and the Defence Forces have been collected in this regard.

Conclusion and Suggestions

Too often States take advantage of the horror of the crime of terrorism in order to provide themselves with a whole array of legal instruments for suppressing any form of political arrest. There is an apprehension that under the pretext of combating terrorism, some authoritarian states may intensify the repression against their opposition or national minorities.

“The challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to “terrorism”. That would be bad for the State, the community and above all for the rule of law. The State must, therefore ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves.”37 The solution to the entire problem doesn't lie in a reactionary exercise.

“Just as terrorism is essentially a war against both the state and all of civilized society, so the struggle to eliminate, or at least restrict, terrorism is also a war of sort. The cost of this war on terror, if carried by each state alone, can be quite high.”38 Therefore the need for a higher degree of international co-operation for legal initiatives against the war on terror. These actions can help to create an inhospitable environment for terrorism.

K.P.S. Gill in his article on Tackling Terrorism in Kashmir: Some Lessons from Recent History says, “terrorism is not a war that is fought or won by the security forces alone. It is a war that transcends national boundaries, and within these, one that involves every institution of government and every citizen of the nation state.”39

36 See Goswami, supra 2, p.9
37 supra 30
In a sense, terrorism is gradually becoming an undeclared but open war with a host of perpetrators who can only be contained by high-energy international alliances of the world community. As lawlessness becomes global, laws can no longer be tightly constrained by borders when pursuing terrorists, law enforcement agencies must not only “get their asses,” but must “get their assets,” which often are shielded in safe havens.  

What is happening in India and around the world is a wake up call for all nations grappling with the menace of terrorism. The menace is striking at the foundation of freedom and democracy. Only a collective endeavour of the civilised world can take on the millennium evil.

Research and publication are a part of a dialogue, an on-going conversation in which one work stimulates further study and generates new ideas. This research work on the topic of anti-terrorism laws seeks to find some sort of a solution to the problem of terrorism in the legal arena. With that end in mind I have undertaken to write on this subject, on the hope that someday we will win the war against terrorism, which certainly seems likely to be with us for a long time.

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