CHAPTER-I
INTRODUCTION

Terrorism is a global phenomenon. It affects both the developed and underdeveloped countries in the world. Governments all over are in the process of finding new strategies to deal with it. Terrorism is not only detrimental to peace, but affects the developmental process of nations. Most states view it seriously as a human rights violation. In this century terrorism and the criminal process bear a close relationship. In the process of evolving new methods to deal with this menace of mayhem and murder States are increasingly relying on the United Nations, Regional Agencies and Non-Governmental Organizations to help combat terrorism. It has acquired great importance nationally and internationally. Besides the traditional forms of terrorist bombings, hijackings and extortion, today new forms have manifest themselves on the national and international scene. They are narco-terrorism, cyber terrorism and bio-terrorism.

The 21st century has witnessed such acts of terrorism that have shocked the conscience of the world-both nationally and internationally. The issue
together with its socio-political connotations, poses significant consequences for civil society.

Terrorism is not a modern development it has existed from the dawn of history. It existed in ancient Rome. Over the decades it has acquired a distinct qualitative character. Social, political, religious, ethnic and ideological factors have influenced it from a long time. The need for a legal study is the raison d'etre for understanding its aspects and manifestations. It highlights the motivations of terrorists who spread fear and terror among the social milieu.

It is a paradox of modern democratic regimes, that a small fraction of its population harbours such dangerous anti-social behaviour and use lethal violence of any kind to achieve their ends. Human suffering in bomb blasts, in public places or against public personalities creates disharmony in society. In a pluralistic society, where deep differences exist, a small number of discontented individuals use violent means to achieve their objectives.

All contemporary political systems have witnessed violence and terror by groups as a strategy to achieve immediate change in their society. Institutionalised violence is used against their own citizens and others, with all modern techniques and equipment at their disposal.
Organised political terrorism existed amongst the Roman and Ottoman Emperors. It was common practice to kill their political enemies. Religious social and political groups have indulged in terrorist activities as part of their struggle. The ‘sicarii’ were active during the zealot struggle in Palestine.

During wars and campaigns of Kings and Caliphs, small organized groups carried on terror campaigns against the enemy. The “thuggee” movement and the Chinese river pirates practiced terror tactics. French and Russian revolutionaries also used the same.

The Genesis of violence and terrorism dates back to ancient times. It has now become a weapon in the hands of a few. The modern terrorist is found to be educated, well read and trained. The war by terrorists has been raging for decades. A terrorist must be disposed to kill the police, government functionaries and industrialists. A terrorist must acquire experience in the use of all types of arms and explosives.¹

The roots of modern terrorism can be traced to totalitarian, extremist and fundamentalist movements in the world. In the present situation it is used by ethnic, separatist and military movements, by a variety of acts such as

indiscriminate killings, holding hostages and extortion for their narrow ends. These acts have been called “proxy war” with many States openly supporting such acts eg. Syria, Libya, Pakistan, Iran being foremost among nations.

According to Blacks Law Dictionary a person is guilty of “a terroristic threat if he threatens to commit any crime of violence with the purpose of terrorising another.... “However there is no universally accepted definition of terrorism.

According to the Encyclopedia of Social Sciences terrorism is “the open defiance of law and is the means whereby an opposition aims to demoralize a governmental authority, to undermine its power and to initiate a revolution or counter-revolution”. It is because of foreign help and funding, criminalisation of politics, organized crime and low rate of conviction in the criminal justice system that has contributed to the rise of such crimes. Both national and international terrorism is on the rise.

Terrorism has till date defied all legal definitions. Usually terrorist activity is more easily distinguishable and mentioned in many legal provisions. The modern trend is for the States to enact special provisions to deal with terrorism as ordinary criminal law is insufficient to compressively deal with such activities. Terrorism is often said to be a war without borders.
It has been used extensively from ancient, medieval and modern times and it has eluded all attempts at a precise definition.

Although the League of Nations brought about a Convention for the Prevention of Terrorism, only one State ratified it. It did not come into effect at all. It bears a close association with the concept of political offence at the international level and hence there was no opportunity to achieve a consensus among the nations to deal with it.

International law presumes that the State will punish those who commit crimes including terrorism. Under civil law the State exerts jurisdiction over its own nationals. Certain crimes have universal significance and therefore States are expected to follow the principles of International law - extradite or prosecute. The limitation on this is the political offence exception. These are not ordinary crimes and the offenders are dealt with directly under the law. These are crimes committed with a political purpose. The States are free to determine as to what crimes are 'Political Offences'. It represents the right of the common man to show the dis-satisfaction he has for his government - hence the need for political change. There exists a nexus between the crime

committed and the political offence\textsuperscript{3}. Later, religious beliefs were included to some extent.

However this meant that the state was not obliged to give up the offender, in which case it was expected to prosecute and punish the offender: 

\textit{aut dedre ant judicare}.

Later specific acts such as hijacking, kidnapping, taking of hostages and other related offences were removed from the list of offences\textsuperscript{4} of political crime. In such cases the State was free to extradite the offender.

In human rights related issues, relating to those fighting oppressive or unpopular regimes, States interpret "Political Offence" in a restricted manner, taking into consideration other matters in a geo-political context.

In the light of present day events States assert authority over extra-national crimes.

According to International Law, various conventions and resolutions of the United Nations clearly casts an obligation to try, prosecute and punish

\textsuperscript{3} First came to be used in \textit{Re Castioni}. Later in \textit{Re Meunier}.

\textsuperscript{4} And other offences specifically mentioned in U N. Conventions.
such offenders. The Geneva Conventions also incorporate the ideas of punishing individuals responsible for "grave breaches" of international law.

Terrorism in its modern context started decades ago with hijacking, holding passengers hostage, the kidnapping of internationally protected persons—diplomats for release of other terrorists and wide media coverage. Today with larger organizations, finances, movement across State borders, transnational organized crime and mercenaries terrorism has taken on a different dimension. Later the concept of "freedom fighters" held the public imagination as a terrorist who fought for a cause—self determination. Some countries in the Middle East, Sri Lanka, Pakistan and others came to be known for their soft policy towards terrorists and became safe havens for such persons.

In recent times international law has made efforts to limit the distinction between international terrorism and ordinary crimes. Many U.N. Conventions state that such crimes eg., taking of hostages or hijacking of aircraft as terrorists are not within the ambit of political offence.

The Police force in India has kept the social order intact. Geopolitical factors have contributed to the disturbances faced by the administration. The North Eastern States have remained outside the administrative system.
Mizoram, Assam Tripura have their own unique ethnic identity and their isolation has lead to various problems like the Naxalite Movement, ULFA etc. Religious factors have also contributed to the rise of terrorist activities and militancy in Punjab. Their need for a separate identity was seen in their demand for Khalistan. Places of worship became store-houses for arms and ammunition, where religious leaders refused permission for the police to enter. This, later posed a serious threat to the security of the nation resulting in operation Blue Star and operation Black Thunder at the Golden Temple in Punjab.

Since independence the army has been called upon, with increasing frequency, to maintain law and order in the country. Separatist terrorism grew over the years, when certain groups felt left out, or alienated from the rest of the country. The Black Panthers in U.S.A., the Euzkadita Azakatasuma in Spain, Irish Republican Army in Britain, the Mukti Bahini in former East Pakistan are some groups, which used terror tactics to achieve their ends. A wave of religious fundamentalism\(^5\) also made an entry into the national and international scene some decades ago.

\(^5\) Rise of Islamic fundamentalism.
SIGNIFICANCE OF THE TOPIC

The growing urgency to confront the threat of terrorism is an important aspect that most governments are concerned with these days. The spate of abductions and threats to members of the coalition in Iraq itself is disconcerting. Abduction and extortion killings are not a novel phenomenon, but the increasing use of it to determine international policies are suffice to cause concern. These are elements, which are known to breed violence, and terrorism thrives on this. This violence the scourge of modern civilization and has come to symbolize this century. Terrorist violence acquires greater sophistication due to advances in technology and global communication systems, arms and explosives.

The growth of state sponsored terrorism is another aspect that has to be confronted. In many countries, low intensity conflict\(^6\) initiated by terrorist groups are backed by foreign Governments\(^7\). This emerging trend is often called “Surrogate Warfare” when used by nations against rivals\(^7\).

\(^6\) (LIC) some states prefer to call these incidents as low intensity conflicts.

In recent years Islamic fundamentalism espoused by Libya and Iran have become a force to reckon with. Terrorism is said to be a part of both domestic and external policies. Accordingly, they use religion to justify their acts and incite their people.

The popular notion among such states is that the western democracies manufacture and sell arms to maintain their business interests. Surprisingly most states support covert activities in one form or the other*. The question that is uppermost on the mind is how to distinguish between the legitimate use of force against terrorists and excessive use of force for state interests, against groups and organizations. Further, the distinction between big powers committing aggression and lesser states independently fighting terrorism is narrowing down. By blurring the distinction at the domestic and international level, States are unable to take concrete steps to combat terrorism in all its manifestations.

A major set back to all anti-terrorist plans is the lack of a correct legal definition. Most legislations contain a variety of acts called “terrorist activity”, some such acts form part of international treaties like kidnappings, hijackings, bombings etc. International human rights law and humanitarian law prohibit

* Pakistans ISI in India, and the U.S. in Nicaragua.
certain acts or safeguard and protect other acts. It is difficult to arrive at a precise legal definition.

The Statute of the International Criminal Court\(^9\) contains a number of provisions relating to certain crimes such as war crimes, or crimes against humanity some of which form terrorist acts. The issue confronting the international community today is to find ways and means to combat terrorism. Today, conventional techniques are challenged by increased capabilities of the modern terrorist. Recent trends indicate the threat of nuclear, biological and chemical weapons by terrorists. Diversified motivations of groups and their networks are a cause for concern. Strategies and counter strategies need to be worked out by governments- co-operation is necessary. Other issues related to terrorism need to be addressed such as the illicit trade in arms and drugs. Powerful cartels control the coca and heroin trade\(^{10}\) which now is known for organized crime- assault, extortion and murder are not unknown to them. Human rights and the rule of law are relegated to the background when such powerful groups take up terrorist activities.

\(^9\) Adopted at Rome, 1998 However the Court has no jurisdiction to try offences / acts relating to terrorism.

\(^{10}\) International controls are necessary to stop this trade. Immediate steps are necessary to evolve structures to combat terrorism both at the regional and international levels. In Sudhir Sawant – Steps Against Narco-terrorism in Asia.
OBJECTIVES OF THE STUDY

The main objective of the study is to find the methods and means to combat terrorism which is an ongoing "proxy war". It is a global phenomenon in which all efforts are being made to suppress and prevent such acts of terror and violence, which the world has come to witness.

The main aim is to search for various solutions and the means of law to combat the menace of terrorism. Most states seek to achieve an effective remedy through legislative efforts, national regional and international. It is necessary to evaluate the rule of law contemplated by India in the light of various Conventions and protocols of the United Nations. India has signed and ratified many such conventions. In keeping with the international obligations, India has enacted various anti-terrorist legislations to deal with militancy and insurgency within the country. Many countries are sending their officers to be trained in fighting against insurgency and militancy. Our methods in dealing with these in Jammu and Kashmir, Punjab and Assam have received worldwide attention.

Terrorism is basically a gross violation of human rights. It has a significant effect on national security. In the light of 9/11, the criminal justice
system is expected to discharge its duties effectively in order to protect public peace and the rights of its citizens.

HYPOTHESES

This research study is undertaken with the following hypotheses:

1) To examine the acts of violence in the world that takes place on account of terrorism.

2) It is necessary to suggest measures to effectively combat terrorism in the world.

3) The need for a precise definition of terrorism will be discussed, which is necessary in present day conditions.

4) There is a pressing need to examine other activities closely linked to terrorism, that is organized crime, illegal trafficking in drugs, money laundering and the supply of guns, ammunition and others equipment used to commit acts of murder and mayhem.

5) In order to bring about peace and development in the world, there is an urgent need to put an end to state sponsored terrorism that poses a significant threat to the maintenance of international peace and security and international relations.
The research will focus on combating and suppressing terrorism. The use of force, implying the military option, is one method being increasingly adopted by most states to deal with terrorist activities.

The present study is undertaken to cover all aspects of the problems.

METHODOLOGY

The researcher has used the analytical and historical method of collection of research materials and analysis. The doctrinal research has been made from a study of authentic sources of information such as textbooks, journals, law reports, United Nations documents, Security Council resolutions and various Conventions and Protocols. A case study has been made reviewing the decisions of the Supreme Court of India. Some decisions of other countries have been examined. Trend setting cases have been analyzed, Latest information and developments have also been incorporated by browsing the internet and searching the various websites of organizations both at the national and international level.

The researcher has also used the interview method to elicit the opinion of administrators, NGO's and human rights activists championing the cause of human rights and has been incorporated in the research.
This doctrinal research is a through analysis of the terrorism being faced in contemporary times.

REVIEW OF LITERATURE

Relevant information has been collected from primary and secondary sources. Legislative enactments, work of specialized agencies writings of jurists. Reports of National and International organization have been analysed.

RESEARCH DESIGN

For a thematic development, the study is divided into eight chapters.

CHAPTER-I:

Introduces the topic and evaluates its scope and development.

CHAPTER-II:

Deals with the way governments all over the world have grappled with the problem of terrorism. It is a complex issue, which has left the administration in anxiety. The climate of fear by a variety of methods e.g., hijacking aircraft, taking hostage, diplomatic, holdings public personalities for ransom, extortion; crippling public transportation systems etc has became the techniques of modern day terrorist activities.
CHAPTER-III

Presents the various General Assembly Resolutions, which bear testimony to the work of the Sixth Committee of the United Nations. Issues of ethnicity insurgency and militancy, has kept the world body, busy. States have been repeatedly called upon to solve national issues so that they do not influence or threaten international peace and security. Political ideology and religious fundamentalism have left the world stunned with the events which have taken place-attack on the Indian Parliament, the Madrid bombings, the senseless killing of Daniel Pearl a journalist and many more.

However governments’ were yet to take a united stand against terrorism as we can see from the events that occurred in the last century.

Many governments’ despite the nature of the crime refused to extradite the offenders. Further they would not prosecute him either. In many countries, the terrorist was a “freedom fighter”. The issue of political offence was the main reason why governments gave shelter i.e., asylum to such persons. This is clearly evident from the treatment meted out to hijackers of aircraft throughout the world. However, the raid at Entebbe by the Israelis, to free their citizens kept hostage opened up in new chapter in anti-terrorism. The Lod Airport incident, the killing of Israeli athletes at Munich, the IRA,
LTTE, and other Middle East Terrorist organizations brought new dimensions of terror strikes before the governments i.e. suicide bombers.

The U.N General Assembly and Security Council brought about various Conventions, which many members have ratified, but not all. In its fight against terrorism post 9/11, the Security Council not only condemned terrorism as a criminal act, but also recognized the right of self-defense under Art 51 of the Charter. Till date the most important resolution has been the adoption of Res.1373, 2001. This brought into being a counter terrorism committee. The Counter Terrorism Committee monitors the performance of the Member states with respect to combating terrorism. Most Member states have submitted reports on the measures adopted so far.

CHAPTER -IV

States the various regional efforts over the decades to suppress terrorism. The Council of Europe at Maastricht discussed tackling international terrorism drug trafficking and other serious offences under the European Police Office (EUROPOL).

The European Convention on the Suppression of Terrorism had already come into force in 1978. It is one of the earliest conventions. Europe has had
its own share of terrorist violence and the nations were eager to take steps to effectively combat terrorism.

The British government grappled with the IRA and Sein Fenn. The kidnapping and killing of Public persons such as Lord Mountbatten, suicide bomb attacks, bombing of markets and of other public utilities, left the administration with an import task of combating terrorism. Britain has worked at anti-terrorist measures within the TREVI group which was later expanded to include U.S. Canada and Austria. The U.K. has also brought into being legislation to deal with terrorism under the provisions of law.

The U.S. has also adopted various measures. However post 9/11 it enacted the Patriot Act which made it mandatory for the Federal Bureau of Investigation, Central Intelligence Agency and other agencies to co-operate with each other and share information in the interest of national security. The 9/11 Commission has also taken up public hearings of important heads of governmental agencies to discuss their role to find out lapses in security; which led to four planes being hijacked and the bombing of the World Trade Centre and the Pentagon. This left more than 3000 dead and many hundreds injured.
Israel is perhaps one of the few countries which has used force to deal with terrorism. Right from the 1950’s Israel was beset with problems terrorist strikes. Palestinian terrorist organizations targeted civilian population by using suicide bombers.

The government using force, deportations and demolition of dwellings has dealt with terrorism strictly. The recent killing of the Hamas leader responsible for many deaths has left the world body shocked.

Although words have been exchanged in the Security Council between the two sides, the U.S. has vetoed any resolution that seeks to condemn the Israeli actions.

In the Asian region, the South Asian Association for Regional Co-operation\(^{11}\) has also taken up measures to combat terrorism by bringing about a Convention on Terrorism in 1987. It was of particular importance to the asian region as many members were facing serious problems due to the operation of terrorist networks, militancy and others activities. Illegal drug trafficking, dealing with arms and ammunition and other acts of organized crime posed a serious threat to the SAARC countries.

NATO has also taken many decisions to combat terrorism. These European and now East European countries have created various agencies to deal with many aspects of terrorism. Along with the US the NATO has taken an important step in attacking the Al Qaeda and the Taliban. Also vigilant about the use of nuclear, chemical or biological weapons, i.e., weapons of mass destruction. NATO has developed its own responses regarding troop placements or other logistics. It has also maintained relations with the International Civil Aviation Organisation and the European Union. It has made contributions and suggestions to the U.N. counter terrorism committee.

The Organization of American States (OAS) brought about the Inter-American Convention Against Terrorism. This was in response to the U.N call to increase regional efforts in order to combat terrorism. Enhanced effective measures were implemented to deal with the "proxy war". They also called upon their members to ratify the various U.N. Conventions against terrorism. They also focused attention on those States that support terrorism and made reference to State sponsored terrorism. Together with India, the OAS has requested the U.N. to bring about a comprehensive convention against terrorism.

\[12\] Ibid, at p 334.
In the light of developments taking place in the world, many countries have taken up measures to combat terrorism. In India there have been various legislative efforts to tackle the menace of terrorism. National efforts will be evaluated in the light of anti terrorist legislation. The criminal justice system has kept close vigil of terrorist and disruptive activities in the country. Threats to the internal security and external security of the country have made the governments realize the necessity of enacting appropriate legislation to deal with such matters. The nature and scope of the enactments will be evaluated in the light of global developments.

Hijacking, holding hostage of important people including diplomats, insurgency and militancy in the North Eastern region and Jammu and Kashmir\(^\text{13}\) has left the country shocked. The attack on Parliament, USIS building and religious places poses a serious danger to society. India has always used peaceful methods to tackle its problems. However when the sovereignty and integrity of the Nation are threatened then more serious measures are considered to effectively deal with these matters. Legislations

\(^{13}\) ibid, at p. 214
dealing with terrorism, security of the nation and organized crime are analyzed.

The heightened militancy in Jammu and Kashmir over decades has affected peace in the region and the security of the nations. Transborder terrorism as practiced by the ISI of Pakistan to ferment terrorist activity in the country. Financial help, training, indoctrination and religious fundamentalism are also important factors that affect such activities. Many states such as Karnataka, Andhra Pradesh and Maharashtra have enacted separate legislation to deal with smuggling, illegal trade in narcotics, money laundering etc.

SECTION-B

In the 21st Century terrorist networks are becoming increasingly active. Their efforts are aimed at hitting soft targets in order to coerce governments to accede to their demands.

CHAPTER VI

Deals with the Courts in India, which have interpreted the provisions of enactments and rendered justice. The independence of the judiciary; is an important aspect of the doctrine of separation of powers. Judgments of important cases will be examined. The rule of law is upheld. Enforcement
agencies, prosecutors and the officials within the criminal justice system play an important role. The researcher will analyse these judicial pronouncements.

Various important cases from India, USA and Israel are dealt with their importance in interpreting the will of the legislature is critically analysed.

CHAPTER-VII

Deals with the importance of human right provisions in a democratic polity which is important in present day India. Police excesses, custodial violence, extra judicial killings are restorted to by some members of the forces. In such circumstances, it is the duty of the state to look into such allegations in order to arrive at the truth. In any system of governance human rights of every individual is very important -of the ordinary, civilian or alleged terrorist. Conventions of the U.N. will be analysed in order to assess their impact on member states. In spite of Part III of the Constitution of India enacted The Human Rights Act. The National Human Rights Commission has also played an important role when public authorities have infringed human rights provisions. The NHRC also recommended to the Government problems faced by TADA detenus. The aim being to get the government to act in a positive way regarding human rights and fundamental freedoms.

14 Ibid., at p.106
CHAPTER VIII

In conclusion this research examines the concept\textsuperscript{15} of terrorism. It analyses the efforts made nationally and internationally to combat terrorism. It is a study of the Indian initiative to suppress terrorism in the contemporary world.

Operations Group personnel search for arms and ammunition at a street stall