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ANTI-TERRORISM LEGISLATIONS UNDER INDIAN CRIMINAL JUSTICE SYSTEM – A CRITICAL STUDY

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Abstract

Terrorism is described as the greatest crime against humanity which poses a great threat to enjoyment of human rights. This has posed a global challenge for both individuals as well as nations the measures to be adopted to combat such terrorism. The term terrorism comes from French word terrorism which is based on Latin verb 'Terror' Terrorism is defined in the U.S. by the code of federal Bureau of investigation as the "unlawful use of force and violence against persons or property to intimidate or coerce a government the civilian population in furtherance of political or social objectives. In the words of R. Venkatraman the former president of India at the 21st annual conference of the Indian Society of International Law mentioned that the process is not "Just the maintenance of the powers of the state or 'order law order with law'.

Keywords: Terrorism, Human rights, Anti-Terrorism Legislations, Indian Justice delivery System, guarantees fundamental rights, Constitutional Rights, Implementation of Human Rights.

Introduction

There is a growing Consciousness of the international community as to the negative effects of the terrorism in all forms on full enjoyment of Human Rights, fundamental freedoms. Rule of law and the democratic freedoms, enshrined in U.N. charter and the international instruments. The main question to be considered in this respect is firstly whether the existing laws are sufficient to combat such terrorism, or is there a need to enact such new legislation? Secondly the Indian Constitution guarantees fundamental rights to its citizens in chapter III. Does the law enacted for the purpose of combating terrorism and organized crimes violate the Human rights and fundamental freedoms of the people under Article 14, 15, 19 and 21.

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The Constitutionality of such legislations is often subject to challenge on various grounds including inter alia the violation of fundamental rights and legislative competence. In **Kartar Singh V/s State of Punjab**[2] it was observed that combating terrorism is so powerful that they prevent the judges to follow the rules of natural Justice.

In peoples union for civil liberties v/s union of India the supreme Court up held the constitutional validity of various provisions of POTA. The Court said that the parliament possesses power under Art. 248 and entry 97 of list Ist of 7th schedule of the constitution to legislate the Act. Need for the Act is a matter of policy and the court can not go in to the same. Though the centre has passed as many as drastic legislations like MISA, NSA, UAPA, TADA, POTA, MCOCA, NIA there was a massive misuse of the provisions of these Acts and gross violation of human rights. Finally some of these acts were repealed and some of the acts were amended. It is wrong to think that merely by enacting these draconian laws could project the satiety unity and Integrity of the nation and liberty of the individuals. There should be proper and effective implementation of these laws to deal with terrorism and organized crimes. We find that on one hand human rights jurisprudence is expanding while on the other hand it totally obstructed.

In India the first enactment of preventive detention during the British Period was the Anarchical and revolutionary crime Act. 1919 popularly known as Rowlatt Act. Before this act Bengal State prisoner Regulation Act.III of 1818 and similar enactments were passed in Madras and Bombay. After this Defence of India act 1939 authorized the Government to detain the persons. Later one after another preventive definition laws came in to force. Firstly in 1950 the preventive detention Act. was passed followed with so many other Acts. like maintenance of Internal security Act. (MISA) 1971. Consecration of foreign exchange and preventions of smuggling acuities Act.1974 (COFEPOSA). National security Act (NSA) 1989. Terrorist and disruptive Activities Act 1985. Maharashtra Control of organized crime act. 1999 (MCOCA).Prevention of terrorism Act 2002, unlawful activities prevention amendment Act. 2004 & 2008. National Investigation Agency Act 2008 **(5)**.

The object of preventive detention is to prevent the accused person from doing something which comes in entry of list 1 and Entry 3 List III.**(6)** At the time of framing of the constitution there

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was a lot of discussion on the Article 22 of the constitution some members like G. Durgabai Deshmukh, P.K. Sen, Member from Orissa supported the necessity to pass preventive detention laws some other member Mahavir Tyagi had opposed the law of preventive detention on the ground that "life liberty and pursuit of happiness are the three fundamental rights. Dr. B.R. Ambedkar supported the preventive detention laws totally by overruling the objections of the other members. The law commission of India in its 173rd report is of the opinion that a legislation to fight terrorism is today a necessity in India.(9)

In democratic country like India the concept of Rule of Law is the basic feature of the constitution of India. The individual dignity unity and integrity of the nation are the core values of the constitution. Undoubtedly the national security is of paramount importance without protecting the safety and security of the nation individual rights cannot be protected. The worth of the nation is the worth of the individuals. There is a need to balance these two aspects. Any law for combating terrorism and organized crimes should be consistent with the provisions of the constitution and relevant international instruments. The war against terrorism and organized crimes must be won under the rule of law.

The existing criminal Justice system and legal frame work were found to be rather inadequate to curb or control the menace of terrorism. The present Criminal Justice system was designed to deal with individual crimes only but not to deal with terrorism and organized crimes. The existing laws (i.e.) substantive as well as procedural laws for ex. Cr.P.C., I.P.C. and evidence Act should be suitably amended from time to time for effective implementation of these drastic legislations. These extraordinary laws like NSA, UAPA, NIA and MCOCA should be consistent with Art. 14, 19(1) and 21 of the constitution and due adherence to basic principles of Criminal Law.

It is necessary to fight the menance of terrorism and organized crimes within the parameters set by the constitutions of India. The harsher for the law, the greater is the threat to life liberty and human dignity. Under sec 18, 15, 32 of MCOCA, TADA, POTA a confession made by an accused person before a police officer not below the rank of superintendent shall be admissible. Though it was great departure from Sec. 26, 27 of evidence Act. This provision will help the Police authorities for conducting their investigation more easily and effectively in these drastic legislations. To curb the

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activities of mafia, organized crimes, crime syndicate or gangs the existing criminal justice system was unable to deal so that the special laws were enacted by the state and central Government with some additional powers. After the attacks of terrorists in Mumbai and the other parts of the country two more anti-terror legislations, unlawful activities prevention amendment Act. 2008 (UAPA) and National investigation agency Act 2008 was came in to force from 18th Dec. 2008.

CONCLUSION;-

Now the question is whether the country requires these extra ordinary laws or not? The considered opinion is it needs. The special and preventive detention laws are like life saving drugs to be administered only when ever other medicines fail in our medical kit lies when we have so many ordinary laws to combat terrorism we use these extraordinary laws in exceptional and particular purpose. Just like the Doctor using the life saving drug in proper time and place the state should use these Anti-Terrorism legislations in the same manner. Otherwise it may result misuse abuse and violation of human rights.

In fact all laws are good and suitable to people. The real defect was in their implementation but not on their content. Simply passing the new laws are no use. The NHRC, Amnesty International are of the opinion that the existing laws are sufficient to deal with terrorism and organized crimes. Even if the State passes the new laws like NIA, UAPA, 2008 it looks like a "new wine in the old bottle" but nothing more than else. The main hurdle for proper implementation is the political interference, corruption of enforcement officials, lack of Police force and accountability. The real need for proper enforcement of the existing laws is to strengthen the police force and working system of criminal Justice system. Last but not least the "prevention of terrorism and organized crimes are not by law alone". There should be some active support and mutual co-operation of the public, mass media, N.G.O's, legal professionals and the courts for successful implementation of these drastic laws. In this aspect they should act as a watch dog against the misuse of these laws. All State agencies should co-operate with each other and accountable to their work. The sanity is needed rather than insensitivity in discharging their duties effectively. The main purpose, object, and need for enactment of these drastic laws will be achieved only whenever the laws are properly and effectively implemented by the three agencies of the State.

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