

COUNTER-TERRORISM: *Eliminating 'Anything' against State*

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Abstract

Human Rights are minimal rights conferred upon individuals against State for belonging to 'member of human family'. Historical revolution has come up with the idea of imposing responsibility upon State for protection of citizens. The most crucial challenges that international community *at presenti* is facing is protection of human rights while countering terrorism. State has duty to protect its individuals from all sorts of unreasonable interferences; it has also the duty not to become a perpetrator of violence while addressing the issue of terrorism. The task of combating terrorism demands that anti-terror strategic measures should be twined with protection of human rights and rule of law. The international community has failed to give universal definition of 'terrorism' giving states a way too large battlefield in which the domain of terrorism has no predefined limits and unfortunately it has already left the domain of criminal jurisprudence. The concept of terrorism that started with anarchic methods adopted by the state to come to or remain in power has become the concept of eliminating the elements that are anti-state in nature. Terrorism started with 'terrorism by the state' turned to 'terrorism against the state' and reached to the climax of 'eliminating anything against the state'. This eliminating tendency has devised the tools of arbitrary counter-terrorism legislations in the form of the TADA, POTA, and UAPA in Indian context. These laws are framed diluting the rules of criminal jurisprudence like *nulla poena sine lege*, *nullum crimen sine lege*, strict interpretation of criminal laws, presumption of innocence, and proof beyond reasonable doubts. Further their implementation result into

gravest form of human rights violation. It's the mockery of democracy that accused under counter-terrorism laws are activists, students, journalists, physicians, writers, poets, trade unionists, teachers, lawyers fighting against state's arbitrary actions.

Keywords: Counter-terrorism, Criminal Jurisprudence, Human Rights, Rule of law, Terrorism.

Introduction

The fundamental rules that form the bedrock of criminal jurisprudence are *nulla poena sine lege*, *nullum crimen sine lege*, strict interpretation to the criminal laws, presumption of innocence, and proof beyond reasonable doubts. The interpretation principles require strict interpretation of penal provisions so that individual who was not intended to be covered by legislature is not wrapped within penal statute. It would be sheer injustice if people are convicted and punished under criminal law without defining the main offence. But the domain of Terrorism suffers from this major lacuna. According to *Human Rights Watch Report* there are more than 130 counter-terrorism laws that suffer vagueness by not defining words, inhibiting ambiguous definitions and failing to define what constitute a terrorist act.⁴¹ This has created "terror hysteria"⁴² on one side and on the other dilution of its scope. To curb the violence counter-terrorism legislations has started flagging thoughts of people escaping the threshold of criminal jurisprudence. The objects of legislation framed by State in the name of security are deficient in *bona fide* intention. The brutal acts of violence by terrorists, dissent against state administrative and legislative measures, protest against human rights violations are looked from same lens. The situation has become two faced. One that is more highlighted and shown more draconian is violence perpetrated by individual or group of persons. And other state- driven anti-terrorist

⁴¹ In the Name of Security Counterterrorism Laws Worldwide since September 11, Human Rights Watch, 18 (JUNE 2012) <https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11>

⁴² Tapan Kumar Bose, *Global War on 'Terrorism' and Democratic Rights*, 31 (4) India International Centre Quarterly, 27, 27 (2005)

measures that are considered as legalized form in the name of state security and criticized as State Terrorism. The killing of a man by non-state actor should be weighed equally with the killing of a man by the state without any due process. The point is both are at equal standard from the perspective of human right violation.

The crisis of definition

The world is fighting against terrorism without precisely knowing what to fight against. Ambiguity in meaning and scope of it has always been strongly advocated by the scholars.⁴³ The talks around the globe are centered on terrorism, no multi-lateral or bilateral international treaty is untouched by counter-terrorism measures to be taken by states to attain *terrorist-free society*. The international bodies, being the flag bearers of human rights have not come up with the inclusive definition of terrorism involving all kinds of human rights abuse by state and as well as non-state actors. Various international conventions adopted between 1963 and 1999 were compiled under *International Instruments Related to the Prevention and Suppression of International Terrorism* pursuant to adoption of *Resolution 1373* by Security Council to combat terrorism comprehensively.⁴⁴ These Conventions may give us an idea about the particular activities which forms the scope of terrorism but do not define it. The *1985 Resolution of General Assembly* “[u]nequivocally condemns, as criminal, all acts, methods and practices of terrorism....which jeopardize friendly relations among States and their security”⁴⁵. The *acts, methods, and practices* are comprehensive but uncertain way to address terrorism. *Resolution 1373 of the United Nations Security Council*⁴⁶ which acted as alarm-raiser after 9/11 US attack, determined that “States shall take the necessary steps to prevent the commission of terrorist acts” and not terrorism by making it an open ended regime. This trend has led to many international instruments (ASEAN Declaration on the

Joint Action to Counter Terrorism (2001), Inter American Convention Against Terrorism (2002) and Eleventh SAARC Summit Declaration, Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism (2004) and the OSCE Bucharest Plain of Action for Combating Terrorism), to operate in the field of combating terrorism in the absence of its definition.⁴⁷

The uncertainties in defining the scope of terrorism and simply urging states to take stringent measures against it poses exaggeration of threat leading states to sketch anti-terrorism laws wrapped with very broad and uncertain words. One may argue that the fight against terrorism has been quite successful as there are several conventions dealing with specific horrific activities. The point of contention is that the gap between perpetrators of terrorism and victims of anti-terrorist laws has to be looked into. The broad scope has engulfed the voice of dissent and legitimized state terrorism under name of security.

Terrorism ‘by the State’ to ‘against the state’: The shift

Twentieth century witnesses the transformed version of terrorism.⁴⁸ The objective element of terrorism has undergone a change. Earlier the terrorism was mainly considered to be violent actions of state and now it is considered as violent actions against the State exclusively by non-state actors. The *Oxford English Dictionary* defines terrorism as “government by intimidation as directed and carried out by the party in power in France during the Revolution of 1789-94.”⁴⁹ The French Revolution flags its origin addressing exclusively to state actions.⁵⁰ On the other hand, in 1937 League of Nations *Draft Convention For The Prevention And Punishment Of Terrorism* defined terrorism as “All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general

⁴³ M. Cherif Bassiouni, *Prolegomenon To Terror Violence*, 12 Creighton Law Review, 745, 751-753(1979)

⁴⁴ Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols, United Nations, V.03-85663 (E), 2 (2003)

⁴⁵ General Assembly Resolution, A/RES/40/61 9 December 1985

⁴⁶ Security Council Resolution 1373 (2001), S/RES/1373 (2001)

⁴⁷ Bose, supra, at 28

⁴⁸ Roger S. Clark, *State Terrorism: Some Lessons from the Sinking of the Rainbow Warrior*, 20 Rutgers L.J., 393, 394 (1989).

⁴⁹ 11 Oxford English Dictionary 216 (1933) cited in Roger S. Clark, supra, at 394

⁵⁰ Clark, supra, at 394

public.”⁵¹ Though it never came into existence but it marked the plot for further course of action which later narrowed down to every act against state as terrorist act.⁵²

The shift from ‘by the state’ to ‘against the state’ happened in the middle of 19th century.⁵³ This ‘against the state’ ideology emphasized upon absolute powers of state under the name of security. Coming years excluded state terrorism from its domain. In 1983 the US Department of Defense defined terrorism excluding State terrorism as ‘the use of force by revolutionary organizations’.⁵⁴ India also targets activities of non-state organizations and individuals under its anti-terror laws. The media has played a vital role in bringing this shift by favoring the state in categorically depicting non-state actors in conflict with government.⁵⁵

The shift acted as double-edged sword, firstly it gave State license to counter terrorist activities by itself committing violence within the broad ambit of draconian laws and secondly violation of human rights by state came outside the purview of terrorism. There is misinterpretation of State-terrorism which is often defined as arbitrary acts of state while dealing with terrorism. However this form of “state terrorism is without a fig leaf”.⁵⁶ The acts of states which are devoid of any justified explanation like illegal arrests, involuntary disappearances, forcible relocation of populations, torture, rape and custodial killings, kidnapping and assassination of political opponents, false encounters, massacres of racial or religious minorities or of certain social classes, incarceration of citizens in concentration camps so on and so forth must also be included under state-terrorism.⁵⁷ These are generally not looked at as terrorism however they also engulf lives and surface fear among

people, which constitute elements of terrorism. Though the definitions have avoided including state violence but their objectivity definitely qualify it as terrorist activities.⁵⁸ However such a claim is neither desirable nor feasible with the object in mind to constrain the domain of terrorism for the purpose of its specific elimination. But such deductions do warrant the necessity to revisit the concept otherwise it would include every act of violence by homogenizing it contextually.

Anti- Terrorism Laws: Diluting Terrorism

The dual nature of response to violation of human rights by non-state actors and state is due to the absence of any uniform definition of Terrorism. Absence of precision has given state a wider area to act while countering it. These messy lines have laid heavy cost on lives of innocents. The force of international instruments which led countries to come up with anti-terrorist laws could not justify the measure of its abuse. Counter-terrorism measures of states attributed terrorism with its own baggage of historical, cultural, racial, political and regional disruption ideologies. This opened the mouth of terrorism to take into its account ordinary crimes and expanded government’s power to arrest, detain, investigate and prosecute persons compromising the fundamental principles of security of life and liberty. India’s black laws include Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA), Prevention of Terrorism Act 2002 (POTA), Unlawful Activities (Prevention) Act 1967 (UAPA). Each of these has knitted with itself a story of abuse. These Acts fall prey to irrationality due to absence of fundamental criminal jurisprudence leading to arbitrary state actions violating human rights.

TADA was passed with a view to dealing with specific situations of terrorism in Punjab, Kashmir and even parts of north-east. There is no hesitation to blame the loosely worded broad definition of ‘terrorist act’ and ‘disruptive

⁵¹ League of Nations Convention For The Prevention And Punishment Of Terrorism 1937, art.1, <https://dl.wdl.org/11579/service/11579.pdf>

⁵² Javier Ruperez, *The United Nations In The Fight Against Terrorism*, 2, https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006_01_26_cted_lecture.pdf

⁵³ Jenny Teichman, *How to Define Terrorism*, 64(250), *Philosophy* 505,508-509, (1989)

⁵⁴ *Id.* at 509

⁵⁵ Bose, *supra*, at 30-32

⁵⁶ C. V. Subbarao, *State Terrorism*, 26(50), *Economic and Political Weekly*, 2904 (1991)

⁵⁷ Randhir Singh, *Terrorism, State Terrorism and Democratic Rights*, 27(6)*Economic and Political Weekly*, 281,286 (1994), see also, Bose,*supra*, at 29

⁵⁸ Pupul Datta Prasad, *Concern For Human Rights In The Fight Against Terrorism: Challenges And Options Before India*, 58(4) *Journal of the Indian Law Institute*, 457, 476 (2016)

activities' for its draconian application by the state which justified extortion, illegal arrests and detentions, torture, and other human rights violations.⁵⁹ Even the peaceful expression became the basis of guilt under the law especially for particular sections of society like indigenous peoples, religious minorities, lower caste people, trade unionists, activists, intellectuals, journalists and leaders of opposition political parties.⁶⁰ The failure of legislation could be quantitatively argued by its conviction rate of less than 1.5%- approximately out of total 76,000 detainees, only 35% faced trial in which 95% were acquitted, and 25% were released without charges.⁶¹ It was scrapped down in 1995 after pressure from human right conscious national and international bodies. National Human Rights Commission in its report along with a letter⁶² to Parliament prohibited its renewal.⁶³

However, the stringent provisions were again transplanted into POTA in wake of *Resolution 1373* of Security Council which urged states "to establish terrorist acts as serious criminal offences under domestic laws".⁶⁴ This also met with same fate of being repealed in 2004 on grounds of blatant human rights violations. It facilitated violations of dissenters' rights of speech, expression and other related activities and justified accusation of ordinary crimes as terrorism-related offenses and police brutal torture. Farmers, students, labors, tribal women and children of Jharkhand and Muslims during Gujarat riots bore the brunt of flaws of laws.⁶⁵ Terrorism was diluted from violent activities against the state to putting up posters expressing disgust against the government about the events happening in the society.⁶⁶ It is a shock to the conscience of democratic setup to superimpose the picture of terrorism of

giants holding lethal weapons upon young men holding posters to express themselves.

After struggling with non-humanitarian laws for so many years the fight for securing justice in dealing with anti-terrorist laws faced another suffocating path when Parliament re-enacted the provisions of POTA into UAPA(which is in force at present) by amendment in 2004. The Act suffers from the same vice as its predecessors. It does not define terrorism but *terrorist act* following the international path. The vague and arbitrary wordings of Act have already been questioned several times by various legal intellectuals.⁶⁷ The Act defines 'unlawful activity'⁶⁸ using subjective and unclear terms like *disclaim, question, disrupt* and *disaffection*. The Act also punishes individual for their involvements with the *unlawful associations*.⁶⁹ The issue with this aspect is that Act defines 'association' as 'any combination or body of individual'.⁷⁰ The definition is absurd as a group or *circle of friends or casual relations built on sharing tea or meal in dhabas or restaurants or by visiting and reading in library* may be tagged as association with terrorist. Further the Act punishes membership⁷¹ with terrorist organization by defining it without any certain limits taking in its sweep persons having books, pamphlets or expressing sympathy for members of organization but having no connection as such. Thus anti-terror laws charges and punishes people in vacuum of just, fair, and reasonable law breaking the framework of *nullum crimiin sine lege*. To prevent such abuses Supreme Court has stated that "mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence."⁷² But such judgment fell on deaf ears of state causing innocents to languish in jails for absurd accusations before they could

⁵⁹ Anil Kalhan, Gerald P. Conroy, Mamta Kaushal, Sam Scott Miller, And Jed S. Rakoff, *Colonial Continuities: Human Rights, Terrorism, And Security Laws In India*, 20(1)Columbia Journal of Asian Law,93, 141-147 (2006), see also, Subbarao, supra, at 2904

⁶⁰ *Id.*

⁶¹ Swati Mehta, *Human Rights And Anti-Terror Laws: India Sets An Example, Police Reforms Programme*, CHRI, 23, (2004), see also Kalhan, supra, at 148

⁶² National Human Rights Commission Annual Report 1994-1995, 53-57

⁶³ *Id.* at 8-10,(para 4.1-4.6)

⁶⁴ Security Council Resolution 1373, S/RES/1373 (2001), Para 2(e)

⁶⁵ Mehta, supra, 23, see also Kalhan, supra, at 173-181

⁶⁶ Bose, supra, at 36,37

⁶⁷ Gautam Bhatia, *Bhima Koregaon and the Fault in our Laws*, The Hindu, (2018, 23:54 IST), <https://www.thehindu.com/opinion/lead/bhima-koregaon-and-the-fault-in-our-laws/article24305910.ece>, see also Arun Ferreria and Vernon Gonsalves, *Fifty Years of Unreasonable Restrictions Under the Unlawful Activities Act*, The Wire, (09/MAR/2017) <https://thewire.in/rights/uapa-anti-terrorism-laws>

⁶⁸ The Unlawful Activities (Prevention) Act, 1967, cl.(o) §2

⁶⁹ *Id.* at §10

⁷⁰ *Id.* at cl.(a)§2

⁷¹ *Id.* at §20

⁷² Arup Bhuyan v. State Of Assam, 3SCC 377, 379 (2011)

be set free by adding another judgment to the list in the hope of curtailing state abuse.

The Act empowers state to declare any association as unlawful.⁷³ The Act defines ‘unlawful association’⁷⁴ as association whose object is ‘unlawful activity’⁷⁵, one of which is ‘to cause or intended to cause disaffection against India’ which is somewhat similar to sedition as defined u/s 124A Indian Penal Code 1860 (IPC). Similarly an ‘unlawful association’ is one whose object is to commit an offence punishable under section 153A or 153B IPC.⁷⁶ In this context provision resembles S.141 of IPC except the requirement of at least five persons. It enumerates certain objects which make an assembly unlawful, one object of which is ‘to commits any offence’⁷⁷ which obviously includes section 153A & 153B of IPC. Thus it gives discretion to state to treat two similar set of facts differently and declare one of them as terrorist organization under First Schedule of UAPA. Though making superficial comparison is a straw man argument but the point to be highlighted is that the activities penalized under special laws could easily be incorporated under IPC with certain amendments. It questions the necessity of invoking such laws. It could only be justified by the argument that it was designed to be abused.⁷⁸ The necessity to curb terrorism requires mindful robust mechanisms and not the separate legislations failing to address the real issue and delegitimizing every expression against state. According to *Human Rights Watch Report* much of the counter-terrorism laws include activities which are already covered under ordinary criminal laws of countries.⁷⁹ Thus it hardly makes any difference in the fight against terrorism but amplifying difficulties of ordinary citizens to fight against state for establishing their innocence which is a hard-core task in

presence of special procedures of investigation and trial mechanism.

The provisions give a setback to the criminal jurisprudence of *nulla poena sine lege* by not defining offences with precision. It punishes those acts which are too far from even preparation, the vague words blur the line between actual preparatory terrorist acts and the acts which could not be tagged as any offence but the adjective terrorist could make it one.⁸⁰ ‘Terrorism’ became comfort area for legislature dispensing responsibility to place words with exactness as affixing ‘terrorism or terrorist’ could easily declare any act equivalent to offence. This deliberate irresponsibility has diluted the scope of terrorism and made counter-terrorism measures authoritarian devoid of human rights values. In application of terror laws principles of natural justice are ignored blatantly violating due process, and give prosecution benefit of doubt instead of accused.

The Anti-terrorist legislations have placed the victims of terrorist activities and accused of anti-terrorist laws in the same positions- both are victims of human right violations but the former at the hands of non-state actors and later at the hands of state. The recent Amendment of 2019 to UAPA was the last nail in coffin giving silent death to another rule of criminal jurisprudence of *presumption of innocence*. The Amendment gives discretion to Central Government u/s 35 to add the name of individual in the Fourth Schedule if ‘it believes that he is involved in terrorism’. The absurdity lies in belief of government which is sufficient to call any person terrorist. Though S.15 of the Act defines ‘terrorist act’ but it is flourishing area for arbitrary state discretion to brand any ordinary citizen without any act being actually committed by employing words like ‘likely to threaten’ or ‘likely to strike terror in people’. He will be tagged guilty before he could advocate for his innocence, though under ordinary criminal law he is not required to even advocate because there is presumption of innocence in favor of accused and it is the prosecution who has to prove the case beyond reasonable doubt. Graver

⁷³ The Unlawful Activities (Prevention) Act, 1967, § 3

⁷⁴ *Id.* at cl.(p) § 2

⁷⁵ *Id.* at sub-cl. (iii)cl.(o) § 2

⁷⁶ *Id.* at sub-cl.(ii)cl.(p) § 2

⁷⁷ Indian Penal Code, 1860 cl.(3) § 141

⁷⁸ See Generally, Kunal Ambasta, *Designed For Abuse: Special Criminal Laws and Rights of Accused*, 14 NALSAR Student Law Review, (2020)

⁷⁹ In the Name of Security Counterterrorism Laws Worldwide since September 11, Human Rights Watch, 18, (June 2012), <https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11>

⁸⁰ George Williams, *Anti-Terrorism Laws and Human Rights*, 19 Rev. Const. Stud., 127, 130-131, (2015)

the crime higher is the standard of proof required to rebut the presumption of innocence. The amendment has been challenged in the Supreme Court on the ground that it violates Article 14, 19 and 21 of the Constitution.⁸¹ The petitions challenge arbitrary discretion of state to label individual as terrorist even before commencement of trial or any application of judicial mind over it, violating right to live with dignity and reputation without any procedure established by law and creating chilling effect on right of dissent.

Anything against State: Terrorism against State

The unchecked powers of State through legislations are used not for the *bona fide* purpose of security of State rather for the suppression of anti-state terrorism voices. The image of today's government resonates with colonial power holders who invoked black laws to suppress the voices of people against their repressive action. The argument alleging political application of anti-terrorist laws by government in power for curbing socio-democratic protests and civil rights activism and consequent violation of human rights is not meek.⁸² Terrorism has become euphemism for political violence against the state. The de-legitimization of protests relieves the states from their obligation to enquire real issues addressed at such stages. It's the mockery of democracy that accused under UAPA are activists, students, journalists, physicians, writers, poets, trade unionists, teachers, lawyers fighting against state's questionable actions. Recent incidents satisfies this list where people were charged for protesting or raising voices against the government not for its subversion or creating terror in people but for some administrative or legislative changes or reforms- Arrest of Umar Khalid(activist and former JNU student), Safoora Zargar(MPhil student), Meeran Haider(PhD student) for protests against Citizenship

(Amendment) Act 2019;⁸³ arrest of Sudha Bharadwaj-a lawyer advocating human rights issues specifically the rights of indigenous people of Chattisgarh and has legally represented the cases of their being extra-judicial persecuted and also made representations in their favor before National Human Rights Commission, Vernon Gonsalves-trade unionist, academician, activist and writer expressing concerns for issues like prison conditions, prisoner's rights and rights of lower caste strata (Dalits) and indigenous people, Varavara Rao-academician, writer and activist for human rights issues, Gautam Navlakha-journalist and activist for human rights issues, Arun Ferreira-lawyer and human rights defender, he represented human rights activists in Bhima-Koregaon related case;⁸⁴ Sudhir Dhawale- writer and poet highlighting land, labor, health, education and caste issues, Surendra Gadling-lawyer representing political prisoners and raising voices for indigenous people rights, he also represented Delhi University professor G.N.Saibaba, Mahesh Raut- former student of Tata Institute of Social Sciences, Mumbai and human rights activist focusing on indigenous communities of Gadchiroli, Shoma Sen- Professor of English at Nagpur University and women rights activist, and Rona Wilson-social activist for bhima-koregan incident,⁸⁵ arrest of Anand Teltumbde for advocating in favor of activists who were fighting for causes of lower caste and indigenous people through literary works, on accusation of being 'urban naxal'.⁸⁶

If legitimacy of such laws lies in protecting security and integrity of India by eliminating actors who even satisfies the requirement of section 153A/153B IPC then actors giving provocative speeches against the activists or dissenters putting state integrity at risk must be placed at the same footing but absence of 'against the state' shred of

⁸¹ Sajal Awasthi v. Union of India, WP (C) 1076/2019

⁸² Singh, supra, 281-283; see also, *India: Dalit Rights Activists Detained End Politically Motivated Use of Counterterrorism Law*, Human Rights Watch, (2018) <https://www.hrw.org/news/2018/06/24/india-dalit-rights-activists-detained>, *Who is an urban naxal, asks Romila Thapar*, The Hindu, (2018 16:30 IST) <https://www.thehindu.com/news/national/who-is-an-urban-naxal-asks-romila-thapar/article25088465.ece>

⁸³ *Delhi Riots: Police Now Book Jamia Students, Umar Khalid Under UAPA*, The Wire, (2020)<https://thewire.in/government/delhi-riots-meeran-haider-safoora-zargar-umar-khalid>

⁸⁴ *Arrest of Sudha Bharadwaj*, Frontline Defenders, <https://www.frontlinedefenders.org/en/case/arrest-sudha-bhardwaj>

⁸⁵ Aarefa Johari, *A poet, a lawyer, a professor: These are the five activists held for sparking Bhima Koregaon clashes*, scroll.in, (2018 01:03) pm <https://scroll.in/article/881849/a-poet-a-lawyer-a-professor-these-are-the-five-activists-held-for-sparking-bhima-koregaon-clashes>

⁸⁶ *India's Unforgivable Laws*, Economic & Political Weekly, (2018) <https://www.epw.in/engage/article/indias-unforgivable-laws>

any kind of liability. It is not the offence as such which determine culpability but the subject against which it is done is the one. Even if 'against the state' could be justified to the legitimate extent, the provisions of IPC under section 122,123, 124A could be found satisfactory unless State seeks to eliminate 'anything' against it for which such special laws become necessity. Thus legitimacy is located in eliminating every anti-state activity.

The dilution of severe concept of terrorism to 'anything against state' has reached out to tag thought process of individual as terrorist activity which is being referred to as 'thought crimes'⁸⁷. It is like punishing people for inculcating politico-majoritarian unauthorized views. The most glaring examples to this would be of conviction of Delhi University professor G N Saibaba, under UAPA who was 90% disabled.⁸⁸ The conviction definitely hooked the thought process. Another example is the conviction of Binayak Sen-a physician who served indigenous and poor people for over thirty years, by admitting his possession of certain books and literature as evidence against him.⁸⁹ There is no second thought for holding the assertion that 'Freedom of expression'⁹⁰ guaranteed under the constitution has been squeezed beyond reasonable restrictions. People are being held liable under UAPA for expressing, creating, developing and possessing literary works. Citizens are denied freedom of discussion and dissent so important for democracy. These laws have violated the bail jurisprudence also in their enthusiasm to combat terrorism. Bail jurisprudence 'bail and not jail'⁹¹ requires Court to lean in favor of granting bail and not in detaining person in jail. Death of Stan Swamy and similar instances reveals reversal of rule of 'Bail and not jail' when charges are framed under anti-terror laws. Courts struggle

to overcome the barriers of sec. 43D UAPA for releasing people on bail in those cases also which are groundless and are not even close to constitute a 'terrorist act'. These laws have frustrated legality of criminal justice system in weighing equally the violent criminal activities of terrorists, harmless voices of dissenters and thought process contrary to majority view under the head of terrorism. In a democracy like India having intense diversity a lawful space must be left for different ideologies to thrive within the fabric of rule of law and outside the broader structure of crime prevention model.

Conclusion

The journey which was started with overzealous response to tackle terrorist attacks had reached to its ugliest forms in letting down its individuals merely for diverse views which are inevitable to the rich cultural diversity of India. It seems that in the vacuum of any precise definition state has shifted its focus from the violent activities which sprung the need to come up with legislative measures to the identities and ideologies which condemn government for its flaws. When something is not defined it starts to take shape outside the language of law where everything has some impacts whether it is legal judgments, majority opinion, media stories or events happening within and outside country. We started curbing terrorism with the understanding of it as 'by the state' leaping forward to 'against the state' and reached to 'anything against state'. Terrorism has lost its rigor in its actual criminal format and has become stringiest in its dilute form by setting aside fundamentals of criminal jurisprudence. It has been so diluted that today it's difficult to call a person thief merely by seeing that he is having some suspicious articles but calling a person terrorist is so easy that even a word of dissent from his mouth and he is a terrorist. The infraction of human rights by terrorism has ironically mirrored the infraction of human rights by counter-terrorism efforts of the state. In devising means to curb terrorism protection of human rights should be made central point learning from past experiences and current instances glaring human right issues. In defining terrorism it should be kept in mind that fight against terrorism is

⁸⁷ Deepali Bhandari and Deeksha Pokhriyal, *The Continuing Threat of India's Unlawful Activities Prevention Act to Free Speech*, Jurist, (2020 05:56:20 PM) <https://www.jurist.org/commentary/2020/06/bhandari-pokhriyal-uapa-free-speech/>, see also, *What is the UAPA?*, India Civil Watch <https://indiacivilwatch.org/uapa/>

⁸⁸ Susan Abraham, *Misuse of the Unlawful Activities (Prevention) Act*, 12(52) Economic & Political Weekly, (2017)

⁸⁹ Aman Sethi, *Lawyers, activists shocked by Binayak Sen verdict*, The Hindu, (Dec.4,2010 15:07 IST) <https://www.thehindu.com/news/national/Lawyers-activists-shocked-by-Binayak-Sen-verdict/article15606998.ece>

⁹⁰ The Constitution of India, 1950, sub-cl.(a)cl.(1)art.19

⁹¹ State of Rajasthan v. Balchand (1977) 4 SCC 308

inter-dependent upon protection of human rights. The site of violation of human rights becomes breeding ground for terrorism inculcating sense of contempt to rule of law.⁹² The law abiding citizens are the characteristic of law-abiding state. The vague legislation, its peculiar way of usage and its magnification by media has portrayed terrorism in such a way, that it has failed us to realize that by expanding the circle of terrorism we have narrowed the circle of democracy.

⁹² *Human rights violations root-cause of conflicts, terrorism: Justice Anand*, National Human Rights Commission, India, <https://nhrc.nic.in/press-release/human-rights-violations-root-cause-conflicts-terrorism-justice-anand>.