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# Human Rights and Terrorism

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# Key Take aways -

- What are Human Rights?
- Terrorism?
- Counter-terrorism measures?
- How are Human Rights affected in terrorism and counter-terrorism?
- Some Examples and Facts

# Human Rights

- Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death.
- Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity.
- Human rights are norms that aspire to protect all people everywhere from severe political, legal, and social abuses.

# Elements of Human Rights

- Basic Rights
- Belong to every person
- Universality
- High Priority?
- Alienable/Inalienable?
- Interdependent?

# Foundation of Human Rights Law

## National Origin of Human Rights Law

- Bill of Rights 1689
- Bill of Rights of America, 1789
- Declaration Des Droits de l'homme et du citoyen, 26 August 1789

## Precursors of International Human Rights Protection

- International minimum standard of treatment of aliens/diplomatic protection
- Humanitarian Interventions by European powers to protect Christian minorities in Ottoman Empire
- Minority protection under the League of Nations
- Emergence of International Humanitarian Law

## UN Charter and Universal Declaration of Human Rights

# History

- Lieber Code - 1863
- First Geneva Convention - 1864
- Hague Conventions of 1899 and 1907
- Poisonous Gas Protocol - 1925
- United Nations Charter - 1945
- Universal Declaration of Human Rights - 1948
- 4 Geneva Conventions of - 1949
- European Convention on Human Rights - 1950
- International Convention of Civil and Political Rights - 1966/76

# Sources of Human Rights Law

- UN Charter
- Universal human rights treaties
- Regional human rights treaties
- Customary law
- Resolutions and declarations
- Humanitarian Law
- International Criminal Law

# International Human Rights Law

## Key Treaties

- The International Covenant on Economic, Social and Cultural Rights - 1966/76
- The International Covenant on Civil and Political Rights - 1966/76
- Its two Optional Protocols.

## Other Important treaties

- International Convention on the Elimination of All Forms of Racial Discrimination - 1966;
- The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol - 1979;
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol - 1984;
- The Convention on the Rights of the Child and its two Optional Protocols - 1989;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families - 1990.
- The International Convention for the Protection of All Persons from Enforced Disappearance - 2006;
- The Convention on the Rights of Persons with Disabilities and its Optional Protocol - 2006

# Categories of Human Rights

- First Generation Rights - Civil and Political Rights
- Second Generation Rights - Economic, Social and Cultural Rights
- Third Generation Rights - Collective Rights

# Basic Concepts

Who is bound by Human Rights Obligations?

- States
- IOs?
- Private Actors?

To whom are Human Rights obligations owed?

Categories and scope of obligations arising from Human Rights?

- 1st Generation Rights
- 2nd Generation Rights
- 3rd Generation Rights

# What is Terrorism?

- Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims. In legal terms, although the international community has yet to adopt a comprehensive definition of terrorism, existing declarations, resolutions and universal "sectoral" treaties relating to specific aspects of it define certain acts and core elements.
- In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes" and that such acts "are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them."

- Ten years later, the Security Council, in its resolution 1566 (2004), referred to “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act”.
- In 2004, the Secretary-General's High-level Panel on Threats, Challenges and Change described terrorism as any action that is “intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act”

The Convention on the Suppression of Financing Terrorism - 2002, Art. 2(1), defines Terrorism as -

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;
- (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

- Draft Counter-terrorism convention , by GA, article 2 contains a definition of terrorism which includes “unlawfully and intentionally” causing, attempting or threatening to cause: “(a) death or serious bodily injury to any person; or (b) serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) damage to property, places, facilities, or systems..., resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.”
- The draft article further defines as an offence participating as an accomplice, organizing or directing others, or contributing to the commission of such offences by a group of persons acting with a common purpose.

# Impact of Terrorism on Human Rights

Terrorism attacks the core values of UN and other international instruments-

- respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict.
- Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity.

# Obligations of states

- take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction.
- must put in place effective criminal justice and law enforcement systems
- States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of another individual, which certainly includes terrorists.
- to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist.

# Victims of terrorism

- In the 2005 World Summit Outcome (General Assembly resolution 60/1), Member States stressed “the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief.”
- Similarly, the United Nations Global Counter-Terrorism Strategy reflects the pledge by Member States to “promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation.”

# Who are victims?

- According to the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, set out in General Assembly resolution 40/34, victims include “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”
- the Declaration notes that an individual may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim”
- The term victim may include “the immediate family or dependants of the direct victim, as well as persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

The Declaration further outlines the minimum standards for the treatment of these victims according to several basic principles of justice. These require that victims should:

- Be treated with compassion and respect for their dignity;
- Be informed about, and have their views and concerns presented at, legal proceedings;
- Be entitled to proper assistance throughout the legal process;
- Be protected against intimidation and retaliation;
- Have their privacy protected;
- Be offered the opportunity to participate in informal mechanisms for the resolution of disputes, including mediation;
- Enjoy restitution and compensation, as appropriate; and
- Receive the necessary material, medical, psychological and social assistance.

- The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted in 2005 by the General Assembly in its resolution 60/147, underscore the need for victims to be treated with humanity and respect for their dignity and human rights, and emphasize that appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families.

# Remedies to victims of violations of international human rights and humanitarian law

- equal and effective access to justice,
- effective and prompt reparation for harm suffered, and
- access to relevant information concerning the violations and reparation mechanisms

# obligations on States - for Victims

- to provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law, and
- to establish national programmes for reparation and other assistance to victims, if the parties liable for the harm suffered are unable or unwilling to meet their obligations.

HUMAN RIGHTS AND  
COUNTER-TERRORISM

# Some initiatives by states for countering terrorism

- preventing terrorism financing,
- reducing the risk that terrorists might acquire weapons of mass destruction and
- improving cross-border information-sharing by law enforcement authorities,
- establishing a monitoring body, the Counter-Terrorism Committee, to supervise the implementation of these measures.

# The UN Global Counter-Terrorism Strategy (GA/RES/60/288)

4 pillars of strategy :

- Addressing the conditions conducive to the spread of terrorism
- Measures to prevent and combat terrorism
- Measures to build states' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard
- Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism

- The World Summit Outcome, adopted by the General Assembly in 2005, concluded that, international cooperation to fight terrorism must be conducted in conformity with international law, including the Charter of the United Nations and relevant international conventions and protocols.
- The General Assembly and the Commission on Human Rights have emphasized that States must ensure that any measures taken to combat terrorism comply with their obligations under international human rights law, refugee law and international humanitarian law.
- The Security Council has done the same, starting with the declaration set out in its resolution 1456 (2003), in which the Security Council, meeting at the level of Ministers for Foreign Affairs, stated that "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law." This position was reaffirmed in Security Council resolution 1624 (2005).

# Violations of Human Rights while countering terrorism

- Impact on the rights to life, security, liberty and integrity of person
- Impact on freedom of movement and on the right to a nationality
- Impact on due process, including the right to a fair trial
- Impact on the right to privacy
- Impact on freedom of opinion and expression, freedom of religion or belief and freedom of peaceful assembly and association
- Impact on the right to work and the right to health
- Impact on the right to education and the right to participate in cultural life

# Some Counter-terrorism measures

- Sanctions against states
- Sanctions against individual persons/Organisations
- establishment of committees to monitor the implementation of these sanctions
- criminalize various forms of terrorist actions
- take measures that assist and promote cooperation among countries including signing up to international counter-terrorism instruments
- report regularly to the Counter-Terrorism Committee

Limitations and derogations of Human  
Rights

# Limitations of certain Human Rights

- right to freedom of expression,
- the right to freedom of association and assembly,
- the right to freedom of movement and
- the right to respect for one's private and family life

# Conditions for imposing limitations of certain HRs

- Must follow principles of equality and non-discrimination,
- the limitations must be prescribed by law,
- in pursuance of one or more specific legitimate purposes (national security, public safety, public order, health, morals, and the human rights and freedoms of others) and
- necessary in a democratic society / Necessity and proportionality

# Derogations

- public emergency which threatens the life of the nation
- article 4 of ICCPR sets out the formal and substantive requirements which a State party must fulfil to derogate legitimately from certain obligations under the Covenant.
- A state of emergency must be understood as a truly exceptional, temporary measure to which may be resorted only if there is a genuine threat to the life of the nation.
- The Human Rights Committee has commented that, even during an armed conflict, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. Whether or not terrorist acts or threats establish such a state of emergency must therefore be assessed case by case.

# Non-derogable human rights

- Derogation from certain human rights set out in international human rights treaties is prohibited, even in a state of emergency.
- Article 4 (2) of the International Covenant on Civil and Political Rights identifies as non-derogable the right to life, freedom from torture or cruel, inhuman or degrading treatment or punishment, the prohibition against slavery and servitude, freedom from imprisonment for failure to fulfil a contract, freedom from retrospective penalties, the right to be recognized as a person before the law, and freedom of thought, conscience and religion.
- customary law rights: the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person; the prohibitions against the taking of hostages, abductions or unacknowledged detention; the international protection of the rights of persons belonging to minorities; the deportation or forcible transfer of population without grounds permitted under international law; and the prohibition against propaganda for war or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.

# SPECIFIC HUMAN RIGHTS CHALLENGES IN THE CONTEXT OF TERRORISM AND COUNTER-TERRORISM

- The right to life
- Challenges to the absolute prohibition against torture
- Transfer of individuals suspected of terrorist activity
- Liberty and security of the person
- Profiling and the principle of non-discrimination
- Due process and the right to a fair trial
- The principle of legality and the definition of terrorism
- Freedom of expression and the prohibition of incitement to terrorism
- Freedom of association
- Surveillance, data protection and the right to privacy
- Economic, social and cultural rights

# Some Facts

- the Global Terrorism Index 2016 suggests that 2015 was the second deadliest year on record, with 74 per cent of “terrorism deaths” being attributed to only four groups — Islamic State in Iraq and the Levant (ISIL), Boko Haram, the Taliban and Al-Qaida.
- The same source reported that, in Afghanistan during the same period, there had been a significant increase in deaths as a result of terrorism and that the Taliban had been responsible for the majority of terrorist attacks in 2015. In one contribution to the present report, it was reported that 3,129 civilians had lost their lives in Afghanistan in 2015, with 34.7 per cent of them killed as a result of suicide bombings.

- In a 2016 report on crimes committed by ISIL against the Yazidis, the Independent International Commission of Inquiry on the Syrian Arab Republic found that ISIL's conduct constituted serious abuses of international human rights, including the prohibition against slavery. It stated that female survivors of sexual slavery had been shattered, many experienced suicidal thoughts and some of the families had tremendous difficulty acknowledging the crimes committed against, in particular, the youngest female victims of sexual slavery.
- Reports from several Special Rapporteurs and OHCHR on violations and abuses committed by Boko Haram and the impact on human rights in the countries affected stressed that, since 2009, Boko Haram has subjected women and girls to widespread and severe forms of abuse, including sexual slavery, which has resulted in many becoming pregnant.

- On 23 July 2016, a suicide attack against peaceful demonstrators in Kabul — for which ISIL claimed responsibility — resulted in the deaths of at least 85 civilians and injury to more than 400 others, mainly Shia Muslims of Hazara ethnicity. In a special report, the United Nations Assistance Mission in Afghanistan concluded that the attack appeared to have deliberately targeted persons belonging to a specific ethnic and religious community and had a serious negative impact on demonstrators' rights to freedom of opinion and expression and peaceful assembly.
- In Nigeria, Boko Haram has engaged in forced religious conversions and targeted civilian objects protected under international law, including bomb attacks against churches and mosques.

- the practice of racial or religious profiling in some States had led to the perception of imaginary "crimes" shaped by racial or religious prejudice in expressions such as "driving while Black", "flying while Arab" or "perambulating while Muslim". The number of attacks against Muslims in Europe increased following the terrorist attacks in Paris in November 2015. One report on anti-Muslim hatred showed a 300 per cent rise in hate crime incidents in the United Kingdom of Great Britain and Northern Ireland in the week following the Paris attacks, particularly affecting Muslim women and girls aged between 14 years and 45 years wearing hijabs. Many of those attacked indicated that no one had come to their assistance and that they felt victimized, embarrassed and alone following the incidents.