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**COMMISSION 2: TERRORISM, HUMAN RIGHTS AND  
RIGHT OF RESISTANCE -  
AN INDIAN EXPERIENCE**

**BY**

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This is an appropriate time to discuss the important issue of terrorism, Human Rights and Right of Resistance. The last century in its first half was ridden with two bloodiest world wars entailing shocking holocaust of human life and property which also created an awakening for human rights and peace. The U.N. Charter was adopted on 24<sup>th</sup> October, 1945 by 51 nation state members. Today its membership is 191, with every nation free.

The dawn of 21<sup>st</sup> century has been indeed gloomy. There has been an upsurge of terrorism starting with the bombing of the World Trade Center in New York on 11<sup>th</sup> September, 2001, the Indian Parliament on 13-12-2001 and several other terrorist attacks in Dar-es-Salaam, Nairobi, Tel Aviv, Bali, Istanbul, Riyadh, Casablanca, Baghdad, Mumbai, Beslan. The launching of avoidable war on Iraq without any trace of weapons of mass destruction and with Osama Bin Laden still at large, also raises an issue whether war is an answer to terrorism. How is terrorism resulting in killing of innocent civilians permitted in a modern society based on human rights and rule of law?

India was a British colony before its independence on the 15<sup>th</sup> August, 1947. The British regime was a foreign regime depriving every citizen of all liberty and freedom. The laws of the land were then looked upon as colonial inhuman laws of exploitation and repression. Lokmanya Bal Ganga Dhar Tilak, who gave the mantra "*Swaraj is my birthright*" told the Judge at the end of his trial for sedition in the Bombay High Court : "*I maintain that I am innocent. There are higher powers that rule the destiny of men and nations and it may be the will of providence that the*

*cause which I represent may prosper more by my suffering than by my remaining free (1908)".*

Mahatma Gandhi was the first on our planet to propagate the culture of non-violence to attain independence. The goal of independence for us was equally clear to usher in a democratic egalitarian society rooted in rule of law to protect and promote human rights, development, harmony, peace, progress and prosperity. Spreading culture of non-violence is a sine-qua-non for extinction of terrorism rooted in human violence.

Let me quote Gandhiji:

*"If I want to cross the ocean, I can do so only by means of a vessel; if I were to use a cart for the purpose, both the cart and I would find the bottom..... The means may be likened to a seed, the end to a tree; and there is the same inviolable connection between the means and the end as there is between the seed and the tree.*

*To use brute force, to use gunpowder.... Means that we want to force our opponent to do that which we desire but he does not. And if such a use of force is justifiable, surely he is entitled to do likewise by us.*

*Do you not tremble to think of freeing India by assassination? .... Whom do you suppose to free by assassination? The millions of India do not desire it..... Those who will rise to power by murder will certainly not make the nation happy..."*

The freedom struggle was overwhelmingly non-violent under the leadership of Mohandas Karamchand Gandhi.

India is thus the only country where non-violence in the freedom movement was widespread through every inch of Indian soil.. The underground resistance rooted in violence was restricted and did not kill any civilian.

### **Definition of Terrorism:**

The definition of terrorism has been baffling. There has been a lack of agreement on the definition of terrorism. The League of Nations Convention (1937) had proposed to define terrorism "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 public. Alex P. Schmid, the author of a detailed

research guide to terrorism, published in 1984, lists 109 different definitions of terrorism provided between 1936 and 1981.

In his key note address to the closing plenary of the International Summit on Democracy, Terrorism and Security at Madrid, Spain, on 10<sup>th</sup> March, 2004 U.N. Secretary General Kofi Annan referred to the report "A More Secure World – Our Shared Responsibility" produced by the High-level Panel set up by him to study global threats and recommend changes in the international system. The Panel calls for a definition of terrorism which would make it clear that any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants, with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act. According to Kofi Annan this proposal has clear moral force. He also urged world leaders to unite behind it with a view to adopting the comprehensive convention as soon as possible. He emphasizes that a deliberate use of armed force by states against civilians is already clearly prohibited in international law. As for the right to resist occupation it must be understood in its true meaning. It cannot include the right to deliberately kill or maim civilians. India followed this rule in its independence struggle.

### **India's Role in International Arena:**

There have been as many as twelve conventions (beginning 1963) drawn up during the course of 36 years concerning suppression of terrorism and allied subjects clearly bringing out the opposite reactions of the world community. However these conventions leave much to be desired and can be interpreted in any way a member state may choose suiting its own diplomatic and political priority.

India's efforts in the international arena on issues relating to terrorism have been serious, sustained and substantial. As a victim of terrorism sponsored from outside its borders, India has consistently emphasized the imperative need and urgency to enhance international cooperation in countering the global menace of terrorism. India has not only been signatory to these conventions, it has been actively involved in developing an effective and viable international rule of law regime to check terrorism. In 1996 India introduced the draft of a 'Comprehensive

Convention on International Terrorism' (CCIT) in the UN General Assembly with the aim of filling the gaps and loopholes in existing the sectoral conventions on terrorism, and strengthen the international legal framework.\*

India has been projecting its concerns in respect of tackling international terrorism by the combined will and strength of the entire international community. Joint working groups for combating international terrorism have been set up with Canada and Germany in this regard. Extradition and Mutual Legal Assistance Treaties between India and UAE were signed in October, 1999. High level delegations from Poland, Mongolia and Croatia visited New Delhi in November 1999 for negotiating draft agreements on Mutual Legal Assistance in Criminal Matters and on Cooperation in Combating Organised Crime, Terrorism and Drug Trafficking

The Government of India has also formed Joint-Working Groups on Counter-Terrorism with 19 countries so far. These countries are USA, UK, Germany, France, Canada, Israel, European Union, China, Kazakhstan, Thailand, Uzbekistan, Russia, Croatia and Tajikistan, Turkey, Singapore, Australia, Egypt and Mauritius. In addition, there are Joint Working Group with Nepal, Bangladesh and Myanmar on border and security matters.\*\*

Realizing that the legal framework to combat a crime like terrorism cannot be complete without international bi-lateral cooperation, and treaties on Extradition, Mutual Legal Assistance in Criminal Matters and related Memoranda of Understanding/Bilateral Agreement. India has taken steps in this direction too. India has signed Mutual Legal Assistance Treaties in Criminal Matters so far with 17 countries, namely, Turkey, Switzerland, Russia, Canada, France, USA, UAE, UK, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Uzbekistan, Ukraine, Bahrain, Thailand and South Africa. Agreement to sign the Treaty with South Africa, South Korea, Bahrain, Belarus and Thailand have been finalized at official levels. Memorandum of Understandings, on cooperation on terrorist related matter has been signed with seven countries, viz., Bulgaria, Romania, Oman, Italy, Croatia, Poland

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\* <http://meaindia.nic.in/warterror/Internationalconventions/bishkek-int-conf.htm>

\*\* India, Government of, Ministry of Home Affairs, Annual Report: 2003-2004, New Delhi 2004

and China. An Agreement on Mutual Protection of Classified Information with Ukraine has also been signed. Bilateral agreements on Mutual Legal Assistance in Criminal Matters and Agreements/Memoranda of Understanding on Combating International Terrorism and Organised Crime, are, at present, under negotiation with Hong Kong, Iran, Azerbaijan, Egypt, Philippines, Turkmenistan, Hungary, Norway, Nepal, Bulgaria and Saudi Arabia

### **Insurgency and Terrorism in India:**

Insurgency and terrorism are still prevalent in North East, Jammu & Kashmir though they have diminished considerably. There is also terrorism of Maoists and Naxalites in places like Andhra Pradesh. Terrorism in Punjab has been completely eliminated and the state is normal. I am briefly referring to the North East and Jammu & Kashmir.

India's north-east is perhaps the most heterogeneous region that any country can have. Spread into 255 thousand sq. kms., consisting of 7.7 per cent of the country's total land area, the seven states (Arunachal Pradesh, Manipur, Assam, Nagaland, Tripura, Meghalaya and Mizoram) contain, as per the 2001 census, 38.5 million people representing 3.8 per cent of the country's total population. The scheduled tribes (ST) form about 21.76 per cent of the population in the region, compared to 7.76 per cent for all India. The STs are in majority only in four states – Meghalaya (80.54 per cent), Nagaland (84 per cent), Arunachal Pradesh (69.78 per cent) and Mizoram (93.52 per cent). Though significant in number they are in a minority in Assam (10.9 per cent), Manipur (27.30 per cent) and Tripura (28.45 per cent). The region has over 200 scheduled tribes nearly one-third of the total tribal population in the country. Due to hilly and heavily forested terrain, population density is low and uneven in the region – the average population density is 104 persons per sq. km, but it is as low as 8 persons in Arunachal Pradesh. Out of 1652 languages and dialects in the country 420 are in the north eastern region. The ethnic and socio-cultural diversity itself pushes several tribal groups into conflicts. There are several insurgent groups engaged in militant activities.

Pakistan is virtually fighting a proxy war in the Indian part of Jammu and Kashmir. The use of religion as a weapon, in which politics of terror has become *jehad* (the holy war) is not only meant to conquer a territory, but also to vindicate her position on the partition in general and Kashmir in particular is inexcusable. Kashmir for India is not only a symbol of unity and integrity but also secularism and humanism. All democratic processes of elections –to the Parliament, Legislative Assembly, municipal and other local bodies at the grass root level as well as continuous dialogue with Pakistan and the separatists has brought down terrorism to a large extent. Even a bus now runs between Muzaffarabad in PoK to Srinagar in Jammu & Kashmir. It is gratifying that three months before the tourist season all the bookings have been full in Srinagar this year.

### **Democracy – Human Rights – Rule of Law in India:**

India is the largest and most vibrant democracy in the world today. She has charted her way for fifty eight years since Independence through ballot vanquishing bullet. Equally she is the most pluralistic and diverse society in the world today - multi-religious – multi ethnic – multi racial – multi-lingual and multi cultural. Democracy has always thrived in our country despite the challenge of several adverse factors like hunger and want, illiteracy, unemployment and malnutrition.

Our Constitution has secured for our citizens democracy, deeply rooted in human rights and the rule of law. The Preamble speaks of the four pillars of the Constitution: JUSTICE, social economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity and to promote them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation. We have the Fundamental Rights guaranteed under Part III of the Constitution. Article 13(2) prohibits the state from making any law which takes away or abridges the rights conferred by Part III of the Constitution. All laws inconsistent with or in derogation of the fundamental rights are void. Article 32 confers a fundamental right to move the Supreme Court for enforcement of the fundamental rights. Equally important Articles 21 and 22 of the Constitution are ample safeguards for protection of life and personal liberty, as also for protection

against arbitrary arrests and detentions. Our Constitution has been constantly amended to secure greater democracy and freedoms in India.

Terrorism is the biggest threat to human rights in the world. India is one country where the bullet has not succeeded over the ballot. It has overcome traumas of terrorism to restore rule of law and democracy to its citizens. There are some areas like Jammu & Kashmir, the North-East where terrorism is still prevalent mainly due to the support from neighbouring countries like Pakistan, Myanmar, Bhutan, Bangladesh and in past even China. It is significant that these countries have little credibility for democracy, human rights or rule of law. However terrorism is on the decline.

One wonders whether the U.S.A. is reaping what it has sown. It is paying for having supported rather than confronted the forces of terrorism. It is well known that the terrorist training camps were first installed in Pakistan by U.S.A. It is unfortunate that the Kanishka bombing resulting in the death of 329 passengers had its roots in Canada. The recent acquittal of the principal accused in the case by the Canadian court has frustrated people. Everybody is asking as to how the Canadian police failed to gather enough evidence for one of the worst terrorist onslaughts.

Today terrorism has turned into proxy wars. The real danger for such is of weapons of mass destruction including the nuclear weapons. Yet the super powers are doing nothing to control the spread of nuclear weapons or towards achieving a goal of disarmament. In fact disarmament has been forgotten and illegal sale of arms including the nuclear arms is gathering momentum. I am mentioning this because these are the matters beyond the control of any single country. Disarmament is a global issue.

India has always worked hard for elimination of nuclear weapons from our planet. Yet it is forced to develop its nuclear capacity purely as a defence measure. It has been a responsible nuclear power. Funds which could be used for human development are utilized for human destruction. If we cannot eliminate nuclear weapons and weapons of mass destruction can we eliminate terrorism? Both work on the same mind-set of violence.

India is a model in following the rule of law in tackling terrorism. It is unfortunate that terrorism cannot be ousted by recourse to ordinary law but even the special laws made have been diluted from time to time both at the Centre as well as in the States. The media and the N.G.Os are the watch dog for protecting the human rights. We have an independent and strong judiciary to protect human rights and the rule of law. Our Supreme Court has given land-mark judgements protecting and promoting democracy, human rights and the rule of law. India will go down in the history as having combated terrorism under the rule of law without transgressing the limits of human rights.

The discrimination is caused also by under-development and poverty. The original tribals of the North eastern regions are getting a feeling of being exploited and deprived by industries and even non-residents of the States. The economic growth is the need of the hour. One could hope that the economic growth which follows liberalization and globalization also ends up in substantially reducing the poverty level in India. It is important to note that things have totally changed in Punjab because it is the most prosperous state in the country. It is heartening to find that for the vacation period of May and June there has been a full tourist booking in Jammu and Kashmir. Economic prosperity is thus also a solution to terrorism. Religious intolerance has also spread a culture of violence reflected in Jihad, the holy war. This culture must be changed in favour of human rights.

The High Level Panel on Threats, Challenges and Change appointed by Secretary General Kofi Annan to study global threats and recommend changes in the international system has submitted its final report "A More Secure World – Our Shared Responsibility". The five elements which are also called "five D's" as the backbone of the new anti-terrorism strategy are as follows:

- Dissuade disaffected groups from choosing terrorism as a tactic to achieve their goals;
- Deny terrorists the means to carry out their attacks;
- Deter states from supporting terrorists;
- Develop state capacity to prevent terrorism;
- Defend human rights in the struggle against terrorism.

India fulfills all these five elements. In fact there is no other country which has effectively implemented all these "five D's" long before they have been

formulated now by the U.N. Yet it may not get a seat on U.N. Security Council. If it gets one it will be without veto – a reflection of dark clouds of super power in today's world.

In India we follow the democratic path of dialogue, persuasion and reforms. Special constitutional provisions for Jammu & Kashmir and the seven sister states in North East viz. Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Arunachal, prove the point. The Constitution has been amended to meet their legitimate expectations. Equally we cannot compromise on unity and integrity of the country.

Unfortunately terrorism cannot be effectively dealt with under our ordinary laws. Terrorism like cancer sometimes requires a harsh treatment. It all started with Defence of India Act. However various anti-terrorist laws have been watered down and diluted from time to time to meet the requirements of human rights.

#### **Special Laws enacted to deal with terrorism:**

The Unlawful Activities (Prevention) Act, 1967. The Maintenance of Internal Security Act, 1971 (or MISA). The National Security Act, 1980 (or NSA). Terrorism and Disruptive Activities (Prevention) Act, 1987 (or TADA). The SAARC Convention (Suppression of Terrorism) Act, 1993. The Prevention of Terrorism Act, 2002 (or POTA), The Unlawful Activities (Prevention) Act, 1967 as amended by Unlawful Activities (Prevention) Amdt.) Act, 2004. (UAPA). By and large people have never been happy with the detention without trial. Controversy and protests always continue by human rights activists in regard to these acts. All the laws had to be diluted from time to time. The latest Prevention of Unlawful Activities (Prevention) Amendment Act (UAPA) 2004 takes care of human rights concerns. The National Human Rights Commission is also playing an effective role in ensuring human rights and thereby preventing terrorism. When democratic means are open why do the terrorists in Jammu and Kashmir or North East avoid electoral democratic process. For the simple reason that they would be totally rejected by the voters. Terrorism for them has now become a profession devoid of all moral force.

The Supreme Court while upholding the validity of POTA AIR 2004 SC 456 in the matter of People's Union for Civil Liberties and Anr. Vs. Union of India at p.465 observed:

*Terrorism the Act (TADA), contemplated, cannot be classified as mere Disturbance of 'public order' disturbing the 'even tempo of the life of the community of any specified locality' but it is much more, rather a grave situation .... Throwing a challenge to the very existence and sovereignty of the country in its democratic polity.....*

*Fight against ..... acts of terrorism is not a regular criminal justice endeavour ..... terrorism is a new challenge for law enforcement..... To face terrorism we need new approaches, techniques, weapons, expertise and of course new laws.....*

Democracy, human rights, rule of law, development and peace are the *Panchsheel, five pillars* on which the movement against terrorism has been pushed forward in India.

What is important is that one must reject dictatorial regimes. One must ensure that within a nation there are democratic means of meeting the urges and aspirations of the people. India has proved through successive elections, as many as 14 to the Lok Sabha, that the citizens of this country are the masters. When constitutional provisions are there to safeguard democracy, rule of law and human rights, there can be no place for terrorism. Equally the methods adopted to combat terrorism must be proportional to the threat and must never side track the human rights. No act of terrorism gives a licence to a nation to combat it with inhuman actions. That would be counter state terrorism not permissible in today's world. At the same time we cannot forget the innocent victims of terrorism. I am confident that in India everything is in position and in over five decades she has achieved which could not have been achieved by any other nation.

At the dawn of the 21<sup>st</sup> century the world was full of hope that we are ushering in a century of peace but our hopes have been belied. We live in peace for the fear of war and not for love of peace. The whole humanity is languishing in a culture of violence instead of basking in the sunshine of harmony and peace. War is no way to peace. It is said there is no way to peace, peace is the way.