



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL

TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

a professional Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

HUMAN RIGHTS AND COUNTER-TERRORISM: **LEGAL CHALLENGES AND SOLUTIONS**

AUTHORED BY - RUTUJA SANTOSH KOKARE

ABSTRACT

Human rights are at stake in the absence of a universal definition of terrorism. Terrorism aims to undermine human rights through violent acts against civilians. Counter-terrorism efforts involve protecting citizens, infrastructures, and businesses from terrorism threats. However, such efforts can also pose challenges to human rights, including the right to life, prohibition of torture, liberty interests, racial profiling, due process, freedom of speech and association, privacy, and other rights.

The international legal framework for counter-terrorism includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights. These documents outline various rights, such as equality, non-discrimination, the right to life, recognition as a person before the law, and others.

KEYWORDS: *Human Rights, Terrorism, Counter-Terrorism.*

INTRODUCTION

Human beings by virtue of their being human possess certain basic and inalienable rights which are commonly known as Human Rights¹. Human rights are implicated in the lack of a universal definition of terrorism. Without a universal definition of terrorism, States may create broad, overreaching definitions and inadvertently criminalise activity outside the realm of terrorism. Though, Section 2(1)(k) of the Unlawful Activities Prevention Act, 1967 states, “terrorist act” has

¹ Dr. H.O. Agarwal, Human Rights, Page number 2

the meaning assigned to it in Section 15, and the expressions “terrorism” and “terrorist” shall be construed accordingly. Terrorism intends the destruction of human rights through terror and violence employed against civilians, often by non-state actors. Whereas, counter-terrorism promotes an international commitment and partnership with the private sector to guard citizens, infrastructures, businesses and investments from the threats of terrorism, cybercrime and organized crime. The global terrorism threat today is looming an intricate than ever. Counter-terrorism trials are crucial, yet may also lurk principal human rights. State counter-terrorist trials involve several fundamental human rights, together with the right to life through embattled killings, the prohibition against torture, liberty interests through arbitrary detention, racial and ethnic profiling, the right to due process, freedom of speech and association, the right to privacy, and various other social, economic, and cultural rights.

Terrorism is a human rights issue as it involves deliberate attacks on civilians causing death and grave injury and so involves the right to life and the right to corporeal integrity. On the other hand, Counter-terrorism is a human rights issue because the way that the state replies to the peril of terrorism may involve exceptional measures that depart from ancient legal principles, counting fundamental rights.

INTERNATIONAL LEGAL FRAMEWORK

The international legal framework for counter-terrorism consists of a variety of treaties, conventions, and resolutions, to provide a comprehensive approach to preventing and combating terrorism while respecting human rights.

1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, addresses human rights.

- Article 1. Right to Equality and Dignity

All human beings are born free and equal in pride and human rights.

- Article 2. Freedom from Discrimination

Everyone is entitled to all rights and freedoms, without division of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- Article 7. Equality Before the Law

All are equal before the law and are entitled lacking any discernment to equal protection of the law.

And other rights including the Right to own Property, the Right to an Adequate Standard of Living, Right to Education.

2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

The International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations General Assembly in 1966, is a key international treaty that protects a range of civil and political rights. While the ICCPR does not explicitly address terrorist issues as a specific issue, many of its provisions are highly relevant to the protection of human rights.

- Article 1(1). Right of Self-Determination

All people have the right to self-determination. By virtue of that right they freely determine their political status and fully pursue their economic, social and cultural development.

- Article 2. Non-Discrimination and Equal Protection

No person shall be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- Article 6. Right to Life

Every individual has the inherent right to life. This right shall be protected by law. No one shall be indiscriminately deprived of his life.

3. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS. 1966

- Article 1(1). Right of Self-Determination All people have the right to self-determination. By virtue of that right they freely determine their political status and fully pursue their economic, social and cultural development.

- Article 2. Non-Discrimination No person shall be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

And other rights including the Right to Work, the Right to an Adequate Standard of Living, Right to Education.

COUNTER-TERRORISM MEASURES AND HUMAN RIGHTS VIOLATIONS

Counter-terrorism measures encompass a wide array of approaches and actions employed by governments and international organizations to prevent, mitigate, and respond to terrorist threats. These measures are vital for safeguarding national security, protecting civilian inhabitants, and maintaining societal resilience in the face of evolving terrorist tactics. At the core of these exertions is intelligence assembly and surveillance, which intends to identify and evaluate potential threats before they show up. This involves monitoring communications, tracking individuals of interest, and examining data to detect patterns indicative of suspicious activities or planning. By enhancing border security and implementing rigorous immigration controls, countries aim to prevent the movement of terrorists and the illicit transfer of materials across borders, thereby stemming the spread of terrorism.

Counter-terrorism initiatives include proactive strategies like counter-radicalization and de-radicalization programs. These measures address the root causes of terrorism, counter extremist ideologies, and support individuals vulnerable to radicalization. Governments use community engagement, education, and psychological interventions to prevent radicalization while upholding human rights and the rule of law. These efforts reinforce democratic principles, legitimacy, and public trust in counter-terrorism.

Effective counter-terrorism measures require a comprehensive and integrated approach that addresses preventive, operational, protective, and cooperative dimensions. By leveraging intelligence capabilities, enhancing security measures, fostering international cooperation, and safeguarding human rights, governments can mitigate the threat of terrorism while preserving the freedoms and safety of their citizens.

The implementation of counter-terrorism measures raises significant implications for human rights, including concerns about arbitrary arrests and detentions, the risk of torture and ill-

treatment, expansion of surveillance measures, restrictions on freedom of movement and assembly, civilian casualties in conflict zones, and stigmatization of specific ethnic or religious groups. Upholding human rights is crucial while combating terrorism to ensure public safety and security.

ROLE OF- UNITED NATIONS

The United Nations is an international organisation which came into being with the entry into force of the United Nations Charter, a multilateral treaty which forms a kind of “constitution” for the United Nations, on 24 October 1946.

The United Nations Charter establishes six principal organs, a few of which play a vital role in counter-terrorism:

1. Role of General Assembly in Counter-Terrorism

The General Assembly plays a vital role in enlarging an international legal framework that promotes cooperation against terrorism and in encouraging governments to work more closely together in addressing this threat. The General Assembly often works in subsidiary bodies—committees—whose members are either all States or a group of States elected by the General Assembly to serve on the body.² The work of some of these subsidiary bodies is of direct relevance to counter-terrorism.

General Assembly committees that deal with counter-terrorism

- 1) Social, Humanitarian and Cultural (Third Committee)³
- 2) Legal Committee (Sixth Committee)⁴
- 3) Ad Hoc Committee established by General Assembly resolution⁵

2. Role of the Security Council in Counter-Terrorism

The Security Council has also set up three Committees, tasked to monitor the enactment of specific resolutions relating to terrorism. The three subsidiary bodies recognized by the Security Council that deal with terrorism-related issues are:

² United Nations Charter, Art. 22

³ United Nation Organ, Third Committee < <https://www.un.org/en/ga/third/>> (June 24, 2024; 01:12 am)

⁴ United Nation Organ, Sixth Committee < <https://www.un.org/en/ga/sixth/>> (June 24, 2024; 01:17 am)

⁵ United Nations Organ < <https://legal.un.org/committees/terrorism/>> (June 24, 2024; 01:19 am)

- 1) The Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and Taliban and associated individuals and entities (1267 Committee)
- 2) The Counter-Terrorism Committee and its Executive Directorate
- 3) The 1540 Committee

3. Role of the UN Secretariat in Counter-Terrorism

The Secretary-General has the power to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."⁶

4. Role of the International Court of Justice in Counter-Terrorism

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations and came into force in 1945. The Statute of the ICJ is annexed to and forms an integral part of the United Nations Charter. While all United Nations Member States are parties to the Statute, States must accord to the jurisdiction of the ICJ before they can be obligated to participate in disagreements before the Court. The ICJ may tackle two types of cases: legal disputes between States that succumbed to them (contentious cases) and requests for recommended views on legal queries referred to it.

Contentious jurisdiction smears only to disagreements between States which have acknowledged that jurisdiction. The ICJ, however, cannot deal with disagreements involving entities or non-state entities. Verdicts rendered by the ICJ in contentious cases are binding on the parties thereto.⁷

LEGAL REMEDIES FOR HUMAN RIGHTS VIOLATIONS IN COUNTER-TERRORISM

- National Legal Remedies

1. Judicial Review:

Courts can review the legality of actions taken by the government and security agencies. Individuals can challenge arbitrary detentions, unlawful surveillance, and other rights violations.

2. Independent Oversight Bodies:

Institutions such as national human rights commissions, ombudsmen, and inspector general

⁶ United Nations Charter, Art. 99

⁷ International Court of Justice (ICJ) Statute, Art. 59.

provide oversight of counter-terrorism activities.

3. Legislative Oversight:

Parliaments and legislative bodies can investigate and hold hearings on counter-terrorism practices and human rights violations.

4. Criminal Prosecution:

Prosecuting individuals responsible for human rights abuses, including state officials and security personnel.

- International Legal Remedies

1. United Nations Human Rights Council:

The UN Human Rights Council reviews the human rights practices of member states and addresses complaints of violations.

2. Human Rights Treaty Bodies:

Various committees monitor compliance with international human rights treaties and address individual complaints.

3. Regional Human Rights Courts and Commissions:

Regional bodies provide platforms for individuals to seek justice for human rights violations.

4. International Criminal Court (ICC):

The ICC prosecutes individuals for serious international crimes, including crimes against humanity and war crimes.

- Non-Judicial Remedies

1. National Human Rights Institutions (NHRIs):

Independent institutions that investigate human rights abuses and provide recommendations to the government.

2. Truth and Reconciliation Commissions:

Commissions were established to address past human rights violations and promote reconciliation.

3. Civil Society Organizations:

NGOs and human rights organizations provide support, advocacy, and legal assistance to victims.

CONCLUSION

The interplay between human rights and counter-terrorism efforts presents complex legal challenges. Counter-terrorism measures often require extraordinary actions that can infringe on human rights, such as surveillance, detention without trial, and restrictions on freedom of movement and expression. These measures pose significant ethical and legal dilemmas. Ensuring that they are proportional, necessary, and non-discriminatory is crucial in protecting individual freedoms. Legal frameworks and oversight mechanisms, both national and international, play a vital role in safeguarding human rights while allowing effective counter-terrorism strategies. Enhanced transparency, accountability, and adherence to international human rights standards are essential in addressing these challenges. By fostering cooperation between states, civil society, and international organizations, and by continually reviewing and refining legal approaches, it is possible to develop solutions that uphold human rights without compromising security.



WHITE BLACK
LEGAL