



# ORF POLICY BRIEF

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## Terrorism and Human Rights

By Wilson John and P.V. Ramana

The primary objectives of an effective counter-terrorism effort are to safeguard human rights, strengthen democracy and uphold the Rule of Law.

The response to terrorism can neither be selective nor lead to unleashing a wave of unbridled repression, which would, as a consequence, enormously infringe upon the rights of the citizens. Thus, it is critical to strike a just balance between ensuring the security and integrity of the country and safeguarding the human rights of the people.

Indeed, there cannot be any compromise in the effort to root-out terrorism from the country. The state is expected to, and should, take all possible legal, security, social and economic measures to neutralise terrorist groups. What, however, needs to be kept in mind is that in India, the largest democracy of the world, human rights of citizens, which are non-alienable and are guaranteed by the Constitution, cannot be allowed to be sacrificed. Importantly, Article 21 (Protection of life and personal liberty, or Right to Life), Article 20 (Protection in respect of conviction for offences, or Protection against Testimonial Compulsion) of the Constitution cannot be suspended even during an Emergency.

Therefore, counter-terrorism efforts of the State should, under any circumstances, uphold the Rule of Law, observe human rights and follow “due processes”. Failure on the part of the State to do so would only alienate large sections of the

population and unwittingly help the terrorists.

It is equally important to bear in mind that it is the terrorists and terrorist groups which are, without any doubt, always guilty of gross human rights abuses, and not the security forces (barring exceptional cases) which are often maligned by the gullible media and motivated activists. The violations by the terrorists, however, receive little attention, especially because of the mortal fear of violent retribution and victimisation. As a former US Senator, Henry Jackson, wrote: “... It is a disgrace that democracies would allow the treasured word ‘freedom’ to be associated with acts of terrorists”.

### STATE VIOLATIONS

Human rights violations by the State and its agencies occur in various settings: during cordon and search operations, during encounters — sometimes genuine and at other times fake — or opening fire in crowded areas, during detention and interrogation.

A number of factors are responsible for such violations. These include: lack of transparency and accountability, inadequate training and education among security personnel in observing human rights, lack of scientific investigation skills and tools among the police, deficient information to, and investigation by, the police, high levels of stress factor caused

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by extended tour of duty in conflict theatres under treacherous and taxing conditions, and a moribund judicial system.

In this agenda-driven cacophony of trading charges by the ‘rights groups’ and the security forces, the perceptions, saner voices and aspirations of the unbiased sections of the civil society, as well as those who have fallen victim to human rights violations are either lost, or are ignored. It might not be incorrect to state that the unbiased civil society does not object to the killing of perpetrators of terrorist acts, but gets enormously disturbed and concerned when innocent persons fall victim to either terrorist acts or excesses by the security forces.

On many occasions, concerned citizens from different walks of life have disapproved, and unequivocally condemned, the agencies of the state employing ‘terrorism as a tool’. In this context, the Supreme Court of India noted in *D.K. Basu vs. state of West Bengal* that: “[S]tate terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism: that would only be bad for the [s]tate, the community and above all the [R]ule of [L]aw. The [State] must, therefore, ensure that the various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves.”

A significant contributing factor for such an avoidable state of affairs is a lack of preventive intelligence, thus, resulting in ‘ruthless post-event investigation’ by the police. In considerable measure, intelligence does not come forth easily and naturally from the people or the community because of a crisis of confidence in the agencies of the State and for the fear of being victimised. Therefore, it is of vital importance for the State to carry along the affected communities with it and make them a partner, rather than stay in isolation or detachment from them, in the fight against terrorism. The

terrorists would not be able to operate for long without support from the people. The State, therefore, can ‘wean away’ or ‘win over’ the people through a proactive, concerted effort, isolate the latter and defeat them comprehensively.

In this effort by the State, the intelligentsia, media — especially the electronic media — and non-governmental organisations can play a significant and useful role. They could not only infuse confidence among the people against terrorists but also act as a bridge between the community and the State in effectively combating terrorism.

It is extremely important to train and educate the security forces — police, para-military and the army — about the salience, non-violability and importance of observing the human rights of the people. The training and education should focus especially on the lower rung of the security forces, which, in large numbers, comes into contact with the community.

Unfortunately, for a long time after Independence, the security forces, especially the police, have operated almost largely as a force of the colonial past. The army, increasingly getting involved in civilian conflicts, is trained to fight ‘enemy soldiers’ and not deal with its fellow countrymen and women. In the process, there have been many occasions of allegations of human rights violations by the army. Therefore, it would be in the interest of the country, the people and the professional interest of the army itself, that the army is deployed in the role for which it has been created, than to perform internal security duties.

At the same time, it is imperative to take a re-look at the judicial procedures to prosecute those accused of being involved in terrorist activities. Speedy trial is an important objective to achieve to ensure that the guilty are punished on time and the innocent are not left awaiting justice.

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## POLICY ACTIONS

- Follow “due procedures”, adhere to the Rule of Law and function within the ambit of existing laws while combating terrorism.
- Ensure transparency in, and accountability for, the actions carried out by the various agencies of State while responding to terrorism.
- Improve intelligence gathering procedures, systems and mechanisms.
- Continuously educate and train all the agencies of the State, especially the security forces, and more importantly those in the lower-rung, in the observance of human rights.
- Human rights should be an integral part of the syllabus at all institutions training police, para-military and army men and officers.
- The officer cadre should be given periodic refresher

courses in Human Rights.

- Special Human Rights Officers should be deputed to army, paramilitary and police units deployed in conflict zones.
- Institute mechanisms and procedures to reduce stress among the security forces working in areas affected by terrorism/insurgency.
- Ensure speedy, fair trial of those accused of being involved in terrorist activities. Revamp judicial processes and procedures. The number of fast track courts should be increased.
- The Union Home Ministry should issue instructions to the police to take utmost care while charging persons in terrorist cases.
- Severe punishment/reprimand should be given to those violating the Home Ministry instructions.
- Do not alienate the people, but make them partners in the fight against terrorism.
- Establish police-citizen coordination cells at select vulnerable conflict zones. Involve resident welfare associations in the initiative.
- The intelligentsia, media and non-governmental organisations should be encouraged to create confidence in the minds of the people that terrorism can be defeated, and also function as a bridge between the state and the community.
- Interest groups must be made to desist from involving in agenda-driven propaganda on human rights violations.

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These findings and recommendations are drawn largely from the discussion which the Observer Research Foundation hosted on August 29, 2006. Participants in the discussion included Gen (Retd) VP Malik, former Chief of the Army Staff and presently President, ORF Institute of Security Studies, Mr Vikram Sood, former chief, Research and Analysis Wing and presently Advisor to ORF Chairman, Maj Gen

(Retd) Afsir Karim, former member of the National Security Advisory Board, Maj Gen (Retd) Ramesh Chopra, Mr K S Subramanian, IPS (Retd), Mr Zafarul-Islam Khan, Editor, The Milli Gazette, New Delhi, Ms Swati Mehta, Project Officer, Commonwealth Human Rights Initiative, New Delhi, Mr Wilson John, Senior Fellow, ORF, and Dr PV Ramana, Research Fellow, ORF.

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