**Human rights under anti-terrorism laws: can restriction of civil liberties for the sake of public safety be justified or is this approach unacceptable?**

**JULIA ANNA JOSEPH**

**1st year**

**BBA LLB (Hons.)**

**CHRIST (Deemed to be University), Bengaluru**

**Email id:** **julia.joseph@law.christuniversity.in**

****

[www.probono-india.in](http://www.probono-india.in)

**May 15, 2020**

**ABSTRACT**

Terrorisms not a new found term or a new concept to anyone in the world. From the ending phase of the 20th century up until now, the world has seen increasing acts of brutal terrorist attacks around the globe, be it the 9/11 attacks at World Trade Centre, the Okalahoma city bombings, the 2002 Bali bombings, the 2003 Bombay bombings, the 2006 Malegaon bombings, the 2014 Peshawar school massacre to the very recent Easter bombings at Sri Lanka and suicide truck bombing in Somalia in 2019, just to name a few.

It is common to witness such unexpected attacks on countries in which case citizens are startled. Families run from pillar to post in search of shelter and food, parents try to save their children from the gunshots, the elderly grapple with their weak bodies to summon sufficient strength, abandoned children cry for help, and all hell breaks loose. In this scenario, it is also hard for the government to think on its feet, as it is equally under the shock of an unprecedented crisis. They are forced to quickly formulate counterterrorism legislations to drive away the dreaded forces. This legislation usually allows amendments to existing laws, under grounds of imminent threats and necessity. Thus, most governments adopt rules by which the people’s civil liberties are heavily restricted so as to take control of the situation in an easy and feasible manner.[[1]](#footnote-2) In past times of crisis, governments have harassed, investigated, interrogated and arrested people solely because of their race, religion, national origin, speech or political beliefs and ideologies. It is disappointing to see that the counterterrorism legislation often fails to strike a crucial balance between safety and liberty. This legislation is filled with measures that expand powers of intelligence agencies to infiltrate, wiretap, spy, conduct secret searches, and detain and deport immigrants[[2]](#footnote-3). Thus, the anti-terrorism legislation imperils some of the very civil liberties that the war intends to protect. Suspension of civil liberties essentially means the curb on the fundamental rights of citizens. During this time period the mammoth power gets concentrated in the hands of the government. It may also amend the Constitution of a country in favour of the government’s want of undue power. Such laws may turn out to be a sharp shift from the fundamental rights of the ordinary citizens of a country. Despite the agony of having to go through brutal terrorist attacks, they are also made to feel like enemies of the state within their own homelands, deprived of fundamental rights and freedoms. Although it is widely practised in varying degrees in different countries of the world, the question still remains-is suspension of civil liberties during times of national struggle, an acceptable practice?

**KEYWORDS**: Counterterrorism legislation, terrorism, civil liberties, 9/11 attack.

**TERRORISMIN DEFINITION**

Terrorism doesn't have a single absolute definition[[3]](#footnote-4). There is no universal agreement on what it means[[4]](#footnote-5). In practice, it is a term used to describe violence perpetrated by the state or by individuals, such as hijacking aircrafts, holding people hostage, bombings, mass shootings etc. both during conflicts as well as peacetime. In modern times, it is recognized as acts which are conspired to injure or harm civilians thereby intimidating a larger group of people, often for the purpose of achieving some political gains. Legal definitions of the word terrorism generally specify two or three basic constituents: either the act and the purpose, or the act, motive, and purpose. The crime of terrorism is generally characterized as an act carried out with a particular motive or intent —for example, the motive to kill—and for a specific purpose, such as pressurizing or intimidating a government or populace into performing or abstaining from doing an action. Infamous terrorist groups include the Taliban, Al Qaeda, Al Shabbab etc.

[[5]](#footnote-6)Most counterterrorism laws make reference to one or more of the following four general categories of danger: 1) severe physical injury to a person or persons—in other words murdering or injuring one or more persons, or impairing public health more seriously; 2) serious damage of property (vandalism) , particularly damage that is likely to pose grave danger to people; 3) harm to important infrastructure, such as electricity, food, or water supplies; medical services; or financial and electronic systems; and, most importantly, 4) danger to national security, defense, or “public order.”

Most often the domestic legislations have very vague definitions of terrorism that they even include the most common of crimes that can never be reasonably understood as acts of terrorism. Such ambiguity causes these legislations to adopt a form of discriminatory enforcement by exploiting religious and ethnic minorities, political parties or such particular groups.[[6]](#footnote-7)

Each country defines terrorism in a different manner. Saudi Arabia’s draft Penal Law for Crimes of Terrorism of 2011  states terrorist crimes as actions that “insult the reputation of the state,” “disturb public order,” or “inflict damage upon one of its public utilities or its natural sources.” The law also criminalizes “describing the king or the crown prince as an unbeliever, doubting his integrity or defaming his honesty.”[[7]](#footnote-8)

Azerbaijan’s 1999 Law on Combating Terrorism states that terrorist acts must have as their goal “undermining public security, spreading panic among the population or forcing State authorities or international organizations to take decisions that comply with the demands of terrorists.”The initial phrase—“undermining public security”—is so ambiguous and broad that it could be used to a wide range of otherwise lawful activities. After the 1981 assassination of Egyptian President Anwar Sadat by conservative Islamist army staff, Egypt passed an emergency law that created special security courts and gave the military sweeping powers of search and arrest.[[8]](#footnote-9)

In the case of Australia, an overly broad definition of “terrorist act” does not necessitate the need of an intent to cause death or serious bodily injury, or the taking of hostages. An amendment in 2008  to the counterterrorism law of UK refers terrorism to the goal of advancing a political, religious, racial or ideological cause.[[9]](#footnote-10)

The threat of terrorism has existed from the time of League of Nations (former UN) . However, treaties and agreements on countering terrorist acts on a global level has come into force only in the early 1960s.

**CIVIL LIBERTIES**

Civil liberties are a set of freedoms which governments of countries choose to confer on its legal citizens[[10]](#footnote-11). It is believed to have its origin from the Magna Carta signed in 1215 by King John of England. They can be understood as guarantees that the government shall treat people equally and that decisions will be taken on the basis of merit rather than gender, race, ethnicity or any such characteristics. These rights cannot be abridged by the government without having a due process in law and they are underpinned by the country's legal system. However, in countries with an authoritarian system of governance, these civil liberties are only granted in the Constitution, and not followed in practice. They usually include freedom of speech, freedom from arbitrary arrest, freedom of travel, freedom from discrimination, freedom of assembly, freedom of religion etc. For example, the Bill of Rights enshrined in the U.S. Constitution gives citizens of U.S. the freedom of speech.

**CIVIL LIBERTIES v. HUMAN RIGHTS**

Civil liberties can most easily be understood as rights vested in a person by virtue of citizenship. It is commonly perceived as curbs on the freedom of government. Semantically, civil liberties are different from human rights because human rights are inherent rights received by virtue of birth and not citizenship[[11]](#footnote-12).They refer to certain universally accepted inalienable rights which are vested in all persons irrespective of age, sex, caste, ethnicity, religion, language, place of birth or any other status. These rights are independent of each other and indivisible in their character. They are constantly protected as natural and legal rights in both municipal as well as international laws. Practically speaking however, civil liberties given by countries are more or less the same rights as mentioned in the United Nations Declaration on Human Rights (UDHR), 1948 which states that all human beings are born free and equal in dignity and rights, and they all have the right to self-determination.[[12]](#footnote-13) This is an eye-opener to the fact that every human being in hold the right to steer their life, and no external force can exert undue power over them. If they do, it is a violation of human rights.

**DEROGABLE AND NON-DEROGABLE RIGHTS**

In the International Covenant on Civil and Political Rights (ICCPR), 1966, human rights are classified into two-derogable and non-derogable rights[[13]](#footnote-14). Non-derogable rights are those rights which are considered as very crucial and basic to human life, that they cannot be suspended in any case.[[14]](#footnote-15) It includes right to life, right to be free from torture and inhumane treatment, right to be free from slavery, right to recognition everywhere as a person before the law etc. On the contrary, derogable rights are those rights which can be in justifiable cases, stand suspended. These may include right to education, right to freedom of travel etc. as these are not incidental to mere human survival. This classification may be used as a defense against the suspension of a few human rights such as the right to freedom of speech. Yet, the question remains, as to whether or not such a distinction between rights give governments the freedom to call off these rights for a period of time, while they are still fundamental rights. It is quite a contested issue, yet it must be understood that such a classification is not reasonable in times of such grave danger, for instance, where it is still or in fact all the more important for the press to report the ground realities. It is still important for citizens to have their right to privacy, as a wartime gives no excuse for a government to extort sensitive information from people.

**TERRORISM AND CIVIL LIBERTIES FROM THE 9/11 EPISODE**

With the brand new age of terrorism, a new age of repressive anti terrorism measures had also been ushered in. One such infamous terrorist attack is the series of terrorist attacks by the Islamic terrorist group, Al Qaeda targeted at the United States, on 11th September 2001. The attack killed many,and destroyed the American spirit by attacking at an emblem of American freedoms[[15]](#footnote-16). After the happenings of the day, the United States had imposed stringent measures within the State, some of which continue to be in force till date. In the wake of the event, the then President, Late George W. Bush created new government agencies, federalized airport security, tapped tens of millions of phone calls. In airports, the government had the freedom to keep a secret watch list of those suspected terrorists and their information was shared with thousands of public and private organizations. This watch list includes around 1.2 million people as on 2017. Having one's name on the watch list indicates that they can be barred from traveling to the U.S., they may be subject to additional scrutiny at the airport, and also disqualification from government benefits and contracts. Also, members in the cockpit are given loaded weapons and vested with the power of a federal agent. The scanning techniques used in airports too, are said to cause health hazards. Also, parts of the US t Act, 2001 are still in effect[[16]](#footnote-17). Even though these laws are created for a certain period of time, they are usually extended at the end of their expiry. It is an anti-terrorism law which aims at hunting down criminals and dealers of drugs. It allows execution of search warrants on mere suspicion, without any notification. Additionally, surplus military equipment such as machine guns, riot shields, armored trucks and other weapons, in excess from the wars of Iraq and Afghanistan were made freely available to the personnel in the police department, with hardly any restrictions on their use. This unnecessary provision of arms was restricted by Barack Obama in 2015. However, Donald Trump scaled back the same in 2017. Back in Obama's presidency, the U. S. had also launched drone strikes against citizens who lived abroad. In the process, Anwar Al Alwaki, a California born jihadist propagandist for Al Qaeda was killed, without even been given a fair chance to appear for trial. Due process of law is the right of every accused person. Most of these measures taken back then have been embedded into the common American's life that they have now traded a part of their civil liberties in exchange for security[[17]](#footnote-18). As much as it sounds surprising, it is nothing short of a bitter reality.

**'IN THE NAME OF SECURITY' COUNTERTERRORISM LEGISLATION REQUISITES**

 'In the Name of Security'[[18]](#footnote-19) offers a detailed list of eight components common to most of the legislations that were framed after the 9/11 incident. These eight elements are given as follows:-

(i) clear definitions of the word 'terrorism' and what comprises of terrorist acts.

(ii) designations of organizations involved in terrorism and absolute ban on membership into them.

(iii) absolute restrictions on funding terrorist activities or such organizations that promote such acts.

(iv) restrictions to any kind of speech or gestures that may act in favour of or incite or encourage terrorist activities.

(v) giving wide powers to police that may undermine a few basic rights, such as conducting warrantless arrests, detain suspects without prior communication, surveillance, policing, property seizures and restrictions on challenging arbitrary detention.

(vi) establishing special courts and modifying trial procedures in the favour of prosecution, without giving a due process for the defendants.

(vii) imposing the sentence of death penalty for those who commit terrorism related offences.

(viii) imposing administrative detention and 'control order' mechanisms.

Although it is a detailed list and manages to solve a lot of common concerns, it is neither comprehensive nor exhaustive in nature. It is just one of the many such counterterrorism legislation blueprints that were created post the 9/11 attack.

**ANTI-TERRORISM LEGISLATION IN THE MODERN TIMES**

Anti-terrorism legislation refers to a set of laws which are aimed at fighting or driving out the undesirable terrorist forces from a particular territory.  Also called counterterrorism laws, these laws have taken shape in varied forms across the world, and it has seen gross misuse of laws and human rights violations very frequently in recent times. While International Humanitarian Law (IHL) in its guidelines balances the principle of military necessity along with humanitarian considerations and sets a cap on fighting wars, present day counterterrorism legislations tend to erode away those given specifications. For instance, in a protest in Turkey in 2010, two university students, Berna and Ferhat held banners on which was emblazoned 'We want free education, we will get it'[[19]](#footnote-20). For committing this assertive act, the students were convicted of membership in an armed group and given prison sentence for 8 years and 5 months. Of late, Turkish officials have arrested and imprisoned hundreds of such people taking part in protests. The Turkish Criminal Code relating to anti-terrorism law continue to create some of the most gruesome violations of freedom of expression. In Ethiopia, in January 2012, three local journalists and two opposition political leaders were convicted of criminal conspiracy to commit terrorist attacks. The evidence however only suggested that they published online articles that were critical of the government and held conversations about holding peaceful protests against political issues. The authorities did not give any of the defendants access to lawyers during their pretrial detention and also the allegations of two journalists being tortured was never investigated. Although in all these 3 countries, their rights to due process, free expression and privacy were violated according to international law, yet, they were carried out using domestic counterterrorism legislation passed after the attack of 11 September 2001. Meanwhile in the UK up to 2011, police stopped and frisked more than a half million people without any reasonable grounds for suspicion[[20]](#footnote-21). Most of them were from ethnic minorities and had no connections to terrorist groups. They were merely taunted and teased for pleasure. In all of these cases it is seen that the rights of free expression, due process and privacy. In France, 'apology of terrorism' is a severe crime and it is seen that the number of convicts for the same have risen exponentially with the average punishment being a one year sentence. In Russia too, the use of counterterrorism along with anti extremism measures left people devoid of their right to free speech. In the Russian law on terminating extremism, the terms 'extremism', 'extremist activity' etc. are defined very widely with imprecise words which grants a really wide scope and discretion for its interpretation. As per data of the Supreme Court of Russian Federation, there were at least 650 criminal convictions in 2017 against those individuals who expressed views that were in some way seemingly favouring extremist groups. But what appears pro-terrorism, remains highly subjective. In Australia, specified people are targeted and tracked and restricted to use techno too. However, the proofs are merely civil standard and lack transparency.[[21]](#footnote-22)

Also, over 120 countries have enacted counterterrorism laws which greatly widen police powers to do surveillance, frisk persons and search property, make arrests, and seize objects and contraband in cases the police consider it to be related to terrorism, in most cases without judicial warrant. By enhancing the legality of police forces to act without judicial approval, and lowering—or removing altogether—the grounds of reasonable suspicion or probable cause normally required to justify police interference, these laws may violate the right to privacy and encourage racial profiling and the targeting of minorities. As was warned by the Commonwealth Human Rights Initiative (CHRI) in 2007, “[counterterrorism] laws, based on police discretion, reduce the potential for oversight by courts and other accountability bodies, thereby creating an environment favourable to police misconduct and human rights abuses."[[22]](#footnote-23) For instance, Zambia’s counterterrorism law permits warrantless searches and seizures of property, in cases of “urgency” in which the process of obtaining a warrant would cause a delay that might be prejudicial to public safety or order. As per the counterterrorism law of Uganda too, a similar provision can be found[[23]](#footnote-24) If an investigating officer has reasonable grounds to believe that a case has a kind of “great urgency” then the officer may provide written authorization for any other officer to enter and search the premises, the people there, and seize and retain property, all of them without a warrant.[[24]](#footnote-25) Police powers granted under these provisions include the power to look for material categorized as “excluded material[[25]](#footnote-26),” which include personal business records held as confidential, human tissue or fluid taken for biological purposes held in confidence, and journalistic material kept in confidence. Detention of persons without judicial authorization for an increased period of time, is also gaining popularity. For instance, in the case of Bahrain, the counterterrorism law of 2006 has doubled pre-charge detention without judicial authorization from 7 days to 15 days[[26]](#footnote-27). Another flaw with regard to counterterrorism laws is the inaccessibility to legal counsels. Mauritius’ 2002 counterterrorism law provides that persons arrested on suspicion of terrorist offenses may be held in police custody for up to 36 hours and that a superintendent of police may order that detainees be denied access to anyone other than “a police officer not below the rank of Inspector, or a Government Medical Officer.” Similar is the case with France where high security suspects such as alleged terrorists are denied rights to approach a counsel. Sometimes, even if given, the time allowed for the client-lawyer meeting is restricted. Other restrictions in places like Israel,[[27]](#footnote-28)Spain and UK include not informing family members of the detention. Some counterterrorism laws,a in Gambia,[[28]](#footnote-29) Mauritius[[29]](#footnote-30) and Belarus, also give explicit immunity to police officers in cases where their actions cause injury, death, grievous hurt or loss or damage of public or private property. In fact, capital punishment is imposed for the simplest of crimes. For instance, as under the Syrian Penal Code, any terrorist who destroys public property (even partially) too, can be awarded a death sentence[[30]](#footnote-31)

Some counterterrorism laws specifically target assembly of people. In 2006 the UN special rapporteur on human rights and counterterrorism noted “with concern the increase of infringements upon the exercise of the right to freedom of assembly and association in the name of counter-terrorism.” It stated that any kind of limitations on this right “must be narrowly construed as to their objective, which is  counter-terrorism.”Yet laws infringing on these rights continue to be used to quash legal protests.

The shocking fact about these legislations is that rather than providing the required protection to people, they are providing huge powers to government officials to threaten, investigate, dehumanize, subjugate, interrogate, scare and stop people arbitrarily. Often times in these counterterrorism legislatures, the term terrorism itself is defined in a very ambiguous and open-ended manner that, officials include a lot of other activities within this ambit to torture people. This kind of a practice also decreases the chances of bringing the actual terrorists to book, as the focus is shifted. Nowadays, the United Nations Security Council (UNSC) directs states to ensure that anti-terrorism measures comply with international human rights law. However it has not reformed certain important mandates that relate to terrorism such as the UN Special Rapporteur on human rights and counterterrorism, which is considered as a threat to fundamental rights by experts. The Security Council is duty bound to ensure that all countries keep their obligations to fight terrorism in consonance with international humanitarian law, refugee law and international humam rights law. Yet, each year more and more countries enact counterterrorism laws with massive powers and dangerously ambiguous language. The UN Security Council and other bodies of the UN should take an upper hand in leading states to the path of reform in anti-terrorism and release all those who are arbitrarily arrested and confined under these counterterrorism laws of the countries. These measures by the Security Council are necessary not just for mere compliance with international law. Rather, they are also helpful in performing the border duties that states are required to do to protect the people falling within their jurisdiction.

**IS IT WRONG TO CURB CIVIL LIBERTIES?**

In rough and tough times like those of unprecedented terrorist attacks, it is understandable that governments are also in sheer shock and are very much fearful of what steps to take next. Many a time, they are very clueless, that every step becomes part of a trial and error process. Yet, certain things are quite unmistakably fallacious. It is one such thing to curb civil liberties during terrorist attacks.

All the people of a country are vested with some rights under the pretext that these will not be infringed upon or tampered by the government. These mostly include a few fundamental rights such as that of speech, privacy, security, life and liberty etc. It is therefore truly unfair to suddenly take away all these rights from people, surprisingly, at a time when it's needed the most! Therefore, it is not completely wrong to say that it is very unmindful of officials to create very arbitrary and barbaric rules at the time of such crises where people cannot be left to grapple with the wreckage that it causes. People have their inherent rights and freedoms by virtue of birth, which is guaranteed as human rights by the UDHR. These are quite the same rights that are guaranteed as civil liberties by countries. In this scenario, it is very wrongful for countries to ask people to surrender all their fundamental rights and freedoms and expect their course of life to be completely decided by the government, leaving their futures to the whims and fancies of the government officials. It is hard to imagine that while people are given certain freedoms and they live with it, reasonably expecting it to be with them for life long, they are all of a sudden stripped of the same. It is equal to dehumanizing them. In fact, as stated by Eleanor Roosevelt, when all human beings on earth are born free and equal in dignity and rights, who is ever right to stop, frisk, investigate, spy, tap calls, slap lawsuits and trap people arbitrarily? It is easy to understand that such practices are too barbaric to be continued in the 21st century. It does no good other than satisfy the pleasures of megalomaniac political leaders and intensify the desolation of citizens who are already struggling with severe issues like loss of shelter, food, clothes, loved ones, health and wealth. It is absolutely devastating to add fuel to the fire by robbing these rights as well from the people. Expressing thoughtful views and voicing suggestions, opinions and concerns are more important during times like this. Ensuring that people stay safe and protected from all external forces is also more important than ever. Securing people's lives by keeping them safe from physical and mental torture is also utmost important. It then, cannot be the time to ask people to forgo all these rights like they were never given to them in the first place. Hence it is seen that there are deficiencies in this approach to anti-terrorism, and often the scope of its performance goes way beyond its actual scope in law. In fact, it cannot be overlooked that the United Nations Global Counterterrorism Strategy of the year 2006 itself states that the world wide violations of human rights are among the many condition that are conducive for the proliferation of terrorism.

In fact, according to a paper presented at the 2018 Meeting of the International Studies Association by Jeong-Woo Koo (Sungkyunkwan University) and Amanda Murdie (University of Georgia)**,** which examined whether the counterterrorism rhetoric that regimes often use to justify attempts to close civil society space really do limit terrorist attacks, the authors found that there was no evidence of legal restrictions on civil society, reducing the frequency of terrorist attacks in that country.[[31]](#footnote-32)

This brings to light that UN agencies, humanitarian donors, governments and prime non-government organizations across the world need to have a dialogue on how counterterrorism legislations can be made without undermining their humanitarian commitments to the world at large.

**UNSECURITY COUNCIL** MANDATES

Post the attacks of September 11, the UN Security Council (UNSC) passed several resolutions pressing all UN member states to enact strong anti-terrorism legislation. The result was a slew of new and revised measures that granted special law-enforcement and other prosecutorial powers to the police and other authorities.[[32]](#footnote-33)

These laws continued a kind of historical pattern by which governments have responded to politically motivated acts of violence—assassinations, shootings, and armed attacks—on high-profile targets by expanding existing laws and granting security forces new powers. In those months after anarchist August Vaillant’s bombing of the French National Assembly in the year 1893, for example, the French Third Republic passed laws that were called as “villainous laws” because of their heavy restrictions on freedom of speech.[[33]](#footnote-34)

Post the 1981 killing of President of Egypt, Anwar Sadat by conservative Islamist army officers, Egypt had enacted an emergency law that led to special security courts and gave the military massive powers of search and arrest. The law stayed for 31 years, only to be replaced with a similar law for a short period of time by the military-led government when an Islamist candidate was poised to win the presidential elections of 2012.

A lot of laws granting huge powers are colonies or responses to nationalist or some other insurgent movements. Malaysia’s Internal Security Act of 1960, which until being revoked in 2012 allowed indefinite preventive detention of suspected terrorists, was inspired by the Emergency Regulations Ordinance 1948 that the British had[[34]](#footnote-35) used against Communist insurgents in Malaya before independence. Special powers introduced by the British in Northern Ireland in 1922 were renewed in different forms throughout and beyond the “Troubles” until its place was taken by UK-wide counterterrorism laws in 2000.[[35]](#footnote-36)

However, the number of counterterrorism laws enacted mainly in response to the Security Council’s post-September 11 resolutions was unexpected[[36]](#footnote-37). Over 140 countries have enacted or updated one or more such counterterrorism laws, according to Human Rights Watch’s calculations- a lot of which violate or undermine fundamental liberties such as freedoms of speech, assembly, and religion, or deprive suspects of due process or the right to a fair trial.[[37]](#footnote-38)

The Security Council called on its member states “to redouble their efforts to prevent and suppress terrorist acts,” as part of their duties to sustain international security and peace. In a few resolutions, the call was mandatory[[38]](#footnote-39). Yet the Security Council gave insufficient attention to ensuring that governments’ counterterrorism responses were in tune with international human rights standards. Only gradually did its resolutions stick to the need to protect civil liberties and due process from exploitative counterterrorism laws and rules.

Acts of terrorism are an inexcusable attack on the right to life. As the UN Global Counter-Terrorism Strategy of 2006 mentioned, states have a responsibility to secure all individuals within their jurisdiction from such attacks[[39]](#footnote-40). This responsibility comes from the primary duty of states to ensure respect for the right to life.[[40]](#footnote-41)

However, even in the context of countering terrorism, states need to meet their obligations according to international humanitarian law. This as well, is noted in the UN Global Counter-Terrorism Strategy, which mentions that, “The promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.”[[41]](#footnote-42)

Several of the UN Security Council resolutions passed in the wake of September 11 have failed miserably in adequately reinforcing that standard.

Security Council Resolution 1373, sponsored by the US  after the September 11 attacks, has been the centerpiece of the council’s approach to anti-terrorism. [[42]](#footnote-43)It needs all states to “work together urgently to curb and suppress terrorist acts,” including by “taking extra measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism.”

The resolution led the way to abusive domestic legislation largely by what it has not mentioned; it makes no reference to member states’ duties to respect the law of international human rights or international humanitarian law, the laws of war[[43]](#footnote-44). The resolution gives states wide leverage to create their own definitions. In 2009 UN High Commissioner for Human Rights Navanethem Pillai told that by serving as a vehicle for “numerous” states to enact provisions that “derogate from binding international human rights instruments,” Resolution 1373 has “a very serious negative impact on human rights.”[[44]](#footnote-45)

In 2002 the Security Council also widened its existing blacklist of individuals and institutions thought to be linked with the Taliban and Al Qaeda into a list with no global limitations. The Security Council had created the Al Qaeda and Taliban Sanctions List in the year 1999 through Resolution 1267 in response to al Qaeda attacks in the previous year on the embassies of US in Kenya and Tanzania. It first expanded the list through a different resolution in 2000 and extended it beyond Afghanistan to any location in the world in 2002.

Listings on the Security Council’s blacklist have often been based on secret information. The resolutions contain no specific limits on who could be declared as targets, the time limit of sanctions, or, first of all, mechanisms to cancel someone from the list.[[45]](#footnote-46) Resolution 1373 further expanded the regime created under Resolution 1267 by requiring states to freeze assets and entities of those “who commit or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts,” without requiring that they be linked to the Taliban or al Qaeda.[[46]](#footnote-47)

Security Council Resolution 1624 of 2005 calls on UN member states to pass laws that prevent and stop incitement to commit acts of terrorism and to deny safe haven to persons against whom there is “credible and relevant information” that implicates them in such conduct.

Right after 2003 Security Council resolutions have gradually directed states to ensure that counterterrorism measures are in consonance with international human rights law[[47]](#footnote-48). Among the most important of these is Resolution 1456 of 2003, which calls on states to “makesure that any measure taken to combat terrorism comply with all their obligations under international law ... in particular international human rights, refugee, and humanitarian law.”

These reforms are still less. Just as M. Scheinin, the then-UN special rapporteur on human rights and counterterrorism, said in his last report to the UN General Assembly in  2010, the anti-terrorism framework made by the Security Council in a few cases “continues to pose threats to the protection of a number of international human rights standards[[48]](#footnote-49).” Scheinn’s successor too has expressed quite the same concerns, as has the UNHRC.[[49]](#footnote-50)

**CONCLUSION**

To sum up, it may be stated that it is absolutely wrong to curb civil liberties during times of terrorist attacks. Civil liberties are freedoms that are meant to lie with people for their whole life. Therefore, it is morally wrong to take away these freedoms and push people into a mode of life where they have neither privacy nor security. It is harsh enough for people to live in places under threats of terrorist attacks. It is then harsher, to deliberately let them live without fundamental freedoms amid such crises. Nobody would want to live a life where they could be searched, jailed, detained or inspected arbitrarily. It is not the kind of life that any human being would wish to live.

Instead, counterterrorism laws need to be made more specific, clear, and precise. It should also disallow granting unreasonably wide powers to police, such that undermines the power of the judiciary. The legislations need to more citizen friendly and grant of punishments need to be carefully done, after following a fair, legal process of trial. Above all, they must be framed, not to satisfy autocratic powers of governments, but to ensure life and liberty of the people who are at the receiving end of these laws.

**REFERENCES**

1**.** Michael Brull, 2018 JOHN MARSDEN LECTURE: Sacrificing Civil Liberties to Counter Terrorism – Where Will it End? (New South Wave Council for civil liberties, 14 April 2019), <https://www.nswccl.org.au/2018\_john\_marsden\_lecture\_sacrificing\_civil\_liberties\_to\_counter\_terrorism\_where\_will\_it\_end> accessed on 12 May 2020.

2**.** Safe and Free-Civil Liberties in the Age of Terrorism ( *Aclu of New Jersey*) <https://www.aclu-nj.org/theissues/opengovernment/safefreecivillibertiesinth> accessed on 1 May 2020.

3**.** Alex Schmid, “T*he Definition of Terrorism,*” in Alex Schmid, ed., *The Routledge Handbook of Terrorism Research* (Abingdon, Virginia: Routledge, 2011), http://books.google.com/books?id=\_PXpFxKRsHgC&pg=PA, 39 (accessed 4 May 2020), p. 39.

4.Williamson, Myra Terrorism, war and international law: the legality of the use of force against Really (2001, Ashgate Publishing).

5.‘Counter-Terrorism’ (Legislation Online) https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.legislationline.org/topics/topic/5&ved=2ahUKEwiUvfeY06bpAhXSILcAHT8-CuEQFjAAegQIBRAC&usg=AOvVaw3fwMtqxFZBBhk6ak021gpM accessed 4 May 2020.

6.‘Misuse of Anti terrorism legislation’ (Human Rights Comment, 4 December 2018) https://www.coe.int/en/web/commissioner/blog/-/asset\_publisher/xZ32OPEoxOkq/content/misuse-of-anti-terror-legislation-threatens-freedom-of-expression/pop\_up?\_101\_INSTANCE\_xZ32OPEoxOkq\_viewMode=print&\_101\_INSTANCE\_xZ32OPEoxOkq\_languageId=en\_GB, accessed 10 May 2020.

7.Saudi Arabia’s Penal Law for Crimes of Terrorism, 2011, art. 29.

8. Egypt’s Chance to End State of Emergency,” Human Rights Watch news release, 30 May 2012.

9.Criminal Code Act 1995 (Australia’s Criminal Code), sec. 100.1(1).

10. The Editors od Encyclopedia Britannica, ‘Civil Liberty’ (*Britannica*, 29 April 2020) https://www.britannica.com/topic/civil-liberty accessed 5 May 2020.

11. Louise Smith, ‘Human Rights and Civil Liberties’(*About Human Rights*, 15 April 2019) <http://www.abouthumanrights.co.uk/human-rights-civil-liberties.html> accessed on 13 May 2020.

12. United Nations Declaration of Human Rights, 1948, art. 1.

13.International Convention on Civil and Political Rights, 1966, art. 4.

14.Gazala Parveen ‘Protection of Mankind through non-derogable rights’ (*IPLEADERS*) https://www.google.com/amp/s/blog.ipleaders.in/protection-mankind-through-non-derogable-human-rights/amp/.

15. Kelly R. Cusick ‘Thwarting Ideological Terrorism: Are We Brave Enough to Maintain Civil Liberties in the Face of Terrorist Induced Trauma’ (2003) 3 Case Western Reserve Journal of International Law 35, 1.

16.USA Patriot Act’epic.org </privacy/terrorism/usapatriot/> accessed 6 May 2020.

17. ‘NEW ANTI-TERRORISM LAW CONTINUES DANGEROUS TREND OF STRIPPING FEDERAL JUDICIARY OF AUTHORITY’ (*ACLU*) https://www.aclu.org/other/new-anti-terrorism-law-continues-dangerous-trend-stripping-federal-judiciary-authority accessed on 10 May 2020.

18.Johan Lidberg and Denis Muller, In the Name of Security- Secrecy, Surveillance and Journalism ( first published in 2018, Anthem Press).

19.Human Rights Watch, Protesting as a Terrorist Offense, chapter 4 and appendix I.

20.Human Rights Watch, United Kingdom – Without Suspicion: Stop and Search under the Terrorism Act 2000.

21. Australia’s Counter-Terrorism and National Security Legislation, sec. 35.

22. Commonwealth Human Rights Initiative (*CHRI*), “Stamping Out Rights: The impact of anti-terrorism laws on policing,” 2007.

23.Counterterrorism and Human Rights Abuses in Kenya and Uganda: The World Cup Bombing and Beyond’ (Open Society Justice Initiative, November 2012) https://www.justiceinitiative.org/publications/counterterrorism-and-human-rights-abuses-kenya-and-uganda-world-cup-bombing-and-beyond accessed on 14 May 2020.

24.Uganda’s Anti-Terrorism Act of 2002, art. 19(1)..

26.Bahrain’s Law with Respect to Protection of the Community against Terrorist Acts, 2006, , art. 6.

27.Israel’s Incarceration of Unlawful Combatants Law, 2002.

28.Gambia’s Anti-Terrorism Act, 2002, as amended by the Anti-Terrorism Amendment Act, 2008.

29.Mauritius’ Prevention of Terrorism Act, No. 2, 2002.

30. Syrian Penal Code, 1948 art. 304.

31.Jeong-Woo Koo and Amanda Murdie, Liberty or Security : Do Civil Society restrictions limit Terrorism? ( CSIS, 4 June 2018) accessed on 15 May 2020.

32. Conor Friedersdorf, ‘Civil Liberties Keep Americans Safe’ (The Atlantic, 15 June 2016) https://www.google.com/amp/s/amp.theatlantic.com/amp/article/487115/ accessed 13 May 2020.

33.Olivier Cahn, “The Fight Against Terrorism and Human Rights,” in Marianne Wade and Almir Maljevic, eds., A War on Terror? The European Stance on a New Threat, Changing Laws and Human Rights Implications (Springer Science + Business Media, 2009), chapter 17, p. 467.

34.In the Name of Security: Counterterrorism and Human Rights Abuses under Malaysia’s Internal Security Act, May 2004 http://www.hrw.org/reports/2004/05/24/name-security accessed on 7 May 2020.

35.International Commission of Jurists (ICJ), Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, 2009.

36. The 9/11 Effect: Comparative Counter-Terrorism (Cambridge University Press, 2011), p. 45.

37. ‘In the Name of Security’(Human Rights Watch) https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11#3a38ac accessed on 7 May 2020.

38.UN Security Council, Resolution 1368 (2001), S/RES/1368 (2001) http://www.unhcr.org/refworld/docid/3c4e94557.html (accessed May 2, 2020).

39.UN Global Counter-Terrorism Strategy, resolution and annexed Plan of Action, September 8, 2006, A/RES/60/288, http://www.un.org/depts/dhl/resguide/r60.htm (accessed May 4, 2020), Plan of Action, Pillar I.

40.International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI).

41.UN Security Council Resolution 1456 (2003).

42.Eric Rosand, Alistair Millar, and Jason Ipe, “The UN Security Council’s Counterterrorism Program: What Lies Ahead?” International Peace Institute, October 1.

43.UN Security Council, Resolution 1373 (2001).

44.’Address of UN High Commissioner for Human Rights Navanethem Pillay to the Counter-Terrorism Committee of the Security Council’, October 29, 2009, http://www.un.org/en/sc/ctc/docs/rights/2009\_10\_09\_hchr\_brief.pdf (accessed May 25, 2012.

45. Sullivan and Hayes, Blacklisted, pg 13.

46.UN Security Council, Resolution 1373 (2001), para. 1( c).

47. Center on Global Counterterrorism Cooperation, March 2012 pg. 7-9.

48.Martin Scheinin, “Report of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” UN Doc. A/65/258 (2010), para. 39.

49.Secretary-General’s Symposium on International Counter-Terrorism Cooperation, New York, September 19, 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11430&LangID=E (accessed 10 May 2020); and Human Rights Council.

50. “The United Nations Global Counter-Terrorism Strategy,” adopted September 8, 2006, A/RES/60/288, http://www.un.org/terrorism/strategy-counter-terrorism.shtml (accessed May 4 2020).

**BIO OF THE AUTHOR**

Julia Anna Joseph is a first year BBA LLB (Hons.) student at CHRIST (Deemed to be University), Bengaluru. She is an avid writer in contemporary legal issues. Her key interests lie in Tort law and Criminal law. She has interned with Qatar Charity Centre for Community Development, a consulting member of the United Nations Economic and Social Council (ECOSOC), the International Organization for Migration (IOM), CHS Alliance, and Start Network. She is an active participant in mediation, trial advocacy and Asian parliamentary debate competitions in the University. She also has interests in music and reading. By interning at ProBono, she aspires to broaden her advocacy and judgement analysis skills.

1. Michael Brull, 2018 JOHN MARSDEN LECTURE: Sacrificing Civil Liberties to Counter Terrorism – Where Will it End? (New South Wave Council for civil liberties, 14 April 2019https://www.nswccl.org.au/2018\_john\_marsden\_lecture\_sacrificing\_civil\_liberties\_to\_counter\_terrorism\_where\_will\_it\_endaccessed on 12 May 2020. [↑](#footnote-ref-2)
2. Safe and Free-Civil Liberties in the Age of Terrorism ( Aclu of New Jersey) https://www.aclu-nj.org/theissues/opengovernment/safefreecivillibertiesinth accessed on 1 May 2020. [↑](#footnote-ref-3)
3. Alex Schmid, “The Definition of Terrorism,” in Alex Schmid, ed., The Routledge Handbook of Terrorism Research (Abingdon, Virginia: Routledge, 2011), http://books.google.com/books?id=\_PXpFxKRsHgC&pg=PA, 39 (accessed 4 May 2020), p. 39. [↑](#footnote-ref-4)
4. Williamson, MyraTerrorism, war and international law: the legality of the use of force against Really (2001, Ashgate Publishing). [↑](#footnote-ref-5)
5. ‘Counter-Terrorism’ (Legislation Online) https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.legislationline.org/topics/topic/5&ved=2ahUKEwiUvfeY06bpAhXSILcAHT8-CuEQFjAAegQIBRAC&usg=AOvVaw3fwMtqxFZBBhk6ak021gpM accessed 4 May 2020. [↑](#footnote-ref-6)
6. ‘Misuse of Anti terrorism legislation’ (Human Rights Comment, 4 December 2018) https://www.coe.int/en/web/commissioner/blog/-/asset\_publisher/xZ32OPEoxOkq/content/misuse-of-anti-terror-legislation-threatens-freedom-of-expression/pop\_up?\_101\_INSTANCE\_xZ32OPEoxOkq\_viewMode=print&\_101\_INSTANCE\_xZ32OPEoxOkq\_languageId=en\_GB, accessed 10 May 2020. [↑](#footnote-ref-7)
7. Saudi Arabia’s Penal Law for Crimes of Terrorism, 2011, art. 29. [↑](#footnote-ref-8)
8. 8“Egypt’s Chance to End State of Emergency,” Human Rights Watch news release, 30 May 2012 . [↑](#footnote-ref-9)
9. Criminal Code Act 1995 (Australia’s Criminal Code), sec. 100.1(1). [↑](#footnote-ref-10)
10. The Editorsod Encyclopedia Britannica, ‘Civil Liberty’(Britannica,29 April 2020).https://www.britannica.com/topic/civil-liberty accessed 5 May 2020. [↑](#footnote-ref-11)
11. Louise Smith,‘Human Rights and Civil Liberties’(About Human Rights,15 April 2019) http://www.abouthumanrights.co.uk/human-rights-civil-liberties.htmlaccessed on 13 May 2020. [↑](#footnote-ref-12)
12. United Nations Declaration of Human Rights, 1948, art. 1. [↑](#footnote-ref-13)
13. International Convention on Civil and Political Rights, 1966, art. 4. [↑](#footnote-ref-14)
14. Gazala Parveen ‘Protection of Mankind through non-derogable rights’(IPLEADERS) https://www.google.com/amp/s/blog.ipleaders.in/protection-mankind-through-non-derogable-human-rights/amp/. [↑](#footnote-ref-15)
15. Kelly R. Cusick ‘Thwarting Ideological Terrorism: Are We Brave Enough to Maintain Civil Liberties in the Face of Terrorist Induced Trauma’ (2003)3 Case Western Reserve Journal of International Law 35, 1. [↑](#footnote-ref-16)
16. ‘USA Patriot Act’epic.org</privacy/terrorism/usapatriot/> accessed 6 May 2020. [↑](#footnote-ref-17)
17. ‘NEW ANTI-TERRORISM LAW CONTINUES DANGEROUS TREND OF STRIPPING FEDERAL JUDICIARY OF AUTHORITY’ (Aclu) https://www.aclu.org/other/new-anti-terrorism-law-continues-dangerous-trend-stripping-federal-judiciary-authority accessed on 10 May 2020. [↑](#footnote-ref-18)
18. Johan Lidberg and Denis Muller, In the Name of Security- Secrecy, Surveillance and Journalism ( first published in 2018, Anthem Press). [↑](#footnote-ref-19)
19. Human Rights Watch, Protesting as a Terrorist Offense, chapter 4 and appendix I. [↑](#footnote-ref-20)
20. Human Rights Watch, United Kingdom – Without Suspicion: Stop and Search under the Terrorism Act 2000. [↑](#footnote-ref-21)
21. Australia’s Counter-Terrorism and National Security Legislation, sec. 35. [↑](#footnote-ref-22)
22. Commonwealth Human Rights Initiative (CHRI), “Stamping Out Rights: The impact of anti-terrorism laws on policing,” 2007 [↑](#footnote-ref-23)
23. ‘Counterterrorism and Human Rights Abuses in Kenya and Uganda: The World Cup Bombing and Beyond’ (Open Society Justice Initiative, November 2012) https://www.justiceinitiative.org/publications/counterterrorism-and-human-rights-abuses-kenya-and-uganda-world-cup-bombing-and-beyond accessed on 14 May 2020. [↑](#footnote-ref-24)
24. Uganda’s Anti-Terrorism Act of 2002, art. 19(1). [↑](#footnote-ref-25)
25. [↑](#footnote-ref-26)
26. Bahrain’s Law with Respect to Protection of the Community against Terrorist Acts, 2006, , art. 6. [↑](#footnote-ref-27)
27. Israel’s Incarceration of Unlawful Combatants Law,2002. [↑](#footnote-ref-28)
28. Gambia’s Anti-Terrorism Act, 2002, as amended by the Anti-Terrorism Amendment Act, 2008. [↑](#footnote-ref-29)
29. Mauritius’ Prevention of Terrorism Act, No. 2, 2002. [↑](#footnote-ref-30)
30. Syrian Penal Code, 1948art. 304. [↑](#footnote-ref-31)
31. Jeong-Woo Koo and Amanda Murdie, Liberty or Security : Do Civil Society restrictions limit Terrorism? ( CSIS, 4 June 2018) accessed on 15 May 2020. [↑](#footnote-ref-32)
32. Conor Friedersdorf, ‘Civil Liberties Keep Americans Safe’ (The Atlantic, 15 June 2016). https://www.google.com/amp/s/amp.theatlantic.com/amp/article/487115/ accessed 13 May 2020. [↑](#footnote-ref-33)
33. Olivier Cahn, “The Fight Against Terrorism and Human Rights,” in Marianne Wade and Almir Maljevic, eds., A War on Terror? The European Stance on a New Threat, Changing Laws and Human Rights Implications (Springer Science + Business Media, 2009), chapter 17, p. 467. [↑](#footnote-ref-34)
34. In the Name of Security: Counterterrorism and Human Rights Abuses under Malaysia’s Internal Security Act, May 2004 http://www.hrw.org/reports/2004/05/24/name-security accessed on 7 May 2020. [↑](#footnote-ref-35)
35. International Commission of Jurists (ICJ), Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, 2009. [↑](#footnote-ref-36)
36. The 9/11 Effect: Comparative Counter-Terrorism (Cambridge University Press, 2011), p. 45. [↑](#footnote-ref-37)
37. ‘In the Nameof Security’(Human Rights Watch) https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11#3a38ac accessed on 7 May 2020. [↑](#footnote-ref-38)
38. UN Security Council, Resolution 1368 (2001), S/RES/1368 (2001)http://www.unhcr.org/refworld/docid/3c4e94557.html(accessed May 2, 2020). [↑](#footnote-ref-39)
39. UN Global Counter-Terrorism Strategy, resolution and annexed Plan of Action, September 8, 2006, A/RES/60/288, <http://www.un.org/depts/dhl/resguide/r60.htm> (accessed May 4, 2020), Plan of Action, Pillar I. [↑](#footnote-ref-40)
40. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI). [↑](#footnote-ref-41)
41. UN Security Council Resolution 1456 (2003). [↑](#footnote-ref-42)
42. Eric Rosand, Alistair Millar, and Jason Ipe, “The UN Security Council’s Counterterrorism Program: What Lies Ahead?” International Peace Institute, October 1. [↑](#footnote-ref-43)
43. UN Security Council, Resolution 1373 (2001). [↑](#footnote-ref-44)
44. “Address of UN High Commissioner for Human Rights Navanethem Pillay to the Counter-Terrorism Committee of the Security Council,” October 29, 2009, http://www.un.org/en/sc/ctc/docs/rights/2009\_10\_09\_hchr\_brief.pdf (accessed May 25, 2012), p. 6. [↑](#footnote-ref-45)
45. Sullivan and Hayes, Blacklisted, pg 13. [↑](#footnote-ref-46)
46. UN Security Council, Resolution 1373 (2001), para. 1(c). [↑](#footnote-ref-47)
47. Center on Global Counterterrorism Cooperation, March 2012pg. 7-9. [↑](#footnote-ref-48)
48. Martin Scheinin, “Report of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” UN Doc. A/65/258 (2010),para. 39. [↑](#footnote-ref-49)
49. Secretary-General’s Symposium on International Counter-Terrorism Cooperation, New York, September 19, 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11430&LangID=E (accessed 10 May 2020); and Human Rights Council. [↑](#footnote-ref-50)