

Human Rights, Freedom of Expression and Terrorism

Riyaz Punjabi and Claire Galez*

*[*Dr. Riyaz Punjabi is Professor in the Centre for the Study of Social Systems, Jawaharlal Nehru University, New Delhi. He is President (Hony.), International Centre for Peace Studies, New Delhi, India.*

**Ms. Claire Galez is Director, Centre for South Asian Studies, Switzerland, Geneva.]*

Introduction

The war against terrorism is being fought on many fronts. In view of the threat posed by terrorism to the very human existence, the public opinion, transcending geographical and ideological boundaries, is unanimous that the scourge of terrorism has to be stamped out from the face of the earth. In the initial stages of the fight against terrorism, the entire international community, expressed its solidarity with the strategies and mechanisms to deal with the menace which had emerged as a challenge to global civilised order and stability. In the meantime, the human rights groups and human rights defenders have been perennially raising the concern to ensure a balance between human rights and counter-terrorism measures. In the ever changing dynamics of international relations, a new scenario is emerging in which it appears that the strategies to deal with the menace of terrorism are being employed selectively and are covertly used to advance strategic agenda. It is in this context that Civil, Political and Human Rights activists, the world over, are expressing apprehensions over counter-terrorism measures and mechanisms adopted by some countries. Ironically, the empirical evidence gathered from some parts of the world support these apprehensions and concerns. Thus, the debates over the definition of 'terrorism' and 'striking a balance between terrorism and human rights' has resurged and acquired a centrality in the discourses on terrorism. Be that as it is, the new approaches to deal with the menace of terrorism are equally attracting the attention of human rights regime the world over. In this perspective, the impact of terrorism on the basic 'human right to life' and concomitant right to 'free expression' (in the context to stand up against ideologies intended to legitimise the threats to human life) have acquired the centre-stage of the entire discourse. In the process of the estimation of the discourse, the liability of 'non-state-actors' as against the 'state-actors' (who in any case are liable under local, national or international law) has also come under sharp scrutiny.

The Vienna Conference

It needs to be recognised that 1993 Vienna Conference on Human Rights brought a sharp and unprecedented focus on human rights. The intention was to reiterate the

commitment to human rights regime in the changing global environment of post cold-war era and to meet the new trend of globalisation. This focus cast a shadow on the right of states to exercise their sovereign powers particularly in reference to their national security concerns as recognised under UN Conventions and provided in the international law. This state of affairs, in a strange turn of events, equally provided a pretext to states to adopt new strategies, on the plea of exercising their sovereign right in ensuring their national security concerns, to meet the challenge of the real or imagined threats of terrorism, which were not always confirming to human rights standards. These strategies equally violated the human rights law which had been assiduously evolved due to the efforts of international community over the decades. The public outcry and intervention of judiciary in many states is now reversing the trend. It is equally important to note that despite the stringent measures adopted by the US and its allies post 9/11 in dealing with terrorism, "all 16 of America's intelligence agencies have declared that the terrorist threat is spreading and intensifying" as reported in the International Herald Tribune (October 7-8, 2006). This state of affairs prods us to look into various aspects of the phenomenon and devise the strategies well within the framework of human rights and humanitarian law to deal with the situation created by terrorism the world over.

Freedom of Expression

The dissemination of information and messages purported to sustain terrorist ideologies and strengthen terrorist groups, and state response to restrain the same, has brought the issue of freedom of speech and expression to the fore. It is well recognised that free speech and expression is the vehicle through which ideas and ideologies are disseminated transcending time and space. Thus, human rights conventions and instruments and the declarations of international and regional bodies underline the significance of the right to freedom of expression as a core human right. However, terrorism which is emerging as a well knit and properly organised 'machine', the issue of use (or misuse) of right to freedom of speech and expression is posing a new challenge to the human rights regime globally. There is an urgent need to seek the clarity on the issue. The right to freedom and speech has been a ticklish issue between state and civil society in which judicial intervention has been providing some clarity from time to time. But the challenges posed by terrorism are unique which invite fresh responses. The freedom of expression is one of the very first rights that is placed in jeopardy in the situations intended, calculated or actually created toward the state of terror. It needs to be acknowledged that the freedom of expression plays a crucial role in strengthening all other human rights and its unfettered exercise leads to the transformation of societies by creating a connectivity with the global world-an intractable trend of the 21st Century.

The UN Jurisprudence

Article 19 of the Universal Declaration on Human Rights (UDHR) underlines the centrality of freedom of expression as a basic human right in these words:

“Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

The International Covenant on Civil and Political Rights (ICCPR) under Article 19 guarantees the right to freedom of expression in the very similar terms as in the Article 19 of UDHR. In fact, all regional human rights instruments and conventions on human rights guarantee and protect the right to freedom of expression.

The UN Declarations and Covenants as reflected in International law and national constitutions, however, recognise that the right to freedom of expression is not absolute. Article 29 of the UDHR and Article 19 (3) of the ICCPR provide legal parameters for limitations on the right to freedom of expression. The ‘threats to national security’ have been cited as the chief argument by States to place restrictions on the right to freedom of expression. It may be mentioned here that although the UN Declarations and Covenants are overtly silent on this issue, different UN bodies have encouraged credible non-governmental organisations to evolve a theoretical framework to address this very issue.

New Principles

The Siracusa Principles (1984) and the Johannesburg Principles (1996) provide a relevant framework to address the issue of ‘threats to national security’ and ‘right to freedom of expression’. The Johannesburg principles elaborated by a group of experts in international law, national security and human rights are based on standards for protection of human rights with regard to states’ practices and the general principles of law recognised by UN bodies and mechanisms. These principles provide for derogation of UN norms on freedom of expression on the ground of *national security* in the following situations :

- a) Where the expression is intended to incite imminent violence;
- b) Where it is likely to incite such violence;
- c) Where there is a direct and immediate connection between the expression and likelihood or occurrence of such violence.

The international NGO’s dedicated to the cause of freedom of expression have been monitoring the status of human rights in the areas of conflict. Article XIX (An International NGO working exclusively in the area of right to freedom of expression

globally) maintains in *Global Campaign for Free Expression Report, War of Words: Conflict and Freedom of Expression in South Asia*, 2005 that :

“What is common between international and internal armed conflicts through out history is the desire by the warring parties to seek to control information.”

The report further maintains that:

“Indeed, information becomes a weapon in the hands of protagonists who manipulate it for three principle ends; a) to create conflict by building a case for war and demonising the enemy; b) to prolong conflict by diverting attention away from root causes; and c) to conceal their own atrocities from public and international scrutiny.”

The case studies undertaken by Article XIX have identified a number of trends adversely impacting the exercise of right of freedom of expression in conflict situations. Some of these trends are:

- a) Governments as well as separatist or insurgent combatants use ‘national security’ arguments to stifle dissent within their own sphere of influence;
- b) Conflict protagonists disseminate biased or manipulated information in order to mobilise public support in the way respective political leaders pursue their conflict goals. At times, this can mean that media voluntarily disseminate distorted information out of patriotic motivations. At other times, there is an underlying information strategy, planned and instigated at political levels;
- c) Persistent misinformation is a powerful factor further entrenching feelings of mutual hatred between divided communities and promoting the construction of enemy pictures, thereby adding to the obstacles that long and difficult conflict resolution and peace process will have to overcome;
- d) Media reporting is often polarised along political, ethnic or religious lines. Ownership of media is regarded by parties to a conflict as a central element in gaining control of the flow of information;
- e) In some cases, journalists and media outlets within conflict zones are deliberately targeted;
- f) Restrictions on freedom of expression during conflict situations have a disproportionately adverse effect on women.

The findings of Article XIX have references to ‘governments’ as well as ‘separatists or insurgent’ combatants who are referred as ‘non-state armed actors’ in the international discourse on conflicts and terrorism. There is a vast body of case law from US Supreme Court and US District Courts as well as from European Courts which deal with the limitations on the power of governments and states in placing restrictions on the right to freedom of expression particularly on the grounds of ‘*national security*’. Some of these decisions would be discussed in this paper later. It is equally important to raise the issue of ‘*national interest*’ or ‘*national security*’ with reference to the jurisprudence

of the UN. There is a mistaken perception that these concepts are beyond the UN jurisprudence. In view of the new challenges posed by international terrorism, it is significant to discuss these concepts as recognised under UN conventions and Covenants and evaluate their relevance within human rights regime with a special focus on freedom of expression. Be that as it is, the complexity arises due to ambiguous position of UN Conventions as well as regional declarations on the liability of non-state armed actors in violating the right of freedom of expression of civilian population. The appropriate legal framework under UN system and international law to define the responsibility of non-state armed actors in respecting and upholding all human rights including the right to freedom of expression needs to be outline and debated.

(To be continued)