

# HUMAN RIGHTS AND COUNTER TERRORISM



**VB LAW ASSOCIATES**

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The most common definition of counterterrorism (counter-terrorism) is the practices, tactics, techniques, and strategies that governments, militaries, police departments and corporations adopt in response to terrorist threats and/or acts, both real and imputed. Counter-terrorism includes both the detection of potential acts and the response to related events.

## Terrorism

Counter-terrorism regimes have generally bestowed a plethora of extraordinary powers on law enforcement agencies. It is the practices, tactics, techniques, and strategies that governments, militaries, police departments and corporations adopt in response to terrorist threats or acts, both real and imputed.

There are two aspects of counter-terrorism: to make citizens safer from terrorist threats and to neutralize the terrorists through arrests, prosecutions, assassinations, raids on terrorist facilities, military action, etc.

Most counter-terrorism strategies involve an increase in standard police and domestic intelligence. New technology has expanded the range of military and law enforcement operations. Other strategies include Preemptive neutralization and Counter-terrorism tactical units. The Indian scenario is that number of intelligence, military, and police organizations contribute to counterterrorism efforts as there are scores of insurgent and terrorist groups operating in India.

Counter-terrorism laws can have a profound impact on fundamental human rights and freedoms, for example, prolonged, incommunicado detention without judicial review; risk of subjecting to torture during the transfer, return and extradition of people between or within countries, etc.

Counter terrorism is the best and most widely adopted way hitherto to check and fight with the terrorism, but this fight has being posed a limitation (positive) by the human rights. This limitation is indeed a necessity for safeguarding the masses; else this practice of counter terrorism will pose a greater threat on the common public than on the terrorism activities.

## Human Rights and Counter-Terrorism

The threat of terrorism has in recent years been propelled to the forefront of the global agenda. Events such as those of 11 September 2001, the Bali bombings, the London underground bombing, the Madrid bombing and closer home, the attack on the Indian Parliament have entrenched the perception that terrorism is a global threat that is the concern of all nations to counter.

Despite decades of efforts, no uniform definition of terrorism currently exists in the international community. This is reflective of the high political stakes associated with the term. Nevertheless, in response to the events of 11 September 2001, the United Nations Security Council issued Resolution 1373, which placed an obligation on all member states to implement counter-terrorism laws with respect to financing, supporting, planning, or perpetrating terrorist acts or harbouring terrorists. Without an internationally accepted understanding of terrorism, States were thus obliged to implement counter-terrorism laws in the name of international peace and security based on their own understanding of terrorism.

### Counter-terrorism

Counter-terrorism regimes have generally bestowed a plethora of extraordinary powers on law enforcement agencies, being reflective of the perception that terrorism is a unique crime in the threat it poses not merely to individuals, but to the security of states and democratic culture. Such powers have included preventive detention, broad and invasive investigatory powers, and special rules of criminal procedure – many of which themselves offend basic principles of procedural justice and democratic rights. As a consequence, combating terrorism has given rise to concerns regarding its own adverse affects on human rights and democratic polity.

The most common definition of counterterrorism (counter-terrorism) is the practices, tactics, techniques, and strategies that governments, militaries, police departments and corporations adopt in response to terrorist threats and/or acts, both real and imputed. Counter-terrorism includes both the detection of potential acts and the response to related events.

The US military definition, compatible with the definitions used by NATO and many other militaries, is "Operations that include the offensive measures taken to prevent, deter, preempt, and respond to terrorism." In other words, counter-terrorism is a set of techniques for denying an opponent the use of terrorism-based tactics, for instance counter-air is a set of techniques for denying the opponent the use of attack aircraft.

## Counter-terrorism- Strategies

Building a counter-terrorism plan involves all segments of a society or many government agencies. Most counter-terrorism strategies involve an increase in standard police and domestic intelligence. The central activities are traditional: interception of communications, and the tracing of persons. New technology has, however, expanded the range of military and law enforcement operations. Domestic intelligence is often directed at specific groups, defined on the basis of origin or religion, which is a source of political controversy.

### Preemptive neutralization

Some countries see preemptive attacks as a legitimate strategy. This includes capturing, killing, or disabling suspected terrorists before they can mount an attack. Israel, the United Kingdom, the United States, and Russia have taken this approach, while Western European states generally do not.

Another major method of preemptive neutralization is interrogation of known or suspected terrorists to obtain information about specific plots, targets, the identity of other terrorists, whether or not the interrogation subjects him is guilty of terrorist involvement. Sometimes more extreme methods are used to increase suggestibility, such as sleep deprivation or drugs. Such methods may lead captives to offer false information in an attempt to stop the treatment, or due to the confusion brought on by it. These methods are not tolerated by European powers. In 1978 the European Court of Human Rights ruled in the Ireland v. United Kingdom case that such methods amounted to a practice of inhuman and degrading treatment, and that such practices were in breach of the European Convention on Human Rights Article 3 (art. 3).

### Counter-terrorism tactical units

Today, many countries have special units designated to handle terrorist threats. Besides various security agencies, there are elite tactical units, also known as special mission units, whose role is to directly engage terrorists and prevent terrorist attacks.

Such units perform both in preventive actions, hostage rescue and responding to on-going attacks. Countries of all sizes can have highly trained counter-terrorist teams. Tactics, techniques and procedures for man hunting are under constant development. These units are specially trained in tactics and are very well equipped. The units include take-over force (assault teams), snipers, EOD experts, dog handlers and intelligence officers.

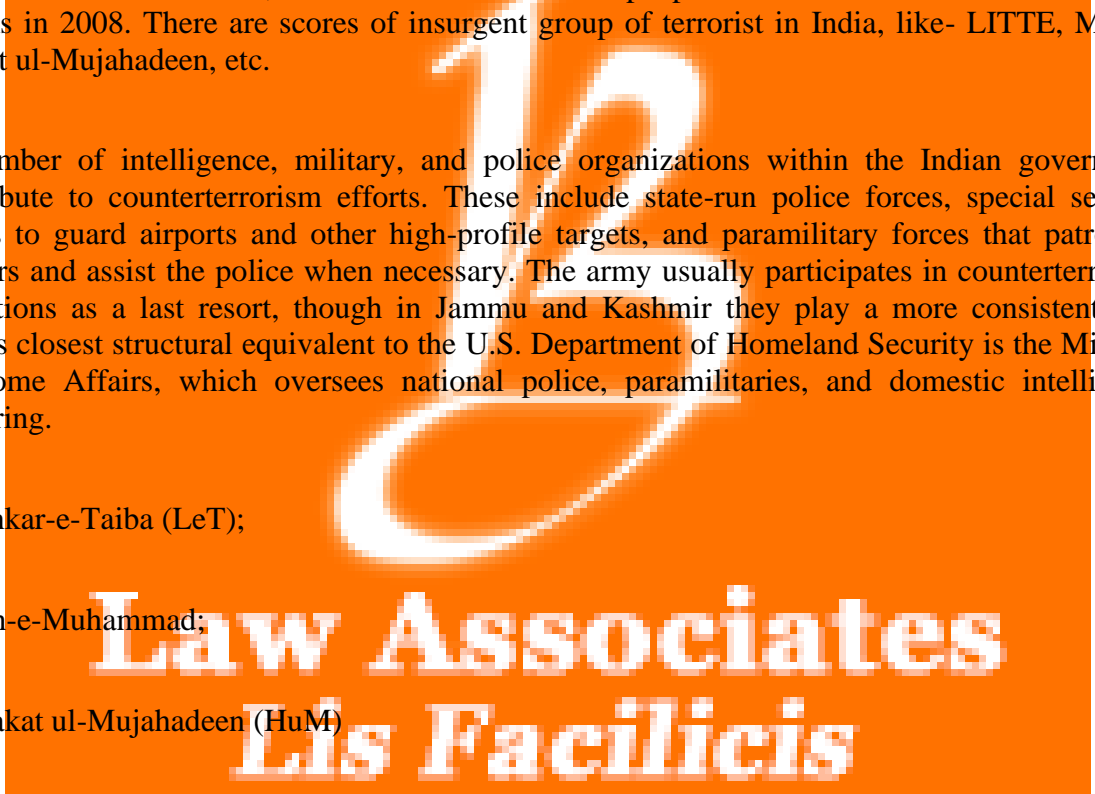
The majority of counter-terrorism operations at the tactical level, are conducted by state, federal and national law enforcement agencies or intelligence agencies. In some countries, the military may be called in as a last resort. Obviously, for countries whose military are legally permitted to conduct police operations, this is a non-issue, and such counter-terrorism operations are conducted by their military.

## Scenario in India

The November 2008 deadly terrorist assault (ABC News) on Mumbai's hotel district and a spate of bomb attacks (BBC) across India's cities, the same year have claimed hundreds of lives. According to the latest report on global terrorism by the U.S. government's National Counter-Terrorism Center, more than one thousand people died in India because of terrorist attacks in 2008. There are scores of insurgent group of terrorist in India, like- LITTE, Maoist, Jamiat ul-Mujahadeen, etc.

A number of intelligence, military, and police organizations within the Indian government contribute to counterterrorism efforts. These include state-run police forces, special security forces to guard airports and other high-profile targets, and paramilitary forces that patrol the borders and assist the police when necessary. The army usually participates in counterterrorism operations as a last resort, though in Jammu and Kashmir they play a more consistent role. India's closest structural equivalent to the U.S. Department of Homeland Security is the Ministry of Home Affairs, which oversees national police, paramilitaries, and domestic intelligence gathering.

- Lashkar-e-Taiba (LeT);
- Jaish-e-Muhammad;
- Harakat ul-Mujahadeen (HuM)
- The Communist Party of India (Maoist);
- Harakat ul-Jihad-I-Islami (HUJI);
- Jamiat ul-Mujahadeen;



- The United Liberation Front of Assam (ULFA).

## Counter-Terrorism and human rights

One of the primary difficulties of implementing effective counter-terrorist measures is the waning of civil liberties and individual privacy that such measures often entail, both for citizens of, and for those detained by states attempting to combat terror. At times, measures designed to tighten security have been seen as abuses of power or even violations of human rights.

What do human rights have to do with counter-terrorism laws?

Counter-terrorism laws can have a profound impact on fundamental human rights and freedoms, including:

§ the right to life;

§ the right to a fair trial;

§ the right not to be subjected to arbitrary detention;

§ freedom from torture and cruel, inhuman or degrading treatment or punishment;

§ the right to freedom of expression;

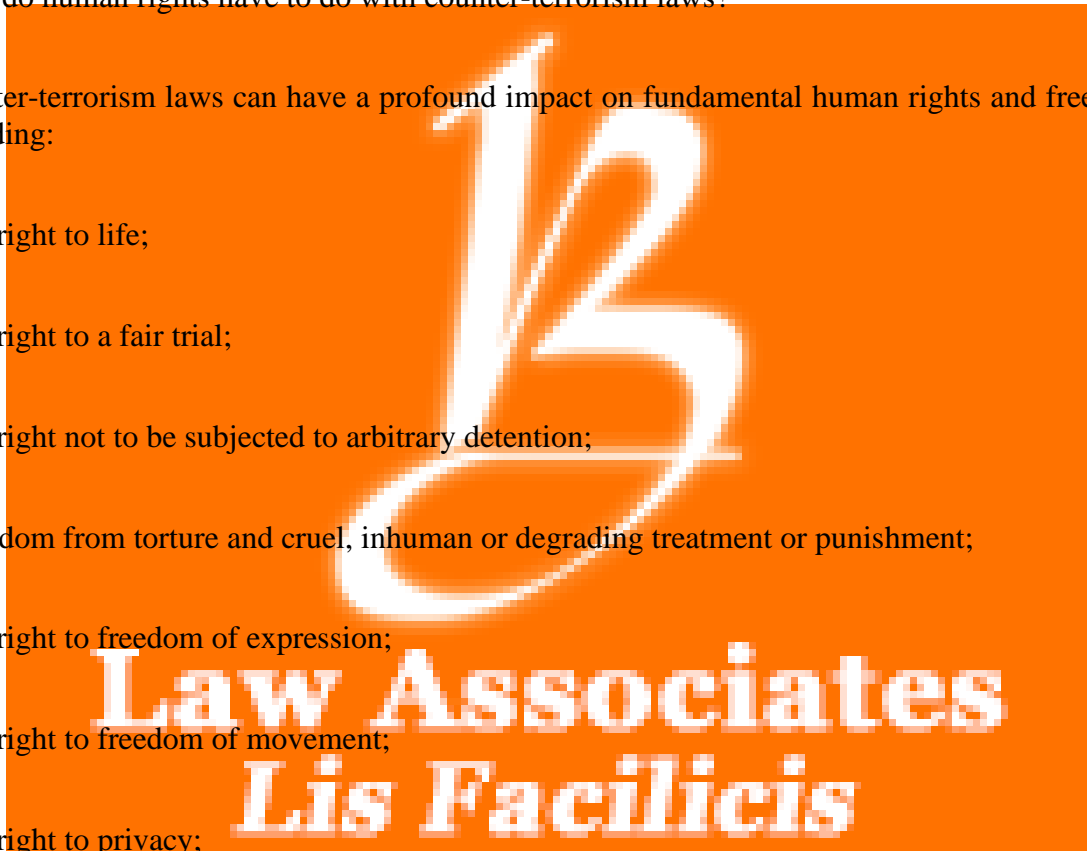
§ the right to freedom of movement;

§ the right to privacy;

§ the right to non-discrimination;

§ the right to an effective remedy for a breach of human rights.

Examples of these problems can include prolonged, incommunicado detention without judicial review; risk of subjecting to torture during the transfer, return and extradition of people between or within countries; and the adoption of security measures that restrain the rights or freedoms of citizens and breach principles of non-discrimination. Certain such examples include:



· In November 2003, Malaysia passed new counter-terrorism laws that were widely criticized by local human rights groups for being vague and overbroad. Critics claim that the laws put the basic rights of free expression, association, and assembly at risk. Malaysia persisted in holding around 100 alleged militants without trial, including five Malaysian students detained for alleged terrorist activity while studying in Karachi, Pakistan.

· In November 2003 a Canadian-Syrian national, Maher Arar, alleged publicly that he had been tortured in a Syrian prison after being handed over to the Syrian authorities by U.S.

· In December 2003 Colombia's congress approved legislation that would give the military the power to arrest, tap telephones and carry out searches without warrants or any previous judicial order.

· Images of unpopular treatment of detainees in US custody in Iraq and other locations have encouraged international scrutiny of US operations in the war on terror.

· Hundreds of foreign nationals remain in prolonged indefinite detention without charge or trial in Guantánamo Bay, despite international and US constitutional standards some groups believe outlaw such practices.

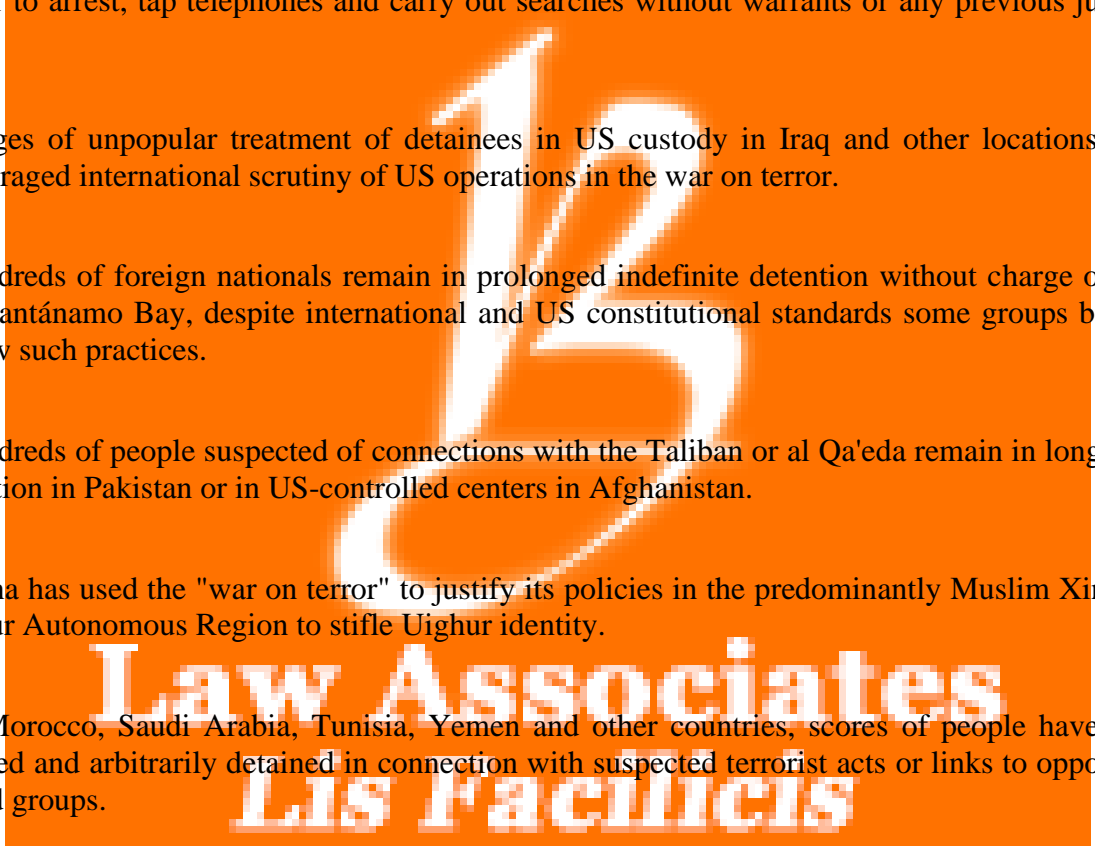
· Hundreds of people suspected of connections with the Taliban or al Qa'eda remain in long-term detention in Pakistan or in US-controlled centers in Afghanistan.

· China has used the "war on terror" to justify its policies in the predominantly Muslim Xinjiang Uighur Autonomous Region to stifle Uighur identity.

· In Morocco, Saudi Arabia, Tunisia, Yemen and other countries, scores of people have been arrested and arbitrarily detained in connection with suspected terrorist acts or links to opposition armed groups.

· Until 2005 eleven men remained in high security detention in the UK under the Anti-Terrorism, Crime and Security Act 2001.

· In 2011, a very recent instance is more than enough to explain the relationship between counter terrorism and human rights in India, Kasab's case. Mumbai High Court has upheld the capital punishment given to him by the trial court but this decision of the Court has attracted plethora of views concerning human rights (of Kasab) which criticize or oppose this decision.



Many would argue that such violations exacerbate rather than counter the terrorist threat. Human rights advocates argue for the crucial role of human rights protection as an intrinsic part to fight against terrorism. This suggests, as proponents of human security have long argued, that respecting human rights may indeed help us to incur security. Amnesty International included a section on confronting terrorism in the recommendations in the Madrid Agenda arising from the Madrid Summit on Democracy and Terrorism (Madrid 8–11 March 2005):

(1) taking effective measures to make impunity impossible either for acts of terrorism or for the abuse of human rights in counter-terrorism measures,

(2) the incorporation of human rights laws in all anti-terrorism programs and policies of national governments as well as international bodies."

To conclude, it is very obvious that counter terrorism is the best and the most widely accepted way hitherto to check and oppose the terrorism, but this fight has being posed a limitation (positive) by the human rights. This limitation is indeed a necessity for safeguarding the masses; else this practice of counter terrorism will pose a greater threat on the common public than on the terrorism activities. It is therefore urged from all the authoritative corners of the world to safeguard basic human rights while framing strategies for counter-terrorism.

Anti- terrorism and Counter terrorism- Are they the same thing?

Anti-terrorism is defensive[1], intended to reduce the chance of an attack using terrorist tactics at specific points, or to reduce the vulnerability of possible targets to such tactics. Whereas, Counter-terrorism refers to offensive strategies intended to prevent a belligerent, in a broader conflict, from successfully using the tactic of terrorism. Therefore, both the strategies differ in their application, process and even in the end result to some extent.

How Does Counter-terrorism Work?

There are two aspects of counterterrorism. The first is to make citizens safer from terrorist threats through screening of airline passengers, placing video cameras and metal detectors in public places, random patrols of bomb-sniffing dogs, etc. The second is neutralization of terrorists through arrests, prosecutions, assassinations, raids on terrorist facilities, military action, etc.

Counter-terrorism- Strategies

Building a counter-terrorism plan involves all segments of a society or many government agencies. In dealing with foreign terrorists, the lead responsibility is usually at the national level.



Because propaganda and indoctrination lie at the core of terrorism, understanding their profile and functions increases the ability to counter terrorism more effectively.

Most counter-terrorism strategies involve an increase in standard police and domestic intelligence. The central activities are traditional: interception of communications, and the tracing of persons. New technology has, however, expanded the range of military and law enforcement operations.

Domestic intelligence is often directed at specific groups, defined on the basis of origin or religion, which is a source of political controversy. Mass surveillance of an entire population raises objections on civil liberties grounds.

To select the effective action when terrorism appears to be more of an isolated event, the appropriate government organizations need to understand the source, motivation, methods of preparation, and tactics of terrorist groups. Good intelligence is at the heart of such preparation, as well as political and social understanding of any grievances that might be solved.

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### What groups are involved in terrorism in India?

There are scores of insurgent and terrorist groups operating in the country. Those recognized by the U.S. State Department as Foreign Terrorist Organizations (FTO) or other "groups of concern" are:

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- Jaish-e-Muhammad;
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### Human Rights into action

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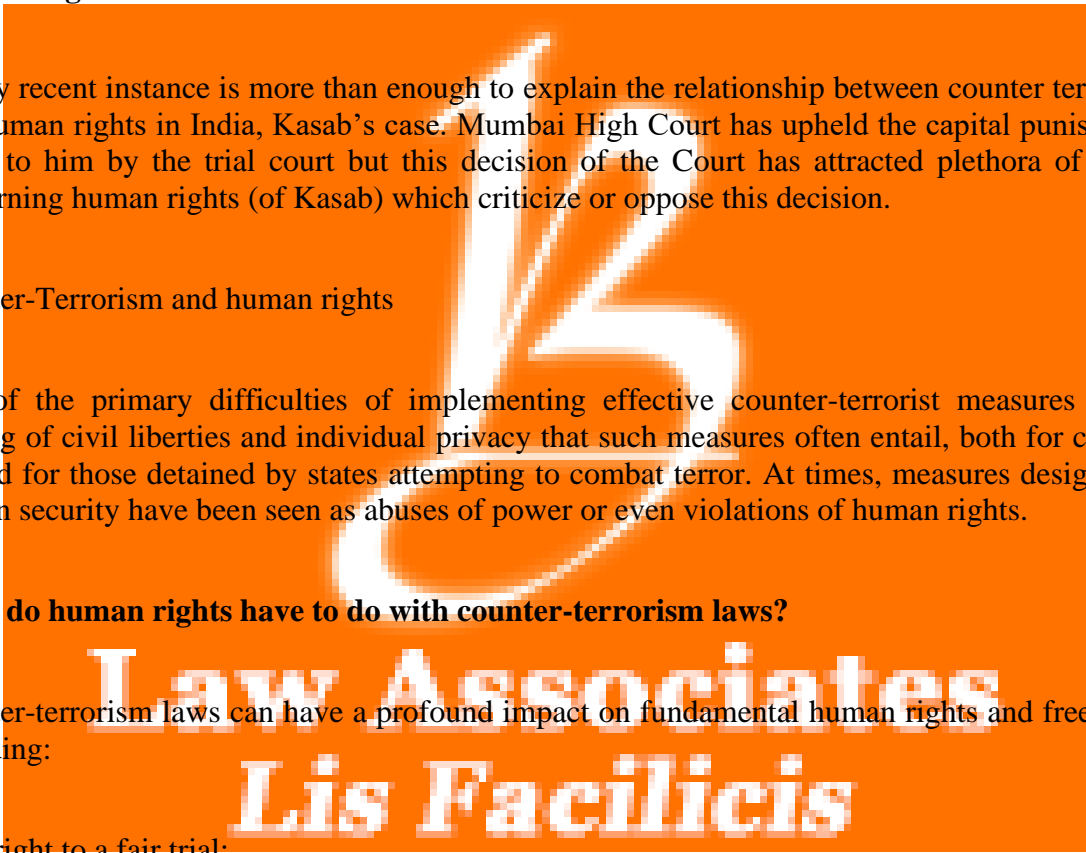
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