

“The Victims of Terrorism (Provision of Compensation and Welfare Measures) Bill, 2012”- A Critical Analysis

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Abstract

In modern times, the concept of State has undergone a radical change. The individualistic view of the functions of the State and the laissez faire theory has been rejected and are considered to be out-dated. The concept of welfare State has emerged and has gained wide recognition. Every State is tending to become a welfare State. The social and economic uplift of the masses has become their avowed objectives. In India, even before the independence the nation clearly underlined its objectives of the socio-economic development of the people. It can only be achieved by providing fundamental rights and safety to the citizens of the country but terrorist violates both the rights of the citizens. So it is the responsibility of the State to safeguard its citizens. Few parliamentarians has taken initiative to rehabilitate the victims of terrorism by introducing the Bill but it is still pending.

Keywords: Terrorism, explosions, welfare state, individualistic

INTRODUCTION

Terrorism has been threatening the world in its various forms, with unprecedented intensity and frequency. The strikes have varied in their targets and mode of execution by way of skyjacking of airliners, explosions at airports and hotels, assassination of well known public men, killing of innocent bystanders, taking of hostages, planting bombs in public places and a score of other violent methods to intimidate people. This epidemic of terrorism has engulfed the whole world. No society can consider itself safe against its effects. East or west, rich or poor radical left or conservative right, big or small, democratic or totalitarian systems, capitalists or socialists, society of every type have been affected by this curse.

Terrorism is one of the most heinous crimes ever witnessed by mankind during the course of its history. It will be no exaggeration to say that it amounts to an act of sacrilege against humanity since its perpetrators pay scant or no regard to the inherent value and worth of human life. As a blood crime it may well be placed in the same category to which genocide and tyrannicide belong. In its aspect as an instrument of psychological warfare, it is in a class by itself since its principal targets are not the traditional power centres but the innocent masses as a whole. As a strategy, it seeks to undermine the authority of a regime by spreading a sense of insecurity among the members of the society whom the regime under challenge represents and for whose protection, security and well being it is responsible.¹

By its very nature, terrorism is “a ferocious violence of humans against humans.” Since the objectives of this violence is to instil a sense of insecurity among the masses, the term terrorism is used to refer to the intentional stimulation of fear psychosis, the inducement of mass scale terror or the causation of mortifying dread. One important fact about the nature of terrorism which deserves attention is that it is by its very character low profile symbolic violence carried out in accordance with a systematically conceived, highly organised purposive design. One isolated act, therefore, cannot be called terrorism. Any violence then, would qualify to be called terrorism only if it is organised in such a manner as to serve a particular set of objectives, say, for example, winning national freedom, establishing a race or religion based homeland, and bringing about fundamental political change. In other words, a violent act can be said to constitute terrorism only on the basis of the intentions behind it.²

Terrorism brings suffering and miseries to human beings. It being immoral and inhuman act puts under threat the rights and freedoms of innocent people. It, therefore, abuses the Fundamental Human Rights of the victims, particularly, the right to life, the right to physical integrity and the right to personal freedom. The increasing number of innocent persons including women, children and the elderly has been killed, massacred or maimed by terrorists in indiscriminate and random acts of violence and terror which in no case can be justified. It has put a question mark on the most essential and basic human right of the people, i.e. right to life. The General Assembly has repeatedly expressed its deep concern about the “worldwide escalation of the acts of terrorism in

¹ C. S. Sood. “Terrorism and the Terrorists: Nature, Attributes and Choice”, in S. C. Tiwari(ed), *Terrorism in India* (New Delhi: South Asian Publishers Pvt Ltd, 1990) 71.

² Id. at p.72.

all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings.”³

TERRORISM AS A CRIME AFFECTING STATE SECURITY

Looking at the very means, techniques and strategies of terrorism from the law oriented angle; it may be contained within the limits of extortion or criminal intimidation or even simple offence breaching public peace and law and order. However, only when national security and integrity is threatened and the movement has larger ramification, it can come within the ambit of a crime affecting State Security.⁴

“The United Nations Human Rights Commission has recognised for the first time that terrorism can destroy human and fundamental freedom of people, and threaten the territorial integrity of nations. The Commission further unanimously resolved on March 4, 1994 that such acts of aggression are aimed at the destruction of Human Rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilising legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences on the economic and social development of States.”⁵

RELATION BETWEEN HUMAN RIGHTS AND VICTIMS OF TERRORISM

There is very close connection between terrorism and human rights. It may be either State terrorism or individual terrorism; it always abuses the fundamental Human Rights of the innocent people. The victims of terrorism capriciously deprived the Fundamental Human Rights of life and liberty. Acts which are covered under the term terrorism are in fact violation of fundamental Human Rights of those against whom they are perpetrated. The predicament is that the terrorist who done the acts of terrorism also demand the Human rights for them.

WELFARE STATE VIZ-A-VIZ VICTIMS OF TERRORISM

In modern times, the concept of State has undergone a radical change. The individualistic view of the functions of the State and the *laissez faire* theory has been rejected and are considered to be out-dated. The concept of welfare State has emerged and has gained wide recognition. Every State is tending to become a welfare State. The social and economic uplift of

³ Dr. H.O. Aggarwal. *International Law and Human Rights* (Allahabad: Central Law Publications, 2007) 645.

⁴ Rajeev Kumar Sinha. *Crime Affecting State Security Problems and Recent Trends* (New Delhi: Deep and Deep Publications, 1995) 130.

⁵ Ibid.

the masses has become their avowed objectives. In India, even before the independence the nation clearly underlined its objectives of the socio-economic development of the people.⁶

The nature and character of State activities is rapidly changing. Almost every State, be it socialistic, communist or capitalist wishes to pursue the ideal of a Welfare State. The modern State is no longer a police State. The growth of industrialisation has increased the functions of the State manifold. It is too much concerned with the betterment of the condition of living of its members. Its functions are becoming wider and wider. The objective of modern State is to establish an atmosphere in which moral development of the individual becomes possible. Its objective should be the complete development of man in social, political, economic and moral spheres. The State is an instrument of socio-economic change.⁷ It encourages the State to undertake enormous tasks towards the welfare of its citizens. It is essentially a social service State. The idea of Welfare State is based on certain essentials. Firstly, it should clearly be understood that welfare is not a matter of charity, but of right. Secondly, the minds and attitudes of men must be attuned to the idea of a welfare State. The people must work for it. They must not remain passive.⁸

The concept of welfare State exercised a tremendous influence on the minds of the framers of the Indian constitution. The chapter on the Directive Principle of State Policy is nothing, but a reflection of the ideals of a Welfare State. Article 38 says, “The State strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life”.

In modern societies, the states have assumed the responsibility to protect its citizens from crime and have taken over the exclusive right, in the collective interest of the community, to punish offenders. However, the State accepts no responsibility for injury to the victim. Through retribution occupies a subordinate position in the present day administration of Criminal Justice, its importance is undesirable. The mention of retributive is even now the main spring of Criminal Law. Therefore, it is clear that the victim who was once central point of whole Criminal Justice System has now become a forgotten person. No special treatment is given to him rather he is

⁶ Dr. B.N. Mani Tripathi. *An Introduction to Jurisprudence- Legal Theory* (Faridabad: Allahabad Law agency Law Publishers) 377.

⁷ Dr. S.R. Myneni. *Political Science* (Faridabad: Allahabad Law Agency, 2013) 97.

⁸ L.S. Rathore and S.A.H. Haqqi. *Political Theory and Organisation* (Lucknow: Eastern Book Company, 2012) 20.

looked down in society during whole legal process instead of 'victim' of unfortunate circumstances. There have been lot of reforms for accused and they have been considered as patient who needs clinical treatment. But there is no victim restitution programmed ever proposed to look into the plight of victim of the crime. India is lagging far behind in implementing the United Nations Charter of 1985 which provides substantial rights to victim of crime and India has ratified this declaration. So India is bound to observe the principles underlined under this declaration.⁹

"The Victims of Terrorism (Provision of Compensation and Welfare Measures) Bill, 2012"

The bill was introduced firstly in the year 2004 but it was lapsed. Then again it was introduced by ShriChandrakantKhair in 2012 in Lok Sabha and is still pending. This bill is to provide the compensation and certain provisions for the welfare of the victims of terrorism

Statement of Objectives and reasons:

"The incidents of terror attacks are increasing in many parts of the country. Hundreds of innocent persons are being killed in such terrorist attacks. Their lives are shattered as they become permanently disabled or die during such attacks. The condition of deceased families is miserable as adequate compensation has not been provided to them by the Government. Therefore, it is necessary that the Central Government should come forward to pay compensation and provide certain other measures for the welfare of victims of terror attacks."

Important provisions of the Bill:

Section 3 of the bill provides the compensation to victims of terror attack.

"Notwithstanding anything contained in any other law for the time being in force, the Central Government shall pay compensation to and take the following welfare measures for the victims of terror attack in the following manner":—

- (i) "in case of loss of life",
- (a) "an *ex gratia* grant to the next of kin of the deceased which shall not be less than five lakh rupees";
- (b) "financial assistance at such rate, as may be prescribed, to the next of kin of the deceased"; and

⁹ Gurpreet Singh Randhawa. *Victimology and Compensatory Jurisprudence* (Allahabad: Central Law Publications, 2011) 25.

- (c) “preference in Central Government jobs to the next of kin of the deceased”;
- (ii) “in case of serious injury leading to incapacitation”,—
- (a) “medical treatment free of cost till full recovery”; and
- (b) “payment of an *ex gratia* amount to the victim, which shall not be less than three lakh rupees”;
- (iii) “in case of minor injuries payment of an *ex gratia* amount, which shall not be less than one lakh rupees”; and
- (iv) “in case of damage to the dwelling unit as a result of torching or bombing, repair of the dwelling unit, if viable or construction of a new dwelling unit.”

Section 4 “The provisions of this Act and rules made hereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

Section 5 “The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.”

Section 6 (1) “The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.” (2) “Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

Analysis of the Bill

On the basis of the analysis of the pending bill on victims of terrorism following drawbacks have been pointed out:

1. ***Lack of Witness Protection:*** It is very important to protect the persons who witness the act of terrorism or who suffered due to it. Although there are provisions under other laws like TADA but there is no such provision under this bill for the protection of witnesses. Clear cut provision should be added in this bill to make it a complete code.

2. *Definition of Victims not clear:* Definition of victims of acts of terrorism is not clear. It should be made clearer by adding other victims who suffered any type of loss due to acts of terrorism e.g. victims who suffered emotionally or psychological harm. They should be given their due. Counselling should be done for their rehabilitation.
3. *Complicated Procedure of Compensation:* Procedure of claiming compensation is very complicated like to which authority the application of the claim will addressed, how the victim is to prove that he is the victim or the dependent of the victims who suffered the harm. What is fixed amount of compensation or how the authorities will decide that what amount should be paid to the particular victim?
4. *Lack of Medical Assistance:*Provisions regarding medical help are not clear. Persons who suffered physical harm get the medical assistance but how long? In cases when the person goes into coma or who suffered psychological harm is the fit case for this category.
5. *Free Education for Wards:*There should be provisions for the free education of children of the victims who are killed or physically disable.
6. *Provisions against Illegal Detentions:* Persons who are illegally detained and tortured in police custody on the suspicion of their being terrorist should also get the same benefits as the other victims.

On the basis of analysis of pending Bill namely, “**The Victims of Terrorism (Provision of Compensation and Welfare Measures) Bill, 2012**” the following amendments are proposed.

Existing Provision

Section 3

- (i) “in case of loss of life, an *ex gratia* grant to the next of kin of the deceased which shall not be less than five lakh rupees;
- (ii) in case of serious injury leading to incapacitation,—
- (iii) medical treatment free of cost till full recovery; and
- (iv) payment of an *ex gratia* amount to the victim, which shall not be less than three lakh rupees”.

Proposed amendment

Definition of the victim is very narrow. It covers only the victims who are killed or get serious injury that leads to incapacitation. It should also cover victims of other crimes such as

kidnapping, extortion and robbery by terrorists; illegal detentions and fake encounters by police etc.

Following suggestions should be considered to make it a complete code:

7. *Lack of Witness protection:* It is very important to protect the persons who witness the act of terrorism or who suffered due to it. Although there are provisions under other laws like TADA but there is no such provision under this bill for the protection of witnesses. Clear cut provision should be added in this bill to make it a complete code. Witnesses should be provided security who witness the act of terrorism or who can identify the terrorists in any case of terrorist acts.
8. *Definition of Victims should be clearer:* Definition of victims of acts of terrorism is not clear. It should be made clearer by adding other victims who suffered any type of loss due to acts of terrorism. Like victims who suffered emotional or psychological harm. Counselling should be done for their rehabilitation. Victims of other crimes for instance kidnapping, extortion and bodily injury by terrorists should be added. They should be given their due.
9. *Free Education for Wards:* There should be provisions for the free education of children of the victim who are killed or physically disabled in the acts of terrorism.
10. *Complicated Procedure of Compensation:* Procedure of claiming compensation is very complicated and vague, e.g. with which authority the application of the claim will lie, how the victim will prove that he/she was the victim or the dependent of the victims who suffered the harm. The amount of compensation should be fixed and proper terms and conditions should be formulated to decide the amount of compensation to be paid to the particular victim.
11. *Medical Assistance:* Provisions regarding medical help are not clear. Persons who suffered physical harm get the medical assistance but how long they will get it is not clear. In case a victim goes into coma or suffers psychological harm for a very long period the medical assistance programs should be added.
12. *Set up Separate Tribunal:* There should be separate tribunal to decide such type of cases so that the victims can approach the authorities easily and without any further hassle.
13. *Provisions against Illegal Detentions:* Victims of illegal arrest/detentions by the police should also be compensated same as the other victims of acts of terrorism.