

National Security and Counter Terrorism Laws in the United States

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Abstract

Throughout the research paper, I have tried to exhibit the nature of counter terrorism laws in the United States. Initially, the paper dealt with the history of terrorist attacks in the United States. This part of the history includes a series of terrorist attacks in the United States from the demolition of the U.S. Embassy in the west Beirut. The paper also focuses on certain significant statutes such as the biological weapons Anti-Terrorism Act 1989, Anti-Terrorism and Effective Death Penalty Act 1996, The USA PATRIOT Act 2001, and Military Commission Act 2006. To make the research more effective, there was a study on the Executive Order 12947 and the Executive Order 13224. The paper also had attempted to substantially research on the concept of detention. With an attempt to research about the concept of detention, the paper has also given special emphasis to the landmark judgments such as Humdi v. Rumsfeld, United States v. Melendez Carrion, Salerno v. United States. In addition to traditional terrorism, the United States grappled with cybersecurity threats, including attacks on critical infrastructure, government institutions, and private businesses. These threats could be attributed to state-sponsored actors, criminal organizations, or hacktivist groups. The United States continued to monitor and combat international terrorism, albeit with a diminished threat from groups like Al-Qaeda and ISIS. Law enforcement agencies at the federal and state levels remained engaged in counterterrorism efforts, including surveillance, intelligence sharing, and the apprehension of individuals involved in terrorist plots.

Keywords: Terrorism laws, military commission, detention, USA Patriot Act, biological weapons, anti-terrorism, execution order, Al-qaeda, homeland security, national security, counter terrorism, United States of America, World Trade Center

INTRODUCTION

The primary terrorist threat confronting the United States currently is most accurately perceived as originating from a variety of political perspectives. The power of online communication and social media, along with other factors such as the prevalence of firearms and political polarization, have created a complex and varied terrorist threat that cuts across ideologies and is largely disassociated from conventional notions of terrorist organizations.

The United States was quite stringent and cautious while making their anti-terrorism laws. The enemies often tried to destroy the heart of the country, but how the laws had prevented it is quite appreciable. The incidents that occurred in the nation were extremely catastrophic. It had even led to the downfall of the country. The Beirut barracks bombings on October 23, 1983, marked a tragic incident in Beirut, resulting in the death of 299 individuals and involving the United States and the French Armed forces. The multinational peacekeeping force, comprising soldiers from the United States, France, and Italy, had been deployed to Lebanon in accordance with the ceasefire

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agreement brokered between Israel and the Palestine Liberation Organization. There were major terrorist attacks which led to the formation of new laws in the United States, including the formation of a Homeland Security Department. In December 1985, the United Nations declared that “unequivocally” condemned, “as criminal, all the acts, methods and the practices of terrorism wherever and by whomever committed.”

Terrorism is based on many aspects, it can be based on the religion, on ideologies, places and perspective, and so on. The soul emergence of terrorism is basically due to interpretation of these perspectives and beliefs. And the main concept around interpretation is that one particular ideology can have more than millions of interpretations, certain group is of the belief that this particular interpretation is the way of life and this is how the society has to lead the life.

History

On April 18th, 1983 the calm was broken when a car bomb destroyed the U.S. embassy in West Beirut was the site of a tragic incident that resulted in the loss of numerous American foreign service workers and Lebanese civilians. In the somber context, in the morning of October 23, 1983, a dump truck loaded with around 12,000 pounds (5,400 kg) of explosives forcefully breached the front gates of the U.S. Marine barracks in Beirut.

The blast violently detached the four-story structure from its base, leading to the rapid collapse of the barracks. The detonation resulted in the tragic loss of 241 Marines and sailors, marking the Marine Corps' largest single-day casualty toll since the Battle of Iwo Jima in 1945. Shortly after the attack, a second suicide bomber targeted the barracks housing a French paratrooper detachment in West Beirut, resulting in the collapse of the building and the death of 58 soldiers within. Within a span of four months, components of the multinational force commenced their withdrawal to ships offshore, culminating in the final departure of U.S. forces on February 26, 1984. Marines left Beirut. After the Marines left Beirut, the Al-Qaeda's impressions about the US being a paper tiger increased.

On Feb 26th, 1993 there was a tragic explosion that rocked lower Manhattan. The focal point was situated beneath the World Trade Center. The individuals responsible planted a truck bomb with a timing device on Level B-2 of the underground garage before fleeing the scene. As the number of attacks increased the legislations became more polished from time to time. Initially, one of the deadliest attacks which happened in the American soil would be the 9/11 attacks where a series of hijackings and suicide attacks took place. In 2001, 19 militants affiliated with the Islamic extremist group known as Al-Qaeda perpetrated an attack against the United States, resulting in the death of approximately 2,750 people [1].

On February 26th, 1993 there was a tragic explosion that rocked lower Manhattan. The center of the incident occurred beneath the World Trade Center. The attackers placed a truck bomb, which had a timing device, on Level B-2 of the underground garage before departing from the area.

On September 11, 2001, a group of assailants hijacked four aircraft at three East Coast airports, incapacitating the crews shortly after takeoff. Identified as the Al-Qaeda, this group seized control of the planes. The first collision occurred when American Airlines Flight 11, taking off from Boston, was intentionally directed into the North Tower of the World Trade Center in downtown New York City. Following that, United Airlines Flight 175, also departing from Boston, hit the South Tower 17 minutes later, leaving office workers trapped just above the impact site. The third aircraft, American Airlines Flight 77, departed from Dulles Airport near Washington, and targeted the southwest side of the Pentagon. In a matter of minutes, the Federal Aviation Administration issued a nationwide ground stop, and within the next hour, United Airlines Flight 93, originating from Newark, New Jersey, went down near Shanksville in the rural Pennsylvania landscape. The attacks also had an impact on several nearby buildings to the Twin Towers. The Economic Attack which was more painful after the 9/11 attacks was

unbearable, the Tower were at the heart of the New York's financial district, it was also a damage to Lower Manhattan's infrastructure. In addition to that there was an unavoidable fear of the shake in the stock markets, which kept the New York markets closed for 4 trading days. Basically, a hit at the different part of the enemy. After the extreme effect of 9/11 the terrorism law of the country was carved.

Since the events of 9/11, a total of 107 individuals have lost their lives in the United States due to jihadist attacks, a figure comparable to the death toll caused by far-right terrorism, encompassing anti-government, militia, white supremacist, and anti-abortion violence, which has resulted in 122 fatalities. Additionally, the country has witnessed incidents in recent years influenced by black separatist/nationalist ideology and ideological misogyny, claiming twelve and seventeen lives, respectively. Meanwhile, those with Far-Left views have been responsible for one fatality. The present terrorism challenge in America is primarily domestic, with no single group or ideological perspective exclusively bearing responsibility.

Enacted on May 22, 1990, the Biological Weapons Anti-Terrorism Act of 1989 is a piece of U.S. legislation that was passed into law in 1990. It outlines the measures for enforcing the Biological Weapons Convention and establishes criminal penalties for any violations of its provisions.

President Bill Clinton on January 23, 1995 signed the Executive Order 12947, which prohibited the Transactions with the Terrorists who would threaten to Disrupt the Middle East Peace processes. The Omnibus Counter Terrorism Act was established on 1995. then the U.S. Anti-Terrorism and Effective Death Penalty Act of 1996, in 2001 of September 23rd, President George W. Bush signed the Executive Order 13224. During the same year, the USA PATRIOT Act, formally named the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, was passed. It later underwent modifications in 2006. The Homeland Security Act of 2002, The border Protection Anti-Terrorism and illegal immigration Control Act of 2005, the Real ID Act 2005, the Military Commissions Act of 2006 and the Animal Enterprise Terrorism Act 2006.

BIOLOGICAL WEAPONS ANTI-TERRORISM ACT 1989

Signed in 1975, the Biological and Toxin Weapons Convention primarily centers on the regulation of biological weapons, emphasizing the prohibition of developing, producing, and stockpiling toxins and biological weapons. According to Article I of the Convention, participating states commit to refraining from developing, producing, stockpiling, acquiring, or retaining such weapons under any circumstances [2].

Initially, the Convention prohibits the possession or development of microbial or other biological agents, toxins, equipment, or delivery means designed for transporting new toxic substances, regardless of their origin or production method. In order to establish the norms, which was propounded by the convention the United States enacted the biological Weapons Anti-terrorism Act 1989. It emphasizes the imposition of penalties for breaches of the Convention's prohibition, except in cases where a biological agent, toxin, or delivery system is primarily intended for prophylactic, protective, or other peaceful purposes. Here, the law enforces the government to apply for a warrant in order to seize any biological agent, toxin, or delivery system that does not have a reason for peaceful purposes. Here, the prosecution has to prove that the toxin or biological weapon that was used by the individual did not have peaceful intentions [2].

There has been a rapid growth in the field of biotechnology especially with respect to cloning technology which has in turn increased the chances of the occurrences of a biological warfare. The rise in biological weapons programs has elevated the probability of terrorist groups acquiring expertise in biological weapons. The BWC and the Protocol are the main primarily international agreements which specifically restrict the use of the biological weapons. Even though biological weapons are used by the people for centuries. Geneva Protocol 1925 was the first international treaty banning the use of these weapons. It was in 1925, the United States signed this protocol and abided all the terms in the treaty. This treaty mainly prohibited the use of bacteriological methods of warfare [3].

Executive Order 12947

Executive Order 12947 was primarily introduced to forbid transactions with terrorists posing a threat to the disruption of the Middle East peace process. This Executive Order 12947 was signed by President Clinton 1995, where the President blocked all the property and the interest of the property which was enlisted in the Annex of the Executive order 12947 [4].

This blocks all the property subject to the U.S jurisdiction in which there is any interest of the 12 terrorist organizations which threaten the peace of the Middle East [5].

Omnibus Counterterrorism Act of 1995

As of April 21, 2015, the Omnibus Counter Terrorism Act of 1995 was moving slowly through Congress and was a topic of spirited debate regarding concerns over potential violations of fundamental civil liberties, including the right to confront one's accuser. The bills quick passage was called by the Washington, Democrats and Republicans, after the bombing in the Oklahoma City bombing. The most critical part of the Bill was the provision that allowed the Government to use the evidence from the secret sources for the deportation proceedings that was for the aliens which were suspected for the terrorist involvement [6].

The Bill also had certain political crosscurrents; it is pitting the Jewish advocacy groups who often favor against the Arab-American organization that oppose the same. The Jewish group are of the opinion that this particular measure could be used to dry up the potential contributors. The legislation, in its effect, would focus on Arab-Americans, potentially hindering their ability to contribute to social programs in the Middle East that may have associations with certain terrorist groups. And this bill also focuses on labelling the plastic explosives and trafficking of the nuclear materials. The most significant part of the Act dealt with providing federal jurisdiction for any of the international terrorist attack which can occur in the United Nations [7].

Anti-Terrorism and Effective Death Penalty Act of 1996

In 1996, the Anti-terrorism and Effective Death Penalty Act was established to put forward a court charged only hearing cases based on secret evidence submitted in the form of a classified information, in which the government seeks to deport aliens which are accused of engaging in the terrorist Activities. Then, in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act had been expanded in the secret evidence court where a secret evidence can be used easily to deport even the lawful permanent residents as the terrorists. The provisions of the act also dealt with the use of secret evidence by the government in order to deny a bond to all the non-citizens who are detained, and also to deny certain discretionary immigration benefits such as asylum to all non-asylum to all the non-citizens, including the ones not accused of being terrorists.

Executive Order 13224

The Executive Order 13224 was signed by then-President George W. Bush on September 23, 2001. It provided the U.S. government with a powerful tool in order to obstruct terrorist funding, and now it's part of the U.S. national commitment, which in turn led to the international effort to bring a stop to the evil of the particular terrorist society [8]. The main aim of the order is to disrupt the particular financial support that aids the financial groups and organizations, which gives the U.S. government the power to designate and block the assets of foreign entities and individuals who have the objective of causing significant harm to the state by committing acts of terrorism [8].

THE DEPARTMENT FOR HOMELAND SECURITY

The United States has established a department called the Department of Homeland Security, which is a federal agency to protect the country against threats. The Homeland Security's mission is to guarantee the safety, security, and resilience of the homeland against terrorism and various hazards. Alejandro Mayorkas took on the position of Secretary of the Department of Homeland Security on February 2, 2021, following his swearing-in by President Biden.

The leader of the Department of Homeland Security is responsible for supervising the third-largest department within the U.S. government, overseeing a workforce of 229,000 employees and 22 components. These components include TSA, Customs and Border Protection, Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, FEMA, the Coast Guard, Secret Service, Federal Law Enforcement Training Centers, the National Protection and Programs Directorate, and the Science and Technology Directorate.

Under the Secretary's guidance, the Department of Homeland Security (DHS) takes on the responsibility for various critical functions. These include counterterrorism, cybersecurity, aviation security, border security, port security, maritime security, administration and enforcement of immigration laws, protection of national leaders, safeguarding critical infrastructure, detection and defense against chemical, biological, and nuclear threats to the homeland, and responding to disasters [9].

THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT) ACT 2001

The USA PATRIOT Act, implemented in the aftermath of the 9/11 attacks, has played a crucial role in protecting the nation. Formally known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, its primary objective is to prevent and penalize terrorist activities both domestically and internationally. The act aims to enhance the investigative capabilities of law enforcement and fulfill other associated purposes.

The act comprises 10 categories, called "titles," including the following:

Title I: Enhancing domestic security against terrorism

Title II: Enhanced surveillance procedures

Title III: Anti-money-laundering to prevent terrorism

Title IV: Border security

Title V: Removing obstacles to investigating terrorism

Title VI: Victims and families of victims of terrorism

Title VII: Increased information sharing for critical infrastructure protection

Title VIII: Terrorism criminal law

Title IX: Improved intelligence

Title X: Miscellaneous

Title-I of the USA PATRIOT Act of 2001 deals with Enhancing domestic Security Against Terrorism subsequently Title IV of the Act deals with Protecting the Border. This Act was passed by U.S Congress and signed into by the President George W. Bush after the September 11th terrorist attacks against the United States. Title V of the Act deals with the removal of obstacles in investigating terrorism Sec. 503 deals with the DNA identification of the terrorist and other violent offenders. Subsequently Section 505 deals with the Miscellaneous national security authorities.

Title VIII of the Act deals with Strengthening the criminal laws against Terrorism, Section 801 to Section 817, is the most crucial part of the Act. Section 802 of the Act deals with the definition of domestic terrorism.

Section 802 of the USA PATRIOT Act (Pub. L. No. 107-52) broadened the definition of terrorism to encompass activities categorized as "domestic" rather than solely international. Under this section, an individual is considered to be engaged in domestic terrorism if they commit an act deemed "dangerous to human life," constituting a violation of state or U.S. criminal laws. The act is deemed intentional if it is intended to: (i) intimidate or coerce a civilian population; (ii) influence government policy through intimidation or coercion; or (iii) affect government conduct through mass destruction,

assassination, or kidnapping. Furthermore, for an act to be classified as domestic terrorism, it must primarily occur within the territorial jurisdiction of the United States; otherwise, it may be categorized as international terrorism [10].

Section 802 of the USA PATRIOT Act does not establish a new domestic terrorism offense. Instead, it broadens the scope of conduct subject to government investigation when probing “terrorism.” The USA PATRIOT Act enhances the government’s authority to investigate terrorism, and certain provisions within it are relevant to cases involving domestic terrorism.

The Most significant aim of the act was to centralize the it with the Title-18 US Code, in these particular certain amendments which are mentioned in the Act with respect to Title 18 US Code. The USA PATRIOT Act is designed to prevent and penalize terrorist activities within the United States and globally, aiming to strengthen law enforcement investigatory capabilities, among other specified objectives.

- To strengthen U.S. measures to prevent, detect and prosecute international money laundering and financing of terrorism;
- To subject to special scrutiny foreign jurisdictions, foreign financial institutions, and classes of international transactions or types of accounts that are susceptible to criminal abuse;
- To require all appropriate elements of the financial services industry to report potential money laundering;
- To strengthen measures to prevent use of the U.S. financial system for personal gain by corrupt foreign officials and facilitate repatriation of stolen assets to the citizens of countries to whom such assets belong.

Section 805 deals with the material support for terrorism. Section 812 outlines the procedures and conditions for the post-release supervision of individuals convicted of terrorism-related offenses. Section 814 deals with the deterrence of cyber terrorism and Section 817 deals with the expansion of biological weapons [10].

THE TITLE;18 U.S CODE Chapter 113 B

Chapter 113B of the US Code, which addresses the criminal laws of the United States, specifically covers terrorism. Section 2331 within this chapter provides definitions related to terrorism, distinguishing between international terrorism and domestic terrorism, with the latter being defined under Section 2331(5).

(5) the term “domestic terrorism” means activities that—(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(a) *Appear to be intended:*

- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion; or
- (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

Here as per the US PATRIOT Act the definition of domestic terrorism which was amended by assassination or kidnapping and inserting mass destruction, assassination and kidnapping. This definition has given the word a wider meaning it has led to a meaning where anything inconsistency with the public order. The Act inserts this particular meaning to the aspect of domestic terrorism.

Section 2339 deals with Harboring or concealing of terrorists, this new Section was added. Section 175 of the 18 US Code, deals with the Prohibition with respect to biological weapons.

(b) *Additional offense:* Anyone who knowingly possesses a biological agent, toxin, or delivery system in a type or quantity that, under the circumstances, lacks reasonable justification for prophylactic, protective, genuine research, or other peaceful purposes, shall face fines under this title, imprisonment for up to 10 years, or both. In this context, the terms “biological agent” and “toxin” exclude any naturally

occurring biological agent or toxin in its natural environment if it has not been cultivated, collected, or extracted from its natural source.

The US PATRIOT Act has introduced the term “bonafide research” in this context. As per the Executive Order’s definition, terrorism encompasses a violent or life-threatening act with the aim of intimidating or coercing a civilian population, influencing government policy through intimidation or coercion, or affecting government conduct through mass destruction, assassination, kidnapping, or hostage-taking. Apart from the sanctions regime administered by OFAC, the U.S. criminal code prohibits numerous terrorist activities, including providing material support or resources to terrorism, allowing for legal action in the United States even when these offenses occur outside the country.

After 9/11, the USA PATRIOT Act expanded the scope of these prohibitions. The legal code makes a distinction between offering material support to terrorists in general and to designated Foreign Terrorist Organizations (FTOs) specifically. The former specifies that support or resources must be provided with the knowledge or intent that they will be used in preparing for or carrying out a terrorist act. In contrast, when providing support to a designated FTO, it is adequate for the provider to know either that the organization is designated as a terrorist group or that it has engaged or is engaging in terrorist activity. In this case, no specific knowledge or intent is necessary regarding the use of the support or resources for terrorist purposes.

Material support or resources, as defined, include supplying any tangible or intangible property, service (including currency, monetary instruments, financial securities, and financial services), lodging, training, expert advice or assistance, safe houses, false documentation or identification, communication equipment, facilities, weapons, lethal substances, explosives, personnel (including oneself or others), and transportation, with the exception of medicine or religious materials. Initially, when initially introduced in criminal law, the definition of material support excluded humanitarian aid provided to individuals not directly engaged in terrorist offenses.

In the aftermath of the Oklahoma City bombing in April 1995, the original broader exception for humanitarian assistance was amended to its current, more limited scope, which now specifically excludes only medicine and religious materials from the definition of material support in the context of counterterrorism laws.

The definition of terrorism in the statute closely resembles that in Executive Order 13,224. The scope of this humanitarian exception has been explored in a number of lawsuits in the United States. Prosecutions so far are notable for primarily targeting Islamic organizations and individuals who are allegedly ideologically linked to a proscribed group [11].

However, in two criminal cases concerning individual doctors ideologically affiliated with AlQaeda, rather than humanitarian organizations, the doctors were convicted of supporting terrorism by providing medical treatment to members of a proscribed group (the cases are *US v. Shah* [12], *US v. Farhane* [13]). In these instances, the humanitarian exception was construed narrowly to encompass only the supply of medicine, excluding the provision of medical treatment that involves medical expertise. Nevertheless, a key element in each case was the defendants’ professed dedication to the objectives of Al-Qaeda. The court rulings indicate that a distinct outcome might be possible in situations involving independent humanitarian organizations that operate without being under the ‘direction or control of a designated foreign terrorist organization.

In the widely publicized 2010 case of *Holder v. In the case of the Humanitarian Law Project (HLP)*, the U.S. Supreme Court decisively clarified that the intention of the support provider to a designated Foreign Terrorist Organization (FTO) is irrelevant. The key determinant is that the provider is cognizant of the terrorist character of the organization, as outlined by U.S. law [14].

In 2008, the Holy Land Foundation for Relief and Development, the largest Islamic charity in the U.S. at the time, was convicted of supporting Hamas through contributions to West Bank zakat committees. The charity was disbanded, and its directors received sentences of up to 65 years in prison (the case is currently under appeal). In a related civil case against the Holy Land Foundation by a victim of Hamas, the court examined the scope of the humanitarian exception, specifically the exclusion of medicine from the definition of material support. The court affirmed that providing “medical (or other innocent) assistance by nongovernmental organizations such as the Red Cross and Doctors Without Borders” to injured Hamas fighters would fall within the terms of the exception. According to the court’s non-binding interpretation, even if Doctors Without Borders/Médecins Sans Frontières (MSF) knew that it was treating Hamas fighters, it would not be liable for contributing to terrorism.

The assistance would involve aiding individual patients, not a terrorist group, and in adherence to the principles of the Hippocratic Oath, it would be provided without inquiries into the moral virtue of the patients.

If a hospital unaffiliated with Hamas in Gaza City sought donations, the same principle would apply. Yet, in criminal proceedings involving individual doctors with ideological ties to Al-Qaeda, as opposed to humanitarian organizations, these doctors were convicted of supporting terrorism through the provision of medical treatment to members of a prohibited group (cases: *US v. Shah* and *USC §2339A and B*, respectively). The USA PATRIOT Act bears the title “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.” The designation of Foreign Terrorist Organizations (FTOs) is carried out by the Secretary of State, based on their involvement in terrorism and the perceived threat they pose to the security of the U.S. or its citizens.

Boim v. Holy Land Foundation for Relief and Development [15], 549 F.3d 685 (7th Cir. 2008) (en banc) at 699. *US v. Farhane*). The humanitarian exception was interpreted narrowly in these cases as including the provision of medicine only, and not the provision of medical treatment, which draws upon medical expertise. However, a significant factor in each case was the stated commitment of the defendants to the goals of Al-Qaeda, and the judgments suggest that a different conclusion could be reached in the case of independent humanitarian organizations not acting under the “direction or control of a designated foreign terrorist organization.”

Section 805 of the US PATRIOT Act deals with Material Support for terrorism, which provides the amend section 2339A of 18 U.S Code, the definition of material support or resources is defined under Section 2339A(b),

(1) The term “material support or resources” encompasses any property, tangible or intangible, or service, including currency, monetary instruments, financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals, including oneself), and transportation. However, this definition excludes medicine or religious materials from the scope of “material support or resources.”

A noteworthy facet of the growing relationship between India and the United States is the issuance of multiple joint statements aimed at enhancing cooperation in counterterrorism. The perception that the two nations are victims of “terrorism” in the post-9/11 world has increased their resolve to battle the scourge. In order to achieve this goal, both India and the United States have worked to have the draught UN Comprehensive Convention on International Terrorism approved. They voiced their endorsement for the UN Global Counter-Terrorism Strategy, a framework that gained approval from the UN General Assembly in September 2006.

The India–US Counter Terrorism Collaboration Initiative aims to strengthen the two nations’ cooperation in this area as a crucial component of their bilateral strategic alliance. The initiative

involves fostering exchanges related to the modernization of techniques, sharing best practices on shared interests, developing investigative skills, promoting collaboration among forensic science laboratories, establishing procedures for mutual investigative assistance, enhancing capabilities to combat money laundering, addressing the use of counterfeit money, and financing terrorism. Additionally, the initiative includes the exchange of best practices concerning mass transit and rail security.

DETENTION

The detention as per the United States law on the basis of the International Law, is basically to lawfully detain the terrorists' individuals or the terrorist group in order to interrogate and prosecute them, main function is to prevent them from committing or planning any more attacks. After the 9/11 attacks, which happened in September 11th, 2001, the suspected terrorists were detained for the purpose of deportation and the criminal Justice.

There are circumstances where the terrorists have been captured overseas, in the occupied territory which is detained by the United States military for the preventive security measures. There are many forms in which the detentions of the suspected terrorist can take place. First, it is the prosecution, the terrorist was caught on a flight to the United States with a lit match which was sneaked in the explosive-laden sneaker, here he was called the "shoe bomber," Richard Reid plead guilty and was send to prison. After 9/11 the most successful federal prosecution was not of the terrorists but of the persons who provide material support to the terrorist groups [16].

When it comes to the Battlefield many of the Al-Qaeda and the Taliban from the places of Afghanistan and in the Bagram Air base. The military detained more than 80 individuals at the United States naval base in Guantanamo Bay, Cuba.

There have been several attempts by the U.S. military army to detain at least two of the U.S. citizens for a definite period of time on security grounds without charges and the access to the lawyers. In *Humdi v. Rumsfeld* [17], this practice was terminated in 2004 when the Supreme Court ruled that, at a minimum, due process of law mandates that individuals, including Americans, must be informed of the grounds for their detention. Furthermore, they should have an opportunity to challenge and rebut these grounds before an impartial decision-maker, with the assistance of legal counsel. The military has also detained hundreds of foreign nationals on the basis of the suspicion, these prisoners were also held without any charges these continued till the Supreme Court in 2004 held that the federal courts have jurisdictions to hear the petitions for the habeas corpus which is bought under their behalf.

According to international law, a conflict exists between International Human Rights Law and International Humanitarian Law. International Human Rights Law stipulates that detention must not be arbitrary and should be grounded in pre-established legal grounds. When it comes to the International Humanitarian law, the detention is only allowed in the situations where it is absolutely necessary. They said detentions has to be proportional in nature, it should not be restrictive or prolonged than the exigencies of the security situation. The detention should not be done based on any discriminatory process including the between the foreigners and the citizens.

Detentions must adhere to established legal procedures, requiring proper registration, and avoiding incommunicado status for more than a few days. The reasons and the ground for which the detainee has been detained must be informed to the detention. The detention should be subject to swift and effective judicial oversight, ensuring the detainee receives a fair judicial hearing on the legality of their detention. Furthermore, the conditions of the detention must be humane, including the provision of medical treatment. In cases of unlawful detention, compensation must be provided to the detainee.

In *United States v. Melendez-Carrion* [18] and in the case of *Salerno v. United States* [19], the Second Circuit Court ruled that preventive detention is in violation of the due process clause of the Fifth

Amendment. There was an argument which stated that the preventive detention is constitutional due to the reason that it passes the three conditions of the legislative purpose test of the US Supreme court. It is the bail Reform Act of 1984 which authorize the judicial officers to detain a defendant pre-trial if the officers apprehend that the accused is most likely to commit a crime in the future. In the Salerno decision, the concept of detention came forward in the theoretical level. In the 1984 decision there was a slight practical reformation. Here the court said that in the circumstances where the flight of threat was strong the bail could be denied. But there are certain circumstances where the courts keep the bail sums just below constitutionally excessive and above the sum in which it is almost impossible for the arrestee to pay it.

MILITARY COMMISSION ACT 2006

The main aspect of the Military Commissions Act of 2006 was that it gives the president the veto power to decide who is the enemy of the country and to imprison the people for an indefinitely without charging them with a crime. These Military commissions are the criminal courts which are handled by the U.S. Armed forces. In the traditional view, the military commissions were mainly used to establish the battlefield justice; for example, to capture the combatants for the violations of the laws of the war. During the time of the martial law or the military rule, they have been established to replace the civilian courts. The 2006 enacted legislation permitted the creation of a new military commission system, granting the government the authority to conduct trials for specific non-citizens before a military tribunal [20].

In the case of *Hamdan v. Rumsfeld* [21] the Supreme court struck down certain aspects of the old Military Commission Act which was authorized by the Congress. The revised regulations specify that defendants cannot be found guilty based on evidence they cannot examine or contest. Moreover, defendants have the entitlement to appeal all convictions to a civilian appellate court. The MCA also contained certain provisions which were unfit in nature the rules on hearsay and the evidence which has been obtained through coercion would mean that defendants can be convicted on the basis of a second-hand summaries of statements which may have been occurred through coercive interrogations which in turn does not give the defendant any opportunity to state his side. The new legislation hence allows the establishment of new rules and procedures by the secretary of defense from their court martial if they feel that reliance on the court martial rules and procedure to be impractical in nature.

Any non-citizen even the green card holder which has living in the United States for decades can be tried as per the Act if he is apprehended to be a terrorist or the so called “unlawful enemy combatant” can be tried by a military commission [22].

In this case of *Hamdan v. Rumsfeld*, the district court concluded that the extension of the President’s power to establish the military commission is for “offenders or offenses triable by military [commission] under the law of war,” But the Supreme Court held that the military system which was established by President George Bush which was to try the certain detainees at the Guantanamo Bay was indeed unlawful because it was not authorized by the Congress. But in 2006 and 2009, the military commissions which were established by the congress had a taste of unfair trial and the due process standards [22].

The Supreme court Argued that the military commission violated the U.S. Military code and violated the Geneva Convention. These military commissions mainly prohibited the attorney of the defendant to discuss the evidence with the defendant, and also prevented the viewing of the evidence against the defendant and also deprived the right of the defendant to appeal to the U.S. Court, here the evidence as per the military commissions were the evidences which had the probative values which included the unsworn testimony, hearsay and the evidence which are yielded through coercion and torture. The Court said that the military commission lacks the power to proceed because it lacked structure and contained procedures which were violative of the United States Military justice and the four Geneva Conventions.

Here the Supreme Court made it clear that above all the court focuses to protect the personal liberties of the individual and considers it to be the in its first priority even in the gravest offences [23].

CONCLUSION

However, these laws faced criticism due to concerns about potential misuse and violations of civil liberties. Some cases faced accusations of torture and a deficiency in due process. India continued to amend these laws to address emerging threats and mitigate criticisms, but controversies persisted. Still there are terrorism laws which are in dire need of change and even deletion. When comparing legislations, the laws in the United States are considerably more effective and efficient.

Following the 9/11 attack, the U.S. Patriot Act has been an effect legislation to protect the people who is in risk of many terrorist attacks. It is a necessity for India to adopt a legislation which unify the terrorism laws which broaden the scope of protection of the citizens and the country.

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