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ASSESSING THE UNITED KINGDOM'S ANTI-TERRORISM STRATEGY AND THE HUMAN RIGHTS IMPLICATIONS

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ABSTRACT

This article examines "CONTEST" as United Kingdom's broad-based-policy in countering terrorism, internationally and locally, and as a precursor to distilling core elements from UKATL enacted, overtime, to achieve the defined strategy. This inquiry is limited to UK's post 9/11 anti-terrorism strategy. In doing this, this article addresses human rights violation implicated in UK anti-terrorism strategy implementation. Overall, this article posits that it is possible to combat terrorism, as genuinely intended by the UK government, without necessarily crucifying civil liberties and International Human Rights on the altar of national security or public safety and that to insist otherwise, the UK government may foist terrorist tendencies in innocent victims and racially and religiously discriminated communities. Finally, this article recommends that UK anti-terrorism laws must genuinely conform to International Human Rights and enforced indiscriminately should the UK government be interested in preserving its highly cherished multicultural society.

Keywords: Anti-Terrorism, Human Rights, United Kingdom.

1. INTRODUCTION

Whereas, the concept of 'terrorism' ('CoT') seems to defy any universally acceptable definition,[1] CoT, for purposes of proscribing acts of terrorism in the United Kingdom ('UK'), has been statutorily defined.[2] On a related note, the twin-concepts 'anti-terrorism' and 'counter-terrorism' are oft-used interchangeably, however, they are technically distinguishable to the extent that the former and the latter distinctively represent 'defensive' and 'offensive' measures taken to combat terrorism respectively.[3] The devastating character of 9/11 terrorist attack on the World Trade Centre in 2001 redefined or, perhaps, complicated global perception of CoT and signaled grave threat to world peace and security. This growing common concern has culminated in a collective movement to combat terrorism globally. At the individual national level, some radical measures are undertaken to complement the global struggle to end the menace.

With respect to the UK, national security strategy ('NSS') has been developed and various legislative measures taken, post 9/11, to achieve these long-term goals of countering terrorism. Disturbingly, the draconian features of these laws have generated debates among the general public ('GP'), civil liberty groups, legal practitioners and academics as to the constitutionality and inconsistency of these laws with internationally recognized human rights standards ('IRHRs'). Whilst critics of this legal order maintain that the enacted anti-terrorism laws ('UKATL') are antithetical to well-established human rights ('HRs'),[4] its proponents remain resolved that every government has the powers to strike a balance between public order, public safety and national security ('NS') (on the one hand) and protection of HRs (on the other hand) and to determine *where the pendulum swings* and that, in any event, IRHRs are *derogable* in appropriate circumstances.[5] On his part, Professor Schorlemer has observed that the aftermath of 9/11 has revealed that protection of HRs to States is a matter of sheer convenience and argued vehemently that 'violations of [HRs] are a major causal factor of terrorism'.[6] He concluded that 'unless the rules of [IRHRs] clearly govern *all* [counter terrorism measures], the battle against terrorism is likely merely to reaffirm the instrumentality of terrorism'.[7] This article, therefore, examines CONTEST as

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1 See B Ganor, 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?' *Police Practice and Research* (2002) 3(4) pp 287-304; L Weinberg and A Pedahzur and S Hirsch-Hoefler, 'The Challenges of Conceptualizing Terrorism' *Terrorism And Political Violence* (2004) 16(4) pp 777 -794; J Sorel, 'Some Questions About The Definition Of Terrorism And The Fight Against Its Financing' *EJIL* (2003) 14(2) pp 365-378; A Richards, 'Conceptualizing Terrorism' *Studies in Conflict & Terrorism* (2014) 37(1) pp 213-236; E Mylonaki, 'Defining Terrorism: The Contribution Of The Special Tribunal For Lebanon' (2012) *Jura A Pecsi Tudomanyegyetem Allam-es Karanak Tudomanyos Iapja*, pp 78-81.

2 See section 1 of the Terrorism Act, 2000 and as amended by section 34 of the Terrorism Act, 2006; for a comprehensive comment, see A Carlile, *A Report On The Definition of Terrorism* (Cm 7052, The Stationery Office, 2007).

3 See E Mylonaki and T Burton, 'An Assessment of UK Anti-Terrorism Strategy And The Human Rights Implications Associated With its Implementation', p 66 available at http://satsa.syr.edu/wp-content/uploads/2011/04/EmmanouelaMylonakiAndTimBurton.pdf and last accessed on 15/05/2015.

4 See L Zedner, 'Securing Liberty In The Face Of Terror: Reflections From Criminal Justice' *Journal of Law and Society* (2005) 32(4) pp 507-533; KG Kingston, 'The Implications Of United Kingdom Anti-Terror Laws For The International Human Rights Standard' *African Journal of Law and Criminology* (2011) 1(1) pp 27-57; S Bachmann and M Burt, 'Control Orders Post 9/11 And Human Rights In The United Kingdom, Australia And Canada: A Kafkaesque Dilemma?' *Deakin Law Review* (2010) 15(2) pp 131-168; L Hanlon, 'UK Anti-Terrorism Legislation: Still Disproportionate?' *The International Journal of Human Rights* (2007) 11(4) pp 481-515.

5 See Strasbourg decision in *Jasper v United Kingdom* (2000) 30 EHRR 441, paragraph 52; *Fitt v United Kingdom* (2000) EHRR 480, paragraph 45.

6 See SV Schorlemer, 'Human Rights: Substantive And Institutional Implications Of The War Against Terrorism', *EJIL* (2003) 14(2) pp 265-282 at pp 267, 276.

7 Ibid, p 276; see also views shared by J Fitzpatrick, 'Speaking Law To Power: The War Against Terrorism And Human Rights' *EJIL* (2003) 14(2) pp 241-264.

UK's broad-based-policy in countering terrorism, internationally and locally, and as a precursor to distilling core elements from UKATL enacted, overtime, to achieve the defined strategy. This inquiry is limited to UK's post 9/11 anti-terrorism strategy ('UKATS'). In doing this, this article addresses HRs violation implicated in UKATS implementation. This article is further limited to the 'prevent' and 'pursue' work-streams as domestically enforced through UKATL and does not cover such strands as 'protect' and 'prepare' or those particularly characterizing UK's foreign policy on countering terrorism.

Overall, this article posits that it is possible to combat terrorism, as genuinely intended by the UK government ('UKG'), without necessarily crucifying civil liberties and IRHRs on the altar of NS or public safety and that to insist otherwise, the UKG may foist terrorist tendencies in innocent victims and racially and religiously discriminated communities. Finally, this article recommends that UKATS/UKATL must genuinely conform to IRHRs and enforced indiscriminately should the UKG be interested in preserving its highly cherished multicultural society.

2. AN OVERVIEW OF THE UK ANTI-TERRORISM LAW (UKATL)

The UKATL's antecedents are traceable to the 20th century with the enactment of the highly discriminatory 'Prevention of Terrorism (Temporary Provisions) Act, 1974' (the '1974 Act') intended, in the main, to combat terrorism in Northern Ireland. On the solicited recommendations of Lord Lloyd, advised by Professor Wilkinson,[8] the Terrorism Act, 2000 (the '2000 Act') was enacted as a permanent and generally applicable UKATL. The 2000 Act mirrors the 1974 Act while incorporating substantial part of Lord Lloyd's recommendations. The 2000 Act features some very wide and invasive powers to stop, search, question ('PSS') and hold individuals at various entry ports.[9] Interestingly, the exercise of PSS does not require any grounds of suspicion of involvement in acts of terrorism.[10] Although, the language preference of the 2000 Act, in this regard, portrays the law-makers' intention to set preventive standards equally applicable to all, the fact remains that this expressional preference in the 2000 Act paved way for the eventual abuse and discriminatory use of PSS.

However, UKATL has eroded UK's statute books to the extent that the Home Affairs Select Committee sarcastically observed that 'this country has more [ATL] on its statute books than almost other developed democracy'.[11] Within the space of 14years, the UK has enacted about 9Acts connected to countering terrorism, to wit: the Anti-Terrorism Crime and Security Act, 2001 (the '2001 Act'); the Criminal Justice (International Co-operation) Act, 2003 (the '2003 Act'); the Prevention of Terrorism Act, 2005 (the '2005 Act'); the Terrorism Act, 2006; the Counter-Terrorism Act, 2008 (the '2008 Act'); the Terrorist Asset-Freezing Act, 2010 (the '2010Act'); The Terrorism Prevention and Investigation Measures Act, 2011 (the '2011 Act'); the Protection of Freedoms Act, 2012 (the '2012 Act'); and the Counter Terrorism and Security Act, 2015 (the '2015 Act').

Across the UKATL, varying elements undermining core democratic values tend to feature. For instance in the 2001 Act, there is the executive cum legislative sentencing, in the name of pre-charge detention ('PCD') of persons suspected of having links with or concerns in terrorism. Under this Act, a suspect could be detained in a maximum-security-prison, the concept of Police Station, for purposes of determining where a person is detained, being

[8] See Rt Hon Lord Lloyd of Berwick, Report on *Inquiry Into Legislation Against Terrorism, (*Cm 3420, The Stationery Office – London, 1996).

[9] See Schedule 7 thereof.

[10] See paragraph 2(4) of the Schedule 7 thereof.

[11] See D Anderson, 'Shielding The Compass: How To Fight Terrorism Without Defeating The Law' [2013] 3 EHRLR pp 233-246 at p 234.

where the Secretary of State ('SS') deems,[12] for an unlimited period without being formally convicted or even charged for any offence for that matter. Then came the intrusive control orders ('COs') under the 2005 Act and, much later, amidst strong criticisms, replaced by a rather more invasive measure in 2011, described as the terrorism prevention and investigation measures ('TPIMs'). At the peak of this legislative process is the most recent cramp on free travel under the 2015 Act. All of these are later examined in much detail in this article.

Before the era of the 1974Act, the UK's response to terrorism was through its general criminal law ('GCL'). As a matter of fact, new offences were created as occasions demanded. Thus, the Explosive Substances Act, 1883 was a direct legislative-response to the Fenian Dynamite Campaign of the last quarter of the 19th century.[13] Moreover, some acts of terrorism naturally constitute offences under existing GCL. For instance the offences of murder, manslaughter and making threat to kill under the Offences against the Person, 1861;[14] the offences of incitement to murder and conspiracy under the Criminal Justice Act, 1977,[15] and stirring racial hatred under the Public Order Act, 1986[16].

Invariably, a question arising from the switch in legal regime is as to whether there is need for a specialist criminal law regime ('SCL') in the face of the GCL, which could ordinarily have been sufficient to address basic concerns on the prosecution of terrorism. In response to this poser, David Anderson (QC and Independent Reviewer of Terrorism Legislation) had justified SCL for countering terrorism on a number of grounds he broadly classified as partial and operational.[17]

However, it would seem that the most compelling amongst these justifications, which are the creation of new offences relating to terrorism and enlargement of powers of enforcement agencies, are in themselves not sufficient to justify a SCL for UKATL. This is so because, arguably, the GCL could, equally, have been amended to encapsulate and achieve the objects intended through UKATL's apparent proliferation. Moreover, it has been acknowledged that the GCL still serves as a last-legal-resort for the prosecution of persons suspected of acts of terrorism, but which persons are not sufficiently envisaged under UKATL.[18] This change in legal-paradigm was a product of the politicization of CoT among parliamentarians. It also served the end of responding to public outrage and as a means of reassuring the GP that everything is under UKG's control.

3. UKATS POST 9/11

Since 2003, UK, in order to continuously secure and safeguard the nation, the GP and interest abroad post 9/11, has developed a comprehensive UKATS, locally and internationally. This strategy is identified simply as CONTEST. The framework of CONTEST is organized around 4Ps strands, to *wit*: 'Pursue'; 'Prevent'; 'Protect'; and 'Prepare'.[19] Essentially, CONTEST is designed to address the conditions under which

[12] See paragraph 1(1-2), Part 1 of Schedule 8 to the 2000 Act.
[13] See B Brandon, 'Terrorism, Human Rights And The Rule Of Law: 120 Years Of The UK's Legal Response To Terrorism' [2004] Crim LR pp 981-997.
[14] See sections 5, 6 and 16 thereof.
[15] See section 1 thereof.
[16] See section 18 thereof.
[17] See D Anderson, footnote 11, pp 235-242.
[18] See Home Office, 'Statistics On Terrorism Arrests and Outcomes Great Britain', 11 September 2001 to 31 March 2008, Bulletin 04/09, 13 May 2009, p 1, available at http://webarchive.nationalarchives.gov.uk/20110218135832/http:/rds.homeoffice.gov.uk/rds/pdfs09/hosb0409.pdf last accessed on 15/05/2015.
[19] See Home Office, 'The National Security Strategy Of The United Kingdom: Security In An Interdependent World', March 2008, Presented To Parliament By The Prime Minister By The Command Of Her Majesty, pp 25-30,

terrorism naturally thrive.[20] The varying constituents of CONTEST are intended to be a complementary whole. So that, whilst the first two strands aims at mitigating terrorists' threats, the final two envisages reinforcing the UK's security institutional framework to curtail UK's vulnerability.[21] Although, CONTEST is purported to be founded on the true tenets of liberal democracy, the rule of law and protection of HRs,[22] what is seen in implementation of CONTEST *vis*-a-*vis* these tenets, against all odds, defeats the underlining ideals of CONTEST.

The pursuit strand focuses on the detection and investigation of terrorists' network and truncating their plots prematurely. Whilst prosecution of persons formally charged with the offence of terrorism is believed to fall under the 'pursue' strand,[23] CONTEST, in its broader context, emphasizes more on 'effective' non-prosecution measures such as COs, TPIMs, the exclusion of foreign nationals from entering the UK, revocation of citizenship and deportation, thereby, impeding the commission of the acts of terrorism in the first place. Superficially, the inherent implications of some of these measures are that they do not only set the stage for pre-emptive violation of innocent persons' HRs, but in some circumstances, are inconsistent with well-entrenched practices under international law, such as the principle of *non-refoulement* under international refugee law.

Also within the compact of implementing CONTEST in this regard is the prosecution of suspects of terrorism under non-terrorism related offences. For instance in 2009, 201 arrests were reportedly made, out of which 66 persons were eventually charged to court and 42 persons were tried for non-terrorism related offences.[24] Before this time in 2008, 35% of 521 cases charged to court were non-terrorism related. Quite ridiculously, even the acclaimed terrorist cases prosecuted were, in the main, for 'possession of an article for terrorist purposes' 'membership of proscribed organization' and 'fundraising', all offences under the 2000 Act.[25]

Although, this all inclusive-approach to prosecution may be desirable in deterring crimes generally, it, however, has the propensity of designating a petty criminal as a terrorist. UKATS essence is to stop and deter people from committing acts-of-terrorism or from inciting others to so do and should not be used as a false alarm on terrorism or a tool for making a 'terrorist' out of a 'non-terrorist'. The adoption of universal-jurisdiction in prosecuting terrorism also fulfills this strand.[26]

On its part, the 'prevent' strand deals with deterrence-measures taken to discourage or contain involvement in acts of terrorism. This strand emphasizes 'stopping people becoming terrorists or supporting violent extremism'.[27] To this extent, legislative-measures saddling the SS with PCD and proscription of black-listed terrorist organizations powers are in implementation of the 'prevent' strand. Moreover, offences such as 'facilitating terrorism',

available on https://www.gov.uk/government/publications/the-national-security-strategy-of-the-united-kingdom-security-in-an-interdependent-world last accessed on 15/05/2015.

20 See E Mylonaki and T Burton, footnote 3, p 69.

21 See Home Office, *Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism* (Cm 7547, The Stationery Office – London, 2009) p 13.

22 Ibid.

23 See E Mylonaki and T Burton, footnote 3, p 66.

24 See Home Office, 'Operation of Police Powers Under The Terrorism Act 2000 And Subsequent Legislation: Arrests, Outcomes And Stops & Searches Quarterly Update To September 2009 Great Britain', Statistical Bulletin 04/10, 25 February 2010, p 10 available at https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-and-legislation-quarterly-update-december-2010 last accessed on 15/05/2015.

25 Ibid, p 1.

26 See Section 51 of the 2001 Act on exercise of extra-territorial jurisdiction on crimes, section 19(2) 2006 Act and section 117(2A) 2000 Act (both as amended by section 29 2008 Act) when committed outside the UK with the consent of the Attorney General or Advocate General for the Northern Ireland, depending on where the crime is prosecuted.

27 See The UK's Strategy, footnote 21, p 14.

'glorifying terrorism' 'inciting terrorism' and 'encouraging terrorism' also serve this end. Without doubt, measures under this head have informed a redefinition of certain fundamental HRs. So that the dividing line between what amounts to an act-of-terrorism and the expression of HRs becomes obscure.

The UKATS accommodates co-operation of various local communities, partners and States in the aggregation of efforts and intelligence to address terrorism imposed security concerns. UKATS also encourages public-participation which makes UKATS seemingly transparent and accountable. However, the ear-marking of the Muslim community as 'suspect' under the UK-NSS[28] characterizes the UKATS as discriminatory and may in the long-run *nurture the tree of radicalizing the Muslim community*.[29] The ensuing discussion would focus on some key legislative measures taken to implement CONTEST and HRs thereby implicated.

3.1 Extended Pre-Charge Detention

As one of the preventative-counter-terrorism-measures ('CTM'), a person suspected of involving in terrorism related activity may be detained without being charged for committing any act of terrorism or any other offence. PCD represents the period of time an individual may be detained and questioned by police before being charged with an offence, and as CTM, as allowed by UKATL overtime.

Until January 2011, a suspect may be detained without charge for a maximum period of 28days. Before this time, the 2000 Act originally prescribed 7days and by the 2003 Act extended to 14days. Much later in 2006, it was further extended to 28days, contrary to UKG's proposal to set same at 90days, and subject to annual renewal. Further attempt to re-extend the PCD to 42days was aborted following a heavy defeat in the House of Lords. The subsisting PCD was subsequently renewed until July 2010, which was for 6months. By January 2011, the legislation expired and had since not been renewed, thereby reverting PCD to 14days. Also, the 2012 Act, by amending the 2000 Act in this regard, permanently keeps the maximum-PCD at 14days.[30]

It is instructive to note that the current UK-PCD has no parallel regime under any developed-democracy in the world, irrespective of the severity of the crime involved. In the United States, the limit is 2days. In Ireland, it is 7days. In Italy, it is 4days and in Canada, it is just 24hours.[31] PCD flies in the face of core democratic values, justice, fairness and liberty. The Strasbourg Court has held recurrently that there is a deprivation of the right to personal liberty for house-arrest for 24hours/day, for detention in an open-prison, and non-consensual confinement in a particular restricted space for a non-negligible length of time.[32]

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[28] See Cabinet Office, *The National Security Strategy of the United Kingdom: Security in an Interdependent World* (Cm 7291, The Stationery Office – London, 2008); Home Office, footnote 21; Home Office, Home Office, *Countering International Terrorism: The United Kingdom's Strategy* (Cm 6888, The Stationry Office – London, 2006).

[29] See C Pantazis and S Pemberton, 'From The Old To The New Suspect Community' *BJC* (2009) 49(5) pp 646-666; C Pantazis and S Pemberton, 'Reconstructing Security And Liberty' *BJC* (2012) 52(3) pp 651-667; C Pantazis and S Pemberton, 'Restating The Case For The "Suspect Community": A Reply To Greer' *BJC* (2011) 51(6) 1054-1062; S Greer, 'Anti-Terrorist Laws and The UK' *BJC* (2010) 50(6) 1171-1190; P Thomas, 'Failed and Friendless: The UK's "Preventing Violent" Programme' 12 *BJPIR* (2010) pp 442-458.

[30] See section 57 thereof.

[31] Liberty, 'Liberty's Response to the Coalition Government's Review of Counter-terrorism and Security Powers, 2010' pp 106-107 available at https://www.liberty-human-rights.org.uk/sites/default/files/from-war-to-law-final-pdf-with-bookmarks.pdf last accessed on 15/05/2015.

[32] See *Mancini v Italy* (Application No 44955/98) Judgment of 12 December, 2001; *Storck v Germany* (2005) 43 EHRR 96.

Therefore, it is unfair, unjustifiable and unnecessary to detain a person without any immediate intention to charge him for the particular crime for which he is detained because this tends to unduly alienate innocent people from their associations, families and communities, disproportionately interfere with their private and public lives and, sometimes, render them mentally deranged.[33] Also, it is counter-productive as a means of combating crime and has the propensity of radicalizing discriminated communities into becoming what later may qualify as 'terrorists'.

3.2 Extended Stop and Search Powers

Perhaps, the most misused CTM is the PSS.[34] As originally conferred under the 2000 Act, PSS was exercisable, upon appropriate authorization, by a constable *without any suspicion of crime*.[35] This legislative diction would have been most appropriate to serve the intent of Parliament to ensure an indiscriminate regime for the exercise of PSS but the adverse implication was its predilection of being abused for personal, professional and racial grievances by the police or other law enforcement agencies.

For the exercise of PSS to be legal, it must balance between the statutory prescription and HRs values, which for all intents and purposes, include equality of all before the law. This proposition has been properly initiated in guidance by the Metropolitan Police as representing the principles of 'Proportionality', 'legality', 'accountability', 'necessity' and 'the decision to stop and search must be made against the best information reasonably available at the time'.[36] However, in reality, the police practice often falls short of these standards.

The genesis of the failure of the 2000 Act PSS is multiple-fold. Firstly, the police disproportionately used the mechanism. Between 2002 and 2008 alone, the number of persons stopped and examined under PSS increased from 8,505 to 188,297 with no terrorist threat directly detected from these.[37] Yet, between 2011 and 2012 the number remained as high as 69,109, and despite the conscious effort to reduce the use of the power during the period.[38] Secondly, aside this disproportionate use of the power, the police were extremely discriminatory in the exercise of PSS. So that, out of the numbers recorded, only 8% constituted white race and this proportion was *to fulfill all righteousness* and to keep the

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33 See AN Bajwa and B O'Reilly, 'Public/Human Rights: Terrorising The Innocent', *New Law Journal* (2010) 160 (7411-7412) p 481; see also the following cases *Fox, Campbell and Hartley v UK* [1991] 13 EHRR 157; *Bank Mellat v Her Majesty's Treasury* [2010] EWCA Civ 483; *Christie v Leachinsky* [1947] AC 573, 593.

34 See Equality and Human Rights Commission, 'Stop And Think: A Critical Review Of The Use Of Stop And Search Powers In England And Wales' available at: http://www.equalityhumanrights.com/sites/default/files/documents/raceinbritain/ehrc_stop_and_search_report.pdf, accessed 05/05/2015; J Miller, 'Stop And Search In England: A Reformed Tactic or Business As Usual' *BJC* (2010) 50(5) pp 954-974; B Bowling and C Phillips, 'Disproportionate And Discriminatory: Reviewing The Evidence On Police Stop And Search' *MLR* (2007) 70(6) pp 936-961; HR Clare, 'A Critical Systems Explanation For The Racial Effect of US & UK Counter-Terror Stop and Search and Surveillance Powers', Durham Thesis, Durham University, available at: http://etheses.dur.ac.uk/8481/1/Rachel_Herron_Phd_%282013%29.pdf?DDD19+ last accessed on 14/05/2015.

35 See section 44 thereof and Schedule 7 thereto.

36 See Metropolitan Police, 'Standard Operating Procedure' Revised February, 2009 available at http://www.met.police.uk/foi/pdfs/policies/search_account_rec_61_mpsps_version.pdf last accessed on 15/05/2015.

37 See Home Office, Statistical Bulletin: Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops & searches', Great Britain 2008/09, 26 November 2009 available at http://www.statewatch.org/news/2009/nov/uk-terr-act-statistics.pdf last accessed on 15/05/2015.

38 Available at https://www.liberty-human-rights.org.uk/human-rights/justice-and-fair-trials/stop-and-search last accessed on 15/05/2015.

statistics a bit even.[39] Thirdly, it was obvious that the police clearly misunderstood the application of PSS as the police, occasionally, pursued even non-terrorist there-under. For instance, part of the rationale for the passage of the 2012 Act was in reaction to the ECHR decision in *Gillan and Quinton v UK*.[40] This case was in protest to the exercise of PSS on a peaceful-protester and a photographer-and-journalist. The legality of PSS and its implication on the rights under articles 5, 8, 9, 10 and 11 ECHR were vehemently questioned. Another example in mind is the forceful ejection and subsequent search conducted on Walter Wolfgang at the Labour Party Conference in 2004.[41] In these instances, what seems common and clear is that PSS was used to pursue non-terrorists, perhaps, for some undisclosed-agenda.

Flimsy excuses abound to justify the disproportionate use of PSS by the police against selected races and communities. Most prominent is that the black race and the Muslim community are more inclined to committing violence and terrorism-like crimes. This, among other justifications given, is unfounded and unsupported and provides no justification for the disproportionate and discriminatory use of PSS. Without cavil, this is an affront on the right not to be discriminated against on any ground.[42] It seems that this aberration perpetrated by the police is tacitly encouraged by the UKG having identified the Muslim community as 'suspect' under NSS.[43] It is submitted that it is unlawful for the UKG or the police to base their suspicion on generalized beliefs about particular groups.

Over the years, several initiatives have aimed at tackling this problem. Due to patchy implementation and lack of consistency, however, none has made the necessary lasting impact on rates of disproportionality nationwide. The 'Next Stop' initiative formulated by the National Policing Improvement Agency and due for roll-out in 2010 is a point in context. However, launching new initiatives is no longer enough. The police need to depart from their racial orientation and start reflecting true values of democratic and civilized nations.

With the passage of the 2012 Act, PSS can only be exercised *upon reasonable suspicion* that such person is a terrorist.[44] The arising posers are: what significant difference does it make to the disproportionate use of PSS by the police? Would a constable's racial perception be altered by that statutory provision? Or would his action to stop and search a person, even on discriminatory grounds, be unjustified thereby, particularly, if he purports that the action was taken *upon reasonable suspicion*? It is submitted that the amendment made to the 2000 Act PSS does not sufficiently cater for the disproportionality and discrimination characterizing the implementation of the 2000 Act.

Whilst it is most recommended that PSS is a welcome mechanism for preventing and detecting crime and should be retained, the impact is small. It is established that searches only reduce the number of crimes by 0.2%, and not terrorism-related. Its use therefore needs to be balanced against the negative impact on communal confidence in the police. Invariably, the set objectives of PSS are defeated if the public perceives its exercise as unfair. Law-abiding people who feel they have been unjustifiably targeted are less likely to trust and co-operate with the police when there is the need to. Therefore, effective policing becomes more difficult.

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[39] Available at https://www.liberty-human-rights.org.uk/human-rights/justice-and-fair-trials/stop-and-search last accessed on 15/05/2015.

[40] [2010] ECHR 28.

[41] See N Dent, 'Section 44: Repeal or Reform? A Home Secretary's Dilemma' available at http://projects.essex.ac.uk/ehrr/V8N1/Dent.pdf last accessed on 14/05/2015.

[42] See Article 14 ECHR.

[43] See footnote 28.

[44] See section 60(2) thereof; G Lennon, 'Precautionary Tales: Suspicionless Counter-Terrorism Stop And Search' *Criminology & Criminal Justice* (2015) 15(1) pp 44-62.

3.3 Creating New Offences

There is also the creation of new offences to confront the root causes of terrorism and address the conditions under which terrorism flourish. The offences under the 2006Act such as 'encouraging', 'glorifying' and 'inciting' terrorism, 'disseminating terrorism materials', 'training for terrorism' etc., serves this end.[45] This legislative-effort expressed under the 2006Act is in accordance with the European Union Counter-Terrorism Strategy and the consequent obligation imposed on State Parties to address matters on radicalization and recruitment as part of their Counter-Terrorism Strategy.[46] However, what remains questionable is the apparent deliberate attempt by the UKG through UKATL to suppress all ideologically motivated activity, while purporting to be tackling terrorism.[47] From decided cases[48] and a community-reading of sections 20(2) 2006Act and 1(5) 2000 Act, it is obscure to currently recognize the defining line between the rights to freedom of expression, thought, conscience and religion[49] and encouraging, inciting or glorifying terrorism.[50] It would seem from the observation of Justice Hughes in *R v Abu Hamza*[51] that the dividing-line is once there is a conscious departure from core religious/moral teachings to instigating/encouraging violence. The danger in Justice Hughes' view is that it creates legal uncertainty and furthers the confusion on drawing the line between fantasies/sympathy to terrorism, freedom of expression and actual acts of terrorism.

The legal implication of this proscription is that 'people who have no proven link to terrorism can be prosecuted on the basis that their acts create a [remote risk of harm]' and also carries the tendency of 'preventing people from voicing their views leading to disproportionate interference with free-speech'.[52] Whilst combating-terrorism through properly defined offences is desirable, the offence of encouraging-terrorism seeks to end terrorism by pursuing those on the periphery. Is it possible to *uproot a tree by cutting its branches*?

3.4 Proscription/Deproscription of Organizations

The proscription of various organizations under the 2000 Act by designating them as terrorist-organizations also impacts on the HRs of proponents of those proscribed-organizations.[53] Arguably, the UKATS proscription is essential in curtailing direct or indirect involvement in terrorism related activities, preventing recruitment and radicalization, creating a hostile environment for the operation of terrorism-related-organizations and aggregating efforts to rid the world of the blights of terrorism.

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45 See Sections 1, 2, 5, 9, 10 & 11 thereof.

46 See The European Union Counter-Terrorism Strategy, available at http://www.statewatch.org/news/2005/nov/eu-counter-terr-strategy-nov-05.pdf last accessed on 15/05/2015; see also Council Framework Decision 2008/919/JHA of 28 November 2008 Amending Framework Decision 2002/475/JHA On Combating Terrorism' available at http://www.libertysecurity.org/article2338.html last accessed on 15/05/2015.

47 See I Awan, 'The Problem With Defining Terrorism And The Impact On Civil Liberties: Britain is Beginning To Create A Monster With Large Claws, Sharp Teeth and A Fierce Temper?' *Journal of Politics and Law* (2008) 1(2) pp 1-10.

48 See *Karatas v Turkey* (Application No 23168/94) Judgment 8 July 1999; *R v El-Faisal* [2004] All ER (D) 107 (Mar); *R v Saleem R v Muhid R v Javed* [2007] All ER (D) 462 (Oct); *Leroy v France* (Application No 36109/03), Judgment 2 October 2008 ECHR; *R v Da Costa and Others* [2009] EWCA Crim 482.

49 See articles 10 and 9 ECHR respectively.

50 See A Jones QC and R Bowers and HD Lodge, *Blackstone's Guide To The Terrorism Act 2006* (Oxford University Press-Oxford, 2006) pp 22-23.

51 [2007] 1 Cr App R 27.

52 See E Mylonaki and T Burton, footnote 3, p 75.

53 See section 3 thereof and Schedule 2 thereto.

However, the extent to which proscription has served these ends remains yet to be seen. In his 2008 report, Lord Carlile expressed doubts as to the effectiveness of proscription. He maintained that, aside its end of designating organizations as terrorist, proscription does little or nothing to protect the public from the blights of terrorism.[54] Mylonaki and Burton have also berated the efficacy of proscription to achieve the end of preventing radicalization.[55] Moreover, on its face value, proscription interferes with the rights to freedom of expression and freedom-of-assembly-and-association guaranteed under articles 10 and 11 ECHR respectively. It raises real questions about balancing between NS and well-entrenched HRs and whether the actions usually taken by the executive in this regard are justified and proportionate. It is even more questionable when the parameter for proscription is put in perspective.

It would appear that an organization with any ostentatious emblem of Islamic ideologies would be designated as terrorist. This of course is true about the proscription of Al-Muhajiroun, because even though, there was no evidence of any involvement-in-terrorism-related-activity, it was still proscribed. The aftermath of deproscription continues to stigmatize such organizations as though they remain terrorists. This is so because an individual might be refused entry into the UK on the basis of his affiliation to a previously proscribed organization.[56]

3.5 Control Orders

Control Orders were introduced into the *corpus* of UKATL through the 2005 Act and now repealed by section 1 of the 2011 Act. COs relate to an anti-terrorism power conferred under the 2005 Act on the SS or the court to make 'an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism'.[57] COs were the UKG's response to the popular decision of the House of Lords in *Belmarsh Case*[58] where their lords held that PCD of a suspect as contained in the 2001 Act for purposes of his intended deportation is contrary to his right to liberty guaranteed under article 5 of the European Convention on Human Rights, 1950 ('ECHR').

COs may either be derogating or non-derogating. Interestingly, the item of derogation was the ECHR, an international instrument on HRs, an indication that, right from the outset of its enactment, COs were intended designs to cramp on the HRs of the controlled person. Whilst the non-derogating COs were issued by the SS subject to the prior or subsequent confirmation of the court,[59] the derogating COs could only be made by the court.[60] In any event, there must have been 'reasonable grounds for suspecting that the individual is or has been involved in terrorism related activity' and 'it is necessary for purposes connected with protecting members of the public from a risk of terrorism, to make a [CO] imposing obligations on that individual'.[61] In any case, the obligations, restrictions and prohibitions to be imposed on the controlled person are extremely onerous and stringent.[62]

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54 See A Carlile, *Report On The Operation In 2008 of The Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006* (The Stationery Office-London, 2009) p 12.

55 See E Mylonaki and T Burton, footnote 3, p 72.

56 See *R (on the Application of Lord Carlile of Berriew QC and others) v Secretary of State for the Home Department* [2014] UKSC 60.

57 See section 1(1) 2005 Act.

58 See *A & Others v Secretary of State for the Home Department and X & others v Secretary of State for the Home Department* [2004] UKHL 56.

59 See section 2 & 3 2005 Act.

60 See section 4 2005 Act.

61 See section 4(3) 2005 Act.

62 See section 1(4) 2005 Act.

Derogating and non-derogating COs were to last for as long as 6 and 12 months respectively and may be renewed for another term on show of good cause.[63] As at February, 2008, Lord Carlile, Independent Reviewer of Terrorism Legislation, reported that 31 persons had been subjected to COs.[64] On its far-reaching implications on the HRs of the controlled person, Lord Hope in *AF & others v Secretary of State for the Home Department*[65] described COs as akin to 'house-arrest'.

Some interesting judicial decisions shed light on the practices of COs while it lasted. In *Secretary of Home Department v JJ and others,*[66] the controlled persons, some Iraqi men, were subjected to curfew and to stay at a designated address 18hours/day, to wear some electronic-monitoring-device, restrict their places of visitation outside curfew time, etc.,. The court, up to the House-of-Lords,[67] held the CO as inconsistent with the right to personal liberty under article 5 ECHR. The House of Lords' decision would have been most commendable in preserving HRs but for its acquiescence in holding that reduced curfew hours, such as 12-14hours/day, might have been consistent with the right to personal liberty and notwithstanding that the decision is in line with some judicial precedents including of Strasbourg jurisprudence.[68] As such in *Secretary of State for the Home Department v E & another*,[69] the House of Lords was quick to conclude that, despite the enormity of restrictions placed on the individual, the imposed CO did not violate his rights-to-personal-liberty as the curfew was within 14hours/day.

A similar judicial-summersault is evident in *Re MB*.[70] In that case, the court of first instance quashed a CO made against the applicant on ground of violation of his right to fair trial (convicted on evidence contained in closed-materials). On appeal,[71] the decision was upturned on ground that classified-materials need not be disclosed in court. With due respect to their lordships, the whole essence of conducting a trial is completely defeated if a person standing trial could be convicted solely on evidence not made available to him. As lord Denning aptly observed if 'the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him'.[72] Notwithstanding his status, an accused must be given equal opportunity as the prosecution. The principle of equality of arms is a long-standing conventional criminal justice and international law rule, which every court, irrespective of status, must live by.[73] It need be noted that the Special Advocate regime of the 2005 Act was also a contributory factor to the high level of breach of the rights to fair trial.[74] The representation regime made it difficult for the advocate to liaise with, confide in or even obtain any instruction from the 'suspect' whom he is purportedly appointed to represent once he had been privileged with closed-materials relating to the case against the suspect.

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63 See sections 2(3) & 4(8) 2005 Act.

64 See A Carlile, *Third Report of Independent Reviewer of Terrorism Legislation Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, (The Stationery Office-London, 2008) p 4.

65 [2009] UKHL 28.

66 [2006] EWHC 1623 (Admin)

67 [2006] EWCA Civ 1141 and [2007] UKHL 45.

68 See *Ciancimino v Italy* (1991) 70 DR 103; *Raimondo v Italy* (1994) 18 EHRR 237; *Labita v Italy* (Application No 26772/95) Judgment of 6 April 2000; *Trijonis v Lithuania* (Application No 2333/02) admissibility decision of 17 March 2005.

69 [2007] UKHL 47.

70 [2006] EWHC 1000 (Admin).

71 See *Secretary of State for the Home Department v MB* [2006] EWCA Civ 1140.

72 See *Kanda v Government of Malaya* [1963] AC 322, 337; See also *AG v Ryan* [1980] AC 718; *Hadmor Productions Ltd v Hamilton* [1982] 2 WLR 322.

73 See *Prosecutor v Aleksovski* (IT-95-14/1), Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, paras 22-28; see the view shared in CJM Safferling, *Towards An International Criminal Procedure* (Oxford University Press – Oxford, 2001) p 276-278.

74 See A Kavanagh, 'Special Advocates, Control Orders And The Rights To A Fair Trial' *MLR* (2010) 73(5) 824-857; J Ip, 'Al Rawi, Tariq, And The Future Of Closed Material Procedures And Special Advocates' *MLR* (2012) 75(4) 606-654.

The position in *Re MB* was partially remedied on further appeal to the House of Lords, which held the non-disclosure as a breach of procedural justice in civil-proceedings, though, not the argument on criminal-proceedings by the applicants.[75] On another vein, it was consistent from precedents that where a CO required a controlled person to relocate and live at an address outside his usual residence, such CO would be held to be in violation of the controlled person's rights to privacy and family life.[76]

Notwithstanding the above judicial decisions, the pressing question arising from this deliberate and blatant legislative abuse of HRs is whether or not it makes any difference that such powers to abuse HRs was exercisable by the executive or judiciary?[77] Irrespective of who exercises CO power, the concept violates the most cherished HRs of the controlled persons in a number of ways. Firstly, it is contrary to conventional-criminal-justice that a person be adjudged guilty without a trial testing any indictment against him. Secondly, the concepts of 'executive-sentencing' and 'judicial sentencing without due process' are completely alien to conventional criminal justice. To therefore say that for the purposes of preliminary hearing leading to making a CO, the court may make such order in the absence of the suspect, without being given notice of such hearing or permitted to be represented thereat[78] is an aberration to natural justice, equity and good conscience and, invariably, an outright violation of such persons' IRHRs and under no circumstance should such constituent rights to fair trial be unduly restricted because they amount to minimum guaranteed rights under the ECHR and the International Covenant on Civil and Political Rights, 1966 ('ICCPR').[79] Thirdly, with respect to obligations imposable, it is worthy of note that such obligations are sweeping and hold far-reaching implications on the rights of such person to free movement, association, expression, thought and religion and privacy and family life. The perturbing questions arising here-from are as to whether the UKG could properly derogate by legislative means from internationally binding obligations, or, otherwise, be excused or justified on the basis that the UK is yet to ratify the Protocol to the ECHR embedding some of these rights, for instance, the right-to-freedom-of-movement? It is humbly submitted on the former issue that, much as treaties are observed in good-faith,[80] international law frowns at any state derogating from internationally-binding-obligations through its domestic actions, legislative or administrative.[81] On the latter issue, IRHRs have transcended the value recognized under traditional international law and have started assuming a rather fundamental normative status in the character of peremptory norms (*jus cogens*),[82] such that no state is permitted to derogate there-from.[83] Any action of state, legislative or administrative, purporting to do so will invariably be void to such extent.

It is particularly disturbing when all such restrictions imposable are juxtaposed with the fact that they are so imposed, not on confirmation of guilt, but mere suspicion of such person's involvement in acts of terrorism. Assuming without conceding that there are reasonable grounds to believe that a person is involved in acts of terrorism, should the proper action be to deprive the person of his HRs without due process of justice? Or by apparently

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75 See Secretary of State for the Home Department v MB & AF [2007] UKHL 46.

76 See *CA v Secretary of State for the Home Department* [2010] EWHC 2178; *Secretary of State for the Home Department v AP* [2010] UKSC 24.

77 See the view expressed in A Lynch and A Reilly, 'The Constitutional Validity Of Terrorism Orders Of Control And Preventative Detention' (2007) 10 *FJLR* 105-142.

78 See section 4(2) 2005 Act.

79 See article 6 ECHR and article 14 ICCPR; see also the decision of the House of Lords in *AF & others v Secretary of State for the Home Department* [supra], footnote 65.

80 See article 26 of the Vienna Convention on the Laws of Treaties, 1969

81 See article 27 of the Vienna Convention on the Laws of Treaties, 1969.

82 See the views shared in this regard in D Shelton and PG Carozza and P Wright-Carozza, *Regional Protection of Human Rights* (2nd edition, Vol 1, Oxford University Press – Oxford, 2013) p 557; W Kalin and J Kunzli, *The Law of International Human Rights Protection* (Oxford University Press – Oxford, 2009) p 87.

83 See article 53 of the Vienna Convention on the Laws of Treaties, 1969.

throwing him into an open-prison for 12 or 6 months, depending on the order made, without going through a formal trial? It is submitted that the similitude of this legislative line of reasoning is to say that it is justifiable to, *simpliciter*, convict a person of the crime of murder merely because he committed the crime *in facie curiae (in the face of the court)*.

Further, it is apparent from the provision of the 2005 Act that one of the rationales for issuing CO is to serve as a preliminary preventive-measure to commission of acts of terrorism while proper investigation to confirm such person's 'suspect' status is made.[84] This be the case, it is humbly submitted that the state should have placed some responsibility on itself in the form of reparation for *all inconveniences* caused to the suspect during the period of the CO in the likely event that investigations reveal otherwise.

Commendable as believed to be,[85] it is not sufficient to assert that the exercise of CO power is subject to judicial review, appeals and reporting.[86] This is so because, in the words of Lord Denning, 'you cannot put something on nothing and expect it to stand',[87] it will definitely crumble. The unlawful relegation of the HRs of a person who is presumed innocent until proven otherwise cannot be corrected by subjecting such unlawful process to review and reporting. Finally, it is doubtful whether the 2005 Act regime actually came to resolve, or rather complicate, the problem of PCD violation of HRs in accordance with the decision in *Belmarsh case,* if by its provision, a suspect may also be arrested and detained for the purpose of procuring derogating CO.[88]

4. TERRORISM PREVENTION AND INVESTIGATION MEASURES

The TPIMs is UKG's immediate replacement for CO, upon its repeal in 2011. Perhaps, the introduction of TPIMs is one of such ostentatious moves characterizing a newly elected regime 'to provide evidence that it is yielding to public outcry'. This is so because, TPIMs, which supposedly is a replacement of COs, are simply 'COs in disguise', replicating COs in its worst respects.

On a related note, it would also seem that TPIMs was partially in response to some legal principles gaining ground from judicial decisions. For instance, in *CA v Secretary of State for the Home Department*[89] and *Secretary of State for the Home Department v AP*[90] the courts held that relocating a suspect to a place other than his residence was a violation of his rights to privacy and family life. By its provisions therefore, the 2011 Act enables the SS, in appropriate circumstance, to relocate the suspect to any place the SS deems fit.[91] Further response to the latter decision, stating specifically that such relocation of about 150 miles away from the suspect's residence would amount to a breach of his right to private and family life, was made through section 16(1&3) 2015 Act. It is now statutorily permissible to keep a suspect 200 miles from his residence. In its essence, notices, rather than orders in the previous regime, are now issued against suspects of terrorism, imposing the same set of onerous and stringent obligations and restrictions of the 2005 Act regime, and in fact with stricter and

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84 See section 8 of the 2005 Act.

85 See views expressed by D Anderson, *Control Orders in 2011: Final Report of the Independent Reviewer on the Prevention of Terrorism Act, 2005* (The Stationery Office-London, 2012) pp 1-7; B Jaggers, 'Anti-Terrorism Control Orders in Australia And The United Kingdom: A Comparison' p 19, Being Research Paper For the Law & Bills Digest Section of the Parliamentary Library Information, Analysis and Advice for the Parliament, 29 April, 2008, No 28, 2007-08, ISSN 1834-9854, available at www.aph.gov.au/library and accessed on 3/5/2015; Home Office, *Memorandum To The Home Affairs Committee: Post-Legislative Assessment of The Prevention of Terrorism Act 2005,* (Cm 7797, The Stationery Office-London, 2010) paras 21-33.

86 See sections 3(2), 10 & 14 2005 Act.

87 See *Macfoy v UAC* [1961] 3 All ER 1169 at p 1172; (1962) AC 150 at pp 152, 160.

88 See section 5 2005 Act.

89 Supra, footnote 76.

90 Supra, footnote 76.

91 See paragraph 1(4), Part 1, Schedule 1 to the 2011 Act.

more elaborate wordings.[92] With the 2015 Act, seizure of travel document of suspects, as one of the preventative measures, has now been added to TPIMs.[93] Despite claims that COs are fairer than TPIMs,[94] it is difficult to decipher where the fairness lies, because, crucially, TPIMs still originates from the office of the SS and operated as a non-prosecutorial regime, that is, TPIMs does not envisage investigation, arrest, charge and conviction. To this extent, it follows logically that every objection as to HRs violation which plagued CO is most likely to face the TPIMs regime.[95]

It is immaterial how an anti-terrorism measure is designated. Essentially, the core values it promotes and how it seeks to effectively balance the concerns surrounding security and civil liberty should be ultimate. It is thus submitted that TPIMs are another draconian regimes which fall short of these requirements. TPIMs are unfair as they tag innocent persons as suspect while the dangerous and hardened terrorists are somewhere perpetrating the threat intended to be prevented and pursued.

It is recommended that a rather transparent and fair regime which would ensure that 'justice is not just done but seen at all times to have been done' should be adopted. In this wise, a prosecutorial-regime is favoured, which would ensure that such suspect rises or falls on the bases of available evidence against him and not some UKG's charade agenda capitalizing on the GP Achilles' heel in legitimizing victimization of, and uneven surveillance on, some innocent communities.

4.1 Freezing Of Financial Assets

The terrorism asset freezing powers created under the 2010Act enable the Treasury to freeze the assets of anyone suspected or reasonably believed to be involved in terrorism related activity. The financial implication of the exercise of this power is that it financially disables such suspect or members of his family as they would have been deprived access to their accounts, unless as otherwise allowed by the Treasury.[96]

Like COs and TPIMs, the exercise of these powers are pre-emptive, geared at preventing a person 'suspected' of being involved in terrorism related activity and not 'convicted' or 'standing trial', for which purpose, the exercise of such powers may be understood as a measure to secure such suspect's assets in the event of reparation of victims. The recurring poser remains whether or not freezing the assets of such suspect does not itself amount to convicting him without a fair trial.

It is humbly submitted that, like COs and TPIMs, terrorism freezing powers, though may be intended to serve, and partially serving, the end of deterring encouragement and financing of terrorism related activity, it amounts to executive conviction/sentencing, as they are no doubt extremely harsh punitive measures taken against a person not subject to due process of law. Accordingly, they are unfair and contrary to highly cherished IRHRs. The plight of the suspect is further worsened by the application of the 'secret evidence rule' and the Special Advocate regime applicable in the event that such suspect goes to court to

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92 See Part 1, Schedule 1 of the 2011 Act.

93 See section 17 of the 2015 Act.

94 See Home Office, *Review of Counter-Terrorism And Security Powers Review Findings And Recommendations,* (Cm 8004, The Stationary Office – London, 2011) p 36; D Anderson, *Terrorism Prevention and Investigation Measures in 2012: First Report of the Independent Reviewer on the Operation of the Terrorism Prevention and Investigation Measures Act, 2011* (The Stationery Office – London, 2013) paras 2.23-2.24, 5.5-5.18, 11.33-11.38.

95 See A Hunt, 'From Control Orders To TPIMs: Variations On A Number Of Themes In British Legal Responses To Terrorism' (2014) 62 *Crime Law Soc Change* 289-321; H Fenwick, 'Preventive Anti-Terrorist Strategies In The UK and ECHR: Control Orders, TPIMs and The Role of Technology' *International Review of Law, Computer & Technology* (2011) 25(3) pp 129-141; H Fenwick, 'Designing ETPIMs Around ECHR: Review or Normalization of "Preventive" Non-Trial-Based Executive Measure' *MLR* (2013) 76(5) pp 876-908.

96 See *A v HM Treasury and others* [2010] UKSC 2.

challenge the order and evidence against him. However, it need always be borne in mind that as a fundamental right of due process, 'a person must have the right to see all information put before the judge, to comment on it, to challenge it and if needs be to combat it and to try to establish by contrary evidence that it is wrong. It cannot be withheld from him'.[97] Anything short of this well-established principle, notwithstanding what it purports to protect or preserve, is in violation of the rights of such suspects.

It is, therefore, recommended under this head that instead of harassing a person suspected of involving in acts of terrorism by freezing their assets, intelligence should rather be intensified on the financial dealings of such persons, in which case, it would be easy to detect and confirm the person's financial commitments to terrorism. Such evidence may be subsequently instrumental to facilitating his prosecution for involvement in acts of terrorism.

4.2 Restriction on Travel

The 2015 Act amends the 2011 Act to include seizure of travel document of suspects of terrorism.[98] The 2015 Act empowers the SS to apply for or otherwise issue a 'temporary exclusion order' ('TPO') against a UK resident who is suspected of involving in terrorism related activity but outside the UK. It is not in doubt that in appropriate cases of terrorism, TPO may be invaluable in warding off danger from UK's GP and in containing and prosecuting *confirmed* terrorists. However, the reality that TPOs, like any other TPIMs, are unduly issued to cage innocent persons, who might just be fantasizing about some terrorist activities and may in fact not/never be involved, directly or remotely, in acts-of-terrorism, defeats its essence.

Like COs and TPIMs, an application for a TPO may be granted *ex-parte* against the individual suspect.[99] Once again, this raises the issue of whether or not in so granting, the court would not have violated the suspect's right to fair hearing. Similarly implicated is the suspect's right to family life and privacy, particularly in circumstances where the excluded-person's immediate or extended family is in the UK during the pendency of the TPO. It is saddening how incremental UKATL are building in whittling away the prominence accorded HRs. In the heart of this HRs breath-taking process is the active role of the judiciary in precipitating the attainment of self-seeking executive objectives.

4.3 Mass Surveillance

The UKG secretly indulges in some unscrupulous means of monitoring private communications of individuals without any basis of suspicion. A recent disclosure of Edward Snowden reveals GCHQ's Tempora-programme, where billions of private communications are intercepted and processed daily, accessed through data gathered in bulk under the mass electronic surveillance programmes (PRISM and Upstream operated by the US National Security Agency).[100] Without doubt, this directly undermines true democratic and HRs values. Every person has a right to privacy. There are growing judicial decisions holding the UKG's action in this regard as inconsistent with IRHRs.[101]

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97 See *Official Solicitor v K* (1963) Ch 381, per Upjohn LJ; see also *Roberts v Parole Board* [2005] UKHL 45; *Al Rawi v The Security Service, Secret Intelligence Service & others* [2009] EWCA 2959.

98 See section 1 of the 2015 Act.

99 See section 3 of the 2015 Act.

100 See H Hegemann and M Kahl, 'Constructions Of Effectiveness And The Rationalization Of Counterterrorism Policy: The Case Of Biometric Passports' *Studies in Conflict & Terrorism* (2015) 38(3) pp 199-218.

101 See *Liberty (The National Council of Civil Liberties) & others v The Secretary of State for Foreign and Commonwealth Affairs & others* [2015] UKIPTrib 13 77-H; *Liberty (The National Council of*

5. IS THE UK WINNING 'THE WAR ON TERROR'?

In all fairness, the simple answer to the above poser is in the affirmative. This is so because central to the objectives of any counter-terrorism-regime is to prevent occurrences of terrorism and guarantee the public safety. It is not in doubt that the UK considerably has succeeded in this regard. However, the concern, herein raised, is that this success so far has been recorded at the expense of HRs. The UKG must take conscious measures to balance between NS and HRs concerns.

6. CONCLUSION

So far, this article considered UK's response to terrorism. Whilst this article surveyed the evolution of UKATL as a means to achieving the overall UKATS, it distilled core mechanisms inherent in UKATL to drive home UK counter-terrorism measure in fulfilling the 'pursue' and 'prevent' strands of UKATS, such as COs, TPIMs, PCD, Mass-Surveillance, Restrictions on Travel etc.,. This article believes that UK is succeeding in the 'War against Terror' but at the expense of HRs, the consequences of which may catalyze the radicalization of victimized communities. It therefore recommended that UKG should endeavour to balance NS and HRs to promote and sustain her multi-cultural society.

Civil Liberties) & others v The Secretary of State for Foreign and Commonwealth Affairs & others [2014] UKIPTrib 13 77-H.