1. INTRODUCTION

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being the birth right, are, therefore, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality.

These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they create an environment in which people can develop their full potential and lead productive and creative lives in accordance with their needs and provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings; human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

Presently, the vast majority of legal scholars and philosophers agree that every human being is entitled to some rights. Thus, there is universal acceptance of human rights in principle in domestic and international plane. ‘Human rights’ is a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. It is therefore difficult to give a precise definition of the term ‘human rights’. However, it can be said that the rights that all people have by virtue of their being human are human rights. These are the rights which no one
can be deprived without a grave affront to justice.\(^1\) It is so because they may affect the human dignity. Thus, the idea of human rights is bound up with the idea of human dignity. Chief Justice of India (Retired) has rightly stated that ‘human dignity is the quintessence of human rights.’\(^2\)

All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent may be termed human rights. However, dignity has never been precisely defined on the basis of consensus, but it accords roughly with justice and good society.\(^3\)

Dignity can no longer survive where human beings are humiliated. The World Conference on Human Rights held in 1993 in Vienna stated in the Declaration that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms. D.D. Basu defines human rights as those minimum rights which every individual must have against the State or other public authority by virtue of his being a member of human family, irrespective of any other consideration.\(^4\)

Human rights are, therefore, those rights which belong to an individual as consequence of being human. They are based on elementary human needs as imperatives. Some of these needs are elemental for sheer physical survival and health. Others are elemental for psychic survival and health. Thus, human rights can be perceived and enumerated. These rights are associated with the traditional concept of natural law.

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\(^3\) David P. Forsythe: ‘The Internationalization of Human Rights’, p. 1.
\(^4\) ‘Human Rights in Constitutional Law’, (1994), p. 5. According to Bennett “Human rights include those areas of individual or group freedom that are immune from governmental interference or that, because of their basic contribution to human dignity or welfare, are subject to governmental guarantee, protections, or promotion” (‘International Organisations’, Third Edition, p. 258).
Rights being immunities denote that there is a guarantee that certain things cannot or ought not to be done to a person against his will. According to this concept, human beings, by virtue of their humanity, ought to be protected against unjust and degrading treatment. In other words, human rights are exemptions from the operation of arbitrary power.

An individual can seek human rights only in an organized community, i.e. a State, or in other words, where the civil social order exists. No one can imagine to invoke citizen can appeal against violations of rights. Thus, the principle of the protection of human rights is derived from the concept of man as a person and his relationship with an organized society which cannot be separated from universal human nature.

Human rights being essential for all-round development of the personality of the individuals in the society be necessarily protected and be made available to all the individuals. They must be preserved, cherished and defended if peace and prosperity are to be achieved. Human rights are the very essence of a meaningful life, and to maintain human dignity is the ultimate purpose of the government.

The need for the protection has arisen, governments which by no means can be regarded as desirable. There are several States where fundamental standards of human behaviour are not observed. The consciousness on the part of the human beings as to their rights has also necessitated the protection by the States. It has been realize that the functions of all the laws whether they are the rules of municipal law or that of international law should be to protect them in the interest of the humanity.

One of the achievements of the contemporary international law is to recognize human dignity and honor. The individual has come of age in International Law. It has been also realized that the international protection of the individuals against the State should no longer be entrusted to the State as his
guardian *in litem*. This is clearly reflected from a number of conventions of varying scope which have been adopted under the auspicious of the United Nations Organisations in the last six decades or so. A number of declarations adopted by the United Nations and its specialized agencies also go to prove that their members have pledged themselves to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms.

States themselves are conscious of the rights of the human beings. They, in order to protect the rights, have made regional arrangements by making conventions. On national level too, they have taken measures to protect the rights of the individuals by incorporating the provisions relating to it in their Constitutions. Non-governmental organisations as national, regional and international level are also devoted in bringing the cases of violations of human rights in lime light and finding out ways and means to prevent their occurrence.

Presently, there is a widespread acceptance of the importance of the human rights in the international structure because it has legal, moral and political bearing. Human rights are legal because it involves the implementation of rights and obligations mentioned in international treaties.

It is moral because human rights are a value-based system to preserve human dignity and it is political in the larger sense of the word. They also operate to limit the power of Governments over individuals. However, one will not hesitate to admit that there is a confusion prevailing as to its precise nature and scope and the mode of International Law as to the protection of these rights.

Human rights flourish in a climate of peace. The relationship of ‘human rights and terrorism’ is a vexed one. Man, it is said, “has an inalienable right to go
to hell in his own fashion, provided he does not directly injure the person or property of another on the way”\(^5\).

During the early years of the twentieth century, the protection of human rights had begun to develop as an issue of concern to the international community. Under the League of Nations established at the conclusion of the First World War, attempts were made to develop an international legal framework to protect minorities, along with international monitoring mechanisms.

The horrors perpetrated during the Second World War motivated the international community to ensure that such atrocities would never be repeated and provided the impetus for the modern movement to establish an international system of binding human rights protection.

1.2 BACKGROUND

Human rights can be generally understood as those rights which are inherent in human-beings without which they cannot live as human-beings. These are the rights which every human-being is entitled to enjoy and to have them protected. They are inherent, equal, universal, inalienable, indivisible, inter-related and inter-dependent.

The 20\(^{th}\) is considered as the Century for ‘Democracy and Human Rights’. Human rights demand treating others as we expect others to treat us. They are natural rights come by birth of human beings. No effort is needed to acquire them. We should always remember and recognize that human dignity is the spine of human rights.

The human rights have long process of evolution. Basically, human rights are integral part of human life and it is the possession of these rights that distinguish human beings from other species. At all times and in all ages right from the beginning there was oppression of human beings by human beings, leading to struggles and revolutions restoration and protection of rights. In history and ancient scriptures, references to the basic human rights can be easily noticed.

The *Rig-Veda*, one of the oldest documents of human civilization declares that all human beings are equal and they are all brothers. The *Atharvaveda* proclaims that all human beings have equal right over food and water. The *Vedas* were the primordial source of *Dharma*, a compendious term for all human rights and duties.

The observation of *Dharma* was regarded as essential for securing peace and happiness to individuals as well as society. All such works were intended for securing happiness to all. *Sarve Jana Sukhino Bhavantu* was the ethos of our motherland.

It is interesting to know that the International Human Rights Movement was born in an out of the Second World War. It is ironic that Adolf Hitler, who was responsible for the terror and violence, gave rise to the awakening of the conscience of mankind, opposing repetition of such barbaric and inhuman crimes. This leads to formation of United Nations Organization.

The 20th Century had witnessed unprecedented human losses, devastations and destruction of the two world wars. At the end of the World War II the United Nations was established in 1945 to fulfill the long cherished aspirations of the world community for world peace, prosperity and happiness of all human beings inhabitation in any part of the world irrespective of race, religion, region, caste, creed, colour, and community.
The United Nations Charter is a landmark document which proclaiming that the people of United Nations: “Re-affirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women; and in universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” The day, 10th December, 1948 was remarkable in the modern history of mankind.

That is the day on which the United Nations made the Declaration of Human Rights. This declaration was not either a sudden or miraculous event. It was the effect of a cumulative and continuing movement of human conscience and changes in thinking that went on over a long period.

The proclamation of Universal Declaration of Human Rights (UDHR) on December 10, 1948 is not mere a declaration it represents the collective wisdom of the world community to work together towards a world without injustice, indignity and ignorance; a world without cruelty and hunger.

The proclamation of Universal Declaration of Human Rights (UDHR) on December 10, 1948 is not mere a declaration it represents the collective wisdom of the world community to work together towards a world without injustice, indignity and ignorance; a world without cruelty and hunger. The UDHR declares: “All human beings are born free and equal in rights and dignity”. Human rights broadly constitute two cartograms of rights;

1. Rights which are essential for the dignified human existence, viz., the right to have basic human needs like food, clothing, shelter and medical care; and

2. Rights which are essential for the adequate development of human personality such as the right to education, the right to freedom of culture, the right to freedom of speech and expression, and the right to free movement.
It is a matter of common knowledge that wars produce hunger. But people seem to be less alive to the fact that hunger can lead to war. It is undebatable that hunger and peace cannot co-exist. In other words, while hunger rules, peace cannot prevail. All democratic institutions have onerous and great responsibility and duty to respond to the challenges, to maintain the abiding faith and continuing confidence of the society, which the society has reposed in them, because they essentially exist for the society.

Contemporary evolving concept of human rights can be stated in terms of three generations of human rights. First generation of human rights is mainly concerned with the civil and political rights of the individual; in other words, the ‘liberty-oriented’ rights. These were meant to impose with ‘negative obligations on the Government to desist from interfering with the exercise of individual liberties’. These rights were among the major concerns of all liberal and democratic movements since the 19th Century.

The Second generation of human rights can be said to be ‘security’-oriented and provide for social, economic and cultural security. These rights are positive in nature as they make it the duty of the State to ensure for the realization of these rights. The United Nations Declaration of Human Rights indicates the consensus of principles which form the basis of the first and second generation rights.

The third generation of human rights relatively is of recent origin. They have come into existence in response to various new concerns over which the international consensus has emerged in recent years. These included the environmental, cultural and developmental rights.

They relate to rights of groups of people rather than individual. The developing countries have played a significant role in bringing about international
consensus on these rights. The most important example of these rights is the *Declaration on the Rights to Develop* adopted by the *United Nations General Assembly* in 1986.

The *Universal Declaration of Human Rights* by the United Nations on December 10, 1948 gave global focus and thrust to the Human Rights. The Declaration guarantees rights to life, liberty, property, and equality before law, privacy, fair trial, safeguards against torture, slavery and other degraded practices, protection of family and minorities, free expression, opinion, association, assembly, movement, religion, conscience and culture.

These rights have been accepted by the most of the countries and they are reflected in the Constitutions of many countries. Most political and social systems accept these rights as basic minimum of civilized existence. When the Constitution Assembly adopted the recommendations and drafted the Constitution of India, the *Declaration of Human Rights*, 1948 had already been made hoping that ultimately Nations will embody these human rights in the constitutional documents.

### 1.2.1 Universal Declaration of Human Rights 1948

The Charter of the United Nations of 1945 proclaims that one of the purposes of the United Nations is to promote and encourage respect for human rights and fundamental freedoms for all. With the energetic support of Eleanor Roosevelt, alongside figures such as René Cassin, Charles Malik, Peng Chun Chang and John Humphrey, States, for the first time, sought to set out in a single document the range of fundamental rights and freedoms that belonged to all by virtue of their status as human beings.

These efforts resulted in the Universal Declaration on Human Rights, adopted unanimously by the General Assembly on 1 December 1948, henceforth Human Rights Day. This document, expressed as “a common standard of
achievement for all peoples and all nations” sets out a wide span of rights covering all aspects of life. Its first article famously describes the idea of fundamental human rights: “All human beings are born free and equal in dignity and rights.”

After setting out a general prohibition of discrimination, the Declaration enumerates specific groups of rights: civil, cultural, economic, political and social. Articles 3 to 21 describe classic civil and political rights (including the right to asylum and the right to property). Articles 22 to 28 guarantee a range of economic, social and cultural rights, with the important recognition in article 28 that: “Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

While the Declaration is, as its name suggests, not a directly legally-binding treaty, its importance should not be underestimated. It is of high moral force, representing as it does the first internationally agreed definition of the rights of all people, adopted in the shadow of a period of massive violations of the rights there described.

The Declaration also laid in a direct fashion the groundwork for the treaty structure to be erected in the decades to come. Not least, the Declaration through its comprehensive drawing together of the different types of rights emphasizes the commonality, interrelatedness and inter dependence of all rights, a point of basic importance reaffirmed many years later in the 1993 Declaration of the Vienna World Conference on Human Rights.

Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of the world in which human being shall enjoy freedom of speech and belief and freedom from
fear and want has been proclaimed as the highest aspirations of the common people.\textsuperscript{6}

The Universal Declaration of Human Rights permits enactments of laws by the States to impose reasonable restrictions on the rights and freedoms of an individual for the purpose of protecting the rights and freedoms of the people in general.\textsuperscript{7}

\textit{“In the exercise of his rights and freedoms, every one shall be subject to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirement of morality, public order and the general welfare of the democratic society.”}\textsuperscript{8}

Imposing reasonable restrictions on the rights and freedoms of unscrupulous elements constituting a serious threat to the public order on account of their involvement in activities causing destruction of life, liberty and property of other fellow beings, these laws, far from being at variance with the Universal Declaration of Human Rights, are very much in consonance with its provisions in Article 29. These anti terror laws do not deny any person equality before law or equal protection before laws, which are guaranteed by Article 7 of the Universal Declaration of Human Right, reads as follow:

\textit{“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”}\textsuperscript{9}

\textsuperscript{6} Preamble to the Universal Declaration of Human Rights, 1948.
\textsuperscript{7} R.C. Jha, \textit{Anti-terror laws Vis-avis Human Rights}, IBR Vol. 21 (1) 1994, at 82-83.
\textsuperscript{8} Para 2 of Article 29 of Universal Declaration of Human Rights.
\textsuperscript{9} Article 7 of Universal Declaration of Human Rights.
Terrorism itself involves violation of Human Rights and the anti terrorism laws have been enacted to protect the Human Right of the people trampled upon by the terrorists with impunity. As provided by the Universal Declaration of Human Rights:

“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”10

Therefore when terrorists perpetrate acts of terrorism, they destroy the rights and freedoms of a fellow human being or a group of fellow human being in contravention of the principles enshrined in the Universal Declaration of Human Rights. In times of emergency, the Universal Declaration of Human Rights does not prohibit enactment of more stringent laws to tackle the problem of terrorism.11 Justice V.R. Krishna Iyer rightly describes the importance of Universal Declaration on Human Right as follows:

*The trinity of values underlying the System of equal justice constitutes the bedrock of the burgeoning world legal order, justice, Social, Economic, and Political, is the first fundamental paramount human right to secure which to every person is the tryst with destiny the United Nations and its member nations have made by unanimously passing the Universal Declaration of Human Rights.*12

### 1.2.2 The Protection of Human Rights Act, 1993

The rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by the courts in India.13 There is growing consciousness in the

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10 Article 30 of Universal Declaration of Human Rights.
13 Section 2(d) of the Protection of Human Rights Act, 1993.
international community of the negative effects of terrorism in all its forms on the full enjoyment of human rights, fundamental freedoms, on the establishment of Rule of law and democratic freedoms as enshrined in the United Nations Charter and the International Covenants on Human Rights. All States are required to suppress all and any form of terrorist activities within their borders as terrorism represented globalization of feat and concept for the role of international law\textsuperscript{14}.

1.3 RATIONALE OF THE PROBLEM

Human rights activists take the position that there is no need for a special law on terrorism, as it is bound to result in human rights abuses by the police who may resort to arbitrary arrests or torture. Also neither the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter TADA) which was allowed to lapse in 1995, or the Prevention of Terrorism Act, 2002 (hereinafter POTA) which was repealed in 2004 have succeeded in mitigating terrorism, which is basically the result of socio-economic problems and therefore nothing will be achieved by introducing similar measures. Hence it is a mistake even to introduce the Unlawful Activities (Prevention) Act, 1967, which is nothing but a subterfuge for the earlier statues.

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which lapsed in 1995 was found to have led to widespread use of torture by law enforcement officials. As well as withdrawing safeguards under Article 22 of the Constitution for those suspected of broadly defined offences of “disruptive activities” and “terrorists acts” it withdrew further safeguards and thereby facilitated the use of torture.

Under sections 25 and 26 of the Indian Evidence Act, confessions made to a police officer are not admissible as evidence. These provisions acknowledge the

danger in relying upon such “confessions” in view of the continuing suspicion that they will be obtained by the police resorting to illegal practices including torture.

Evidence of the continued use of torture to extract confession despite this apparent safeguard reinforces the need for its continuing existence and rigorous application. However, Section 15 (1) of TADA suspended this safeguard and made confessions to a police officer of the rank of Superintendent of Police and above admissible evidence. In its majority judgement in Kartar Singh vs. State of Punjab (JT 1994 (2) SC 423) upholding the constitutional validity of TADA, the Supreme Court nevertheless observed:

“Whatever may be said for or against the submission with regard to the admissibility of a confession before a police officer, we cannot avoid but saying that we...have frequently dealt with cases of atrocity and brutality practiced by some over-zealous police officer resorting to inhuman, barbaric, archaic and drastic method of treating the suspects in their anxiety to collect evidence by hook or crook and wrenching a decision in their favour”.

Legislation in place in areas of armed conflict which gives security forces increased powers to act “in aid of civil authority” have also led to widespread human rights violations including torture and ill-treatment. In areas where the Armed Forces (Special Powers) Act is in operation (Jammu and Kashmir and states of north-east) there have been widespread allegations of torture.

Section 4(c) of the Act provides that any person arrested and taken into the custody of the armed forces should be handed over to the nearest police station “with the least possible delay”. In May 1996, the National Human Rights Commission (hereinafter NHRC) made a ruling on a case of the death in custody of Kheshiho Sumi.
He had been arrested by members of the Assam Rifles in Nagaland under the Act and had allegedly died in their custody while being taken to identify a “militant hideout”. The NHRC commented that it was the obligation of security forces to hand over the arrested persons to the police and not to keep them in custody for carrying out interrogation.

These directions were reiterated by the Supreme Court in *Naga Peoples Movement of Human Rights vs. Union of India*\(^\text{15}\) in 1997 in its list of “Dos and Don’ts” for forces acting under the Act which it ordered should be binding and punishable under the Army Act, 1950. In 1997, when considering India’s report to the Human Rights Committee, a committee member commented:

“All these laws and statutes form a network that will necessarily lead to misuse and misunderstanding by the police officers or armed forces that have to execute these laws. Those laws will set free. I think with necessity, base instincts. They create an atmosphere that cannot be controlled. They will lead to brutality, to rape used just for humiliating the women themselves of course and their families. These laws just lower the hurdles the thresholds for a reasonable contact of all those who are in charge of these laws”\(^\text{16}\).

The suspension of safeguards against torture in such legislation reinforces Amnesty International’s concern about a prevailing attitude within the administration that certain categories of suspects do not deserve protection against torture. Section 41\(^\text{17}\) of the Code of Criminal Procedure provides police with sweeping powers to arrest individuals without warrant in a number of broadly

\(^{15}\) SC 1997(7) SCALE 210.
\(^{16}\) Member of the UN Human Rights Committee during its examination of India’s Third Periodic Report of measures taken to implement the ICCPR, July 1997. From transcript of recording by Amnesty International delegates attending the hearing made with the consent of the Human Rights Committee.
\(^{17}\) Section 41 of The Code of Criminal Procedure, 1973. When police may arrest without warrant- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person- (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.
defined situations including the arrest of a person “against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists”.

This extremely broad provision has in practice allowed police to arrest individuals when little or no evidence exist them. The National Police Commission 1979 commented that the powers given to police under section 170 of The Code of Criminal Procedure to bring an accused before a magistrate created the impression that all suspects should be arrested pending investigation. It suggested amending this section in light of its concern that it encouraged large number of arrests of individuals against whom there was no evidence.

The Supreme Court in Joginder Kumar vs. State of UP and Others\(^1\) commented that “existence of power to arrest is one thing but the justification for the exercise of it is quite another”. In its submission to the Supreme Court in Prakash Sing & Others vs. Union of India & Others the NHRC stated: “The power of arrest now available to the police is often misused to harass and humiliate persons in several situations prompted by malafide considerations. Some malafide arrests get exposed in habeas corpus petitions filed in High Courts, but such exposures are very small compared to the large number of unjustified arrests that take place all the time”.

The NHRC has stated recently that at least 60% of all arrests are unwarranted and end in acquittal. It was reported recently that during 1998, 39,205 people were arrested but released without charge sheet being filed in Andhra Pradesh, 33,158 in Bihar and 29, 124 in Uttar Pradesh. In early, November 2000 the Law Commission of India published a Consultation Paper on Law Relating to Arrest.

\(^{18}\) 1994 SC 1172.
The study conducted by the Law Commission, which with the help of the NHRC and police officials in several states put together figures for arrest and detention under various legal provisions, clearly demonstrates the continuing problem of unjustified means.

Since independence we witnessed that repressive laws in India misused and there is a gross violation of human rights. Human rights activists also raised voice against these repressive laws and its enforcement.

There is no merit in the argument that we must refrain from enacting special laws against terrorism because terror attacks have not ceased despite the enactment of the TADA, POTA, the Maharashtra Control of Organized Crime Act, 1999 (hereinafter MCOCA) in Maharashtra, or the Armed Forces Special Powers Act, 1958 (hereinafter AFPSA) in the North East, or because they are liable for misuse.

1.4 SIGNIFICANCE OF THE STUDY

In the present times, terrorism is a great threat and worrying feature of contemporary human civilization. It is unfortunate that millions of the innocent people all over the world had been the helpless victims of mindless and inhuman violence perpetrated by the various terrorist groups in recent years. Violating human rights by terrorist groups are a serious and major concern for the world community.

Counter terrorism operations of the State-authorities are also a concern for the community of nations. There has to be a proper and balanced approach in dealing with the terrorism. However this Century has begun with emergence of effective international net works of terror straight away targeting some democratic States.
In modern day terrorism is the menace before the humanism and entire universe is suffering from the terrorist activities. Since independence India witnessed number of anti-terrorism laws which are failed to tackle with the terrorism. In the present research researcher is willing to focus on the aspect of anti-terrorism laws and its impact on terrorism.

The legal and institutional framework that independent India inherited from the British to govern criminal, criminal procedure, and policing largely remains in place today. Police matters are governed primarily by the Police Act of 1861, one of several framework statues state, facilitating arbitrary and selective enforcement against members of Dalit, other lower caste, tribal, and religious minority communities, violations of protected speech and associational activities, prosecution of ordinary crimes as terrorism-related offences, and severe police misconduct and abuse, including torture. In each state, however, prolonged detention without charge or trial appears to have been the norm under these laws, rather than the carefully limited exception.

As a result, to a considerable degree these laws have functioned more as preventive detention laws than as laws intended to obtain convictions for criminal violations- but without heeding even the limited constitutional protections required for preventive detention laws, much less the more exacting standards under international law. Additionally, human rights defenders who have challenged these violations or defended individuals accused under these antiterrorism laws at times have faced retaliatory threats and intimidation.

Recognising that these antiterrorism laws do not operate in a vacuum, the study also addresses the broader Indian legal and institutional context in which these laws are situated and particularly the implications of such special legislation for the system as a whole.
Even when they create a distinct set of mechanisms and procedural rules, antiterrorism laws draw upon the same institutions—police, prosecution, judiciary—used in fighting any serious crimes, and to the extent these institutions fail to sufficiently protect human rights when enforcing ordinary criminal law, they are no more likely to do so in the high pressure context of investigating and prosecuting terrorism-related crimes.

At the same time, the very existence of these special laws stems from real and perceived problems concerning the effectiveness of the regular criminal justice system, which create intense pressures to take particular offenses outside of that system.

To fully address the human rights issues arising from India’s special laws against terrorism, therefore, the study briefly considers ways to improve and reform the police and criminal justice system more generally both, to ensure that human rights are better protected and remedied and to alleviate the pressures to enact special laws that result from the underlying weakness within the regular criminal justice system.

The influence of the international community on the debate in India over these antiterrorism laws, and in particular the role of Resolution 1373, the mandatory antiterrorism resolution adopted after the September 11, 2001 terrorist attacks by the U.N. Security Council under Chapter VII of the U.N. Charter.

While debate in India over its antiterrorism laws has been shaped principally by a domestic political context which has evolved over decades, Resolution 1373 has played a significant role in framing that debate. However, invocations of enacted in the wake of the Indian uprising of 1857 to more firmly establish British Control. 19 The 1861 statue self-consciously followed the

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paramilitary model of policing that the British had established in Ireland, structuring the police not to promote the rule of law, severe the community, or ensure accountability, but rather to “perpetuate British rule.”

1.5 OBJECTIVES OF THE STUDY

The objectives of the present study are-

1) To discuss about the theoretical background of human rights and terrorism.

2) To describe the International views, conventions, and conferences on terrorism.

3) To Study the Universal Declaration of Human Rights and related conventions of Human right view of Terrorism.

4) To State about the municipal law relating to human rights point of terrorism.

5) To analyse nationwide guidelines and standards of mechanism to emphasis the legislative safeguards.

6) To state about the constitutional mandate and legislative safeguards.

7) To state about the judicial positivism.

8) To give effective findings and recommendations.

1.6 HYPOTHESIS

In the present study the researcher attempted to test the hypothesis that-

1) Anti-terrorism laws in India are failed to curb the menace of the terrorism comparing to the laws in America and England.

2) Anti-terrorism laws in India bound to result in human rights abuses by the police who may resort to arbitrary arrests or torture.

3) Provisions of Indian Penal Code are not sufficient to tackle with the offences relating to terrorism.

4) Security legislations in India and Article 13(1) & (2) of the Constitution of India are Contrary to each other.

1.7 SCOPE OF THE STUDY

The researcher’s area of study is on human rights perspectives of anti-terrorism laws in India. These laws have discussed elaborately in two parts and to avoid too many chapters in the research, the implementation under the role of judiciary has been taken in fifth chapter.

Aspects of India’s antiterrorism laws have raised significant human rights concerns. Some of those concerns have remained even in the aftermath of POTA’s repeal, since the Indian government has preserved many of the law’s provisions in other statutes; other, similar laws also remain in place at both the central and state levels, such as the Unlawful Activities (Prevention) Act 2004 (hereinafter UAPA). Attentiveness to those human rights concerns in not simply a moral and legal imperative, but also a crucial strategic imperative.
This research comprehensively examines India’s recent antiterrorism and other security laws, situating those laws in historical and institutional context in order to analyse the human rights concerns that arise from these laws. POTA and other Indian antiterrorism laws have raised a host of human rights issues, some of which are similar to those raised by antiterrorism laws in other countries.

The study begins with an overview of the legal and institutional framework within which India’s security and antiterrorism laws are situated. While criminal law matters in India are governed by a post-constitutional and international legal framework which includes a strong commitment to fundamental rights, that framework has been layered on top of a set of colonial-era laws and institutions that were designed not to ensure democratic accountability.

The study then traces India’s extensive history of using extraordinary laws to combat terrorism and other security threats, which long predates independence from Britain. These laws include (1) constitutional provisions and statues authorizing the declaration of formal states of emergency, (2) constitutional provisions and statues authorizing detention during non-emergency periods, and (3) substantive criminal laws defining terrorist and other security-related offenses during non-emergency periods.

While periodic efforts have been made to limit the use of these laws, the overall trajectory since independence has been made to maintain the pattern established by the British, which blurred the lines between these categories by periodically seeking to extend the extraordinary powers initially exercised during periods of emergency into non-emergency periods.

The net result of this pattern has been a tendency to institutionalize or routinize the use of extraordinary powers to terrorism and other threats to security in recent years; they have shared a number of continuities with these earlier
emergency and security laws, both before and after independence, and accordingly have raised a number of the same human rights concerns.

Continuing the pattern established by the British and maintained after independence for other emergency and security-related laws, these antiterrorism laws have been enacted and repealed in cyclical fashion over the past twenty-five years. While each subsequent law has incrementally improved upon its immediate predecessor, the human rights concerns raised by these laws have been significant and, under POTA and UAPA, persist today. The study then discusses some specific human rights concerns raised by the application and enforcement of these antiterrorism laws,

1.8 METHODOLOGY USED

Terrorism, which itself represents an attack on human right that governments have an obligation to combat, is a complicated, serious and difficult problem to address. When responding to terrorism, however democratic governments must fully protect human rights to advance both the rule of law and long term security itself, since violation of human rights often plant the seeds for future acts of terrorist violence.

The present study comprehensively examines India’s recent antiterrorism and other security laws. These security laws since independence have a great impact on human rights of citizens. Terrorism is the menace not only for India but for the entire universe. Here the non-doctrinal type of research is not suitable, because terrorism is the threat to the entire universe and not for a particular state.

Therefore, here researcher opt the doctrinal type of research for the present study which is more suitable than non-doctrinal research. It is suitable with the help of various legislations relating to anti-terrorism. Considering these facts for the present study the researcher is intended to do the doctrinal type of research
through statues, case laws, treaties/conventions/declarations/, government documents, books, articles, dictionaries, and websites.

1.9 DEFINITIONS

1.9.1 Human Rights

The concept of human rights does not lend itself easily to any precise definition. Human rights in simple language may be categorized as those fundamental rights to whichever man and woman living in part of the world is entitled by virtue of having been born as a human being. The preamble of the Universal Declaration of Human Rights states “... it is essential if man is not compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

The New Encyclopedia Britannica, Micropedia Volume IX- rights thought to belong to the individual under natural law as a consequence of his being human. The Charter of the United Nations affirms a “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”

Lexicon meaning of the term ‘human rights’ is: claims asserted or those which should be or sometimes Stated to be those which are legally recognized and protected to secure for each individual the fullest and freest development or personality and spiritual, moral and other independence.21 The rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution are embodied in the international covenants and enforceable by the courts in India.22

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22 Section 2(d) of the Protection of Human Rights Act, 1993.
1.9.1.1 The views of the scholars.

The human rights according to natural theory are natural rights and the product of history. The civil rights or individual rights like the right to life; liberty and property were characterized as inviolable natural rights of man. They are rooted in the ethical concept that man is a spiritual being and his life is sacred. He has an inherent dignity and worth and they must be preserving. It is thereby propounded that man is endowed with those inalienable rights sacrosanct. According to Hobbes, the man's ethical duty is to seek his own happiness. The pursuit of happiness is an essential postulate of right to life.

Acquinas, Hobbes and Locke have propounded this theory of natural law. Rousseau in his doctrine of Social contract has stated that the man is born free, but everywhere he is in chains. He thereby reveals that though he is borne free, he is shackled with serious constraints which stand as impediments in his away to blossom forth into his full personality.

But the industrial revolution in England threw up its own problems to protect the welfare of the workman. It came into conflict with the absolute laissez-faire theory. Bentham attempted to harmonize these competing or conflicting theories enunciating the utilitarian philosophy of the greatest good of the greatest number under this disadvantaged are given rights as also the means to seek their happiness.

Rights can of course be outweighed by other rights- even by less important ones if these are much seriously threatened in a particular case. But rights- even the important ones – can also be overridden in order to prevent disaster; for example, important political rights might be suspended in times of emergency. And rights can sometimes be outweighed by important social and economic
policies; for example the policy of discouraging monopolization might sometimes outweigh the right to enter freely into contracts.\textsuperscript{23}

Hobbes regarded the government, as a Leviathan, which is at large to interfere at, will with the freedom of the subjects. Hegel also held the same view. But Bentham has propounded that the function of the government, is to bring about a greater good. His emphasis is on 'social and economic rights' by enlargement of governmental functions.

Prof. C.K. Allen in his book 'Law in the Making' refers to Prof. Duguits view that law is the result of the principle of social interdependence. All society is discipline and man cannot live apart from society. John Stuart Mill and Hebert Spencer, champions of laissez faire, regarded freedom from government interference as a new economic liberty- having for its basis the text of Adam Smith, the profounder of New economic theory in his Wealth of Nations, according primacy to volition for individual excellence without intervention by the State.

Immanuel Kant accorded due regard to the individual as a moral responsibility of the State and society. But the theory of liberalism of J.S. Mill and Spencer, viz; 'to live one's own life, developing one's native traits and capacities, is not just a means to happiness; it is really a substantial part of happiness.\textsuperscript{24}

Therefore, Kant has advocated reason as the touchstone. Kant hated inequality and hierarchies, oligarchies, paternalism, however benevolent they may be. According to him liberal nationalism is the goal. His main theme is that man is a rational being and he would command himself to do or not to do and that State would devote theory resources to education, culture, the moral improvement of their citizens and not to increase their material power and conquest, thereby

\textsuperscript{23} Theodore M. Bendit in his 'Law as a Rule and Principle' [1978].
\textsuperscript{24} Prof. C.K. Allen in his book 'Law in the Making'.
heralding the birth of individual and collective rights. According to him, to deprive a human being of the power to choice is to do him the greatest imaginable injury. This will be so no matter benevolent the intention with which it is done.

What is the most important human right? For John Milton, the most important human right was the freedom of any person to think and talk and publish without interference from the State or from other person. Immanuel Kant agreed but in fact reversed the formulae. For Kant the most important human virtue was to refrain from interfering with the self-expression of other persons, where as Milton stressed freedom of speech and thought. Kant stressed tolerance of the freedom speech and thought of others. Milton's view was right's based and Kant was duty based.

Susan Muller Okin defines human rights as a claim to something whether a freedom, or a good or a benefit of crucial importance for human life. The things crucial for human existence, according, to her, are claims to basic physical goods, to physical security and to be treated with respect by persons. Susan's description of human rights thus include both the values of freedom and welfare. If human rights are viewed as respect for persons these will include right to life, freedom from arbitrary coercion and to be respected as human person.25

Prof. Louis Henkin of Columbia University in his article 'Rights Here and There' explained human rights as: ...claims, which every individual has, or should have, upon the society in which she or he lives. To call them human rights suggests that they are universal; they are due of human beings in every society. They do not differ with geography or history, culture or ideology, political or economic system or stage of development.

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They do not depend on gender or race, class or status. In other words, human right is the genus of which humanitarian law is the species. The former relates to the basic rights of all-human beings everywhere, at all times and latter relates to the particular categories of human beings particularly, the sick, the wounded, prisoners of war during armed conflict and hostility. In most of the western legal material the expression 'human rights' is used in the sense of freedom of speech, liberty of person, religious freedom, and freedom from arbitrary coercion and torture.26

In the third world countries, people speak of human rights in terms of development and basic needs satisfaction. Professor C.J Friedrich in his book 'Constitutional Government and Democracy' [1968] describes human rights as a capacity, as a power of man to achieve self realization enabling him a rounded self and a fully developed person. The right to development is deemed to be an inalienable human right of all human beings and people to participate in and enjoy economic, social, cultural and political development.27

The crucial philosophical question that should be asked is: What does it mean to say that there are human rights or that persons have them? Are human rights primarily claiming rights in the sense that they entail correlative duties of other persons or the government to act or refrain from acting in certain ways? Are the rights different in theory and content with the old family of civil or political rights? Can the human rights be restricted for the fulfillment of collective goals or general welfare? Are these rights are moral properties of the individuals?

As Prof. Joel Feinburg in his scholarly article titled 'Duties, Rights and Claims’, published in American political quarterly in 1966 puts it: Rights are not mere gifts or favour.... for which gratitude is the sole fitting response. A right is

26 Prof. Louis Henkin of Columbia University in his article 'Rights here and There'.
something, which a man can stand on, something that can be demanded or insisted upon without embarrassment or shame. It is doubtful whether several claims advanced in the guise of human rights fulfill the characteristics of a right as described by Feinberg.\textsuperscript{28}

Professor Paramanand Singh of Delhi University [India] says, the only thing that the contemporary discourse on human rights points out is that the new claims represent a response to a new situation of people frustrated by the existing inequities of the political economy and repressive nature of modern capitalist society.

He further contends that a model of economic development based on multinational capital and privatization of economy will have a negative impact on human rights contributing to increased inequalities, dismantling of social services with adverse effect on the poor and restrictions on trade union rights. It is also alleged that implementation of developmental projects will have a negative impact on local population, indigenous people.

1.9.2 TERRORISM

The term “terrorism” for the first time was formally mentioned at the international level at the Third Conference for the Unification of Penal Law. It defined “an act of terrorism” as “the deliberate use of means capable of producing a common danger” to commit “an act imperiling life, physical integrity or human health or threatening to destroy substantial property.” Prior to the establishment of the UN, a Convention for the Prevention of Terrorism was concluded in Geneva in 1937.

The New Encyclopedia Britannica defines terrorism as: the systematic use of terror (such as bombings, killings and kidnappings) as a means of forcing some

\textsuperscript{28} Prof. Joel Feinburg in his scholarly article titled 'Duties, Rights and Claims’, published in American political quarterly in 1966.
political objective. When used by a government, it may signal efforts to stifle dissent; use by insurrectionists or guerrillas, it may be part of an overall effort to effect desired political change.\textsuperscript{29}

Even as early as that terrorism was defined as “criminal acts directed against the state or intended to create a State of terror in the minds of particular persons or group of persons or the general public”. However, it never came in to force. Terrorism has immensely affected India. The reasons for terrorism in India may vary vastly from religious to geographical to caste to history.

The difficulty in defining “terrorism” is in agreeing on a basis for determining when the use of violence (directed at whom, by whom, for what ends) is legitimate; therefore, the modern definition of terrorism is inherently controversial. The use of violence for the achievement of political ends is common to state and non-state groups.

The majority of definitions in use has been written by agencies directly associated with government, and is systematically biased to exclude governments from the definition. The contemporary label of "terrorist" is highly pejorative-- it denotes a lack of legitimacy and morality. As a practical matter, so-called acts of "terrorism" or terrorism are often a tactic committed by the actors as part of a larger military or geo-political agenda.

First attempt to arrive at an internationally accepted definition of terrorism was made under the League of Nations but the convention drafted in 1937 never came into existence till today no consensus has arrived among the Member States of United Nations on the definitions of international terrorism.

The UN General Assembly Resolution 49/60 (adopted on December 9, 1994), titled "Measures to Eliminate International Terrorism," contains a provision

\textsuperscript{29} The New Encyclopedia Britannica in 30 volumes, Micropedia volume IX, 15\textsuperscript{th} Edition. Founded 1768, Editor- Philips Goetz.
describing terrorism: Criminal acts intended or calculated to provoke a state of
terror in the general public, a group of persons or particular persons for political
purposes are in any circumstance unjustifiable, whatever the considerations of a
political, philosophical, ideological, racial, ethnic, religious or any other nature
that may be invoked to justify them.

The UN Member States still have no agreed-upon definition of terrorism,
and this fact has been a major obstacle to meaningful international
countermeasures. Terminology consensus would be necessary for single
comprehensive convention on terrorism, which some countries favor in place of
the present 12 piecemeal conventions and protocols. Cynics have often
commented that one state’s” terrorist" is another state's "freedom fighter”.

Arab Convention for the Suppression of Terrorism was adopted by the
Council of Arab Ministers of the Interior and the Council of Arab Ministers of
Justice in Cairo, Egypt in 1998. Terrorism was defined in the conventions: Any act
or threat of violence, whatever its motives or purposes, that occurs in the
advancement of an individual or collective criminal agenda and seeking to sow
panic among people, causing fear by harming them, or placing their lives, liberty
or security in danger, or seeking to cause damage to the environment or to public
or private installations or property or to occupying or to occupying or seizing
them, or seeking to jeopardize national resources.

acts, including against civilians, committed with the intent to cause death or
serious bodily injury, or taking of hostages, with the purpose to provoke a state of
terror in the general public or in a group of persons or particular persons,
intimidate a population or compel a government or an international organisation to
do or to abstain from doing any act.
A UN panel, on March 17, 2005, described terrorism: as any act "intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organisation to do or abstain from doing any act.”

European Union: The European Union defines terrorism for legal/official purposes in Art.1 of the Framework Decision on Combating Terrorism (2002). This provides that terrorist offences are certain criminal offences set out in a list comprised largely of serious offences against persons and property which: given their nature or context, may seriously damage a country or an international organisation where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organisation to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

United Kingdom: The United Kingdom’s Terrorism Act 2000 defines terrorism to include an act “designed seriously to interfere with or seriously to disrupt an electronic system”. An act of violence is not even necessary under this definition.

United States: The United States has defined terrorism under the Federal Criminal Code. Title 18 of the United States Code defines terrorism and lists the crimes associated with terrorism. In Section 2331 of Chapter 113(B), defines terrorism as: “…activities that involve violent… or life-threatening acts… that are a violation of the criminal laws of the United States or of any State and… 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...(C) occur primarily within the territorial jurisdiction of the United States…”
US Patriot Act of 2001: terrorist activities include- threatening, conspiring or attempting to hijack airplanes, boats, buses or other vehicles, threatening, conspiring or attempting to commit acts of violence on any ‘protected’ persons, such as government officials, any crime committed with ‘the use of any weapon or dangerous device’, when the intent of the crime is determined to be the endangerment of public safety or substantial property damage rather than for mere personal monetary gain.

FBI definition of terrorism: The unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

In UN Resolution language (1999):- There is a lack of agreement on the definition of terrorism among the Member States. The General Assembly Resolution of 1999 on Measures to eliminate International Terrorism describes what constitutes terrorism – “…….criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them”.

Supreme Court of India: - To quote Supreme Court of India\textsuperscript{30} it is not possible to give a precise definition of terrorism or to lay down what constitutes terrorism. It may be possible to describe it as use of violence when it’s most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole.

There may be death, injury or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist

activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to over awe the government or disturb harmony of the society or terrorise people and the society and not only those directly assaulted with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity………..”

U.S. Army Manual definition of terrorism is the "calculated use of unlawful violence or threat of unlawful violence to inculcate fear. It is intended to coerce or intimidate governments or societies ... [to attain] political, religious, or ideological goals."\(^{31}\)

Department of Defence Dictionary of Military Terms defines terrorism as: the calculated use of unlawful violence or threat of unlawful violence to inculcate fear, intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, ideological.

League of Nations Conventions: - All criminal acts directed against state and intended or calculated to create threat of terror in the minds of particular group of persons or the general public

Academic Consensus Definition:- terrorism is an anxiety-inspiring method treated violent action, employed by clandestine individual, group or state for idiosyncratic, criminal or political reasons, whereby – in contrast to as violation- the direct targets of violence of the main targets.

The immediate victims of violence are generally targets of opportunity or self representative or symbolic targets, targets population. Threat and violence based on communication processes between terrorist organisation imperiled victims and targets are used to manipulate the audiences, turning it into a terror, a

\(^{31}\) U.S Army Field Manual No. FM 3-0, Chapter 9, 37 (14 June 2001).
target of demands or a target, depending on whether coercion or propaganda is prime thought.

1.10 REVIEW OF LITERATURE

For the purpose of the present study the researcher conducted an extensive review of literature relevant for the study. Number of relevant books and articles were identified. The researcher has visited various libraries, websites as well as various concerned offices and institutions for collecting the information and other material relevant to the present study.

A plethora of theoretical and empirical studies relating to recognition and protection of human rights on international and regional level have been undertaken by various scholars. Some efforts have also been made by jurists to analyse the human rights. For the purpose of review, the author has classified available literature into three categories – literature on Human Rights, literature on terrorism specially literature on anti-terror laws and other related works.

A research namely ‘Anti-Terrorism Law and its impact on Human Rights in India: A critical Appraisal’, 2005-2008, has been conducted in the year 2008 by Kavita Singh for her Degree of Doctorate of Philosophy under the Faculty of Law, The West Bengal National University of Juridical Sciences, Kolkata. In her research she emphasize that how anti-terrorism laws in India are violated the human rights. In her research author emphasized that how anti-terrorism laws in India violates human rights of the citizens. She also stressed the need for the legislation which balances the prevention of terrorist activities on the one side and the protection of human rights on the other.

Another research namely ‘Terrorism and Problem of Protection of Human Rights in India’ has been conducted in 2011 by Suman for her Degree of
Doctorate of Philosophy under the Faculty of Law, Punjab University Chandigarh. In her research she focused on the Problems of Protection of Human Rights in India, and also laid down important suggestions to tackle with the problem of implementation of human rights. In her research researcher laid down problems of enforcement of anti-terrorism laws in India.

B.N Sharma in his book titled ‘India and Israel against Islamic Terror’ told about the Palestinians took up arms against the people of Israel by dispatching suicide bombers and murderous gangs to install terror in the minds of innocent civilians. He also compared the situation with in a similar manner, which India had to put up with the worst type of cross-border terrorism in the form of Jehadi militants produced in the killing factories of fundamentalist Islam in Pakistan.

Both the countries, though they have much in common still need to learn a lot from each other and most importantly, how to defeat their present enemies and make a better future for themselves. Both the nations have the best armed forces in the world and a strong nuclear capability. In a conventional war, both India and Israel are invincible against their potential enemies. In a nuclear flash, Israel can blast off any Arab attempt towards its destruction, just as India enjoys a favourable balance of terror against Pakistan.

SarabJit Singh in his book titled ‘Operation Black Thunder: An Eyewitness Account of Terrorism in Punjab’. He described the circumstances in Punjab and the issue of Operation Blue Star. The Golden Temple in Amritsar was the scene of two pivotal anti-terrorist operations during this decade- Operations Blue Star in 1984 followed by Operation Black Thunder in 1988, when the Indian government dislodged terrorists who had occupied this holiest of Sikh places of worship.
The consequences of Operation Blue Star included the assassination of Indira Gandhi, the Prime Minister who sanctioned the operation. The success of Operation Black Thunder, by one who initiated it and was intimately involved in executing it, this absorbing book analysis the factors responsible for the rise and growth of terrorism in Punjab, including the role of Pakistan in promoting terrorism in India.

Pulling no punches, the author also criticizes the role of politicians and the Congress government in Delhi, particularly its use of central intelligence agencies in order to undermine the growth of a regional party like the Akali Dal by promoting the rise of leader such as Jarnail Singh Bhindranwale. Sarab Jit Singh covers the history of Punjab during the 1980s from the Rajiv Longowal Accord, through the tenure of successive Governors and their measures to curb terrorism, till election were held in the early 1990s and peace was finally restored to Punjab.

In the process he brings to light many crucial and significant events which have remained shrouded in mystery. Combining an impartial and authentic eyewitness account of tumultuous period in contemporary political history with a critical analysis of the causes of the growth of terrorism in Punjab and the methods used to combat it, this book will of interest to students of politics, public administration, contemporary Indian history and the general reader.

Prem Mahadevan in his book titled ‘The Politics of Counterterrorism in India: Strategic Intelligence and National Security in South Asia’ focused on the impact of Mumbai terror attack and other similar terrorist activities. In the wake of Mumbai terrorist attacks in November 2008, terrorism and counterterrorism in India became the focus of international, regional and national attention.

Here Prem Mahadevan, by using three case studies of Sikh separatist, Kashmiri separatist and pan-Islamist groups, focuses on the efforts of India’s
decision-makers and intelligence agencies to create coherent and effective counterterrorism policies and actions.

Questioning why Sikh separatist groups have been effectively contained, and yet pan-Islamist have not, Mahadevan draws the conclusion that, due to a gap between the expectations of decision-makers and the capabilities of strategic intelligence agencies, India’s ability to prevent terrorist attacks has been undermined. In addition, the role played by Pakistan’s intelligence agencies in the broader regions is given extensive analytical treatment. Combining a theoretical approach with empirical analysis of India’s counterterrorist activities, this book holds valuable information for those examining strategy-making and counterterrorism – practitioners as well as researchers – in addition to those interested in the politics of India.

But the present research is entirely different from the above all research and books, in the present research, researcher focused on the anti-terrorism laws in India and their perspectives on human rights. Researcher also trying to emphasized on India’s various anti-terrorism legislation from the independence. Here the researcher is trying to balance human rights on one side and the enforcement of anti-terrorism laws on the other. Anti-terrorism laws are very much essential to tackle with the terrorism but shall not override the rights of the individuals.

1.11 SCHEME OF THE STUDY

Chapter No 1- INTRODUCTION

The present study consists of six chapters. The first chapter introduces the importance of Human Rights on national and international level. The review of literature reveals that though attempt has been made to evaluate the anti-terrorism laws in India in context with human rights but the present work is entirely different. It explains the broad objectives of this study and also the research tools
that the author has employed in while doing this research. It also gives the background of the study, statements of hypothesis, rationale of the problem and the scope of the study.

**Chapter No 2 ORIGIN AND EVOLUTION OF HUMAN RIGHTS AND TERRORISM**

The second chapter entitled ‘Origin and Evolution of Human Rights’ deals with the evolution of human rights from ancient times, human rights from medieval times, human rights in 17 & 18th century and how concept of human rights widened in modern times. It enlists the factors responsible for recognition of human rights in 20th century. It also analyses the forces and events which necessitated the need for incorporation of fundamental rights in part III of the Indian Constitution by the constituent assembly.

**Chapter No 3 INTERNATIONAL PARAMETERS OF HUMAN RIGHTS VIEW OF ANTI-TERRORISM**

The third chapter entitled ‘International Parameters of Human Rights view of Anti-terrorism’ deals with the various provisions of U.N. charter concerning the recognition and protection of human rights. The chapter also covers international conventions and conferences on human rights and terrorism. An attempt has been made to tackle with the terrorism and protect the human rights. This chapter also covers the comparative study on anti-terrorism in U.S.A and U.K.

**Chapter No 4 HUMAN RIGHTS PERSPECTIVES OF HUMAN RIGHTS AND ANTI-TERRORISM LAW**

The fourth chapter entitled ‘Human Rights Perspective of Human Rights and Anti-Terrorism law’ covers definition of terrorism its scope and what are the lacunas in the definition of terrorism. This chapter also covers the terrorism in Indian context and what are the legislative measures available to curb the menace
of terrorism. This chapter also covers special laws available on terrorism and judicial approach towards terrorism. Finally, chapter concludes with problems and perspective with terrorism.

**Chapter No 5 A CRITICAL STUDY ON IMPLEMENTATION OF ANTI-TERRORISM LAWS AND ROLE OF JUDICIARY IN INDIA**

The fifth chapter entitled ‘A critical study on implementation of Anti-terrorism law in India’. An effort has been made to evaluate the anti-terrorist laws in India and also covers the legislation on terrorism and judicial approach towards the terrorism. The impact of these legislations on human rights is covered in the chapter. Because several human rights issues are raised by the human rights activists. In respect of this issues role of executive is also an important in the implementation of law relating to terrorism.

**Chapter No 6 CONCLUSION AND SUGGESTIONS**

The suggestions based on the study conducted by the researcher are discussed in this chapter. Some suggestions are also based on the comparative study of anti-terrorism laws with U.S. and U.K.