Chapter II

TERRORISM AND VIOLATION OF HUMAN RIGHTS IN INDIA
Human history tells us that man has always been in quest of peace, security and freedom and has struggled for the realization of this quest. As a result of his quest and struggle he attained some basic rights which are considered essential for his proper development and enjoyment of life. These rights which are recognised as human rights are available to one and all throughout the world. These rights are inherent, inalienable and universal. They are inherent in the sense that they are the birth rights of human beings and they enjoy them simply by virtue of their human existence; inalienable in the sense that man can neither give them up nor they can be taken away from him, universal in the sense that they are provided and available to one and all throughout the globe without discrimination. So human rights are rights which belong to a man simply because he is a man. Infact, they are what make a man human and his life birth living.

Though these rights are meant for all people and nations but in reality they vary from society to society. They differ from one culture to another, from one ideology to another and from one existential condition to another. They are culture specific. They are somewhat differently understood in different societies despite the fact that they are pursued universally. At national level, the response to the issues of human rights vary according to the kind of society, its stage of national development and the cultural environment. In India too the issue of human rights remains inextricably interwined with the problems of national integration, economic development and cultural and social changes. At international
level they aim at promoting and encouraging the respect for human rights without distinction as to race, sex, language or religion. These rights are guaranteed by majority of the countries to their citizens. India is also one among them. Its Constitution assures to every member of the society a fair deal. It not only recognises the basic human rights but ensures their protection and promotion. It also lays down the provisions to ensure that they are not violated except by due process of law. Despite the constitutional guarantees, what we see is the widespread violation of these rights throughout the globe. The violation of these rights is not uniform. Their violation in developing societies is much higher than the developed societies. There may be many causes of it. But one of the main cause is terrorism: both state and non-state. Terrorism, in fact, has emerged as the greatest single threat to human rights.

Terrorism in its all forms has become a serious threat to human rights. It is in this century, particularly after the Second World War that non-state terrorism emerged as the most endangering and disturbing phenomena at the global scene. It has become a serious threat to the security of nations. The essence of security of nation is that the state shall safeguard the lives of its inhabitants from any threat or situation which threatens their way of life in any way. States are under obligation to protect the rights of their inhabitants; to see that people in the society enjoy their rights freely without which the existence of state will become purposeless and meaningless. The three main and interlinked goals of human beings have been survival, sustenance and security. All these
three goals are under serious challenge and threat from both state and non-state terrorism.

Terrorism has jeopardised the security of many nations in various ways. Since the Second World War various political elites either have been removed or assassinated. Thousands of bombings, kidnappings, skyjakings and hostage taking have been carried out by terrorists which inflicted unbearable causalities in gross violation of generally accepted norms and standards of decency.

Normal and democratic existence of peoples has been under the direct threat of terrorism. The very mechanism through which states exercise their normal control has been challenged by it. It has created the climate of bitterness and hatred, poisoned the relations between different ethnic groups like Punjabi and Hindus, Kashmiri Muslims and Kashmiri Pandits in India. It has become a way of life inducting whole generation into the ethos of violence and suspicion rendering the task of conciliation and return to normal democratic life all the more difficult. It has paralysing effects on the administrative control of the state, demonstrating to the populace the inefficiency of the government to protect its people from the threats of terrorism. The maintenance of law and order, the prime responsibility of the governments becomes a serious problem in the face of it. It creates such a mess that it becomes really difficult to defend the governments and the rights of people while preserving popular support, willing compliance and obedience.
Terrorism wherever it erupts, attacks the links which bind together the political, economic and military organism of the nation. Whether it succeeds or not, the violence perpetrated by it creates a creeping sense of insecurity among the populace. In a relatively brief span of time, it degrades the quality of life of the inhabitants of nations. The enormous burden on the finances of the nations to meet the cost of security, causes damaging blow to the welfare and economic advancement of the society. It poses obstacles to the economic development of the society at large. It hampers the development process as such.

Terrorism is the negation of human rights. It contravence the accepted norms of behaviour. It indulges in violent activities in utter disregard of the human rights of the people. Its perpetrators, though deprive a large number of people of their basic freedoms and rights, themselves seek refuge in the philosophy of human rights. Terrorism has, infact, become a negation of life. Moreover, its brutalisation is on increase. In 1970's statistics revealed that about 80% of all attacks were directed against property and 20% directed against people. Now more than 50% attacks are directed against the people. But today the incidents like kidnapping, rape, killings and assassination take place everyday in the terrorist prone areas anywhere in the world.

Terrorism is destructive to the rights of man. It negates the democratic rights and fundamental freedom of people. In the last 50
years the intensity as well as extent of terrorism has increased tremendously largely as a result of the development of sophisticated military hardware and strategic technology. Cold War that persisted for more than four decades after the Second World War encouraged terrorist activities worldwide and made it more cruel and inhuman. Its strategy of killing ten that too the innocent people and terrorising ten thousand, created a sense of insecurity among the populace wherever it erupted.

With the technological advancement and easy availability of lethal weapons, terrorism is becoming more and more lethal. Majority of the terrorist groups possess weapons like automatic rifles, mortars, rocket launchers, portable shoulder fired missiles, powerful explosives etc. Not only this, there is frightening possibility of the terrorists groups seeking to create fear and panic by holding threats of nuclear explosion. The possibility that terrorist might obtain fissionable material, attack nuclear facilities, use radioactive material can not be ruled out completely as there are various instances when such attempts have been made by them. The attack by ETA on the Lemoniz nuclear reactor in northern Spain is one such example. According to a US report between March 1969 - March 1970 there were around 175 acts of violence or threat against nuclear facilities in the United States. The US Nuclear Emergency Search Team (N.E.S.T.) dealt with over 70 threats involving nuclear materials since its establishment in 1975. With this terrorism is becoming more diabolic and a much severe threat to human life and environment. Not only the use of radioactive material but even
mishandling of such material by terrorists can prove equally dangerous to human life.

In recent years the fear of terrorists using chemical or biological weapons has moved from thriller-novel fantasy to front page news. Chemical and biological weapons are easier to acquire than nuclear devices relatively little scientific training is required for their production, and they can be concocted in rather simple laboratories using readily available material. Precedents do exists for the production of home made arsenals of biological and chemical agents. In 1984, Members of Bhagwan Shree Rajneesh cult tried to infect an entire Oregon town with Salmonella bacteria. In 1987, a Christian supermacist group in Arkansas was found to have stockpiled 30 gallons of cynide, which it planned to use to poison municipal water supplies in the United States. In April 1991, the right-wing Patriot's Council of Minesota used caster beans to produce the biological agent ricin to use against the federal law enforcement officers. And in 1995, a member of an American neo-Nazi group obtained a lethal quantity of the virus that causes hubonic plague from a Maryland firm that provides biological agents for scientific research. The most serious of these attempts were thwarted by authorities, but Japanese law enforcement agencies were caught completely off guard in the most devastating terrorist use of chemical weapons to date; the 1995 Aum Shinrikyo attack on the Tokyo subway which killed 12 people and contaminated another 3,000 with Sarin gas. Though such acts have not been reported in India so far their
happening can not be ruled out. Chemical and biological weapons are
terror weapons, and they can brutally affect or hold hostage an entire
country. Terrorists can use these weapons to exterminate people that
they consider hostile to them, to their cause.

Security is the prime concern of every individual. It is the duty
of state to provide it to its citizens. In the face of terrorism it becomes
really problematic for governments to safeguard the life of its citizens.
Terrorist activities like assassination, killings, kidnapping, hostage-
taking, skyjackings and bombings seriously impair the fundamental rights
of people. They not only inflict physical harm to the body of the victims
but also cause severe psychological distress. Our experience in this
respect is horrible. The people of India have undergone a traumatic
experience many times since independence.

We experienced a number of violent situations starting with
Nagaland, Telengana, Mizoram, Naxalbari, Assam, Punjab, Gurkhaland,
Bodoland and Jammu & Kashmir. The main reason for violence in these
regions were/are discrimination, threat to ethnic and cultural identity,
economic backwardness etc. Whereas in Punjab and Kashmir valley,
religion was the main reason; ethnic and cultural identity were the main
plank in Nagaland and Mizoram. These factors did play a role in the
valley, Bodoland, Gurkhaland and Assam. On the other hand, economic
backwardness was the main reason for trouble in Naxalbari and
Telengana. There is no one reason, but a multiplicity of reasons mixed
together in a complicated manner for violence in any of the areas.
The violence by Nagas and Mizos raged for decades. The entire north-east region has been volatile since the beginning of Independence. The creation of small-states like Nagaland (in 1963), Manipur, Meghalaya and Tripura (all in 1972) and Arunachal Pradesh and Mizoram (both in 1986) was the outcome of the violence unleashed by various separatist, disintegrative organisations against the Indian state either for autonomy within the Indian union or independence from India. Few of these organisations continue to be active in Nagaland, Manipur, Tripura, Mizoram and Assam. The violence committed by separatist forces in the region besides resulting into the large scale killings of innocent peoples caused unlimited miseries to the hapless innocent and ordinary people. Its challenges to the security of state undermined the social and economic development of the region.

In Telengana, peasants movement led by Naxalites has been continuing its armed struggle against the state in Andhra Pradesh. In the year 1949 the movement killed 5,659 persons, burnt 347 houses and carried out 470 attacks on police personnel and armed forces. Peoples War Group (PWG) still continue to unleash a reign of terror in the region. Thousands of people suffered the violation of their rights at the hands of naxalites. Many of them were killed. And others suffered the agony of the naxalite violence.

The terrorist violence which was limited to few parts of India spread to its other parts like Punjab and Jammu & Kashmir in 1980s. The state of Punjab remained under the shadow of terrorist violence for more
than a decade. From Late 1970's to early 1990's. The violence which began in Kashmir valley in the late 1980's still looms large in the state. The case of terrorism and violation of human rights in the state of Punjab will be discussed in the Chapter IV of this study. Here we will discuss the violation of human rights due to terrorism in India. The purpose is not to ascertain the number of violation of human rights both at the hands of terrorists and the Indian state as this is beyond the purview of this study. The focus is to understand how the human rights are violated in the situation of violence committed by terrorists and the state as well. As terrorism is presently being faced Indian state of Jammu & Kashmir so the focus will be on the violation of rights there.

Kashmir has been place where both Muslims and Hindus have lived an exemplary life to tolerance and accommodation. It is ironical that same Kashmir has become the victim of terrorist violence. Terrorism has engulfed the whole province of Jammu and Kashmir. A large number of people suffered the violation of human rights there under the feet of terrorism in the state of Kashmir where more than 25 terrorists outfits are engaged in carrying out the acts of violence against the administration resulting into the violation of human rights of innocent people who are in majority of cases are no party to violence. Large number of Kashmiri Hindus have been made homeless. They are refugees in their own country. According to an official source there were reports of 4400 deaths between 1988 and 1991, this included 3000 civilians (nearly 70% of the total), 800 terrorists and 500 security personnel. In the year 1992 there was a sharp rise in the level of
terrorist violence with 4971 as compared to 3122 in 1991. About 70 percent attacks were targeted against the security forces which lost 177 personnel. The terrorists also indulged in robberies, dacoities and large-scale extortions from the the civilians.

Kashmiri terrorists were responsible for more than 15000 lives since 1990. People who have been killed in attacks have left behind their families to mourn their deaths. Most of the families have lost their male member and thus facing poverty, starvation and further harassment by the terrorists. The following table spells out the casualties of terrorist violence in Jammu and Kashmir during the period 1988 to 1993.

### Terrorist Violence in Kashmir, 1988-93

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<tbody>
<tr>
<td>Total Killed</td>
<td>31</td>
<td>92</td>
<td>1177</td>
<td>1393</td>
<td>1909</td>
<td>654</td>
<td>5256</td>
</tr>
<tr>
<td>SF Personnel</td>
<td>1</td>
<td>13</td>
<td>132</td>
<td>185</td>
<td>177</td>
<td>40</td>
<td>548</td>
</tr>
<tr>
<td>Govt. Officials</td>
<td>1</td>
<td>3</td>
<td>62</td>
<td>57</td>
<td>36</td>
<td>8</td>
<td>166</td>
</tr>
<tr>
<td>Top Pol. Leaders</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Politicians</td>
<td>-</td>
<td>3</td>
<td>24</td>
<td>10</td>
<td>4</td>
<td>7</td>
<td>48</td>
</tr>
<tr>
<td>Judiciary</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Pressman</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Hindus</td>
<td>-</td>
<td>6</td>
<td>177</td>
<td>45</td>
<td>67</td>
<td>22</td>
<td>317</td>
</tr>
<tr>
<td>Muslims</td>
<td>28</td>
<td>64</td>
<td>575</td>
<td>456</td>
<td>747</td>
<td>242</td>
<td>2112</td>
</tr>
<tr>
<td>Sikhs</td>
<td>-</td>
<td>-</td>
<td>6</td>
<td>12</td>
<td>10</td>
<td>-</td>
<td>28</td>
</tr>
<tr>
<td>Militants</td>
<td>1</td>
<td>-</td>
<td>183</td>
<td>614</td>
<td>873</td>
<td>320</td>
<td>1991</td>
</tr>
<tr>
<td>Others</td>
<td>-</td>
<td>16</td>
<td>12</td>
<td>35</td>
<td>13</td>
<td>76</td>
<td></td>
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</table>

Source: Government of India, Ministry of Home Affairs; The Times of India, November 7, 1993; *Figures for the year 1993 are incomplete.
Terrorism killed thousands in Kashmir. It made the entire state politically unstable, economically weaken. It brought the developmental activities at standstill, made the peoples life miserable, even created the conditions of starvation for some. Cruelties committed by the various terrorist organisations in Jammu and Kashmir made the lives of the people there utterly pathetic forcing many of them particularly of one community to migrate from the state. The communal harmony which was a unique feature of the state of Jammu and Kashmir was destroyed due to terrorist violence. Terrorism created the feeling of bitterness and hatred among the Muslims and the Hindus. It rendered the state administration ineffective. Though the democracy has returned there, terror and violence still looms large.

Terrorism during the last five decades have caused lot of violations of human rights in India. Statistics reveal that more citizens have been killed in terrorist violence in Punjab and Kashmir than the army men killed in three Indo-Pakistan wars. In 1947-48 war, Indian Army Army lost about 2500 soldiers including about 1000 personnel declared missing in action. Another 3261 soldiers were killed including 359 declared as missing in action in the highly intensive war of 1965. While 1525 army men died in the eastern front during the 1971 war. The total number of Indian soldiers killed in these wars stands about 7286. In contrast to this between 1981 to April 1993 as many as 21475 citizens including 8126 terrorists were killed in Punjab alone. In Kashmir these figures works out to 11656. Thus violence in the form of terrorism has
taken a toll of 33132, four times more than the number of soldiers
killed in the three India-Pakistan wars. The toll in north-eastern states
of India has also been very heavy. Not only that thousands became the
victim of death caused by terrorists violence, a large number of people
also suffered in other ways. The following table shows the destruction

Destruction by Terrorism

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<tbody>
<tr>
<td>Private Houses gutted</td>
<td>1145</td>
<td>989</td>
<td>996</td>
<td>997</td>
<td>501</td>
<td>4628</td>
</tr>
<tr>
<td>Shops gutted</td>
<td>575</td>
<td>174</td>
<td>107</td>
<td>544</td>
<td>133</td>
<td>1596</td>
</tr>
<tr>
<td>Bridges burnt</td>
<td>45</td>
<td>35</td>
<td>21</td>
<td>47</td>
<td>40</td>
<td>188</td>
</tr>
<tr>
<td>Schools burnt</td>
<td>138</td>
<td>29</td>
<td>39</td>
<td>71</td>
<td>106</td>
<td>383</td>
</tr>
<tr>
<td>Government Buildings burnt</td>
<td>718</td>
<td>161</td>
<td>105</td>
<td>308</td>
<td>157</td>
<td>1449</td>
</tr>
</tbody>
</table>

Source: B.P. Singh Sehgal, *Human Rights in India*, Deep & Deep
Publishers, New Delhi, p. 519.

Since independence India, faced grave threats from various
disintegrative forces in different parts of the country. It continued to
face violent attacks by armed opposition groups in Jammu and Kashmir,
throughout the northeastern states and in some other parts of the country
including Andhra Pradesh. Armed opposition groups/terrorist committed
grade human rights abuses including deliberate and arbitrary killings of
civilians, hostagetaking, assassinations and even rapes. The people
while suffered both mentally and physically at the hands of terrorist,
they also underwent trauma of torture, death and exploitation at the
hands of state in the process of fighting terrorism.
State terrorism is another form of violence which is also violative rights and freedoms of people. State commits acts of violence, not necessarily deliberately, violative of human rights in the process of defeating the terrorism. Moreover it is also employed to intimidate those who offer opposition to the policies of state. It is through the material apparatus, which every state maintains, like Police, Paramilitary Forces, Armed Forces, prison, courts etc. that state indulges into activities violative of basic freedoms and rights of peoples.

Opposition to Governments normally in non-democracies is dealt with severe measures, sometimes even resulting into the extermination and annihilation of individuals, groups or even an ethnic community. In order to achieve unity and territorial integrity states sometimes become genocidal by committing acts of violence with interest to destroy in whole or in part a national, ethnical, racial or religious group. Though genocide was declared by United Nations under the Genocide Convention in 1948 as prohibited, as something fundamentally inhuman against the very spirit of human rights, it continues to be available as an option in nation-state-building where a body of people seeking independence or demanding autonomy are overcome by use of annihilative force in complete disregard of their rights. In such a situation they are vulnerable to all kinds of atrocities including death. The recent examples of ethnic cleansing amounting to genocide are Bosnia-Hersegovina and Kosovo in Balkans.
Gross violations of human rights may occur in the efforts of government to bring about uniformity essential to any political community. Any kind of indifference of opinion, ideas or ideologies with that of the official one may be disturbing factor and threat to the stability and order. Such dissentients are eliminated in order to create fear amongst the people and prevent any other dissentient to emerge. Political dissent does not merely mean the opposition to the government policy but opposition to the state structure within which government policies are made. Allegiance is the pre-requisite of the law enforcement. Gross violations of human rights frequently occur as a way of pressurising dissentients to acknowledge allegiance to the existing state structure. There was violation of human rights at large in a peaceful, country like Nepal. In response to the peoples' opposition against government in 1996, it launched widespread repression leading to deaths due to indiscriminate shooting by police. Hundreds of people were arrested, detained and imprisoned, tortured, treated in humanely, and denied medical treatment. There were reports of deaths due to severe torture in police custody. Arrest was made on false charges, threat to law and order and destroying public property. The woman detainees were even the subject of rape and sexual harassment.13

Suppression of opposition in Nepal is not an isolated case. This is a common phenomenon. Opposition to regimes, particularly in nondemocracies, in most cases is severely dealt with by the administration. Demand for autonomy particularly for self-realization by
a group of people is always put down by violent means by the states. It is not so that the acts violative of human rights are committed by the states only when there is opposition to the regime or demand for self realization. Such acts are also committed by the states in the name of defeating dissent and protests in order to fulfil their primary obligation of maintenance of law and order. The state of India has committed such acts, through its organs meant for maintaining law and order in the society, which amounted to the violation of basic rights of its people. Its various apparatuses like Police and Army indulged into various such acts in order to defeat the violent movement ranging from autonomy to separatism in the states like Punjab, Jammu and Kashmir north-eastern states and in other parts as well. It does not mean that human rights of people are violated during the suppression of violent movement. They are violated even during peace times. It is necessary to analyse how the human rights are violated in India by the organs of political authority.

The institution of police was created with the purpose of providing security to people and maintaining law and order. Police as a sub-system in law enforcement have a variety of power and authority. But the record of police is quiet dark and full of allegations against the abuse of authority. They violate human rights of people in the name of maintenance of law and order in justification of suppressing extremist and terrorist activities. Day in and day out, we come across with news of blood-curdling incidents of police brutality and atrocities, alleged to have been committed, in utter disregard to humanitarian law and the
constitutional guarantees. A man from the police S.C. Singhvi writes that "the essence of Police violence lies in police use of physical force which is a manifestation (firstly) in the use of third degree methods in interrogation of accused persons or witnesses, (secondly) in fake encounter killings of decoits and terrorists, (thirdly) in the commission of rape of women by policemen on women in police custody, (fourthly) in the beating of citizens with whom, for any reason, a policeman, in his majesty, gets annoyed and (fifthly) in the use of more force than what is necessary in apprehending an accused, handling unruly crowds and dispersing unlawful assemblies." Police resorts to harassment, torture, wrongful confinement, beating, applying electric shocks, abusing and other brutalities which cause humiliation, physical injury and in extreme cases even death. P.D. Sharma writes that Indian police was started as an organ of terror and awe in the hands of an alien power. It has not yet been able to generate affection, respect and acceptability among the people who in general believe that members of police force are incompetent, cruel, normless and corrupt.

Torture by police is a widespread phenomenon in India despite the fact that though it is not prohibited by the constitution, but Indian laws contain adequate provisions for safeguarding human rights and are considered to be sufficient safeguards against police brutality and torture. Not only this, India has ratified the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, but Police does not care for these humanitarian principles. They
continue their inhuman practice completely disregarding the laws. There are number of methods adopted by police in order to extract confessions or intimidating of the people. These methods are as follows:16

- Rolling of a log of wood between the legs to rupture the muscles;
- Spraying of chilli powder in the eyes and nose, rectum and vagina of the victims;
- Stretching the legs apart to unbearable extent;
- Application of electric current to their bodies;
- Giving 'Lathi' blows on the feet;
- Hanging them upside down from a roof;
- Keeping the detainee without food and water;
- Pulling out of nails by screw drivers,
- Making the victim to lie on ice slabs, etc..

In the areas experiencing terrorism and militancy or any kind of anti-government movement, police extensively indulges into acts of torture and cruel treatment. Security forces also commit such acts. Under the Armed Forces (Special Powers) Act in the Northeast, security personnel are not even held accountable under civil law for their acts. Amnesty International, expressed concern over police intimidation and torture of witnesses in the state of Manipur.17 Torture is one method which is violative of human rights. This is frequently employed by both police and security forces, transgressing the limits of law.
Police also commits custodial death. Custodial deaths are usually the result of torture and violence to extract information or teaching the person a lesson. 1012 custodial deaths were reported in India in 1997-98. Almost every day an incident of custodial death is reported.

Death by encounter is also common phenomena. It implies an armed confrontation where fire is supposedly exchanged and in the ensuing shooting person is killed. Police and security forces undertake such measures to maintain peace and security in society.

State pursues political and extra judicial killing in order to control violence especially in terrorist prone states. On account of massive extra-judicial killings, fake encounters and custodial deaths in the states of Northeast, Punjab, Andhra Pradesh Human Rights Watch and Lawyers Committee for Human Rights in a report issued in 1989 characterized them as constituting a "pattern of extrajudicial killings". No security official were convicted of "encounter" killings or custodial death during 1989. Approximately hundreds of suspected government opponents were reportedly executed extrajudicially by police in Andhra Pradesh and Punjab. The police said all killings occurred during "encounters" with armed opponents or during escape attempts by prisoners but evidence suggested that some suspects were killed after arrest in "encounter" staged by the police. Andhra Civil Liberties Committee, a private group, accused the police and the Telegu Desam
Party for staging over 200 fake "encounters" with Naxalite to cover up deaths in police custody.\textsuperscript{21}

Police and security forces also get killed in exchange of fire. In armed clashes between police and terrorist innocent people also become victim. Police and security forces sometime in retaliation kill completely innocent people. In 1989 security forces during search operation in Kashmir shot dead four unarmed by standers apparently in retaliation for the killing of two policemen by suspected Kashmiri secessionists.\textsuperscript{22}

The various ways in which police misbehaves with the public inside and outside the police stations have been extensively dealt with by the National Police Commission. Some of the cases of misbehaviour reported by it are\textsuperscript{23}

- deliberate handcuffing of a person in police custody merely to humble him;

- non-release after arrest even in cases where bail can be granted. This is calculated to put the man in more trouble and mental agony;

- discretionary enforcement of law while dealing with public order situations with emphasis on severity and ruthlessness in regard to persons opposed to the ruling party.

Apart from what the Police Commission has enumerated in its report, a research study on the subject has added.\textsuperscript{24}

- asking the witnesses to wait at the police stations/premises for hours together - till the police decide to record their statements;
- detaining people in police custody without allowing them to enjoy the minimum comforts and at times without providing food and water;
- asking people to undress themselves and forcing them to remain in undergarments when they are not in look-ups;
- shouting at the people by calling bad names and at times using filthy language.
- asking people to remain in sitting position without chair or support.
- making false statements about the persons under custody to their family and friends waiting at the station premises etc.

There are other ways by which police harasses by making informal, illegal, and arbitrary arrest such incidents despite legal safeguards are not uncommon. Preventive detention is a measure most often employed by the police to establish law and order in society. In situations of threat to security of nation state carry out preventive detention, sometimes even by enacting special laws under which suspected persons can be detained for longer period of time. Police being a powerful executive organ of the government frequently steps out of the limits laid down by the law of the land. Any disobedience to their commands (whether lawful or unlawful) is normally not tolerated by the police and results in utter indecent expressions and hostile aggressive attitude. Police on account of power and authority create terror and deterrence in public. There has developed a feeling amongst people as
well as police officials that the latter has the statutory authority to use filthy language and abuse anyone, beat any body, to be hostile towards those who disobey their pseudo-authority, put them behind the bar, register false case, subject them to humiliation and torture and even sometimes to death. There also exists misconception amongst majority of police officials that society can not be protected/policed without violating the human rights of people. In their opinion human rights violations are a sine qua non for good and effective law and order management and prevention of crime. Human rights violations have been accepted as a part of the police sub-culture, both by people as well as police. They think and behave in an authoritarian way, encouraging transgression of their legal jurisdiction and disobedience of legal norms. Due to extra-legal stepping out of police it is increasingly being seen as a force rather than a service. The named adopted by police both in normal and emergently situations are grossly violative of rights and freedoms of people. Infact it seems that terrorist and police both come from the same basket.

Other than the Indian Police, Indian Army is, increasingly employed these days to maintain peace and security in disturbed and terrorist infected areas. Among the forces employed by India, it is the Indian Army which is seen as a responsible force, commanding respectability among the populace. Moreover Indian Army is also trained to respect the human rights of the people. The Charter of Social Army Training Programme (SATM) which aims at creating awareness of
human rights among the forces, urges soldiers to familiarise with the provisions related to citizen's Right and Duties. Despite this the news of army personnel being involved in excesses against the people, detaining the innocent villagers, committing rape, firing on unarmed personnel without warning, indulging in illegal search, are not uncommon.

The forms of human rights violations that generally takes place as a result of the action of security forces (including military + paramilitary forces) are:

1) Use of third degree methods during interrogation,
2) Deaths in custody of security forces
3) Disappearances and fake encounters by the security forces
4) Illegal and unauthorized searches and raids causing inconvenience to public
5) Unauthorised detentions
6) Atrocities against women and children including cases of rapes.24

Since independence, there have been thousands of occasions in India when the human rights of the people were violated by the security forces especially in disturbed areas like the whole of northeast, states of Jammu and Kashmir and Punjab. Thousands of political prisoners were held without changes or trial. Torture including rape and ill-treatment has been reported endemic throughout the country especially in terrorist infected areas. Thousands of people were reportedly extrajudicially executed by the security forces.26 The incidents of
violation of human rights continued to be committed by the Indian forces in northeastern part of India where many armed opposition group like United Liberation Front of Assam, Bado Liberation Front, Nationalist Council of Manipur are still engaged in carrying out sporadic armed attacks against the write of the administration which from the beginning of the independence never been efficient and effective. The administration continued to face persistence armed opposition from same groups seeking separation from Indian state.

The situation in the state of Jammu and Kashmir is not much different. Rather it has been more severe. The People's Union for Civil Liberties (PUCL) along with the Radical Human Association and the Manav Ekta Abhyan jointly visited Kashmir in 1990 to assess human rights situation there. It reported that there were no communal motives underlying massive killings. There were widespread discrimination against the Muslim masses specially at the hands of government. The non-Muslims who were in relief camps were getting their salaries plus compensations but Muslims employees, who were in the valley and could not attend their duties because of curfew, were not receiving any payment.27

About the atrocities committed by the security forces, PUCL team reported that most of the atrocities were conducted either deliberately or as an act of retaliation. Large number of excesses were brought to their notice. Some of them were heart breaking and entirely
inhuman in nature.\textsuperscript{28} The report also alleged that security forces looted the cash, valuables and destroyed the property, "we saw several persons lying in the houses with fresh injuries and were told that besides pealing them, their cash was also taken by the security forces".\textsuperscript{29} The team also focused its concern on the 'unparalleled curfew' imposed on the life of Kashmiri people. "For more than three and half months now, except for a break for few days, the Srinagar city and other major towns have been under curfew by and large with the result that the civil life is totally disrupted, shops hardly open, banks, schools, courts etc. remain closed and no mail is delivered nor are the government treasurers functioning. Traders can not transport the essential commodities and nor the medical services functioning due to curfew. The people in valley neither have the cash nor the opportunity to be able to purchase anything, mobility of people in valley is almost at a standstill.\textsuperscript{30}

Under the scenario of terrorism in Kashmir, gross violation of human rights at the hands of security forces has been reported. The incident of terror producing acts like kidnappings, rape, custodial deaths, extra-judicial killings were not uncommon. Tens of thousands were subjected to harassment and persecution. According to human rights activist many of their news are unreported. It is the alleged gross violation of human rights in Kashmir which has brought it into world view. As a result international human rights organisations such as Amnesty International, Asia Watch and Physicians for Human Rights, the World Press, human rights committees and many European countries paid attention to the human rights violation in Kashmir.
It has been more than a decade that terrorism in the state of Jammu and Kashmir continues to be perpetuated by various terrorist organisations. The armed forces engaged in fighting terrorism in the state commit such acts which violate the rights of people. Thousands of political prisoners were detained without charge or trial, tortured and subjected to different kinds of pain and mental distress. Thousands of people were reportedly extrajudicially executed by the members of the security forces over the years. Violation of human rights by security forces generally take place in the process of defeating down terrorism. As a result other than the terrorists many innocent people become the victims of violation of human rights.

No cause justifies the death of an innocent committed either by terrorists or the government fighting terrorism. Disregards to human rights in itself is the violation of human rights. Though it is sometimes said that terrorism is a fight for human rights. It violate the rights of others, generally innocent people. State in the process of fighting the terrorism violates the rights of its people. Terrorists and suspects becomes its worst sufferer. Though they themselves are not guided by ethical and moral considerations in respecting the human rights of others, their rights needs to be protected as the human rights are meant for one and all. Moreover the state is guarantor and protector of human rights.

In counter-terrorist operations the efforts and resources of government are diverted towards crises management. Security forces come to hold much higher power to their 'peace time' charter of duties.
The check and control on their functioning are not given due consideration as the entire focus is on the result, on the ends and not on the means. In such a scenario often the forces employ ruthless measures to get the desired result which are difficult to achieve otherwise. This makes them overlook the means employed. Moreover, the various draconian and black laws promulgated by the governments from time to time to meet out the situations of violence and terrorism help the agencies of the government to misuse them resulting into the violation of human rights. Not only this such laws themselves are against the very spirit of the human rights. Putting a man in prison and forgetting his personhood thereafter, depriving him of his personal liberty for an arbitrary period without any kind of monitoring by the laws, keeping him in continued custody unmindful of just, fair and reasonable procedure is completely against the spirit of rule of law. It is essential here to briefly discuss such laws to ascertain their nature which is violative of human rights.

Preventive detention is the most common both during peace and conflict. The purpose of preventive detention is not to punish a man for having done something but to intercept him before he does it to prevent him from doing it. Preventive Detention laws are against the basic principles of democracy. They are not found in any of the democratic countries of the world except India where they are an integral part of the Constitution. They were employed as a war-time measures in England. The Indian Constitution recognises their use even in normal times. Article 22 of the Indian Constitution provides an scheme under which
the preventive detention laws could be enacted by the Indian state. Since independence, Governments both at the state and union levels have passed various preventive detention laws that have exercised curbs on civil liberties. Though the purposes for which our Parliament can frame laws for preventive detention are, defence, foreign affairs and security of India. There are other areas as well like maintenance of public order and supply of essential commodities which leave a very large score for legislature and the executives to make laws which they think are essential. Preventive Detention laws are largely employed in three areas: (a) suppression of political dissent, (b) curbing trade union rights, (c) dealing with problems of crime, of the law and order. In the name of the security of the state various civil and political rights of the people are taken away through the instrument of preventive detention. In A.K. Gopalan V. State of Madras Justice Patanjali Shastri explained the necessity of the provision as: "The sinister looking feature, so strongly out of place in democratic constitution, which invests personal liberty with the sacrosanctity of a fundamental right and so incompatible with the promises of its preamble, is doubtless designed to prevent the abuse of freedom by anti-social and subversive elements which might impair the national welfare of the infant republic". Irrespective of what is being said or done to justify preventive detention, such laws are not only incompatible with the promises of the Preamble and contradictory to the provisions of Chapter III of the Constitution which deals with fundamental rights but also a breach of promise made during national
struggle to create a society based on Rule of Law. Preventive Detention Act of 1950 violates Articles 3 and 9 of Universal Declaration of Human Rights.\textsuperscript{32}

The Preventive Detention Act of 1950 which was meant to be a temporary measure was extended one way or other till 1969. After that it lapsed. But soon Maintenance of Internal Security Act (MISA) was enacted by Indian Parliament in 1971. This act was repealed by Government in 1978 but in less than two years. It was revived in the form of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980. Again in 1980 National Security Act (NSA) came into being providing for detention of persons responsible for communal and caste riots and other activities threatening the security of the country. Under National Security Act (NSA) a detainee may remain in jail without knowing the grounds of his detention and consequently without any remedy against the detention. An Amendment was made in the act. After the amendment the detainee was supposed undergo imprisonment for a period of about 6 months and even more. Thus, a person may remain in jail simply because executive believes him to be a threat to the security of the nation. This highlights the undemocratic and authoritative tendencies of the Act. Not only National Security Act (NSA), 1980 but other acts and ordinances such as Terrorist Affected Areas (Special Courts) Ordinance, 1976, Armed Forces Special Power Act, 1958, Terrorist and Disruptive Activities (Prevention) Act, 1985, etc. are against the spirit of the constitution which guarantees the basic freedom and rights to its people.
The provisions of Terrorist Affected Areas (Special Courts) Ordinance can be implemented in any of the terrorist affected areas of the country. The definition of terrorist as per section 2(h) of the Ordinance is too wide and declares any person a "terrorist" if he causes "disruption of services or means of communications essential to the communities", if he does so for "coercing or overawing the Government established by law". It implies that even those who are organising in protests and demonstration against the government may fall under the category of terrorist. Ordinance also makes drastic amendments in section 167 of Cr.P.C. curbing the fundamental rights to life and liberty guaranteed by the Constitution. Section 167 of Cr.P.C. provides that where a person is arrested for an alleged offence and investigation of the offence can not be completed within 24 hours, he should be produced before a judicial magistrate who may release him on bail or may order his continued detention and the prisoner would be remained either in judicial custody or in police custody. Besides, total period of custody shall not exceed 15 days unless the magistrate is satisfied for a longer custody. But the Ordinance provides that arrested person may be produced before an executive magistrate and not necessarily before a judicial magistrate. Executive magistrates are appointed by the government who function under the influence of the government. The ordinary period of investigation also extended from 15 days to 30 days and where adequate grounds are shown, to even one year. Consequently a person may remain in custody for a whole year without a charge sheet.
being filed against him in a court of law. It means detention without trial for one year.

Another very objectionable provision is that in an area, declared as "disturbed area", if a person is alleged to have committed an offence under 121, 121A or 122 of IPC and if the prosecution shows that the accused person was at the place where fire arms or explosives were used in an attack on the police or the security forces the accused shall be presumed to have committed the alleged offence unless he proves his innocence.

The statutes of Armed Forces Special Powers Act, 1958 earned much of criticism because of its undemocratic nature. The Act applies only to areas which the Government declares as disturbed. Section 3 gives power to the Central as well as State Governments to declare whole or any part of the state "to be a disturbed area", if either of them is of the opinion that "in such a disturbed or dangerous condition the use of armed forces in aid of the civil power is necessary. The Act facilitates the extensive use of armed forces over a long period and with vastly greater powers. There is no limit for the duration of the declaration of the 'disturbed area'. It will continue as long as the Government wants it. Section 4 defines the "Special powers of the armed forces" which are available to "any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces in the area. These powers are:
- destruction of arms dump, fortified position or shelter from which armed attacks are made or are likely to be made or used as a hide out.

- arrest without a warrant of one who has committed or about to commit a cognisable offence merely on the grounds of "reasonable suspicion", enter and search premises.

Section 4(a) of that Act reads "If he (officer) is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area, prohibiting the assembly of five or more persons or carrying of weapons or things capable of being used as weapons or of fire arms, ammunition or explosive substances". Thus giving them a licence to kill. Even a peaceful assembly, meeting or protest demonstration are covered within it. Nature of warning also a discretion of the officer. The provisions of the Act are clear violations of the fundamental rights as well as the provisions of Covenant on Civil and Political rights which has been signed by India.

The Terrorist and Disruptive Activities (Prevention) Act (TADA) was enacted in 1985 to deal with the problem of terrorism exclusively. Its tenure was initially 2 years but was extended gradually, in pieces, finally to end in 1995. Under this Act, any one who knowingly
facilitates the commission of any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment not less than three years which may be extended to a term of life and shall also be liable to fine. But the definition of "Disruptive activity" is too wide -- any action taken, whether by act or by speech or through any other media or in any other manner whatsoever,

i) which questions, disrupt or is intended to disrupt whether directly or indirectly, the sovereignty and territorial integrity of India,

ii) which is intended to bring about or supports any claim whether directly or indirectly, for the secession of any part of India from the union.

Under the law anybody protesting against the corrupt practices of a public servant, anybody who publishes any leaflet criticising the Government or anybody using democratic modes of protest such as Rasta Roko or Gherao may be dubbed as a terrorism. In effect, anybody can be picked up any time and tried by special Courts. There are hardly any safeguards for the accused. Once a person is dubbed as terrorist he a union leader, an agricultural labourer fighting for minimum wages or a social activist protesting against the Government action, what would follow be virtually legalised murder by the state.

Under section 20 of TADA a detainee may be held under police custody for upto sixty days in contradiction to the maximum period of 15 days when a detainee may be held in Police custody under the
ordinary law. A detainee was to be produced before an executive magistrate rather than a judicial magistrate. Former is a police/administrative official not a judicial magistrate. Further the persons may be detained upto one year without being given a trial. All the proceeding shall be conducted in camera within a prison with the identity of the witnesses being concealed from the defence council, depriving the detainee a right to a fair and public trial.

The risks of Police torture, which are otherwise quite common, were enhanced because of long period of detention. Act also reverses the presumption of innocence placing the burden on the accused to prove that he is not guilty, thus, negating the established rules of criminal trial. The courts will presume the guilt of accused if - arms or explosives or any other substances specified in section 3 were recovered from the possession of accused and there is a reason to believe that they were used in the commission of such offence; or finger prints of the accused were found at the site of the offence or an arms and vehicles used in offence; or confession made by co-accused that the accused had committed the offence; or confession on the part of accused. Besides accused can appeal only at the very end of trial and only to the Supreme Court and within 30 days instead of normal 60 days.

In the fight against terrorism, violation of human rights takes place when states enact draconian and enactment in human laws. Not only this security forces who are expected to safeguard rights of the
peoples get involved in the acts of human rights violation while fighting terrorism. In counter-terrorist operations it is not easily identifiable who is a terrorist, it leads to the incidental violation of the human rights. There are often situations when force is used by security forces, it may violate human rights and if they don't they may lose their lives. It is in the name of restoration of law and order that curtailment of civil liberties and fundamental rights takes place. It is said they are the consequence of restoration of law and order efforts of the state.

Fighting terrorism, however, does not mean that moral, ethical and legal restraints should not be the guiding principle of state agencies. Nor does it mean an utter disregard of the rights of innocent civilians in the name of counter-terrorist operations. Due care should be taken during anti-terrorist operation that the acts of the state agencies are in accordance with the rule of law as far as possible because it is the terrorists strategy to encourage the state to indulge in human rights violations of terrorist as well as innocent civilians so that they can gain the sympathy of the general masses as well as international community and can justify their actions.

The Government should not adopt the same strategy of terrorism as the terrorism has rarely been contained by counter-terrorism. When such strategy is adopted the state forces become at par with the terrorists. It also breeds contempt which alienates the people. In any constitutional polity, where every action has to be covered under some
provision of law, arbitrary and indiscriminate punitive action is not only improper but highly illegal. The stiff law and order measure many times crossing the parameters of rule of law may achieve temporary peace but in fact it may prove at times counter-productive. The ruthless suppression of terrorist outfit is needed and necessary but the counter-offensive by the state forces in an indiscriminate, obliterating the distinction between terrorist and an innocent civilian population is not only illegal but against the spirit of rule of law.

Sometimes to deal with grave and serious threats to its security and integrity, a state has to adopt special emergency measures curtailing the rights of the citizens. The rationale behind it is expressed in the maxim that the safety of the people is the highest law. The International Covenant on Civil and Political Rights records that "in times of public emergency which threatens the life of the nation and existence of which is officially proclaimed, state party to the present covenant may take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the grounds of race, religion, sex, language or social origin". However there are certain exceptions to this and state is not completely free from its obligations of protecting the non-derogable rights of the people : No one shall be subjected to torture or cruel treatment; No one shall be held in slavery, etc. which in toto tends to protect "Righ: to
Life" plus liberty of the individuals. India being signatory to the covenant is under an international obligation to meet the required international legal standard on the issue. What is important is that the ordinance should not be used against the democratic sections. It is equally important that any law framed for dealing with terrorist should give them a fair trial.

The state of India is increasingly taking recourse to repression for maintaining its security. The indiscriminate resort to ordinance-making power itself shows the scant regard for democratic norms and a tendency to go by the letter rather than the spirit of the Constitution. The accumulation of extra-ordinary powers makes one wonder whether in not too distant future anything will be left of the normal law of the land. This highlights the growing authoritarianism of Indian state.

What we see, infact, is the disregard for human rights on the part of state agencies involved in maintaining the law and order. The two Acts most frequently used against anti-government political activist and others adjudged to be terrorists are the National Security Act (NSA), 1980 and the Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. 1101 persons were arrested in 13 of the 25 states under the NSA in the first nine months of 1991 and a total of 26415 had been detained under TADA between 1988 and 1991. In case of latter, the highest figures were recorded in Gujrat (9569), Assam (7138), Punjab (6206), Andhra Pradesh (1919) and Jammu & Kashmir (688). These figures are probably an underestimate. For instance in Kashmir
Amnesty International quotes unofficial sources as estimating that between 10,000 and 15,000 were detained without trial in the first seven months of 1990.34

Since 1985 TADA was applied in different states of India. It has been applied in 19000 cases in Gujrat, 16000 cases in Punjuab, 10000 cases in Jammu & Kashmir. All over India the number of cases where TADA has been applied were 65000. The Criminal Law Amendment Still proposed in 1995 as a replacement to the lapsed Terrorist and Disruptive Activities (Prevention) Act (TADA) was not enacted and thousands remained in detention under this Act without charge or trial. In March 1996 the Government disclosed that more than 42,000 people were detained pending trial under the TADA. It revised the figure in December 1996 to 2000.35

A.G. Noorani in his article published in Frontline, April 1994 has said that it is a matter of shame that TADA has been declared a lawful Act by a Division Bench of the Supreme Court of India. According to him TADA is more draconian and more anti-people than the Rowlatt Bill of 1919 framed by the British imperialists. Justice Misra, Chairman of the National Human Rights Commission (NHRC), expressed his resentment and anger against the extensive misuse of TADA. According to him, human rights have been violated to a very great extent. Even in the states where there were no terrorist activities at all, TADA was used randomly and arbitrarily.36 Among the various draconian laws enacted in India from time to time, TADA was the most
subversive of the principles of liberty, and destructive of the elementary
right of the individuals.

Long and continuous history of such Laws has created an
impression that security of the state can not be ensured without
restricting fundamental freedoms. So states continue to violate the rights
of people despite being the protector and guarantor of these rights to
their people. The fact is that it is the people who suffer the violation
their rights because of terrorist violence, no matter who indulges into
the act of terrorism, use it either as a means of control or for achieving
the desired objectives. The case of India in this respect is highly
unpleasant where the thousands of people suffered the violation of their
rights both at the hands of terrorists and the Indian state.
REFERENCES


6. Ibid., p. 221.


26. See for details: *Reports of Amnesty International on India*.


31. See for details: *Amnesty International Reports*.


