CHAPTER-VII

ROLE OF NGO's - NATIONAL SECURITY AND HUMAN RIGHTS

The roots for the protection of human rights date back to Babylon, Assyria and are found in ‘Dharma’ of India jurisprudence. In ancient Greece and Rome the state ensured the protection and promotion of human rights – the earliest being the freedom of speech and the right to equality.

The present importance to human rights is from the experiences learnt during the Second World War. In 1941 President Roosevelt spoke of the four freedoms. It is this policy that has shaped human rights law. With the increase of hijackings, aerial incidents of holding the passengers hostage passengers, extortion, release of terrorists or political ideologies being espoused through media coverage, human rights law has remained of paramount interest to all governments. At the international level and regional level, the United Nations and regional agencies have brought about various Conventions, Protocols and Declarations to protect and promote human rights. In order to do so, the important issue of terrorism has to be effectively dealt with under the rule of law.
Violence and terrorism has also been brought to the attention of the government by NGO’s. The work of such organizations are vital to any democracy in the world. Because of the scourge of terrorism the world today is more sensitive to human suffering.

Amnesty International\(^1\), one of the most well known NGO’s reported that armed groups committed grave human rights abuses, including torture, hostage taking and killings of civilians. It criticized TADA provisions, as under this stringent legal regime other safeguards normally available under ordinary criminal law would be suspended. The preventive detention measures which the state could use against suspected militants and terrorists, ushered in a strict regime, which could give the Government and the law enforcement agencies unfettered powers.

In many parts of the country eg. Jammu and Kashmir and Assam, due to heightened militancy, cross-border terrorism, and insurgency, the armed forces have been called upon to assist in law and order administration. Under the provisions of the Armed Forces (Special Powers) Act, the military and security forces could shoot and kill in such situations. These excesses were mentioned in the Report. In the name of

\(^1\) Amnesty International Report 1999. Recently the International Red Cross reported on the torture and degrading treatment given to Iraqis in the Abu Gharib prison bag.
preserving peace the security forces, can kill and get away with impunity. Further violations of human rights took place in Punjab with extra judicial killings and fake encounters. Several human rights activists were arrested allegedly for their involvement with the Punjab Committee for Coordination ofDisappearances. Many reports were also received about extra judicial killings by the Mumbai Police. The State government addressing security concerns, considered at one time the death penalty for the crime of carrying explosives! Thus was because of the tension created by violence and terror.

For many years armed groups took hostages and killed innocent civilians in their fight against the Government. They also attacked or raised religious structures to the ground. Further terror and fear spread in society with militants using fundamentalism to get their message across, with bomb blasts and other forms of violence.

On the international scene in the 1970's military regimes overthrew their civilian Governments in many Latin American countries. In the name of national security these regimes waged wars with their own citizens.

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2 Assam and Manipur as well.
3 Also in the 1998 Reports.
4 Assam and Tripura, Manipur.
Abduction and extra-judicial killings were not unknown. Many political activists sought refuge in other countries. They mobilized support and appealed to the U.N. to put an end to the military regimes in their countries. NGO’s\(^5\) reported on the situation in many countries and U.N. Human Rights Commission, focused attention on such matters. The issue of Enforced or Involuntary Disappearances was taken up by NGO’s.

As regards extra-judicial, summary or arbitrary executions, a Special Rapporteur was appointed to look into specific complaints against Governments. In some cases on site visits have also been made to assess the situation first hand eg. in Columbia.

The Association of Parents of Disappeared Persons (APDP) in Srinagar have stated that in the last fifteen years 8,000 to 10,000 persons have been the subject of Enforced or Involuntary Disappearances\(^6\). This is said to be mainly due to the ongoing operations against terrorism and militancy in the valley. Under the guise of combating terrorism “disappearances” still continue. The Association claimed that an overwhelming number of people have disappeared affecting the lives of

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\(^5\) Res. 1296. ECOSOC, 1968 is the basis of all NGO Consultation with the U.N.

family and relatives alike. Many of them were earning members of the family.

This is against the provisions of the U.N. Declaration on the "Protection of All Persons from Enforced Disappearance". Further the law enforcement officials, with Special Powers conferred on them by the Armed Forces (Special Powers) Act, have committed serious human rights violations in their efforts against militancy.

In fact, many Governments all over the world, in recent times, have preferred the use of force, to combat terrorism that is sweeping across international borders. It has been noticed that "Governments across the regions equate the movement for the right to self determination with so called terrorist activities."

A) U.N. HUMAN RIGHTS

It is surprising to note that while the U.N. Human Rights Committee in July 2003 condemned the disproportionate force used by Israel against the Palestinians, it did not mention or denounce the killing of Israeli civilians by the Palestinians who use suicide bombers to carry out attacks.

7 Against the Geneva Conventions and other International Human Rights Instruments.
8 The Kashmir Times, April 3, 2004
9 CHR Res at 59th Session (2003/6) the 60th Session also did not make mentioned of the same. This is in total disregard to the Geneva Conventions.
Serious human rights violations have also taken place in Iraq by the forces of the occupying powers.

Human Rights Watch reported about excessive use of force by the troops resulting in harm to the civilian population. It went further to state that inadequate training for law enforcement tasks of military occupation was the main reason. U.S. troops not only fired and killed civilians, but also had taken hostages and ill-treated prisoners. In such situations, according to many the actions of the Government amount to State terrorism and nothing else.

The U.N. General Assembly expressed concern over enforced disappearances persistently occurring in various countries all over the world. Persons were arrested, detained or abducted by law enforcement agencies and terrorists alike. Enforced or Involuntary Disappearances was discussed in December 1978\textsuperscript{10} by the General Assembly. The provisions of the Geneva Conventions of 1949\textsuperscript{11} also mention about protection for such victims. Other instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights mention

\textsuperscript{10} UNGA Res. 33/173
\textsuperscript{11} Protection afforded to victims in armed conflicts; prisoners.

Deccan Herald, Bangalore, 9.5.04
to right to liberty and security of the person. The General Assembly by a resolution focused the attention of the world on the prohibition of enforced disappearances. In 1992 it adopted the Declaration on the Protection of All Persons from Enforced Disappearances.

Enforced disappearance is an offence to human dignity and is a violation of human rights provisions, as mentioned in the Charter and UDHR. It constitutes a grave threat to life also.

States were called upon to take all effective means to eradicate this at the national and regional level. States were to accept responsibility in such cases and prosecute the perpetrators under criminal law. All efforts must be made to bring them back alive. This crime is one that cannot be justified under any circumstances. A prompt judicial remedy must be provided. Adequate investigation of such enforced or involuntary disappearances must be thoroughly investigated.

The importance of this Declaration lies in the fact that the General Assembly has made it obligatory for all members to adopt the provisions.

\[12\] Under Art 55 of the Charter States are expected to promote respect for human rights and fundamental freedoms.
The Economic and Social Council Res. 1989 regarding Principles on
the Effective Prevention and Investigation of Extra Legal Arbitrary and
Summary Executions\textsuperscript{13}; had recommended that the member States of the
U.N. should prohibit by law all such extra legal and summary executions.
Such execution should be considered a crime under national laws.
Emergency situations within the country should not be used as a
justification for the commission of such offences. The situations envisaged
are – war, internal armed conflict etc.

Governments must exert control over all officials who carry fire
arms and use force under the law. Effective protection to citizens must be
provided under judicial or other means. Further States need not extradite
persons where there are grounds to believe that the person may become a
victim of such crimes.

\textbf{B) LAW ENFORCEMENT – HUMAN RIGHTS}

The law enforcement authorities are expected to deal with all such
complaints and investigate the same. In case of death, all procedures
normally followed by investigative agencies must be protected from
violence or threats of violence. All such persons who participated in such

\textsuperscript{13} ESC Res. 1989/65 Endorsed by the G.A. in Res. 44/162 of 1989.
extra legal or summary executions need to be dealt with strictly under the law. The families and victims should be entitled to compensation.

All over the World the judiciary has played an important role in the protection of human rights. However, “in a plural society under a democratic frame work regime, sustained efforts of the Government and NGO’s at different levels”\textsuperscript{14} is a necessity besides, a vigilant media is required to safeguard the rights of civil society.

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, dealt with the Basic Principles on the Independence of the Judiciary\textsuperscript{15}. At Milan certain basic principles were formulated as guidelines for States in order to secure the independence of the judiciary Governments were urged to incorporate the provisions into their national legislation.

Provisions were framed regarding independence and impartiality of the Judiciary, conditions, service, professional secrecy, and immunity; discipline suspension and removal were detailed for Governments to provide and to follow, Guidelines on the Role of Prosecutors was also

\textsuperscript{15} UN DOC A/CONF 121/22 Rev 1 1985 at Milan.
discussed at the international level. According to the guidelines, prosecutors play a crucial role in the administration of justice. They play an important role in contributing to a fair and equitable criminal justice and the effective protection of citizens against crime. Provisions detailed their status and role in the criminal justice system.

At the international level, the General Assembly of the U.N. took into account a number of issues when dealing with law enforcement and combating terrorism. The victims of crime have been the sufferers throughout. In 1985 the General Assembly adopted a Declaration of Basic Principles for Justice for Victims of Crime and Abuse of Power. In order to help such victims (of terrorism whether State Sponsored or otherwise) judicial and administrative mechanisms should be established by member States. Proper assistance should be provided through the legal process. When the head or earning member of the family is killed or sustains bodily injury the family becomes financially impoverished. When government officials disregard national legislation then the Government should pay compensation. Health and other social services must be made available.

16 UN DOC A/CONF 144/28/Rev 1 1990 at Havana.
States were called upon to incorporate such provisions into their legislation or review any such existing legislation.

In India the NHRC and other organizations have rendered great service to such victims. The Malimath Committee Report\textsuperscript{18} has suggested that the victims be compensated for their loss, economic and otherwise. In keeping with the International obligations India enacted the Human Rights Act in 1993. The United Nations in order to control and combat terrorism, took into consideration other activities that contribute to terrorism. A large number of terrorist acts are committed by mercenaries. These persons are paid to commit acts of terror and also indulge in killings, extortion and abduction.

They are also known as Soldiers of fortune. Their activities are known all over the World. The U.N. has condemned such ‘Soldiers’ and called their acts criminal. They are highly mobile, well trained and highly paid. No State wishes to accept them as their nationals. Further, their services are used in under cover operations. In some states they have established training camps. They recruit, train and dispatch recruits where their services are required. They have no political leanings or religious

\textsuperscript{18} Witness protection has also been suggested to enable the enforcement agencies to prosecute offenders – terrorists and militants in particular.
backing. They are funded by States or powerful cartels. Their organizations are transnational.

C) GENERAL ASSEMBLY – PROTECTION OF HUMAN RIGHTS

In 1980 the General Assembly created a Committee to submit a draft declaration so that their activities could be controlled. The Convention Against the Recruitment, Use Financing and Training of Mercenaries was brought about. Members States were called upon to prohibit such schools of training from functioning on their territory. They were asked to refrain from organizing or instigating such acts, in other countries. It was laid down that it was not in the interest of the international community to assist or participate in terrorist acts in other States.

At one time a large number of mercenaries were found in Africa. Today they are found in many parts of the world. They also sell guns and ammunition to militants and ultras.

The impact of terrorism on society poses serious consequences to the State. Most governments respond with serious measures and countermeasures. It is expected that to some extent there will be some repressions
and violations of human rights but they are justified in the interests of society. Terrorism must be curbed and steps taken to combat it. In this context the role of the State and the rule of law are required to play an important part.

Besides, the lack of a precise legal definition still eludes the world body. States are divided on the scope of terrorism. According to the Western view international terrorism should not include governmental acts, because then State sponsored terrorism will come to the forefront. This would open the "Pandora's box" regarding the role of governments in financing or aiding various militant outfits to carry out terrorist activities in other countries. The developing and non-aligned countries subscribe to the view that governmental acts should be included as well. When governments support other regimes or groups, such activities beyond their borders affect international relations. This would pose serious consequences ultimately for international peace and security. Acts of terrorism, whether State sponsored or otherwise are against international conventions and the rule of law.
In India, Chinese guns have been recovered from ULFA activists. Many groups operating in Jammu and Kashmir and in Punjab are said to be funded by the ISI-Pakistan.²⁰

Further training camps are close to the border and LOC where young men are recruited and trained. This is clearly evident that neighbouring countries are involved in dangerous plans against India. The weakness of enforcing international law, has resulted in such acts of terrorism being committed by States²¹ themselves.

D) HUMAN RIGHTS – GLOBAL CONCEPT:

In 1941, during the II World War, President Roosevelt spoke of the four freedoms, one of which was freedom from fear. This has been important, when enforcing provisions relating to human rights all over the world, especially in the context of terrorism. One of the main characteristics of terrorism is that it creates fear in the minds of the civilian population. A resolution on Human Rights and Terrorism was adopted by the General

Assembly,22 states that "terrorism creates an environment that destroys the freedom from fear of the people". It went further to State that terrorism constituted gross violation of human rights perpetrated by terrorist groups”.

In this context the issue that confronts most Governments today is whether terrorists should be provided with human rights. The modern view is that all should enjoy human rights23. Whereas, according to the traditional view terrorism is terrorism and all those who pursue it must be punished for human rights violations. Therefore they cease to posses human rights as they have violated the human rights of others.

STATE OF JAMMU AND KASHMIR V. THE HIGH COURT BAR ASSOCIATION AND OTHERS24

In case the Supreme Court gave a judgement upholding human rights of citizens and terrorists who were held at the Hazratbal Shrine in Jammu and Kashmir. The militants had taken over the shrine while the forces had surrounded it and cut off water, electricity and food supplies to the Shrine in order to force the militants to surrender. Innocent civilians

22 In 1993.
23 Act 1, U.D.H.R.
24 (1994) SCC (3) 708
   This was also the view of former Prime Minister Margaret Thatcher when speaking of the IRA and Bobby Sands.
were detained by militants in the Hazratbal Shrine. This matter was discussed. The Jammu and Kashmir Bar Association filed a petition under Article 226 of the Constitution before the Division Bench of the High Court. By an order Mr. Z.A. Shah, Advocate and Counsel for the Petitioner was permitted to enter the Hazratbal Shrine and report on matters there. The State objected to Mr. Z.A. Shah and went in an S.L.P. before the Supreme Court. It was agreed that Red Cross Personnel be allowed to enter—not exceeding five in number. Later the State moved the High Court and four Medical Officers were appointed to enter the Shrine and report all matters enumerated in the order of the High Court.

The Four medical officers later submitted a report stating that there were over eighty persons in the Hazratbal Shrine. There was no food, water and electricity as the military forces had surrounded the Shrine in order to flush out the terrorists who had taken it over. There was also no sanitary arrangements. The sick were in need of emergency treatment and medical aid. On the basis of the report, the High Court passed another order, which the State appealed against by way of the SLP.

The authorities were asked not to put any impediments in the supply of food to the inmates. This should be checked so that no extraneous
material was allowed inside the Shrine. Further the State was directed to supply water and electricity to the eighty inmates and treatment for the sick. A doctor was directed to visit the Shrine once a day to provide medical aid.

The innocent hostages inside the Shrine should not be made to suffer on account of forcible detention by the militants. However the State was required to rescue the hostages. If they were provided with all amenities it would not be possible to rescue the hostages. This was the view of the authorities and the administration.

Accordingly the High Court directed that packets of food were to be prepared and served to small groups of five. They were required to eat the food there and not carry it inside. The minimum calorific value of the food should be not less than 1200 calories together with the supply of drinking water in small plastic bottles.

With regard to electricity they left it to the authorities to provide floodlights or candles because there were twenty-one sick persons. Other measures would also be taken in order to prevent the spread of any disease.

Later, a political solution was found. There is no parallel example to quote in judicial history, where the judiciary has upheld human rights of
Many governments do not expressly recognize human rights of terrorists

Britain does not recognize such rights and treats such persons as common criminals. Many have been subjected to degrading treatment in jail during times of emergency.\(^{25}\)

Punishment under existing laws must be meted out to terrorists for such acts that destroy the peace of society and lead to the senseless killing of innocent citizens. Under International law the accused must be tried or extradited – under the Principle of "aut dedere aut judicare".

In some countries non-violent acts are classified as terrorism. In many countries, governments use excessive measures when dealing with such offenders. Many languish in jails without trial or legal counsel. Such countries have not ratified UN Conventions and no action can be initiated against them for gross human rights violations. Many do not permit international NGO's to operate in their territory. The UN Secretary General Kofi Annan in his address to the Security Council stated that there

\(^{25}\) Lawless V Ireland ECHR Ser A Vol 3 1961 Bobby Sands died agitating for rights in jail. He asked to be treated as a political prisoner
should be “no trade off between effective action against terrorism and protection of human rights”.

E) ROLE OF N.G.O’s – HUMAN RIGHTS:

Many NGO’s in India have maintained a strict watch over human rights issues and its violations thereof. Human rights and civil liberties have played an important role in India. However sustained action\(^2\) for the human rights movement came after the 1970’s when NGO’s took up of human rights issues with the government. These groups basically emerged from three different areas.

1) One set of organizations emerged from the Naxalite movement.

2) The second set emerged from opposition to government policies – which took up violations against civil liberties eg. PUCL.

3) The third set of organizations emerged from ethnic struggles eg. Punjab Human Rights Organisation etc.

Emergency and preventive detention brought human rights issues to the forefront. Most of them are associated with civil and political rights. The media has played an important role when dealing with such issues.

\(^2\) The Poet Rabindranath Tagore became the first President of the Indian Civil Liberties Union in the early decades of the last century.
In the wake of militancy in West Bengal and Andhra Pradesh, the State responded with pressure and repressions. In 1972 the Association for the Protection of Democratic Rights was formed in Calcutta. In 1974 the Andhra Pradesh Civil Liberties Committee was formed with progressive writers like Cherabandu Raju and others being involved.

The issue of human rights and NGO’s has "gained unprecedented importance in global politics". The civil liberties or democratic rights movement, till some time ago depended solely on the work of non-governmental organizations. Violence and terrorist activities are some of the issues that the groups deal with. Many of these groups are against State violence. Some condemn violence and terrorism in strong terms, and have voiced the opinion that the State must not choose violent means to quell the violence or violate its own laws.

The role of NGO’s cannot be under estimated at the international, regional or national level. Their investigations and reports provide useful information about the matter at hand, in various parts of the World.

Some NGOs have questioned the very competence of the legislature in enacting anti-terrorist legislation like POTA. In a landmark judgement, recently, the Supreme Court opined that the "terrorist threat that we are facing is now on an unprecedented global scale", hence a challenge to the sovereignty and integrity of the nation. It followed that the Parliament was empowered under list-1\(^{28}\) to enact laws to prevent and punish terrorism in order to safeguard national security and sovereignty. The complex phenomenon of terrorism is a threat and challenge to civilized society. Acts of terrorism cannot be equated with breaches of law and order or public order, it needs well established legal principles to deter such acts. Terrorist strikes are designed to attack democratic institutions (e.g. Parliament); symbols of national pride (strategic installations or places of worship) so as to injure religious sentiments. The feeling of fear and insecurity could force people to turn against the government, thus destabilising the nation.

Terrorist strikes pose a challenge to our sovereignty and tear asunder the secular fabric. It would demoralize, the security forces, to thwart the economic progress and development and so on. This cannot be equated with

\(^{28}\) AIR 2004 SC 456
a usual law and order problem within a State. On the other hand, it is inter-
state, inter-national or cross-border in character. Fight against the overt and
covert acts of terrorism is not a regular criminal justice endeavour. Rather
it is defence of our nation and its citizens. It is a challenge to the whole
nation and invisible force of Indian ness that binds this great nation
together. Therefore, terrorism is a new challenge for law enforcement by
indulging in terrorist activities organized groups or individuals, trained,
inspired and supported by fundamentalists and anti-Indian elements were
trying to destabilize the country. This new breed of menace was hitherto
unheard of. Terrorism is definitely a criminal act but it is much more than
mere criminality. Today, the government is charged with the duty of
protecting the unity, integrity, secularism and sovereignty of India from
terrorists, both from outside and within borders. To face terrorism we need
new approaches, techniques, weapons, expertise and of course new laws.
In the above said circumstances Parliament felt that a new anti-terrorism
law is necessary for a better future. This Parliamentary resolve is
epitomized in POTA.

The terrorist threat that we are facing is now on an unprecedented
global scale. Terrorism has become a global threat with global effects. It
has become a challenge to the whole community of civilized nations,
Terrorist activities in one country may take on a transnational character, carrying out attacks across one border, receiving funding from private parties or a government across another, and procuring arms from multiple sources. Terrorism in a single country can readily become a threat to regional peace and security owing to its spillover effects. It is therefore difficult in the present context to draw sharp distinction between domestic and international terrorism.\(^{29}\)

Therefore, the anti-terrorism laws should be capable of dissuading individuals or groups from escorting to terrorism, denying the opportunities for the commission of acts of terrorism by creating inhospitable environments for terrorism and also for leading the struggle against terrorism.

**NAGA PEOPLE’S MOVEMENT OF HUMAN RIGHTS V. UNION OF INDIA**

Powers under Armed Forces (Special Powers) Act 1958 should be exercised by Officers of Armed Forces with minimal force required for effective action against person/s acting in contravention of prohibitory order. The armed forces shall strictly follow instructions contained in list

\(^{2}\) Ibid.
of Do's Don't's issued by army authorities. Mis-use or abuse or powers under the Act should be thoroughly inquired into.

The grievance of the petitioners were that there has been wide spread abuse of powers conferred under the Central Act by personnel of the armed forces when such forces were deployed in the areas declared as disturbed areas under the Central Act. In the Writ Petitions references were made to a number of instances. Mrs. Indira Jaisingh also placed reports of the Commission of Inquiry headed by Shri. Justice D.M. Sen, a retired Judge of Gauhati High Court in respect of some of those instances. On behalf of the Union of India, it was submitted that an inquiry was made whenever any complaint about misuse of powers conferred under the Central Act is received and that on enquiry most of the complaints found false and that whenever it is found that there is substance in the complaint, suitable action has been taken against the person concerned under the provisions of the Army Act.

It was held that people may feel assured that there is an effective check against misuse or abuse of powers by the members of the Armed forces, it is necessary that a complaint containing allegations about mis-use or abuse of powers conferred under the Central Act should be thoroughly inquired into and if it is found that there is substance in the allegation, the
victim should be suitably compensated by the State and the requisite sanction under section 6 of the Central Act should be granted for institution of prosecution and or a civil suit or other proceedings against the persons responsible for such violation.

PEOPLE’S UNION FOR CIVIL LIBERTIES V. UNION OF INDIA

Article 21 deals with the Right to Life. The Police took away two persons, alleged terrorists and killed them. Defence of Sovereign immunity was stated. It was held that the same did not apply to the case in question. Compensation of Rs.1,00,000/- awarded to family of each deceased. Provisions of International Covenant on Civil and Political Rights was held as elucidating and effectuating fundamental rights. They are enforceable in the India context.

PUCL filed this Writ Petition under Article 32 for issue of a Write of Mandamus or other appropriate writ. There was an order to (1) institute a judicial inquiry into the false encounter by Imphal Police on April 3rd, 1991 in which two persons of Lunthilian Village were killed and (2) to direct appropriate action to be taken against the erring police officials and (3) to award compensation to the members of the family of the deceased.

AIR 1997 SC 1203

Recently Manorama Devi was allegedly killed by the Army. There is still unrest in the State.
According to the petitioners, there was no encounter but it was a case where certain villagers were caught by the police during night of April 3, 1991 taken in truck to a distant place and two of them killed there. It is alleged that three other persons who were also caught and taken away along with the two deceased persons were kept in police custody for a number of days. It was further submitted that Hamar People's Convention is a political party active in Mizoram. It is not an unlawful organization. Even according to the news released by the said organization it was a case of deliberate killing.

It was held that “It is now well accepted proposition in most of such cases, that monetary or pecuniary compensation is appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of fundamental right of life of a citizen by the public servants and the state is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer”.

309
We are of the opinion that award of compensation of Rs. 1 lakh to the families of each deceased would be appropriate and just, and the same shall be given within two months.

The PUCL which filed the Writ Petition and pursued it all these years shall be entitled to its cost of Rs. 10,000/-.

D.K. BASU V. STATE OF WEST BENGAL

The Executive Chairman, Legal Aid Services, West Bengal, a non-political organization registered under the Societies Registration Act, on 26th August 1986, addressed a letter to the Chief Justice of India drawing his attention to a certain news items published in The Telegraph dated 20, 21 & 22 of July 1986 and in the Statesman & Indian Express dated 17th August 1986, regarding death in police lock-ups and custody. The Executive Chairman after reproducing the news items submitted that it was imperative to examine the issue in depth and to develop "custody jurisprudence" and formulate modalities for awarding compensation to the victim and or family members of the victim for atrocities and death caused in police custody and to provide accountability for the officers concerned. It was also stated in the letter that efforts are often made to hush up the

31 AIR 1997 SC 610
matter of lock up deaths and thus the crime goes unpunished and flourishes. It was requested that the letter along with the news items be treated as a writ petition under PIL category. It was held under Article 21, 22 (1) of Constitution of India, custodial death or any form of torture or cruel, inhuman or degrading treatment fall within the ambit of Article 21, whether it occurs during investigation, interrogation or otherwise. The Supreme Court issued guidelines to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures.

The torture to an arrestee constitutes infringement of fundamental rights of citizens. Citizens are entitled to receive compensation from the State. The quantum of compensation would depend on peculiar facts of each case. It is custodial jurisprudence that victims should be entitled for compensation.

Due to the sharp rise in custodial violence Parliament has to amend statutory provisions. Amendment of relevant provisions of law to protect the interests of arrested persons in cases relating to economic offences, offences under Essential Commodities Act, Excise and Customs Act, FERA etc. is a genuine need.
Protection of fundamental rights and human rights of criminals vis-
a-vis duties of Police should have a balanced approach to meet the ends of justice.

PEOPLE'S UNION FOR DEMOCRATIC RIGHTS V. POLICE COMMISSIONER, DELHI

This case dealt with Police atrocities and compensation to victims. Police officers took the petitioners to the police station for doing some work without paying labour charges. On demand they were beaten and one of them succumbed to injuries. A female also was stripped of her clothes and thrashed in police the station. Directions were made for payment of compensation to victims and family of the deceased. This amount was to be recovered out of the salaries of guilty officers after giving them opportunity to showcause.

It was held that it was an unfortunate case where the police collected poor people and took them to the Police Station for doing some work. They were asked to work without labour charges. On demand they were beaten and it appears that one of them Ram Swaroop Succumbed to the injuries and the body has also been disposed of.

32 1989 4 SCC 730
Under the above circumstances it was directed that the family of Ram Swaroop who was dead would be paid Rs.50,000/- as compensation, which would be invested in some scheme under Life Insurance Corporation, so that the destitute family may get some amount monthly and the money also be kept secured.

It was directed that after investigation and inquiry officers who are found guilty, the amount paid as compensation or part thereof may be recovered from these persons out of their salaries after giving them opportunity to showcase.

This order would not prevent any lawful action for compensation. But in case where some compensation is ordered by a competent court, this will be given credit to.

SAHELI V. COMMISSIONER OF POLICE, DELHI AT SAHELI – A WOMEN’S RESOURCES CENTRE THROUGH Ms. NALINI BHANOSt.33

This case dealt with police atrocities. The liability of State for death of a nine year old child because of beating and assault by police was discussed. The State Government was directed to pay Rs.75,000/- as compensation to the mother of the victim.

33 AIR 1990 SC 5 (3)
The death was due to police atrocities. The state is liable to pay compensation. Police atrocities in case of death, the State is liable to pay compensation. The State is liable for tortious acts of its employees. Police atrocities incurs liability of the State to pay compensation.

The Writ Petitions were filed by a Women’s and Civil Rights organization known as ‘Saheli’ a Women’s Resource Centre on behalf of two women. Maya Devi & Kamalesh Kumari who were residing in one room and were severally beaten up by the alleged landlord in collusion with the SHO of Anand Prabat Police Station.

Following the decision of STATE OF RAJASTHAN V. VIDHYAWATI AND PUDR\textsuperscript{34} V. DELHI, COMMISSIONER OF POLICE\textsuperscript{35}, the Court was of the opinion that it was just and proper to direct the Delhi Administration to pay compensation to Kamalesh Kumari, Mother of deceased, Naresh a sum of Rs.75,000/-. The Delhi administration may taken appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found responsible, if suitable action is taken. As the police officers are not parties before us, we state that any observation made by us in justification of this Order shall not have any

\textsuperscript{34} AIR 1962 SC 933
\textsuperscript{35} Ibid at 31
bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of Naresh”.

PEOPLE’S UNION FOR DEMOCRATIC RIGHTS V. STATE OF BIHAR36

Police firing on backward class people resulted in deaths and injuries. A compensation of Rs.10,000/- to families of some of the deceased was inadequate and improper. The State Government was directed to pay compensation of Rs.20,000/- to dependants of each deceased and Rs.5,000/- to each injured person. The High Court was directed to examine in pending Writ Petitions, the governments claim of privilege in respect of inquiry report. Investigation of pending Police case was directed to be completed within three months.

PUDR, an organization said to be committed to the upholding of fundamental rights of citizens had filed this application under Article 32 of the Constitution. It was alleged that on April 19, 1986, 600 to 700 poor peasants and landless people mostly belonging to the backward classes had collected for holding a peaceful meeting within the compound of Gandhi Library in Arawal, a place in Gaya district of Bihar. Without any previous warning by the police or any provocation on the part of the people who had

36 1987 I SCC 265
so collected the Police (S.P) reached the spot, surrounded the gathering and opened fire as a result of which several people were injured and at least 21 persons including children died.

The Court directed that:-

1) Without prejudice to any just claim for compensation that may be advanced by the relations of the victims who have died or by the injured persons themselves, for every case of death compensation of Rs.20,000 and for every injured person compensation of Rs.5,000 shall be paid.

2) The investigation of the pending police case shall be completed within three months. In case the Charge Sheet is submitted, it would be open to the petitioner or any other aggrieved party to challenge the maintainability of the charges in accordance with law.

In case of the LEGAL AID COMMITTEE V. STATE OF BIHAR, the Supreme Court awarded Rs.20,000/- as compensation for gross negligence of the Railway Police. In another case – R.S. SODHI, PUCL V. STATE OF U.P. the Supreme Court awarded compensation to the victim.\(^{37}\)

\(^{37}\) 1991 (2), SCALE, 463. This was an “encounter case”. 
In most countries, the judiciary plays an important role in upholding human rights and fundamental freedoms. The delicate balance between the State interests and the rights of the individual must be maintained. However in the present conditions terrorist acts within the country may pose serious consequences in other countries. With modern communication systems, technology and equipment terrorists can strike anywhere from a distant place through terrorist networks or mercenaries.

States under the U.N. are enjoined to "contribute to the progressive elimination of the causes underlying terrorism and to pay special attention to all situations including inter-alia colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation that may give rise to international terrorism and may endanger international peace and security."38

At the same time it must be noted that the State is using great force to suppress dissent, and at times civil liberties. Terrorism destroys human rights and other values cherished by civilized society. The present world order requires the State to create conditions of life for its citizens to feel secure. The provisions of Act 55 of the U.N. Charter States that the U.N.

38 UNGA Res 40/61, 1985 and 42/159, 1987
shall promote universal respect for human rights and fundamental freedoms for all without any distinction. Acts of terrorism, whether committed by States or by groups and individuals violate the human rights of the victims and their attackers. Bombings, enforced disappearances, excessive use of force by governmental agencies are methods used to threaten and intimidate the civilian population. Many times States over react in the name of elimination of terrorism. National security is the primary concern, and sometimes the extreme step is taken in negating human rights of terrorists. Detention for long periods, special enactments, burden of proof of the offender to prove his innocence etc. are some anti-terrorist methods used by most governments in order to deal with terrorism. Human rights provision place a limitation upon the Government's response to terrorism and treatment of offenders\(^{39}\). The role of law envisaged in any democracy is the basic framework of the criminal justice system. The government cannot disregard the provisions of the law in such cases eg. The right to legal counsel, the right to a fair trial\(^{40}\). Security forces are known to torture terrorists in order to obtain information, which would help in securing a conviction in the court.

\(^{39}\) In U.K. all such militants were treated as ordinary criminal offenders under the law. They did not receive any special privileges.

\(^{40}\) Act 21 of the Constitution.
Groups and organization within the country are said to have links with the outside world. Arms, ammunition, equipment, funding and indoctrination are part of such activity. The Purilia arms drop though investigated has failed to explain the reason for the arms drop or for whom it was intended. The borders of Sikkim, Nepal and Bhutan are known for trafficking of arms. It is also known for insurgents to seek safe refuge. These countries are known to provide facilities for money laundering activities. Profits from business concerns located there fund such activities and organized crime. The border security forces are faced with added duties. The maintenance of law and order in disturbed areas becomes a serious problem for the government. Governments incur high expenditures when dealing with such matters, otherwise the same finances can be spent on other priorities within the country eg. education and primary health care.

With heightened reactions the world over, Amnesty International has stated that governments are taking action against terrorism. However there are no indications whether such actions are in conformity with international human rights obligations.

41 An Indian Airlines flight was hijacked to Kandahar.
When dealing with issues of national security, in times of civil disturbances or emergency the State is permitted to take measures to control the situation. At such times civil rights may be suppressed. Derogations are permitted at the discretion of the State. Many times insurgents take up arms in order to bring about a change in government or to carve out a separate state. The issue of self determination is beset with various problems.

This is a dilemma of modern times because many believe that “one man’s terrorist is another man’s freedom fighter”\textsuperscript{42}. Others believe that if terror and violence is used, it would bring about the downfall of the existing regime. However this destabilizes the entire country. What cannot be achieved by legal and constitutional means, is sought to be achieved by destabilising governments. This poses significant consequences to the nations and world order.

One the one hand, violations by governments include genocide, official racism, large scale official terrorism and totalitarian governance\textsuperscript{42}. On the other hand “self determination with terrorism” may lead to a break down of public order which has been witnessed in many cases. Escalating

\textsuperscript{42} This was largely accepted by the IRA, ETA, Khalistan movement etc.
acts of terrorism pose serious consequences for civilized society. Presently an adequate international response is being worked out regarding terrorism.

Security concerns make governments undertake various measures to combat terrorism. The evolution of civil society is due to the interest of the government to promote the welfare of its citizens. This protection is important in the interest of national progress and development. Security relates to the ability of the State to protect its citizens from threats. In these days security of State is inextricably linked to the capacity of the State to take preventive and deterrent steps within the rule of law. Terrorism is a global phenomenon and no country can be said to be free from it, "national survival is the prime concern of nations big or small". Most nations evolve a legal frame work to deal with such matters effectively.

India’s security concerns date to early post independence days and the inception of the Jammu and Kashmir problem. Later Assam, Nagaland, Tripura, West Bengal and Andhra Pradesh also had to deal with militancy, insurgency and terrorism. Trans-border terrorism and other international events have seriously affected our security, peace and development.

Jayaramu, Indian National Security and Foreign Policy, New Delhi, ABC Publishing House. 1987, p7
“Human rights transcend the boundaries of civil jurisprudence. They have a sanction, which goes beyond the notice of law and reflects the fundamental moral commitments of human civilization." The quest for a new world order, to be brought about by violent change, is sought to be the ideal of the terrorist. This is not accepted as a legitimate instrument for social change. Most countries have amended their penal codes to cover terrorist offences. Special powers have also been provided to the Police to deal with such acts, all these measures are to protect the civilian and combat terrorism. Also, the aim is to protect the State from disintegration. The early years of the 21st Century have witnessed the most violent crimes – 9/11, attack on our Parliament, attack on the USIS building at Kolkata etc. It has also seen concerted measures being adopted by the U.N. to suppress and prevent terrorism. Regional measures have also been undertaken. The Terrorist Convention of the Council of Europe specifically states that the amnesty granted to political offenders, must not apply to terrorists who indulge in violent acts.

Many developed countries of the West treat terrorism as an international crime, aimed at destabilizing the State. Amnesty International

and Asia Watch did not accept that genocide was being committed in Kashmir. Surprisingly they were vocal in their call for human rights of terrorists who according to them were unnecessarily harassed by actions of the security forces.\textsuperscript{45}

Human Rights Watch - in its report lists the abuses by Indian Security Forces and militant groups in Kashmir. Custodial killings and summary execution of detainees are mentioned in their document, however the fate of the officials, at the hands of terrorists and militants is hardly mentioned. Such reports are clearly indicative of a lack of proper understanding of the Kashmir issue and terrorism in particular. However reluctantly, after 9/11, the western world is beginning to see some aspects of this issue clearly.\textsuperscript{46}

NGO’s insist that in the North Eastern States ‘encounters’ are staged between insurgents\textsuperscript{47} and the security forces. In Andhra Pradesh hundreds of revolutionaries of the PWG and the Police have lost their life in clashes. Villages in PWG dominated areas complain of regular harassment by the


\textsuperscript{46} The attack on the Raghunath Temple was another of the serious incidents that have shaken the faith of civil society in the State.

\textsuperscript{47} ULFA activists on Aug. 15, 2004, a bomb killed civilians - children.
Police. The Andhra Pradesh Civil Liberties Committee\(^{48}\) have documented hundreds of “encounter” killings. They allege that the authorities have failed to act expeditiously in the cases they have referred to the NHRC.

In Tripura, militant groups operating, use kidnapping for ransom as a method for raising funds. Many times even after ransom is paid the captive is killed. The kidnapping of NGO environmental monitor Sanjay Ghosh and his death by the ULFA captors is a well known case.

Amnesty International brought to the attention of the government the death of human rights monitor Jaswant Singh Khalra in Punjab. A People’s Commission has also been set up to look into the “disappearances” of thousands in the period of political unrest in the state.

However in the interests of national security matters are taken very seriously. Stringent measures are adopted to put down any terrorist activity or insurgency. The stability of the State must be preserved at any cost. National security can be said to include acts such as;

\(^{48}\) Local NGOs. Some NGO’s alleged that the Police have trained an armed vigilance group ‘Green Tigers’ to combat Naxalite Groups.
1) To overawe by criminal force or show of criminal force the central or any State government or Parliament or the legislature of any State or any lawful power of such public servants, or

2) To resist the executive of any law or of any legal process.

In the fight against terrorism, human rights and national security are important issues that the democratic State must safeguard. Sometimes when fighting against terrorism, a blind eye is turned to the protection of human rights. This is also true at the international level. States in their eagerness to implement counter-terrorist measures, look away from the abysmal human rights records of other countries. The United States has been accused that in the ongoing fight against terrorism, it has suppressed objections to human rights violations\(^49\) by many countries, now coalition partners.

Most nations of the world addressed their security concerns in the post 9/11 period. Although serious counter-measures were adopted, it was said to be part of their commitment to promote human rights. New legislations enacted, made serious inroads to international human rights norms. Policy priorities have been enhanced in the wake of terrorist threats. Terrorism according to many governments poses a threat to democratic

\(^{49}\) Refused to recognize Pakistan as a terrorist state.
institutions and undermines the very values that society upholds. Extremist elements must be taken care of within the parameters of the rule of law.

In this regard various governmental agencies and NGO’s play a vital role. They provide indispensable resources to Governments. However, in the war on terrorism governments take serious procedures against the minorities, making it an issue of national security. For example the Chinese Government considers the Uyghur movement of Muslims in the Xinjian Province as terrorist. They made claim for a home land – East Turkistan. Malaysia has discredited the Party Islam Se Malaysia (PAS) along with the Malaysian Mujahidin Group – said to be a militant Islamic Group as the PAS is an important opposition party. Governments use severe measures against these groups in the name of national security. Religious freedom is thought of as the “corner stone of democracy. Religious freedom elevates and nourishes human dignity”. The fight against the Taliban and terrorism is an entirely different issue, according to the U.S. government, which must not be confused with religious intolerance. However the same Government voices skepticism about the religious dimension of human rights violations in India.

51 The unprovoked bombing of the Bamiyan Buddhas by the Taliban is perhaps a forgotten issue. As also Tibet and Burma.
Civil liberties however remain the focus of all administrative policies of the government. The absence of human rights and democracy is believed to sow the seeds of terrorism eg. Syria known as a terrorist state. The observance of human rights, belies the perceptions and initiatives of governments to protect society and its citizens at all costs. The priorities of the administration is to bring about provisions to combat terrorism legally within the national criminal justice system. Security measures are also addressed with these provisions and rules.

An important component in this effort is the role of the media. By bringing to the attention of the public various incidents, the public exert pressure on the government to observe human rights norms and values, TADA for example was considered a draconian legislation. The National Human Rights Commission also voiced similar concerns. POTA is sought to be repealed and a fresh enactment by the Centre is being considered.

NGO’s play a vital role in bringing issues to the attention of the Government and the public. The accuracy of the reports of NGO’s is well known all over the world. Annual reports on country situations bring violations and human rights abuses to the attention of the world community. There is an urgent need to make effective use of U.N.
documents on Human Rights in order to find a solution to the problems of the modern welfare state. Current trends by governments is that in the light of the serious events taking place, more restraints are placed on the freedoms enjoyed by the individual like preventive detention for long periods, arrest by a constable on mere suspicion or doubt etc., with widespread fear the public has to be protected at all costs. This had lead to various measures taken up by enforcement agencies eg. torture and extra-judicial killings; women too have not been spared. The frustration of the government to deal with incompetent policing is common. The low conviction rate (1.5% in the case of TADA) is indicative of improper investigation by the authorities. Sometimes national institutions are known to reinforce what the justice delivery system guarantees.

The main duty of the nation state is its national existence. In many countries national security laws allow Governments to implement provisions which in normal situations would be illegal. Many of them violate fundamental rights, both civil and political rights of its citizens. Governments need to balance these rights with that of security of State. Militancy, insurgency, illegal arms trade, illegal drug trafficking, money laundering, organized crimes etc. weaken the structure of the State. This de-stabilisation leads to a drop in the progress and development of the
country. With large amounts being spent on defence budgets the modern state spends less on developmental projects, food and healthcare. This could pose serious consequences for the developing countries and make it an LDC (Least Developed Country). Civil strike affects society in many respects and each country must take appropriate measures to combat such forces. Many countries in South Asia\textsuperscript{52} have enacted legislation, giving the government wide ranging powers to deal with situation threatening the country. In times of emergency which threatens the life of a nation, and only in such exceptional circumstances, derogation is permitted (Article 4 ICCPR) security of the citizen is said to be the primary responsibility of the State Internal security must be maintained with proper law and order machinery. The criminal justice system has become progressively in effective. The laws and procedures are often ambiguous and cumbersome, that many a time, the accused is acquitted for lack of evidence.\textsuperscript{53}

The law enforcement agencies, police, military, border security force etc. are often unable to function effectively in their duties and have been

\textsuperscript{52} In Indonesia arrests detention and extra-judicial killings still take place. Thousands have been tortured or have disappeared over the years. The same has been the case in Vietnam.

\textsuperscript{53} In the recent case of Mutapa Rai, who was arrested by Interpol and deported to India from Dubai to face charges, was acquitted as the prosecution failed to prove charges. He was accused of illegal possession of arms and extortion.
accused of taking up extra-judicial measures. In the case of the military the government usually does not interfere, though some cases have been taken up against officers accused of excessive behaviour.

States reserve the right to decide their strategy in international relations. National security is closely linked to the use of force in self defence. The air strikes against so called terrorist bases in Afghanistan and Sudan was on information received about attacks on U.S. facilities and was in retaliation.

Although various General Assembly Resolutions have called upon States to contribute to eliminate the causes underlying terrorism such as situations involving mass and flagrant violations of human rights and fundamental freedoms. It has not been entirely possible to do so. In fact States are re-considering their stand with regard to international terrorism. In the wake of the Madrid Bombings, the Spanish government agreed to withdraw its troops from Iraq. This was largely due to the threat from the Al-Qaeda of further violence in the country. This goes to show that national and international policies of States bear a close relationship. In the present circumstances governments need to take all aspects into

consideration in the interests of national security before they take important
decisions at the international level. In a bomb attack, the Chechan President
was killed in Grozny. Chechans have been fighting against Russian
occupation. Russia occupied Chechnya in 1999. since then, the Chechan
rebels target public gatherings.

On September 1,2004, heavily armed terrorists entered a Beslan
School, in Russia, 1,200 children and adults were held hostage. They
demanded Chechan independence.

Insurgency, terrorism extremist violence and regional movements
are threats to the security of the State. Acts prejudicial to public order are
also viewed in the same light. In present world order, the threats of
terrorists are threats to the security and stability of the State. Today it has
assumed worldwide dimensions. Terrorism is also regarded as a law and
order problem of the State.

When discussing human rights issues and State administration one
issue comes to mind – many NGO’s are criticized for the work they do in
the field of human rights! The anomaly occurs when NGO’s take up human

200 p 8.
rights violations against the state, on behalf of those who themselves have violated the human rights of others. The Chief Minister of Andhra Pradesh echoed the same sentiments when he made reference to the human rights of the officials of law enforcement agencies, who have lost their lives in Peoples War Group violence.

Terrorism is a crime against humanity. The need of the hour is to effectively combat it. Terrorism is a dangerous threat to any human rights regime\textsuperscript{56}. Terrorism anywhere constitutes a threat to society everywhere.
