CHAPTER - V

GLOBALISATION AND HUMAN RIGHTS

It is clear and emerging principle of Human Rights jurisprudence that the state is responsible not only for the acts of its own agents, but also for the acts of non-state players acting within its jurisdiction. The state is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights.

– National Human Rights Commission

We are living in an era of dramatic change and transition, in a world that is being transformed by complex financial systems and revolutionary information technologies into a vast global market place. Globalisation is creating new patterns of interaction among the states, promising unprecedented opportunities for material progress in larger freedom, but also threatening to compound many existing challenges before the international community while deepening the economic marginalization of the most vulnerable. In this context human rights, which were embedded formally at the United Nations as a great international priority 50 years ago – through the December 1948 Universal Declaration of Human Rights – have gained prominence as a universally recognised set of norms and standards that increasingly inform all aspects of our relations as individuals and as collective members of groups within communities and among nations.¹

The consequences of globalisation have thrown new challenges to the realisation and protection of human rights. The globalisation of the

The economy may adversely affect the protection of human rights by loss of job security, abuse of child labour or bonded labours standards, exposure to greater risk to human health and safety of workers, destroying indigenous biological resources, lack of adequate means of livelihood etc. As the world stands on the threshold of the 21st century, it is engulfed by a phenomenon that has come to be called 'globalisation' – the world rapidly being turned into an integrated whole via international trade, internationalisation of production and financial markets and the internationalisation of consumer culture, promoted by an increasingly networked global communication systems. The external factors operating at global level are managed by a coterie of industrialised powers of the north the group of eight.

Globalisation can generate forces of both fragmentation and unification. It implies the intensification of levels of interaction and interconnectedness within and among states and societies. The growth of dense patterns of inter-connectedness among states and societies can increase the range of developments affecting people in particular locations. Globalisation has weakened old structures through creating new patterns of transformation and change. Human rights have increasingly become the common language in terms of which the states in their international relations discuss the values, which they hold to be fundamental.

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International human rights norms provide an excellent opportunity to explore these theoretical issues because, these norms challenge state rule over society and national sovereignty, any impact on domestic change would be counter-intuitive, and are well institutionalised in international regimes and organizations, which they are contested and compete with other principled ideas. The diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to linkup with international regimes. Human rights norms help define a category of states' liberal democratic values. 'Many of the interests these states have are quite different from those of the others the authoritarian or norm violating' states. Democratic structures and systems, which encourage freedom and social justice, safeguard human rights and favour progress.

History is moving fast at the start of the 21st century. Recent waves of globalisation have unleashed waves of change, with the new information and communication technologies. The new global rules and institutions and the accelerating global economic integration, with the end of cold war, the political, economic and social landscapes are changing rapidly and radically. This new context opens unparalleled new opportunities. But it also gives rise to new threats to human security and human freedom.

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7 Ibid, p.5.
Transitions to democracy brought advances in many human rights, advances now under threat as a result of ethnic conflict, rising poverty, growing inequality and social strain. Stable structures of government are not yet in place or have been greatly weakened. Transition and economic collapse dismantled many previous guarantees of social and economic rights.\textsuperscript{10}

Human rights are indeed, inextricably linked with the international economic system. Human rights provide the common moral and legal underpinnings for the global economy.\textsuperscript{11} The basic compact of coexistence between states, expressed in the exchange of recognition of sovereign jurisdictions, implies a conspiracy of silence entered into by governments about the rights and duties of their respective citizens.\textsuperscript{12}

'Human Rights' John Vincent argues, 'are the rights that everyone has and everyone equally, by virtue of their very humanity'.\textsuperscript{13} The contemporary theoretical preoccupation with globalisation however, undermines the importance of state in striving for social justice. The third world state must continue to be conceptualised as the guarantor of basic human rights.\textsuperscript{14}

The theoretical emphasis on globalisation provides an interesting twist to the connection between capitalism and the rise of the rights discourse. The developing countries cannot afford to provide economic

\textsuperscript{10} Ibid.
and political rights as yet. The globalisation discourse thus undermines social welfare expenditure by states in developing economies. The role of the state in ensuring basic human rights is thus quietly ignored or worse de-legitimised.\textsuperscript{15} Thus, the twin forces of globalisation and fragmentation are said by many scholars to be defining characteristics of the age in which we live.\textsuperscript{16}

Harvard's Doni Rodrik, has written, “Globalisation has made it exceedingly difficult for government to provide social insurance. At present, international economic integration is taking place against the background of receding governments and diminished social obligations. Thus, the welfare state has been under attack for two decades.\textsuperscript{17} Therefore, economic integration does limit the power of government, including democratic government. The question is whether it limits it too much, or in undesirable ways. While human rights have been universalised and internationalised and some international mechanism to monitor their observance have been instituted, the state remains the protector and guarantor of these rights. However, with the escalated inter-dependence and recent onslaught of the forces of globalisation, states particularly of the Third World are no longer masters of their own domain.\textsuperscript{18} According to Theo Van Boven, “It is perhaps for many of our western countries easy to clean up their own garden and to establish a relatively high degree of enjoyment of human rights in their own territories, while at the same time profiting from violations of human rights occurring elsewhere or promoting systems of injustice, making

\begin{footnotesize}
\textsuperscript{15} Ibid, p.23.
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profits from sales of arms or from exploitative activities of transnational corporations thus becoming an accomplice to the violation of human rights".19

Globalisation affects all countries differently and makes them more exposed to external developments, positive as well as negative, including in the field of human rights. It is not merely an economic process but it also has social, political, environmental, cultural and legal dimensions, which have an impact on the full enjoyment of all human rights. That the widening gap between the developed and developing countries, which has contributed, inter alia, to deepening poverty and has adversely affected the full enjoyment of all human rights.20

While globalisation, by its impact on, inter alia, the role of the state, may affect human rights, thus, the protection and promotion of all human rights is first and foremost the responsibility of the state. The General Assembly affirmed in its 23rd and 24th session in June 2000 that globalisation is a complex process of structural transformation, with numerous interdisciplinary aspects, which has an impact on the enjoyment of civil, political, economic, social and cultural rights, including the right to development.21 The international community should strive to respond to the challenges and opportunities posed by globalisation in a manner that ensures respect for the cultural diversity of all.22 Therefore, there is a need to continue to analyse the consequences of globalisation for the full enjoyment of all human rights.

19 Ibid, p.6.
22 Ibid.
Globalisation theory is posing a new challenge to the view that human rights are universal in principle and ought to be so in practice. The challenge comes from some of its analyses of global change, which reinforces the view that human rights are an important part of culture wars, a western cultural imposition on other parts of the world. Globalisation theory focuses on quantitative and qualitative changes in communications technology and the markets that are creating a new, closer, global world in the twenty-first century. One aspect of this change is purported to be the universalization of (western) culture and within it, the universalization of human rights.

Paul Kennedy and Benjamin Barber, worry that globalisation will result in ‘Jihad Vs. Mcworld’, a fundamentalist cultural reaction against the spread of western social norms, including the norms of human rights.

Human rights are often described as belonging to three generations. The first generation includes civil and political rights such as the right to a fair trial or the right to vote. The second generation includes economic, social and cultural rights, such as the right to work or the right to food. The third generation is dubbed ‘collective’ rights and includes, inter alia, the right to self-determination and right to development. The three generation hypothesis implies that the last generation; collective rights, is superior to the first two, which sets a dangerous precedent for states’ rights and group rights to be taken as more important than the rights of

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24 Ibid.
26 Rhoda E. Howard, Supra No.23, p.95.
individual human beings. The present culturalist reaction to so-called Western human rights is the one way for authoritarian states to undermine individual human rights in the name of the collectivity.27 The economic weakness of underdeveloped countries means that they now turn to culture as their weapon against the west. As Immanuel Wallerstein has noted, culture is 'the assertion of unchanging realities amidst a world that is, in fact, ceaselessly changing the very construction of culture becomes a battleground, the key ideological battleground.28

The traditional paradigm of human rights campaigning has, rightly, focussed its attention on the state, because the state has been the principal political agent. If anything, globalisation weakens the power of the state, and disrupts the world map by challenging the presumed legitimacy of borders. Thus human rights research must respond to the challenges posed by globalisation.29 Globalisation as it is understood in the media and in political circles undoubtedly produces huge inequalities in economic and political power, most evidently between north and south or what Wallerstein calls the 'core' and periphery.30

Human rights research is meaningless unless it is located within economic, social political and cultural contexts. If human rights are to be timeless and universal, then they must be applicable in all such conditions. As Norberto Bobbio has suggested, that the discourse of human rights came into existence with the invention of the state - citizen relationship.31

27 Rhoda E. Howard, Supra no.23, p.96.
Globalisation challenges intellectual as well as national boundaries. Sklair suggests that there are specific crises, inherent in capitalist globalisation – class polarisation and ecological unsustainability – and that socialist globalisation emerges as an alternative through the globalisation of human rights.\textsuperscript{32}

Globalisation is transforming new rules, new tools and new actors into a vast global marketplace. Human freedoms face new threats from transition, conflicts, xenophobia, human trafficking and religious fundamentalism. And all over the world people with HIV/AIDS face serious threats to their human rights. Along with these new issues, persistent poverty and widening inequality are now treated as a denial of human rights and thus emerge as continuing human rights challenges.\textsuperscript{33} Poverty and inequality disempower people and open them to discrimination in many aspects of life and to additional violations of their rights.

President George Bush, frequently talked about the beginning of the New World Order (NOW) under the unchallenged leadership of the United States of America and predicted that the “21\textsuperscript{st} century will be another American century”.\textsuperscript{34} National Security Advisor, Anthony Lake, while announcing the Clinton Doctrine”, in September 1993 noted: “throughout the cold war, we contained a global threat to market democracies: now we should seek to enlarge their reach. The new world presents immense opportunities to move forward to consolidate the victory of democracy and

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\footnote{34 \textit{Time}, 1, April 1991, p.19.}
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open markets.\textsuperscript{35} According to Thomas Friedman, "America's victory in the cold war was a victory for a set of political and economic principles: democracy and free market", and added, "free market is the wave of the future, a future for which America is both the gatekeeper and the model. Indeed, globalisation, in its present form, is an offshoot of American imperialism.\textsuperscript{36}

Harold J Laski, observed on the Universal Declaration of Human Rights that unless institutions so well entrenched both at national and global level, were removed, the Declaration would only raise false hopes and its contents on human rights "have no prospect of being fulfilled.\textsuperscript{37} Globalisation thus, is a reality: one cannot escape its forces. The real choice of governments is not how to fight globalisation but how to manage it. In a way, globalisation posits a challenge to the concept of nation-state. At the same time, it is the nation-states – the practice they adopt, the arrangements they enter into and the safety net they provide for protection and promotion of human rights representing the most potential force of this era.\textsuperscript{38}

One of the things that makes a state sovereign is right to rule over its own territory and people without the interference from any other state or agent.\textsuperscript{39} In the UN Charter it says, "Nothing contained in the present charter shall authorise UN to intervene in matters which are essentially

\begin{itemize}
\item \textsuperscript{36} \textit{New York Times}, June 2, 1992.
\item \textsuperscript{38} K.P. Saksena, Supra No.3, p.210.
\end{itemize}
within the domestic jurisdiction of any state. It also reaffirms "the faith in fundamental human rights in the dignity and worth's of the human person. The purpose of UN is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".  

Many governments fail today to enable their people to meet even their most basic needs. Over 1.3 billion lack access to safe drinking water, 880 million adults cannot read and write; 770 million have insufficient food for an active working life; and 800 million live in "absolute poverty", lacking even rudimentary necessities. Each year 14 million children – about 10 percent of the number born annually – die of hunger. The concept of marketisation is increasingly associated with desperation and a massive upsurge in crime and violence, as nuclear power stations begin to decay and collapse and as armed gangs plunder state arsenals of weapons. The market is being reintroduced in the context of a general collapse of law and order, and its reintroduction is a part of a fundamental social crisis.

The emerging global scenario and universal trends of globalisation effectively impinged upon the nation-state system, which has remained the basis of international system for the last few centuries. The states' sovereignty is fast eroding and therefore, its autonomy to decide its foreign and domestic policies is severely conditioned and constrained. The latest

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40 http://www.un.org/aboutun/charter
developments in information technology and transportation have brought a sea change in the inter-cultural and inter-societal relations. The work and leisure situations are changing very fast. Rapid advances in computerisation and information technology have changed the entire scenario of the work place all over the world. Thus, globalisation is not all about bringing the world together, rather, it has thrown new challenges belonging to the political, social, cultural, economic, environment and promotion and protection of human rights. Thus, globalisation has brought many threats, perceptions and reaction syndromes at the domestic cultures. The local cultures stand threatened by McDonaldization.

The process of globalisation has triggered off forces of change, which have set people rethinking about the political institutions such as the state, the democracy and civil society— in their functioning and way of protecting human rights in the state. Gary Gereffi and Saskia Sassen have delineated the modalities by which technology has accelerated global transfers of capital, labour, information and knowledge. Maurice Cranston regarded human rights as “The twentieth century name for what has been traditionally known as natural rights. In his work, John Finnis, the natural law theorist, identified human rights as a contemporary idiom for natural rights and argued therefore, that the realm of genuine human rights is significantly narrower than international doctrine maintains.

The term “human rights” is of contemporary roots. Earlier comprehension of human rights was limited in their applicability. It was only after World War II that the concept was advanced as applicable to all human beings in the world.48 Currently there seems to be a great emphasis on respect for human rights around the world. The world community has reached a broad agreement that certain rights of individuals are inalienable, intrinsic to the human conditions that must be protected by law. From one point of view the Declaration’s silence about theoretical foundations can seem to be part of its brilliance.49

The human rights language significantly calls for respect for the integrity of the person encompassing freedom from torture, brutal, inhuman punishment or treatment arbitrary capture and imprisonment.50 The concept also involves regard for due process of law, and security from invasion of the privacy of the home; respect for civil, political liberties, including, freedom of religion, expression, thought, speech, press, freedom of movement within the country.51 International human rights law has been designed to protect the full range of human rights required for people to have full, free, safe, secure and healthy life.52

The primary basis of United Nations activities is to promote, protect and monitor human rights and fundamental freedoms by the International Bill of Human Rights. The Bill comprises three texts: the Universal Declaration of Human Rights, (1948), The International Covenant on

52 Ibid.
Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights (1966) and its two optional protocols. A number of international agreements have achieved the recognition of the world community as having sanctified these rights of humankind.

Contemporary human rights are usually defined as those embodied in the Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly in 1948 and its subsequent covenants, which states according to Article 1, "All human beings are born free and equal in dignity and rights: They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

The current economic globalization is bringing great benefits to the developed countries. According to the United Nations Conference on Trade, the total output value of the 55,000 multinational corporations comprising 30 percent of the world's total; their trade volume, 60 percent; and their foreign investment, 90 percent of global direct investment. In 1998, the 500 largest multinationals reached 11463.4 billion US dollars in gross sales; their total assets increased to 38,989.3 billion US dollars, and their employees numbered 39.69 million.

Human rights are inherently universal, concerned with protecting and furthering the dignity and worth of all human beings. However, there are different views and practices on the human rights. In the United

55 Fortune, August 2, 1999, US.
States, social and economic rights for the poor are neglected. There are approximately 35 million who lack health insurance; approximately 3 million homeless, an average 7.1% of unemployment, evidence of functional illiteracy; and according to the Children’s Defence Fund (1992), approximately 28 percent of American children live in poverty. However, the effects of economic globalisation on human rights, at local, national and international level have been complex and variable as Yash Ghai notes "the regime of rights provides a coherent challenge to economic globalisation. It emphasises the importance of human dignity, the right to work in just conditions and in return for fair wages, the right to welfare, the care of children the equality of women, the respect for the cultural and economic rights of indigenous people, the protection of environment, the exercise of popular sovereignty through democratic constitutional orders, and accountability of holders of power while aiming to distribute ... on a more equitable principle. At present, human rights regime is state centric and governments alone are accountable for protection and promotion of human rights within their geographic limits. As the supremacy of many states declines and that of globalisation and corporation rises, the capacity of the latter to create conditions in which rights become harder to exercise or protect, has increased tremendously.

It is obligatory on the states, which ratify these covenants to ensure that their citizens are able to exercise the enshrined human rights to the full. Kofi Annan called for the development of a systematic doctrine of

UN sponsored humanitarian intervention, noting that the world cannot stand aside when gross and systematic violations of human rights are taking place.\textsuperscript{59}

In the years since the UN covenants came into force, human rights have played a variety of roles in world politics. The most sensational has been the use of human rights to justify foreign interference in states’ internal affairs. In circumstances as different as those of Haiti, Somali and Kosovo, local human rights violations have catalyzed military action by outside agents acting with the authority of multinational bodies.\textsuperscript{60} In Robert Nozick’s phrase, it is called ‘side constraints’.\textsuperscript{61} Human rights stand for a certain ambition about how the world might be. The contemporary international political life can be said to have what, in the domestic analogue, John Rawls calls a “sense of justice”, its language is the language of human rights.\textsuperscript{62} If natural rights are about guaranteeing individual liberty against infringement by the state, human rights are about this and more. International human rights are about establishing social conditions conducive to living dignified human lives.

Hart, distinguishes between “general rights” and “special rights”, special rights arise out of “special transactions or special relationship such as promises and contracts or membership in political society, whereas general rights belong to “all men capable of choice... in the absence of those special conditions which give rise to special rights.\textsuperscript{63} Hart, identifies only one general right – the equal right of all men to be

\textsuperscript{59} Kofi Annan, \textit{The Economist}, 18 September 1999.
free. Many theorists have thought that human rights must be general rights for the same reason.64

Other philosophers, maintains, "The correct conclusion is that many of the rights affirmed in the universal declaration are really not human rights at all.65 Human rights are claimed by everyone that arises out of people’s relationships as participants in a global political economy.

One philosopher therefore, adopts a more cautious formulation: he says, human rights should have weight and bearing for future human beings in societies not yet existing.66 International human rights are standards appropriate to the institutions of modern or modernizing societies coexisting in a global political economy in which human beings face a series of predictable threats. As Jack Donnelly observes; the composition of list of human rights is explained by the nature of these threats.67 As the economic and technological environment evolves, the array of threats will change and so over time, the list of human rights.

Thus, human rights are closely connected to human dignity; they state conditions that domestic social institutions should satisfy in order to respect, in the words of the 1993 Vienna Declarations, the dignity and worth inherent in the human persons.68

Human rights are a global concern; their systematic violation in society over a period of time could justify some appropriate form of remedial action by agents outside the society where violation occurs. Due

64 Peter Jones, Rights, St. Martin’s Press, New York, 1994, p.81.
to these ideas one can say that human rights are basic requirements of global justice. They describe conditions that the institutions of all domestic societies should strive to satisfy whatever a society's comprehensive aims be. "Their violation identifies deficiencies that, if not made good locally, should command the attention and resources of the international community. If a country fails to satisfy these conditions even though it were equipped to fulfil them that country would become susceptible to outside corrective interference. If the failure is due to a lack of local resources, this could justify a requirement on others to assist."  

Since 1945, human rights language has become a source of power and authority. Inevitably, power invites challenge. Human rights doctrine is now so powerful, but also so unthinkingly imperialist in its claim to universality, that it has exposed itself to serious intellectual attack.

The contemporary history of the development of human rights goes back to the UN charter. Even though the UN charter has been described as 'constitution without a bill of rights and with only a mention of human rights'. It is better to direct efforts and resources towards the internal factors that either weaken the state's willingness to respect human rights or impede the states ability to protect human rights.

The twentieth century has so far seen some 250 wars, causing 109,746,000 war-related deaths. The period since 1945 alone has seen some 200 major armed conflicts, more than 90 percent of them fought in

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the developing countries. The industrialised countries (many of them democracies) have been fighting in more than 90 wars since 1945, some of them wars of decolonization. Most active have been Great Britain and France, followed by the USA and the USSR.

Among the developing countries, China, India, Pakistan, Syria and Zaire were each half a dozen or more times at war. However, there have also been zones of peace since the Second World War (which was responsible for the death of 50-60 million people): 63 countries – about one third of all countries presently represented in the UN have not been affected by armed or inter-state conflicts. In total, the number of people killed in wars and armed conflicts between 1945 and 1995 was around 45 million. Between 1960 and 1990 developing countries increased their military expenditures five times and in 1980s alone they spent more than $300 billion on weapons such as 540 warships, 3200 supersonic fighter airplanes, 11,000 tanks, 20,000 pieces of artillery and 37,000 surface-to-air missiles.

Big military senders in the mid-1990s were North Korea (where military expenditure in 1995 amounted to 25.2 percent of the GDP Croatia 12.6 percent, Iraq 14.8%, Israel 9.2%, Pakistan 6.5%, Burma 6.2% and China 5.7%). In the 1980s an estimated 5,600,000 people were killed in armed conflicts; between 1990 and 1995 another 5,500,000 people died in 93 wars and armed conflicts fought in 70 states.

74 Christian P. Scherrer, 
1.3 billion people have to survive on less than $1 per day. 960 million are absolutely poor, 550 million people are severely 'malnourished', 400 million are on the verge of 'starvation' and 20 million actually starve to death every year. Most of these people are too weak to revolt, or too uneducated – 840 million adults are still illiterate. Yet there is also repression; according to one opinion 2,590 million persons have their human rights violated, and 100 million are prisoners, many of them for political offences. The armed forces of all states currently number 22.4 million soldiers (down from 29 million in 1987 and 24 million in 1994). Yet the security forces do not enjoy a monopoly of violence; many members of society possess arms: altogether an estimated 600 million personal firearms are 'out there' (e.g. 10 million in Mozambique alone, while only 200,000 were collected after the civil war.

Most deaths in ongoing-armed conflicts have been caused by small arms. The turnover of light weapons legally traded is estimated at about $5 billion per year. The illegal trade is estimated at somewhere between $2 and $10 billion per year. The world's 20 million cocaine and heroine addicts and 30 million users of amphetamines generate much of the 300-400 billion dollars of 'dirty' money that is believed to be laundered worldwide; part of the money is used for arms.

Amnesty International reported in mid-June 1988 that, 50 years after the signing of the Universal Declaration of Human Rights (10

December 1948), at least 141 states violate human rights and that for most people of the world the Declaration is meaningless.\textsuperscript{86} While there are 76 human rights in the International Bill of Rights, The most significant are - The Universal Declaration of Human Rights (1948), The International Covenant in Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966). The worst violations are undoubtedly those that directly affect the life integrity of individuals - torture, disappearances, extra judicial executions and arbitrary arrest.

**Globalisation and Human Rights in India:**

The impact of globalisation on human rights is analysed with the help of

1) How the capability of state system to protect and promote human rights is declining 2) The failure of state system to control terrorism may lead to violation of human rights or guilty of violation of human rights 3) Transborder involvement of third states with a motive to create or exploit conditions in a state to raise allegations of human rights violations or encourage terrorism to destabilise the polity or undermine the principle of domestic jurisdiction.\textsuperscript{87}

The constitution of India provides a number of rights to individuals in part III that have been termed as fundamental rights. The expression ‘fundamental’ denotes that these rights are inherent in all the human beings and are essential for the individuals for the development of their personality.\textsuperscript{88} Constitution embodies several provisions that protect

fundamental human rights. These stipulations are comparable to western liberal concepts of equality, civil and political rights and individualism. Similar to western notions of human rights the constitution protects citizens from discrimination.89

The Indian Constitution has incorporated several characteristics of the Universal Declaration of Human Rights (UDHR). M.A. Thomas argues the Indian Constitution has promised a lot to its citizens that if implemented can make the country a marvellous place to live in.90 But the practice of human rights has fallen short of promises as regards the right to life, freedom of belief, expression and association. The guarantees against arbitrary arrest, torture and extra legal executions, which are daily breached with impunity by the state.91

It was only in the late 1960s that two regional human rights organisations were established for the first time in India: Association for the Protection of Democratic Rights (APDR) and the Association for Democratic Rights (AFDR). The first national human rights organisation The People Union for Civil Liberties and Democratic Rights (PUCLDR) was established in 1975. Later on two new organisations from earlier PUCLDR – People's Union for Democratic Rights and the People's Union for Civil Rights came into being (PUCL).92

Globalization, which has, began to impact the everyday life of the common man in India who has been enjoying the protection of state

92 Ibid.
sustained safety nets, whose continuity and potency are in imminent danger of being shattered now.\textsuperscript{93} There is all the more so when that people demands increased protection by the state is marginal.\textsuperscript{94} Thus, globalisation may be associated with the transformation and the decline of state in the direction of more complex multi-level governance. Basic human rights and fundamental freedoms are unquestionably of universal validity... However, it is also commonly agreed that their implementation in the national context should remain the competence and responsibility of government, while taking into account the complex variety of problems of diverse value systems and of different economic, social and cultural realities prevailing in the country. Hence, the forces of globalisation have been the defining characteristics of the age in which we live.\textsuperscript{95} The process of globalisation has weakened the state. The capacity of nation-states to protect and promote human rights has been weakened; government is doing less; steering rather than rowing.\textsuperscript{96}

The weathering away of central governments and mushrooming of religious cleavages, tribalism, violence, volatility and diseases; urban dysfunctions, overcrowding, crime, desertification and deforestation, social faultlines and non responsive apparatus of state security forces lead to increasingly anarchic conditions aggravated by scarcity of resources and refugee migrations, the erosion of national states and the empowerment of private armies. Without a comprehensive framework for public functioning

\textsuperscript{94} http://www.ssrc.org/sept11/essayshall.htm.
state cannot work as an effective institution in protection and promotion of human rights.97

The poor have not been served by their states. Thus the gap between the rich and poor seems doomed to increase faster. Globalisation at present means greater prosperity for few and continued inequality and poverty for many which deepens already existing grave inequalities.98

There is a view that globalisation has not been accompanied by democracy but quite the opposite: globalisation has, put democracy at stake.99 International and global relations can coexist of course, and indeed the contemporary world is at the same time both internationalised and globalizing.100

The International Financial Institutions (IFIs) Multilateral Organisations like UN, W.T.O. local NGOs are all key players now for the formulation and implementation of national policy at various geographic and social scales. Their activities have often forced the state to relinquish some of its sovereignty. This current globalisation is a distinctively new phenomenon.101

The present wave of globalization is also characterised by a mixed array of issues. The environment gender rights, debt relief, AIDS, the rights of children, the international transfer of arms and military expertise in the form of mercenaries, nuclear terrorism immigration etc. contribute

97 Hoshiar Singh, Supra no.93, p.311.
98 Ibid, p.312.
to the complexity of globalization process and what it may portend for the poor.102

Today it seems that the language of human rights has given us a tool, which is capable of addressing the moral issues, which arise out of a globalised world. The claim commonly made by proponents of the human rights discourse is that the discourse presents values, which all people everywhere can respect and to which they can give their allegiance.103 As Alan Broun has put it, a right is an elliptical concept for the conclusion of moral deliberation.104 In this view, the discourse of human rights can only become universal when it is able to be appropriated by people from diverse backgrounds who operate within diverse assumptions, traditions of thought and institutions. As Gaete says, human rights are no longer presented in a naturalistic manner. Any talk of natural rights would be considered today an unsophisticated anachronism.105 However, the human rights literature still abounds with such references, as does the day today discourse of human rights activists and bureaucrats.

The twentieth century cannot be circumscribed by the standards of any single culture or be dictated by the aspirations of any single people; a situation which would lead to frustration and not realisation of the personalities of vast numbers of human beings.106 It is these rights, which MacIntyre thought were as probable as unicorns or witches.107

102 Ibid p.3.
Globalisation in India on many counts impinges on the pursuit of social justice within the country; progressive political forces often adhere to a conception of social justice. According to John Rawls, social and economic inequalities are admissible but only in so far as they are to the greatest benefit of the least advantaged members of society. As a result of globalization a government willing to protect the most vulnerable within its jurisdiction may be compelled to tolerate risking levels of inequality among its citizens.

At the threshold of the new millennium, no country can look back on its own record of human rights of this century. Estimates say that some 120 million deaths have resulted from politically-related violence.

At present, nation-states and governments are no longer the sole actors and agents in protecting and promoting human rights at the national and global stages. The emergence of new actors and agents in globalisation needs for redefinition of the role functions, rights and obligations of each actor and the establishment of appropriate partnership between them in order to respond effectively to pressing human rights violations. The linkage between human rights and terrorism has come to be highlighted only recently. The International Court held in the case concerning United States Diplomatic and Consular Staff in Tehran: Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly

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incompatible with the principles of the Charter of the United Nations as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights.\textsuperscript{112}

The United Nations Millennium Declaration adopted by General Assembly in its resolutions 48/122 of December 20, 1993, asserted that, at the dawn of the twenty-first century, the world is witness to historic and for reaching transformations, in the course of which forces of aggressive nationalism and religious and ethnic extremism continue to produce fresh challenges. The acts of terrorism in all its forms and manifestations aimed at the destruction of human rights have continued despite national and international efforts. Bearing in mind that the right to life is the basic human right, without which a human being can exercise no other right, terrorism creates an environment that destroys the right of the people to live in freedom from fear, states have an obligation to promote and protect human rights and fundamental freedoms and that every individual should strive to secure their universal and effective recognition and observance.\textsuperscript{113} Justice A.S. Anand, Chairperson, National Human Rights Commission (NHRC) observed that every year the struggle for human rights is getting more complex with new threats rearing their heads and bringing with them different kinds of challenges.\textsuperscript{114} Terrorism strikes at the root of human rights of innocent people and hence terrorism is natural enemy of human rights.

The Vienna Declaration and programmes of action adopted by the World Conference and Human Rights on 25 June 1993, reaffirmed that

\textsuperscript{112} International Court of Justice Reports 1980, para 91, p.42.
\textsuperscript{113} Year Book of the United Nations, Supra no.23, p.649.
the acts, methods and practices of terrorism in all its forms and manifestations, as well as its linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity and the security of states and destabilizing legitimately constituted governments and international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.\textsuperscript{115}

According to Harold Laski, "Every state is known by the rights that it maintains."\textsuperscript{116} And taking a creative view of rights, he further defines it as "those conditions of social life without which no man can seek, in general, to be himself at his best."\textsuperscript{117} When read together with Rawlsian principle of Justice as fairness.\textsuperscript{118} Rights essentially mean a claim of people on the state [through constitutionally and legally secured provision] for capacity endowments to improve the life chances. Rights claimed on the state have two crucial aspects 1) the protection from the states’ coercion and 2) seeking positive action or affirmative duties from the state towards creation of such conditions which would facilitate the realisation of minimum basic human rights to a dignified life.

Thus, the Rights of man, human rights or fundamental rights are names given to these elementary rights, which are considered to be indispensable for the development of individual.\textsuperscript{119} Hedley Bull called human rights ‘rights attaching to human beings as such, rather than to

\textsuperscript{116} Harold J. Laski, A Grammar of Politics, S. Chand and Company, New Delhi, 1979, p.89.
\textsuperscript{117} Ibid p.91.
\textsuperscript{119} Peter R. Baehr, The Role of Human Rights in Foreign Policy, Macmillan, London, 1994, p.3.
this or that class of human beings, to be enjoyed by human beings only and to be enjoyed by them equally.\textsuperscript{120}

Every country in the world faces the problem of human rights violation in some form or the other. A large number of countries have given credence to human rights by incorporating them as fundamental rights in their constitution. Yet a United Nations study in April 1992 brought to light that at least half of the world’s population has been suffering from violation of human rights.\textsuperscript{121}

India is no exception to the scourge of terrorism including cross border terrorism, which has been longer than that of other countries. The various acts of terrorism continue to be perpetrated in various parts of the country. It is worth noting that violation of rights and terrorism begins when the state fails to deliver goods and discharge its duties towards people. As a result, state which is created to maintain peace and harmony, law and order because of frustration and disturbances in society.\textsuperscript{122} United states is a wide-ranging critique of Indian law and order. The US state Department has said, “Despite extensive constitutional and statutory safeguards significant human rights abuses persists throughout India. The abuses are particularly acute in disturbed areas such as Punjab, Kashmir and northeast, where the judicial system has broken down in the face of terrorist threats.\textsuperscript{123}

Terrorism creates fear. Its very first objective is to intimidate in order to accomplish political goals. When fear psychosis prevails human

\textsuperscript{120} Hedley Bull, Human Rights and World Politics in Ralph Pettman, (ed.) Moral Claims in World Affairs, Crom Helm Press, London, 1979, p.79.
\textsuperscript{121} N. Sanajoba, Human Rights, Principles, Practices and Abuses, Om Sons Publications, New Delhi, 1994, p.5.
\textsuperscript{123} Indian Recorder, February 12 to 18, 1994, p.103.
beings cease to think freely. Terror and indiscriminate killing, making lives unsafe and unsecured, overshadow the mind. It carries the message of violence, threat, killing, kidnapping, extortion, bribery, robbery, etc. These are conditions, which deprive mankind of their basic rights. Since 1995-96 some 300,000 Kashmiri Pandits have been compelled to leave the valley. Bombay blasts in 1993, cost India crores of rupees and tremendous suffering to the people from 6th December 1992 to 12 March 1993 – Indian railways – 10 crores a day, Film industry approximately 5 crores, business enterprises – 300 crores. Extra judicial and reprisal killings by security forces in Kashmir, Punjab, and the Northeast, political killings, kidnapping and extortion by militants, torture, rape and death in custody all over India, detention for prolonged periods without charges, inadequate prosecution of implicated personnel from the police and security forces, inter-caste and communal violence against women, lax prosecution of dowry deaths and widespread exploitation indentured bonded and child labour. Though government has begun to address the international concerns on human rights violations in India by creating the Human Rights Commission and entering into dialogue with international human rights groups, these efforts have produced only modest results. The activities of human rights groups can be constrained as partisan and unfair, if not fundamentally misplaced, leading to an increasing loss of credibility and further marginalisation even with victim groups.

There is a general impression that official abuse goes unpublished and the police for arrest and harassment have targeted human rights

125 K. Prabha, Supra no.122, p.64.
126 Indian Recorder, Supra no.123, p.103.
monitors. The US state department has severely criticised India’s human rights record in Jammu and Kashmir.\textsuperscript{128} Amnesty International has threatened to put India on the high priority human rights monitoring watch list.\textsuperscript{129}

In Andhra Pradesh large number of farmer suicide cases are reported in Karim Nagar – 148. This was followed by 107 in Karnool; 106 in Nalgonda, 100 in Anantpur, 92 in Mehboobnagar, 91 in Ranga Reddy district, 88 in Medak, 84 in Adilabad, 72 in Nizamabad, and 63 each in Warangal and Khamman district. Elsewhere in the state, Guntur has recorded 60 suicides, Prakasam 52, Chittoor 48, Krishna 27, and Kadapa 15. The Telugu Desam had submitted a list of about 2000 farmer’s suicide to the governor.\textsuperscript{130} As if a hostile neighbourhood and long unresolved borders with Pakistan and China were not enough, India is under siege from within. Heavily armed naxalites pose an internal security nightmare with well-trained guerrillas bleeding the country from Uttaranchal in the north to Kerala in south. “Gone are the days when Naxalites had to depend on the traditional bow and arrow while taking on the might of the state. They are well-equipped to fight security forces and strike at will anywhere in as many as 170 districts across 14 states, using sophisticated weapons like INSAS and AK 47 rifles and explosives ranging from locally available Gelatine sticks to smuggled R.D.X.\textsuperscript{131} Figures with the Home ministry suggest that the Maoist have a strength of nearly 10,000 guerrillas with over 20,000 modern weapons. Besides, they have unestimated numbers of country made arms procured mainly from

\textsuperscript{128} \textit{Indian Recorder}, April 16 – 22, 1994, p.247.
\textsuperscript{129} \textit{Indian Recorder}, February 12 – 18, 1998, p.3429.
\textsuperscript{130} \textit{Asian Age}, April 10, 2006.
\textsuperscript{131} \textit{Asian News Digest}, Vol.7 (18), April 22 – 28, 2006, p.5268.
Munger in Bihar, Gorakhpur and Ghaziabad in UP. Government reports confirmed their link with Northeast insurgencies.\textsuperscript{132}

Mismanagement of forests is the main reason for the spread of Naxalism from just one village in West Bengal to 7000 villages in the last 38 years. Different Naxal groups now control 19 percent of India’s forests over an area two and a half times the size of Bangladesh.\textsuperscript{133}

If any proof of the complete failure of criminal justice system was needed, there are cases for instance, the plight of Machang Lalung, now 77, has been an under trial for 54 years, the others are Khalilur Rehman, who has spent 35 years. Anil Kumar Barman who has been there for 33 years. Sonamani Deb, for 32 years and Parbati Mallik who has been in the mental asylum for 32 years.\textsuperscript{134} Custodial deaths and torture, the very act of being lodged in jail is one of a series of deprivations of various human rights – of fundamental rights guaranteed by the constitution. Prisoners do not lose their human / fundamental rights simply because they are held in incarceration as their rights are inherent in them and inalienable. Human rights are to be associated with life not with liberty. In 2001-2002, the total custodial deaths reported in India were 1,305.\textsuperscript{135}

In the UNAIDS Report on the Global AIDS Epidemic released in May; The figures of estimated AIDS deaths in India was over 4 lakh in 2005 highest in the world. The report had also highlighted that India led the HIV/AIDS table with 5.7 million people living with the disease.\textsuperscript{136} The NHRC held “Respect for Human Rights helps to reduce vulnerability to

\textsuperscript{132} *Times of India*, April, 10, 2006.
\textsuperscript{133} *Asian News Digest*, Vol.6 (28), July 3-9, 2005, p.4600.
\textsuperscript{134} *Times of India*, June 11, 2005.
\textsuperscript{135} *N.H.R.C. Annual Report*, 2001-02, p.361.
\textsuperscript{136} *Asian News Digest*, Vol.7 (28), July 1-7, 2006, p.5429.
HIV/AIDS to ensure that those living with or affected by HIV/AIDS live a life of dignity without discrimination and to alleviate the personal and societal impact of HIV infection. Conversely violations of Human Rights are primary forces in the spread of HIV/AIDS. Implementing a Human Rights approach is an essential step in dealing with this catastrophic threat to human development.\textsuperscript{137}

The Delhi based National Crime Records Bureau (NCRB) a government of India organisation collects violation of rights and crime data from various state police department and has a system to standardise the collected data. From the statistics furnished in NCRB crime in India – 1996, it is seen that total crime per lakh of population in India in 1993 was 604 whereas in Japan it was 1,509; 10,954 in Canada and 5,128 in England. The reported crime in Indian context is barely one-fourth of the actual incidence.\textsuperscript{138} However, an attempt has been made here to analyse crime trends in India for the period 1995-2000 with the help of official data with the NCRB. According to the Report 'Crime in India 2000' during the year 2000, 1.77 million IPC crimes and 3.4 million Special and Local Law (SLL) crimes were reported.\textsuperscript{139} Compared to year 1999 there was a four percent increase in IPC crimes and 7.9 percent decrease in SLL crimes. The IPC crime rate is decreased by 1.2 percent, whereas a 6.2 percent increase in SLL crimes is reported on an average every minute in the country. Among the states, Rajasthan, Assam and Jammu Kashmir were more violent as compared to Punjab, West Bengal and Sikkim. In the case of Union Territories, the National Capital Territory of Delhi reported a

\textsuperscript{137} N.H.R.C. Annual Report, 2001-02, p.357.
\textsuperscript{138} Shankar Sen, Police in Democratic Societies, Gyan Publishing House, New Delhi, 2000, p.42.
\textsuperscript{139} Crime in India – 2000, NCRB, Ministry of Home Affairs, Government of India, Delhi 2001, p.43.
high crime rate – 399 per 100,000 population – for all IPC crimes i.e., 2.3 times the national crime rate 176.7.\textsuperscript{140}

In cases of crime against women, a 4.1 percent increase was shown. The highest crime incidents in this category was in the state of Uttar Pradesh (14 Percent) and highest crime rate in Rajasthan – 24 per 1,00,000 population – as compared to 14.1 at the all India level. Punjab reported an increase of 19 percent in sexual harassment cases over the previous year. 33.7 percent of child victims of kidnapping and abduction (upto 10 years age) were reported from Delhi.\textsuperscript{141}

Table No. 5.1: Crimes Under Indian Penal Code (IPC)

<table>
<thead>
<tr>
<th>Year</th>
<th>Population (Estimated mid year in millions)</th>
<th>Crime Incidence (in 000)</th>
<th>Volume of Crime per 100,000 of population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951</td>
<td>361.1</td>
<td>650</td>
<td>179.9</td>
</tr>
<tr>
<td>1961</td>
<td>437.7</td>
<td>625</td>
<td>142.9</td>
</tr>
<tr>
<td>1971</td>
<td>551.2</td>
<td>953</td>
<td>172.8</td>
</tr>
<tr>
<td>1981</td>
<td>690.1</td>
<td>1386</td>
<td>200.8</td>
</tr>
<tr>
<td>1991</td>
<td>849.6</td>
<td>1678</td>
<td>197.5</td>
</tr>
<tr>
<td>1992</td>
<td>867.7</td>
<td>1689</td>
<td>194.7</td>
</tr>
<tr>
<td>1998</td>
<td>970.9</td>
<td>1779</td>
<td>183.2</td>
</tr>
<tr>
<td>1999</td>
<td>986.6</td>
<td>1765</td>
<td>178.9</td>
</tr>
<tr>
<td>2000</td>
<td>1002.1</td>
<td>1771</td>
<td>176.7</td>
</tr>
<tr>
<td>2000</td>
<td>21.2</td>
<td>-3.75</td>
<td>-20.6</td>
</tr>
<tr>
<td>1961</td>
<td>25.9</td>
<td>2.24</td>
<td>20.9</td>
</tr>
<tr>
<td>1971</td>
<td>25.2</td>
<td>5.42</td>
<td>16.2</td>
</tr>
<tr>
<td>1981</td>
<td>23.1</td>
<td>1.1</td>
<td>-1.6</td>
</tr>
</tbody>
</table>

Percentage change in over


In order to assess the crime situation and its trends the table covering both IPC and SLL crime gives a more detailed picture of the scenario. Thus the table represents the rate of cognizable crime under IPC and SLL from the year 1990 to 2000.

\textsuperscript{140} Ibid.
\textsuperscript{141} Crime in India, Supra no.139, p.44.
Table No. 5.2: Rate of Cognizable Crime under IPC and SLL, 1990-2000

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimated Mid-Year Population (in Lakhs)</th>
<th>Rate IPC</th>
<th>Rate SLL</th>
<th>Total</th>
<th>Percentage of IPC Crimes to Total Cognizable Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>8270</td>
<td>194</td>
<td>398.3</td>
<td>592.3</td>
<td>32.8</td>
</tr>
<tr>
<td>1991</td>
<td>8496</td>
<td>197.5</td>
<td>396.8</td>
<td>594.3</td>
<td>33.2</td>
</tr>
<tr>
<td>1992</td>
<td>8677</td>
<td>194.7</td>
<td>410.1</td>
<td>604.8</td>
<td>32.2</td>
</tr>
<tr>
<td>1993</td>
<td>8838</td>
<td>184.4</td>
<td>430.4</td>
<td>614.8</td>
<td>30</td>
</tr>
<tr>
<td>1994</td>
<td>9000</td>
<td>181.7</td>
<td>430.8</td>
<td>612.5</td>
<td>29.7</td>
</tr>
<tr>
<td>1995</td>
<td>9160</td>
<td>185.1</td>
<td>469.2</td>
<td>654.3</td>
<td>28.3</td>
</tr>
<tr>
<td>1996</td>
<td>9319</td>
<td>183.4</td>
<td>492.2</td>
<td>675.6</td>
<td>27.2</td>
</tr>
<tr>
<td>1997</td>
<td>9552</td>
<td>180</td>
<td>491.1</td>
<td>671.2</td>
<td>26.8</td>
</tr>
<tr>
<td>1998</td>
<td>9709</td>
<td>183.2</td>
<td>453.4</td>
<td>636.6</td>
<td>28.8</td>
</tr>
<tr>
<td>1999</td>
<td>9866</td>
<td>178.9</td>
<td>319.0</td>
<td>497.8</td>
<td>35.9</td>
</tr>
<tr>
<td>2000</td>
<td>10021</td>
<td>176.7</td>
<td>338.9</td>
<td>515.7</td>
<td>34.3</td>
</tr>
</tbody>
</table>

Source: Crime in India – 2000, NCRB, Ministry of Home Affairs, Government of India

The total volume of crimes under the IPC as also the total volume of crimes under SLL has been increasing since 1990. However, an exception is noticed in year 1998 and 1999 when the SLL figures decreased. It is important to remember, however that the increase in the figures of crime over the past decades has not been obtained by taking into account other factors, most notably the increase in population. In other words, the volume of crime per hundred thousand of population would be a more appropriate indicator of crime trends in the country.

Table No. 5.3: IPC Crime in Comparison to Population, Literacy & Police Strength, 1971-2000

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IPC Crime (in 100,000)</td>
<td>38.6</td>
<td>39.3</td>
<td>50.5</td>
<td>64.1</td>
<td>61.8</td>
<td>49.1</td>
<td>51.6</td>
</tr>
<tr>
<td>2</td>
<td>Decennial Population Growth</td>
<td>24.8</td>
<td>25</td>
<td>22.1</td>
<td>22.2</td>
<td>21.9</td>
<td>21.5</td>
<td>31.2</td>
</tr>
<tr>
<td>3</td>
<td>Police Strength (in 100,000)</td>
<td>129</td>
<td>131</td>
<td>136</td>
<td>134</td>
<td>135</td>
<td>134</td>
<td>129</td>
</tr>
<tr>
<td>4</td>
<td>Literacy Rate (percent)</td>
<td>34.5</td>
<td>43.6</td>
<td>52.2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>5</td>
<td>Density of Population (per Square kilometre)</td>
<td>177</td>
<td>216</td>
<td>267</td>
<td>301</td>
<td>307</td>
<td>312</td>
<td>316</td>
</tr>
</tbody>
</table>

Source: Crime in India – 2000, NCRB, Ministry of Home Affairs, Government of India

The table gives a broad picture of crime trend as compared to literacy rate, police strength, decennial population growth and density of
population. The data shows that, although there is a definite correspondence between the crime and the other variables identified, over the period 1971 – 1981, crime appears to have grown at a slower pace than literacy over this period, whereas it grew much faster than literacy in the subsequent periods.

The authority and legitimacy of modern nation states has come under a severe challenge as a result of rising trends in terrorism and violation of human rights. The ground realities in India are stark and statistics provide a grim reminder of the increasing threat that terrorism constitutes. India has lost over 56,000 lives to terrorism over the last decade. The enactment of the two anti-terrorist laws in India, TADA and the more recent POTA was intended as patch over against terrorism. Regrettably, their impact has been far from what was needed.

More number of violations of rights is noted from prisons in India, which are overwhelmingly populated by under trials. According to statistics by the custodial judicial cell of the National Human Rights Commission, 225,817 of 3,04,893 or 74.06 percent of the total prison population is comprised of those awaiting trial. The total jail capacity in India is for 232,412 prisoners, which makes the total prison population 31 percent higher than capacity clearly emphasizing the urgent need for a speedier justice mechanism.

Inherent deficiencies in the framing of laws, moreover, are magnified manifold within the context of a criminal justice system which is in as poor a state of health as India's. It is an accepted fact that convictions for

142 http://www.satp.org
any offence, whether minor traffic violations or murder, take an extraordinary length of time. The courts are overburdened, and recent estimates indicate that there are around 3.1 million pending cases in 21 high courts and 20 million in subordinate courts in the country.144 According to the Union Home Ministry the total number of those arrested and put in jail across the country under POTA was 257.145 Regrettably, political indulgence and high-handedness have constantly undermined the implementation of counter terrorist laws, and have infinitely complicated the terrorism debate.

The Gujrat anti-Muslim violence of early 2002 is a pointer towards violations of minority rights in the country. The destruction of Babri Mosque led to riots in Mumbai, which were soon followed by serial bomb blasts that rocked the city. The bomb attacks on the Gateway of India in Mumbai in early 2004, which resulted in killing of large number of innocent people, which calls for urgent action against the culprits.146 The Shah Alam camp where nearly 10,000 Muslims had been accommodated after their homes were burnt and looted, their relatives were killed.147

According to Sorabjee many lawyers and judges are not aware of international human rights instruments or of international human rights law. Some are inclined to interpret such documents to suit their own objectives.148

There is a general feeling that criminal justice system is virtually on the verge of collapse. According to the 61st report of parliamentary

146 Ranjit Bhushan, A Dangerous Symbiosis, Outlook, April 1, 2002, p.22.
147 The Times of India, April 24, 2002.
standing committee on Home Affairs, 25 million cases were pending in different courts in the country. Delivering a speech on the occasion of Golden Jubilee Celebrations of Supreme Court, Prime minister of India referred to the “people’s deep dissatisfaction over the pace of dispensation of justice”. In the same vein, he mentioned “the exasperating and increasingly expensive delays of the judicial system justly invite derision and contempt”.149

The major challenge in the next millennium before human rights movement are, combating terrorism and at the same time safeguarding human rights, sensitising the people, police and armed forces about human rights, updating the state arms of judiciary and legislations, increasing role of NGOs and infusing credibility into their action and reports, democracy and sustained economic and social development including concern for environment and attitudes of major powers towards the issue of human rights in India.150

The violence against women has recently been recognised by United Nations as a fundamental abuse of women’s human rights. Inspite of legislative measures adopted in favour of women in our society after independence, women still continue to be victims of violence. They are beaten, kidnapped, raped, burnt and murdered. In the year 1993 and 1994 a total number of 83,954 and 90,843 cases (which includes cases of dowry deaths, rape, murder), against women were reported. Broadly speaking, every year about 11,000 rapes, 21,000 molestations, 12,000 kidnapping, 20,000 cases of torture, 10,000 cases of eve-teasing and 5000

149 The Times of India, November 27, 1999.
cases of dowry deaths take place.\textsuperscript{151} In 1994 the number of cases recorded were torture 25,946 molestation 24,117 eve teasing 10,496 kidnapping and abduction 12,998; rape 12,351 and dowry death 4,935.\textsuperscript{152} Of the total crimes against women under IPC every year (about 80,000), 25 percent torture cases, 27 percent molestation, 13 percent eve teasing 15 percent are kidnapping and abduction cases, 14 percent rape cases, 6 percent dowry cases are reported.\textsuperscript{153}

Every child has a right, the birth right to a family of its own. It is entitled to love and affection and to grow up in the care and protection of its parents in an atmosphere of affection and of moral and material security. The International year of the child 1979 reaffirmed the concern of the world community to provide an opportunity to emphasise the intellectual, psychological and social development of children. Indian children continu in remain in distress and turmoil. According to International Labour Organisation (ILO) survey in 1995 in India nearly 15 percent of the children are child labourers.\textsuperscript{154} The number of employed children below 14 years of age in various economic activities according to the statement of Union Labour Minister in Rajya Sabha on March 20, 1995 was 17 million (9.5 million males and 7.5 million females).\textsuperscript{155} Every eighth child in the country is a worker. The number of working children in our country is 44 million – 5.2 percent of the total population. According to UNICEF study there are more than a lakh child labourers in the country in the age group of 5–15 years. In Mirzapur carpet industry.

\textsuperscript{152} Ibid.
\textsuperscript{153} Ibid.
\textsuperscript{154} \textit{The Hindustan Times}, June 22, 1995.
\textsuperscript{155} \textit{The Hindustan Times}, March 21, 1995.
50,000 in Zari industry in Lucknow, 10,000 lock industry in Lucknow 30,000.156

According to UN agencies, India has the largest number of child workers in the world. It is estimated that 11-13 million children aged 5-14 are engaged in a range of economic activities and at least two million of them are said to be working in hazardous industries.157

**Information and Communication Technology and Human Rights Violations:**

Globalisation challenges the institutions that have been established for the protection of human rights. The decline of ‘welfarism’ and challenge of states sovereignty have impacted on the ability of state to promote social and economic rights.158 The development and interconnectedness of information and communication technologies (ICTs) such as Internet, email, satellite television and mobile phones are diffusing globally at an impressive speed.159 ICT is easily accessible to every one in the world, with minimum cost and one of the important factors responsible for this is globalisation. Today the Internet has opened up countless communication channels, reduced the cost of networking and allowed human rights dissidents to spread their messages. The Internet was designed to maximize simplicity of communications but not security of communications, which is increasing opportunity for criminals or wrongdoers to exploit the vulnerabilities of the network for their own

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ends.\textsuperscript{160} A study by the National Research Council argues "Tomorrow's terrorists may be able to do more with a keyboard than with a bomb."\textsuperscript{161}

It is an undaunting fact that the scientific advancements and technological progressiveness have touched the pinnacles of the age. The nascent innovative technical know-how in various disciplines have also paved way for the rebirth of multifarious cyber crimes as a by-product of zooming industry leading to violation of rights. The future fate of human rights will be found crucified on the cross of social injustice sprouting from cyber crimes. The cyber crimes, which are homicidal to human rights and an antidote to the holistic progress of the humanity, are extending their tentacles by leaps and bounds with sten gun logic and gun-barrel diplomacy to the hungry humanity which lays for life and liberty.\textsuperscript{162}

The computer crime cases have an implication for violation of human rights, computer is used as a tool for erasing data on property or altering it to indicate that property has been destroyed or damaged or is obsolete, when in fact it has been stolen. In such crimes, the simplest, safest and most common method is data deed doing.\textsuperscript{163}

Crimes connecting to telecommunication network include sabotage; computers, computer facilities, data and program can be physically destroyed or damaged by arson, eclipses or other means, a sophisticated method of sabotage is the electronic destruction of data and program. A

\textsuperscript{160} Ibid, p.225.  
\textsuperscript{163} Panch Ramlingam, quoted in Ibid p.266.
logic Bomb is a computer programme that determines what condition or states of the computer optimally facilitate perpetration of a malicious act.\textsuperscript{164}

Telephone pranking is the misuse of Telecommunication services in different ways to avoid large telephone bills. It is defined as access without right to telecommunication services by infringing protocols and procedures through boxing. Cellular phones are misused; car phones can be taped in using scanners. This is one of the human rights violations, as a great loss will be incurred to the exchequer of the government.\textsuperscript{165} Human feeling starts drying up in the human hearts when all types of criminal activities are perpetrated without any remorse, one amongst such crimes is human organ theft, such as kidney theft, in violation of article 1 of UN conventions against Torture and other Cruel Inhuman Degrading Treatment or punishment.\textsuperscript{166} Consenting to the removal of an organ either under compulsion or inducement can automatically result in degradation of human beings and the practice employed would be inhuman. The notorious crime committed in the recent past is kidney thefts coercive methods to buy kidney with monetary consideration, would have disastrous consequences. Reportedly trading of human organs from India is on alarming rise though the legal provisions in India prohibit illegal transaction of human organs.\textsuperscript{167}

Hijacking is a form of hostage seizure in which the aircraft is mobile extension of the urban environment wherein the hapless and helpless
passengers who are innocent, unconnected and ignorant are subject to inhuman torture by the hijackers. Tender hearted and the weak are also hurled into wrongful confinement and unspeakable torture by hijackers without any humane feeling by intruding into privacy and personal life of the passengers with utter human rights violations.¹⁶⁸

The Rights of the Female child are always at stake. For having born as a female child itself is considered as a curse and worst sin by some of the sections of the society with inhuman heart. The pathetic treatment meted out to girl child is an untold sad story even when the female embryo is subjected to the homicidal torture or female foeticide. Though prenatal diagnostic techniques (Regulation and Prevention of misuse) Act 1994, came into being, there are still large number of such cases reported about the perpetration of the crime.

The Nuclear Theft – The Secrecy of the nuclear testing, preparation of nuclear bombs, separation of radioactive isotopes etc. have been passed on to outsiders with ulterior motives by unscrupulous “insiders”, who hurl the nation into peril. The nuclear crimes have ramification, that will sound the death-knell to the very existence of the nation.¹⁶⁹

The other cyber crimes like – virus, Trojan Horse, Computer worm, hacking etc. are causing great loss to the nation. In a digital world of global economy the risks of fraud money laundering and other financial crises are markedly increased.¹⁷⁰ E-cash and the increasing importance of

¹⁶⁹ M. Ponnain, Supra no. p.276.
digital markets pose problems for central government control over the economy and the behaviour of economic actors; they also enter borders around national markets and nation-state that are increasingly permeable or perhaps, increasingly irrelevant.\textsuperscript{171} The ideological onslaught against the welfare state has made many governments unable to respond to the domestic needs of a more integrated economy.\textsuperscript{172}

An analysis of Trade Related Intellectual Property Rights (TRIPs) Agreements would reveal that it has brought for the first time into global trade the areas of ideas, knowledge and innovation. If trans national corporations manage to obtain a patent on genetically transformed Haldi, Neem or Soyabean, it will own all forms of these for generations and all those using them would have to pay for their use. The General Agreement on Trade and Tarriffs (GATT) and World Trade Organisation (WTO) will force us to give up our traditional rights moral values, economic priorities and autonomy to a handful of Fortune 500 companies resulting violation of intellectual property Rights in the country.\textsuperscript{173}

Human rights in India, therefore, are under constant threat of violation by the state and non-state actors and forces of globalisation. The law implementation mechanism is failing to protect and promote human rights, information and communication technology is yet another challenge posed by globalisation testing the capability of state sovereignty.

\textsuperscript{171} Ibid. p.71.
\textsuperscript{172} Dani Rodrik, Sense and Nonsense in the Globalization Debate, \textit{Foreign Policy}, Vol.107, Summer 1997, p.20.
GLOBALISATION, TERRORISM AND HUMAN RIGHTS IN KASHMIR

"When the foundation is made of spurious material which is infested with white ants from within, a gale of low intensity is sufficient to bring the edifice down; a Hurricane is not needed"

- Jagmohan, January 24, 1990

The state of Jammu and Kashmir, occupies the northernmost latitudes of the Indian Union. The state lies approximately between 32°15' and 37°17'53", North latitudes and 72°35' and 80°20' East Longitudes. The state with a total area of 222,236.2 square kilometres constitutes about 7 percent of the total area of India.174

The state is bound by Sinkiang and Tibet in the north and east respectively. Afghanistan in the northwest and Pakistan in the west, and Central Asian Republics are its close neighbours. The states of Himachal Pradesh and Punjab are contiguous with its southern boundaries.175 The valley of Kashmir has been described, poetically, as an emerald set in pearls, a land of lakes, clear streams, lush green turf, magnificent trees and mighty mountains.176

The state of Jammu and Kashmir comprises three regions, known as Kashmir, Jammu and Ladakh, each with its own distinct religion and identity. Kashmir has 76 percent Muslim, Jammu 82 percent Hindu and Ladakh 90 percent Buddhist. Although, Kashmir is the summer capital and Jammu, the winter, power remains vested in the capital city of Kashmir – Srinagar.177

175 Ibid.
The crisis in Kashmir has been the outcome of the deep-rooted discontent accumulated over the past six decades. The source of all protests is serious dissatisfaction with the existing political arrangement.\textsuperscript{178}

The case of Kashmir demands a serious dispassionate study not only by those who are interested in insurgency and counter insurgency operations but also by all those citizens of India who have some concern about the well being of the nation.\textsuperscript{179} Kashmir remained independent over long periods of time. During the colonial era, it was one of the principalities ruled by hereditary feudal chiefs (Maharajas) and granted interval autonomy by Britain as the paramount power. The maharajah of Jammu and Kashmir was the descendent that obtained the territory from British East India Company on lease. The resentment of the people of Kashmir having been treated as chattel, in lease deed remained inarticulate during early colonial period but exploded in a freedom movement in 1931. It led to the ‘Quit Kashmir’ campaign against the Maharajah in 1946 and to the Azad Kashmir movement.\textsuperscript{180}

Jammu and Kashmir, one of the princely states was ruled by Maharaja Hari Singh, who was the last member of the Dogra dynasty to rule over the modern state of Jammu and Kashmir, created following the Treaty of Amritsar of 16 March 1846 between the British Indian Government and the Raja of Jammu Gulab Singh. The British transferred to him “all the hilly or mountainous country situated to the eastward of

\begin{itemize}
\end{itemize}
The beginning of the muddle in Kashmir can easily be traced to the opportunism of Hari Singh the then Maharaja of Kashmir. He wanted the best of both worlds. The irony of fate was that he ultimately ended up getting the worst of both. He refused to join either India or Pakistan. He was very much apprehensive that Jinnah would dethrone him for religious reasons; at the same time he disliked Nehru for his socialist proclivities and democratic demands. Caught between the two he decided that 'masterly' inaction was the best policy. Hari Singh wallowed in his indecision till the Pakistanis engineered the infamous raid of the tribals on October 22, 1947. "This raid was mounted by a force about 5000 strong Afridi, Wazir, Masud and Swati tribals with Pakistan army soldiers with all the paraphernalia of regular infantry like machine guns, mines, wireless sets, etc. making a rapid advance. The ill-equipped state troops of Hari Singh were essentially ceremonial in character. The raiders easily overwhelmed them on October 26 and reached Baramulla. Hari Singh had become aware of the attack only on October 24 when raiders damaged the Mohor Power Station plunging Srinagar into darkness. He lost no time in scooting off to Jammu leaving Kashmir valley. It was under such pressing circumstances he eventually signed the instrument of accession on October 26 with India.

The people of Kashmir valley welcomed the Indian army to fight the raid sponsored by Pakistan. The Indian forces went to his rescue and

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182 Supra no.179, p.60.
183 Ibid.
staged a historic defence. The counter-offensive was launched on November 5, Baramulla, Uri, Tangmarg and Gulmarg were recaptured.

The Kashmir issue between India and Pakistan is the direct consequence of the partition of India. Pakistani rulers had been making every effort to force the Muslim majority state to accede to Pakistan. When the Maharaja of Kashmir, Hari Singh did not do so, Pakistan decided to annex the state by force.\textsuperscript{185}

Nehru, in a letter to the British Prime Minister Clement Attlee on 25 October 1947 wrote, “Kashmir’s northern frontiers, as you are aware, are in common with those of three countries – Afghanistan, USSR and China. Security of Kashmir is vital to the security of India, especially since part of southern boundary of Kashmir and India is common. Helping Kashmir, therefore, is an obligation to national interest of India.”\textsuperscript{186} On December 31, 1947, India approached the United Nations for help over Kashmir issue immediately entangled Kashmir in the web of international power politics.\textsuperscript{187}

Two important developments had taken place while the wrangling at the UN was going on. Hari Singh had agreed to set up an interim government in Kashmir. Accordingly on March 5, 1948, Sheikh Abdullah became the prime minister of the state. Hari Singh had managed to insert a clause in the Instrument of accession limiting the Indian jurisdiction in respect of the state of Jammu and Kashmir to defence, external affairs and communications.\textsuperscript{188}

\textsuperscript{186} Ibid, p.33
\textsuperscript{188} Supra no. 179, p.66.
After the execution of the Instrument of Accession on 27 October 1947, and adoption of the Indian constitution on 26 January 1950, the state of Jammu and Kashmir was irrevocably brought under the territorial and constitutional jurisdiction of India. A special provision Article 370 was made for it in the Indian constitution.\textsuperscript{189}

**Terrorism in Kashmir:**

Kashmir’s road to terrorism is short but the background is long and wearisome. The Kashmir issue is likely to keep simmering because the Pakistan government would like to shift the focus away from the country’s intractable internal problems and internationalise the issue. India considers Kashmir a bilateral issue to be solved out between India and Pakistan.\textsuperscript{190}

A report for the US Congress by its Research Service (CRS) best sums up the initial events signalling the start of the militancy. Beginning in early 1990, tensions increased significantly as India sent more than 1,50,000 security forces into the state in response to an increasingly militant Muslim secessionist movement, which it contended was being armed and trained by Pakistan. As of mid 1990-91, India had become ever more critical of alleged Pakistan’s interference. Pakistan, for its part claims to provide only moral support for the rights of Kashmiri Muslims. However, the indisputable flow of arms into Kashmir and Pakistan’s public calls for the holding of a plebiscite under the UN resolutions, adopted in 1948, are viewed by many in India as a major threat to the status quo.\textsuperscript{191}

\textsuperscript{189} Jagmohan, Supra no.187, p.20.
A joint study report of the American Asia Society and the Russian Institute of Oriental studies stated that in early 1990 a wave of secessionism, Islamic fundamentalism and militancy swept over Kashmir valley, where the state's largest city, Srinagar, is situated. The Kashmiri 'freedom fighters' engaged in widespread violence, including murder, terrorism, arson and bombings in densely populated areas. Leaders of established political organisations of all social groups, including moderate Muslims who advocate a political settlement of the Kashmir issue, were targeted. Later in 1991, a number of innocent citizens came under threat and attack, including the valley's large Pandit minority. Even leaders of the main separatist groups have undercut Pakistan's statement about spontaneous nature of events in Kashmir. For example, the leader of the Jammu and Kashmir Liberation Front; Amanulla Khan, disclosed in January 1990 that the protest in Kashmir had been carefully planned and supported by well trained armed insurgents coming from Pakistani territory. We received a curious response to our question regarding these training camps; they stated that government did not initiate the creation of such camps, but they could exist beyond government control. We were also informed concerning the participation of Kashmiris in the Afghan war and Mujahideen in the events in Kashmir, 'the Government has nothing to do with this, but such participation may take place on a personal basis.

The level of terrorism can be gauged from the nearly 700 incidents of kidnappings by the militants, and apart from over 200 people killed, most others have been released after extortion, torture or rape by the militants.

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193 Ibid.
Above all else, large-scale torching of property by the militants has ruined decades of development in Kashmir. Apart from the 1,161 government buildings that have been destroyed, over 478 educational institutions and 295 bridges have been burnt and destroyed.194

Pakistan inspired and abetted terrorism in Jammu and Kashmir has posed a direct challenge to India's security since 1989. The concept and execution of cross-border terrorism has been based primarily on techniques employed by the Central Intelligence Agency (CIA) in Afghanistan, where US used local pan, Islamic guerrillas with Pakistan's support to settle scores with the erstwhile Soviet Union.195

The success of the Khomeini revolution in Iran and the dissemination of the ideology of Islamic revolution did influence the Muslims in Asia, the Soviet armed intervention in Afghanistan (December 1979) brought home to them the threats still looming over the Islamic countries.196 Pakistan has taken recourse to the concept of jehad to fulfil its long time policy of securing the independence of Kashmir from India. Pakistan's inclination of using force to annex Kashmir has been apparent from the very beginning. The blue print of aggression against Kashmir, which was drawn in Pakistan in 1947-48, continues to be followed as policy even today. Attacks by infiltration in 1965, which led to the second Indo-Pakistan war, Pakistan's proxy war since 1988 and the Kargil offensive of 1999 confirm that Pakistan prefers to follow a policy of confrontation in Kashmir.197 The separatist movement in Kashmir began

to metamorphose into militancy in April 1988 due to the resurgence in the activities of the Jammu Kashmir Liberation Front (JKLF) the movement was taken over by Pakistan sponsored radical Islamist groups, making terrorism, insurgency and ethnic cleansing its main weapons. The involvement of Pakistan’s intelligence agencies like ISI transformed the movement into a campaign of terror. By 1989, the situation underwent a sea change with the use of sophisticated firearms and extensive use of explosives smuggled in from Pakistan.

Terrorism, in Jammu and Kashmir broadly categorised into six phases since 1989. The first phase, which occurred between the closing months of 1989 till mid 1990, can be termed as eruption of terrorism. The abduction of Rubiya Sayeed and her release in exchange for five jailed terrorists of (JKLF) marked the emergence of serious complexities. "The afternoon of December 13, 1989, changed everything. Five of the JKLF men were set free in exchange for Rubiya Sayeed.... (daughter of then Union Home Minister, Mufti Mohammad Sayeed). The people saw in exchange a surrender of India’s might. The terrorists of yesterday became heroes overnight. This Pakistan's success led Indian government succumb.

In this phase Kashmiri Pandits were targeted and intimidated forcing them to migrate out of the valley. The ethnic cleaning of the valley pushed the terrorists systematically and methodically.

The second phase lasted till the end of 1992. The terrorists systematically destroyed infrastructure, bridges and educational

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institutions. In response efforts were made to increase the presence of the Security Forces (SFs) along the Line of Control (Loc). The contours of third phase of terrorism emerged in the valley in 1993, with the increasing marginalisation of pro-independence elements and local terrorist leadership. Hard-line pro-Pakistan terrorist outfits like the Hizb-ul-Mujahideen (HM), Harkat-ul Ansar (HuA) and Lashkar-e-Toiba (LeT) replaced them. More potent and vicious elements emerged in the form of foreign mercenaries referred to as the Afghanistan. It was during this period that terrorists began to make heavy inroads into the district of Doda and Rajouri-poona.ch.201 The period also witnessed the formation of the All Party Hurriyat Conference (APHC).

The month of November saw two significant achievements: The clearing of the Hazartbal shrine.202 From the clutches of terrorists who had occupied it approximately a month and successful operation (Operation Sahayak) was launched on October 7, 1993.203

The fourth phase of terrorism noted from the years 1994 and 1995 termed as a phase of consolidation by state. Just as Pakistan appeared to be losing its strategic initiative in Jammu and Kashmir, the terrorists occupied and subsequently destroyed the Charar-e-sharief shrine.204 In a desperate attempt to divert attention and stall the impending elections parliamentary elections were conducted peacefully in three phases from May 7 to May 30, 1996, which saw an impressive turn out of 49.02 percent of voters in state.205 The successful holding of parliamentary

201 Sudhir S. Bloeria, Pakistan’s Insurgency vs India’s Security, Manas Publications, New Delhi, 2000, p.349.
205 Sudhir Bloeria, Supra No.201. p.344-48.
elections and an encouraging response from people eventually paved the way for elections to the Legislative Assembly in the state after a gap of nine years. Farooq Abdullah of the National Conference assumed office on October 10, 1996.

The restoration of democratic system also coincided with sixth phase of terrorist operations in the state. One of the most significant achievements was the increased rate of recovery of explosive material, including grenades and Improvised Explosive Devices (IED). This trend was to continue into the year 1998 as well. However, during the years 1999 and 2000, terrorist activity increased and number of terrorists killed during the year 2000 was the highest.

According to Times Magazine, since Kashmir erupted in 1989, India has pointed a blunt and unwavering finger at Pakistan, accusing its neighbour of fomenting the entire problem... today, however, India’s report ranks a lot more truer. Despite a decade of denials – Islamabad insists it provides only moral and political support, not training or tangible aids – Pakistan is fuelling militant activities in Kashmir. Of the five main militant groups operating in Kashmir, four are based in Pakistan where open recruiting and funding are commonplace. Training of militants is also done on Pakistan’s soil. The Pakistani military is deeply involved, especially in smuggling of anti India militants across the line of control. On July 24, 2000, Abdul Majid Dar, the Hizb-ul-Mujahideen Commander in the valley announced a unilateral cease-fire for three months.

206 Bloeria, Supra No.201, p.359.
For Islamabad, the liberation of Kashmir is a sacred mission, the only task unfulfilled since Muhammad Ali Jinnah’s days. Moreover, a crisis in Kashmir constitutes an excellent outlet for the frustration at home, an instrument for the mobilization of the masses, as well as gaining the support of the Islamist parties and primarily their loyalties in the military and the ISI.209

Over the years, there was a considerable increase in Pakistan backed military organisations in the valley. At present there are 110 terrorist camps existing in Pakistan.210 Contrary to Pakistan President Parvez Musharaff’s claim that there are no terrorist training camps (TTC), whereas intelligence imputes indicate about 110 TTCs in Pakistan occupied Kashmir (PoK) some of these camps are at Habibullah, Peergarhi, Tarbela, Jangalmangal, Muzzafarabad, Bhimbar, Kotli, Sarsawah, Sargodh, Attock, Manshera. Most of these camps are located in inaccessible terrain covered with thick forests. These camps are mobile and keep on shifting. These camps are being run by some of the terrorist outfits like the Hizbul-Mujahideen, The Lashkar-e-Taiba and Jaish-e-Mohammad. There were 1,200 to 1,500 trained militants of various terrorist outfits waiting to infiltrate into Jammu and Kashmir. Additional 3000 to 3500 militants are lodged in various training camps. These groups proliferated rapidly – one Indian Army count detailed 177 different organisations. A more recent count published in 2003 included 31 major groups operating in Kashmir211.

Thus people of Kashmir have suffered intensely in the last one-decade. The price has been too heavy for them, and they cannot be expected after such sacrifices to accept too little.212 India’s Former Deputy

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209 Prakash Singh, Supra No.199, p.137.
Prime Minister L.K. Advani, recently argued "The epicentre of global terrorism has shifted to Pakistan after the fall of Taliban in Afghanistan". The idea of a shift in the locus of 'terroir' was first proposed in U.S. State Department's patterns of Global Terrorism Report, 1989, and in all its fairness referred explicitly to the locus of terrorism directed against the United States in its initial conception. The idea advanced was of generic - geographical shift of the locus of terror from Middle East to South Asia with Afghanistan, Pakistan and Kashmir identified as the new loci and primary sources of extremist Islamic militancy.

Dave McIntyre, writing in the wake of the 9/11 terrorist outrage in the U.S., comments that a revolution in Military Affairs has arrived, 'except we did not do it to 'them' they did it for us'.

Even a cursory glance at fatalities in Jammu and Kashmir would confirm, moreover, that terrorism had been at comparable - albeit escalating - levels in this theatre for over a decade. Total fatalities.

<table>
<thead>
<tr>
<th>Year</th>
<th>1990 - 1177</th>
<th>1997 - 2372</th>
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<tbody>
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<td>1993</td>
<td>2567</td>
<td>2000 - 3288</td>
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<tr>
<td>1995</td>
<td>2795</td>
<td>2002 - 2683</td>
</tr>
<tr>
<td>1996</td>
<td>2903</td>
<td>(Till November 18)</td>
</tr>
</tbody>
</table>

(Source: http://www.satp.org/satporgtp/countries/india/states/jandk/data_sheets/annualcasualties.htm)

213 The Statesman, October 2, 2002.
Islamist Fundamentalist terrorism currently exhausts the entire focus of western energies and has a burgeoning body of scholarship on the subject. But it is sobering to learn that Sri Lanka has witnessed over 5,617 fatalities in the terrorist conflict with LTTE, over period of March 2000 and July 2002, and an estimated 64,000 persons have lost their lives in this war. Since its commencements in 1983, Sri Lanka has witnessed at least 4,247 fatalities in the conflict with Maoist extremists between March 2000 and August 10, 2002. A multiplicity of insurgencies in India’s Northeast has resulted in at least 12,901 deaths between 1992 and October 6, 2002. Most of them have an international dimension.

The fact is, the pattern of economic activity and growth that underpin all power in the modern and increasingly globalized-world cannot be sustained by groupings that seek “smaller worlds within borders that will seal them off the modernity”. The inexorable truth is that with contemporary technological imperatives and the corresponding intellectual demands they impose on dynamic societies –it is not possible to simultaneously sustain a thrust towards international globalisation and regional or local ghettoisation.

Significantly, as Oliver Roy correctly notes the apparently ‘anti-modern’ Islamist networks are inevitably linked up with the globalised world – irrespective of their ideological predilections and antipathies. Even in a traditional society as Afghanistan, the network that develops

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217 www.satp.org/satporgtp/sair/archieves/1.16.htm#table
218 http://www.satp.org/satporgtp/sair/archieves/1.4.htm#table
around a small time local commander, plugged into an 'international' network for the circulation of goods (arms and drugs) is no longer the clan that existed before, but a re-composition of the traditional segmentation around a new political elite and the globalised flow of wealth.\textsuperscript{221}

This power is compounded with the passage of time, and the world has seen a continuous trend over the past decades, of the progressive weakening and marginalisation of authoritarian and extremist cultures. This progression creates its own impulses to violence and disruption, but this is the creation of the disadvantaged – those who are excluded to suffer "the frustration inherent in an unattainable consumerist world."\textsuperscript{222} Not the initiative of those who possess the means for transformation when we draft our strategy to defeat the "prairie fire of Jihad terrorism spreading across the world."\textsuperscript{223}

Terror struck into the hearts of the enemies is not only a means, it is the end in itself. Once a condition of terror into the opponents' heart is obtained hardly anything is left to be achieved. It is a point where the means and the end meet and merge. Terror is not a means of imposing decision upon the enemy. It is the decision we wish to impose upon him.\textsuperscript{224}

Pakistani's dramatic victory in Afghanistan and the success of the forces, it trained, motivated, supported and guided, the Taliban, have created a Frankensteinan–dilemma that now threatens its own existence.

\textsuperscript{222} Ibid.
\textsuperscript{223} http://www.saag.org/papers6/paper538.html.
At the heart of the crisis, is the network of increasingly powerful Marakiz (centres) and Madrassas that has now established itself in Pakistan as the source, not only of international 'pan-Islamic' terrorism, but of an overwhelming proportion of internal strife as well. “Its roots can be traced back to General Zia-ul-Haq’s vigorous use of Islam as a tool of regime legitimization, a trend that was first introduced by Zulfiqar Ali Bhutto in 1971.”

The growth of these Madrassas is indeed, an accurate index of Pakistan’s mounting difficulties. In 1947, there were 137 Madrassas in the entire country. By 1971 this number had grown to 900. With Zia’s policy of generously funding “Madrassas” of all sectarian persuasions ... [by the end of the Zia era in 1988], there were 8,000 Madrassas and 25,000 unregistered ones, educating over half a million students. Sources indicate that by the middle of the year 2000, the number of Madrassas had grown to nearly 9,500 and some commentators in Pakistan estimate the current number of unregistered Madrassas at between 40,000 and 50,000.

It was in these circumstances of Islamic victory and despair, that the Jamat-I-Islami and other Muslim fundamentalist groups of Kashmir like Students Islamic Federation, Islami Jamait Tulba, Muslim United Front etc. through their sustained efforts of indoctrination and preaching in mosques, Madrassas, Friday congregations and social and political assemblies ignited the Islamic passions among majority of Kashmiri Muslims and built the youth cadres to achieve the objective of Islamisation of Kashmir society.

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226 Ibid.
India has been a victim of cross-border terrorism. Pakistan’s role in spreading terrorist activities in Jammu and Kashmir is well known. With the growing experience in training, organising and running the Mujahideen campaigns in Afghanistan and vast military supplies (through U.S. Saudi Arabia and other foreign assistance), Pakistan began expanding its operation to sponsor and promote separatism and terrorism primarily in Kashmir, as a strategic long term programme.

Reflecting on cross-border linkages of terrorist groups, Christopher Harmones notes, “weak internal controls combine with weak border controls yielding countries... which all but lack sovereignty, are ripe for abuse by internal groups, outside powers and foreign terrorist organisations.”

The ISI has made widespread efforts to engage soft targets, all over India, if Kashmir has been the front through which Jehad has got a foothold, the Northeast, with its unending influx of illegal immigrants is the backdoor, invitingly beckoning the ISI. Its activities have also been detected in several parts of the country.

Calling for an all out jihad against India for the first time, Osama bin Laden declared: “India and America are now our biggest enemies ... all Mujahideen groups in Pakistan should come together now to target India... We are always ready to help the Kashmiri Mujahideen.”

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Bin Laden's sudden declaration of Jihad against India is not being viewed as an emotional outburst. It was delivered at a point when India and the US were adding a new dimension to their relationship through co-operation on counter-terrorism.

Omar Asghar Khan, a former trade union leader and independent economist, who heads Sangi, an NGO, says Pakistan's economy centres on foreign loan. The budget depends a lot on foreign loans. So if the donors back off, the disaster cannot be far away." However, the fundamentalist hardliners in Pakistan are undeterred. The ISI spends about Rupees 60 to 80 crores per year on Pakistan's proxy war against India in Jammu and Kashmir, Rupees 5 to 6 crore per month. Narcotic money plays a decisive role in Pakistan's military in Afghanistan: The Taliban Movement is sustained by narcotic money.

The state of Jammu and Kashmir has been experiencing terrorism for over a decade now. More than 25,000 persons have lost their lives in the strife over this period. With 63,387 terrorist incidents recorded in the state through the 1990, terror has become an everyday experience in the lives of its people.

Operational Strategy of Cross-Border Terrorism in Jammu and Kashmir:

Though terrorism in Jammu and Kashmir is largely confined to the valley, it has also affected the Rajouri and Poonch districts bordering

233 Ibid.
Pakistan, the Peer Panjal Range and the region stretching down to Doda. The number of terrorist groups in Kashmir was proliferating at a rapid rate. There are at present just half a dozen principal terrorist groups operating in Kashmir.

The Hizb-ul Mujahideen, (HuM) Lashkar-e-Toiba (LeT), Al-Badr, Harkat-ul-Jehadi Islam (HuJI) and Jaish-e-Mohammad (JM).236 The Hizb-ul-Mujahideen cadres are mainly of Kashmiri origin. Other organisations have come to be progressively dominated by militants of foreign origin including Pakistan. Over 60 percent of militants currently active in Jammu and Kashmir are believed to be of foreign origin, a proportion that has increased from a mere 6 percent in 1989.237 The strategy of these terrorist groups is to create terror through bomb explosions, indiscriminate firing, at innocent, targeting VIPs and important functionaries of the government, and attacks on security forces. Lately, several attacks on security establishments by suicide squads or fidayeen have also been executed.238

With regard to the tools of terror, seizure figures from January 1990 to June 30 2000 indicate that these are sufficient to arm at least three divisions of the army.

As per Indian Army estimates, Pakistani troops are reported to have fired more than 10,50,000 small arms rounds, 17,000 artillery rounds, 2000 anti-aircraft rounds and 1,000 rocket propelled grenades in the first six months of 1998 alone.\textsuperscript{239}

Explosives have also been used extensively, and the volume of seized explosives is an index of the destructive potential the terrorists currently possess: on the communications front, the fact that as many as 2,798

\textsuperscript{239} K. Warikoo, Supra no.196, p.45.
wireless sets had been seized from the terrorists (upto October 2000) is an indication of their effective organisational strength.\textsuperscript{240}

<table>
<thead>
<tr>
<th>Sl.No.</th>
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<th>(in numbers)</th>
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<tbody>
<tr>
<td>1)</td>
<td>Grenades/Hand Grenades</td>
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</tr>
<tr>
<td>2)</td>
<td>IEDs</td>
<td>3795</td>
</tr>
<tr>
<td>3)</td>
<td>Explosives</td>
<td>21770</td>
</tr>
<tr>
<td>4)</td>
<td>Electronic Detonators</td>
<td>4004</td>
</tr>
<tr>
<td>5)</td>
<td>Detonators</td>
<td>44790</td>
</tr>
<tr>
<td>6)</td>
<td>A P Mines</td>
<td>4901</td>
</tr>
<tr>
<td>7)</td>
<td>A T Mines</td>
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</tr>
<tr>
<td>8)</td>
<td>R.D.X. (in Kgs)</td>
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</tr>
<tr>
<td>9)</td>
<td>Rockets</td>
<td>3259</td>
</tr>
</tbody>
</table>

Source: Crime records of State Policy

The extent of funding of terrorism in Jammu and Kashmir depends primarily on the estimate of the number of terrorists operating in this region and there is no unanimity. As noted there are six principal terrorist groups operating in Jammu and Kashmir. Within a specific hierarchy, these groups are further sub-divided into numerous gangs of varying membership strength. They function in small gangs for carrying out attacks of a larger intensity.\textsuperscript{241}

According to various computations by intelligence agencies on an average Rupees 3,00,000 per annum is spent on spending a Kashmiri terrorist and upto Rupees 5,00,000 on foreign terrorist. If one assumes an average expenditure of Rupees 4,00,000 per terrorist over a force of 4,000, it results in a staggering amount of Rupees 16 billion.\textsuperscript{242} The structure of funding is as shown below:

\textsuperscript{240} http://www.armyinkashmir.org/weapons.html.
\textsuperscript{241} Hindustan Times, August 3, 2000.
Table 5.6: Funds given to terrorists operating in Jammu & Kashmir

<table>
<thead>
<tr>
<th>Sl.no.</th>
<th>Foreigners (includes Pakistan)</th>
<th>Kashmiris</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Upfront money given at the time of recruitment</td>
<td>Upto Rs.50,000</td>
</tr>
<tr>
<td>2.</td>
<td>Monthly payment</td>
<td>Rs.10,000 to Rs.12,000</td>
</tr>
<tr>
<td>3.</td>
<td>End of tenure payment</td>
<td>Rs.2,00,000 to Rs.2,50,000</td>
</tr>
<tr>
<td>4.</td>
<td>For a spectacular act of terrorism</td>
<td>Rs.1 lakh to Rs.2 Lakhs</td>
</tr>
<tr>
<td>5.</td>
<td>Payment given to a supreme or top leader</td>
<td>Upto Rs.50,000/- per month</td>
</tr>
</tbody>
</table>


The army has separately computed the various sources of funding of terrorism in Jammu & Kashmir. Army sources disclose that the proportions are as follows:

Table 5.7: Funding of Terrorism

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Straight funding from Pakistan</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Funding from narcotics</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>Funding from illegal sale of arms</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Funding through counterfeit currency</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Funding through Zohat (An Islamic tax)</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>Funding from international Islamic organisations</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>Funding from “Organisation of Islamic countries”</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>Funding through extortion</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>Funding through donations</td>
<td>5%</td>
<td></td>
</tr>
</tbody>
</table>
Table 5.8: Cost of weapons and Explosives

<table>
<thead>
<tr>
<th>Sl.no.</th>
<th>Weapons</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>AK 47</td>
<td>Rs.25,000/-</td>
</tr>
<tr>
<td>2.</td>
<td>Rifle</td>
<td>Rs.10,000/-</td>
</tr>
<tr>
<td>3.</td>
<td>LML</td>
<td>Rs.20,000/-</td>
</tr>
<tr>
<td>4.</td>
<td>Rocket launchers</td>
<td>Rs.50,000/-</td>
</tr>
<tr>
<td>5.</td>
<td>Mortars</td>
<td>Rs.75,000/-</td>
</tr>
</tbody>
</table>

Explosives

<table>
<thead>
<tr>
<th>Sl.no.</th>
<th>Explosives</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>RDX</td>
<td>Rs.20,000/- per kg.</td>
</tr>
<tr>
<td>2.</td>
<td>Other explosives</td>
<td>Rs.6,000/- per kg.</td>
</tr>
</tbody>
</table>

Other figures

<table>
<thead>
<tr>
<th>Sl.no.</th>
<th>Other figures</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Cost of training of terrorist</td>
</tr>
<tr>
<td>2.</td>
<td>Cost of clothing</td>
</tr>
<tr>
<td>3.</td>
<td>Relief of families of deceased militants in Pakistan</td>
</tr>
<tr>
<td>4.</td>
<td>Relief for families of deceased Kashmiri in J&amp;K</td>
</tr>
</tbody>
</table>


There are several sources of funds that have been utilised by terrorist outfits in Jammu and Kashmir. Direct funding by the ISI with terrorists crossing the border being provided with both genuine and counterfeit currency. Hawala funding is done through a network of dealers, which extends all the way to Delhi, Mumbai and other places in India.243 With dwindling official resources, Pakistan is increasingly resorting to financing terrorism with proceeds from the smuggling of narcotics. High quality Opium is harvested from Afghanistan and the Pakistan-Afghanistan border, and refined into heroin in highly

sophisticated laboratories in Afghanistan and the Northwest Frontier Province (NWFP) of Pakistan. Narcotic smugglers based in Pakistan and controlled by the ISI are reported to be earning U.S.$2.5 billion in the illegal trading of narcotics. The current harvest has been estimated at 5000 tons of opium by various countries and international agencies.  

It is through illegal trading of narcotics Pakistan is supporting the Taliban Government in Afghanistan and financing terrorist outfits in Jammu and Kashmir. It is also alleged that Kargil war was also financed by Pakistan through smuggling of narcotics.

The number of Terrorists killed in Jammu and Kashmir is as follows:

Table No. 5.9: Terrorists killed in Jammu and Kashmir by Security Forces Up to March 31, 2004

<table>
<thead>
<tr>
<th>Year</th>
<th>Total terrorists killed</th>
<th>Foreign Terrorists killed</th>
<th>% of Foreign Terrorists to Total Terrorists killed</th>
<th>Total Terrorists surrendered</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>263</td>
<td>217</td>
<td>82.50</td>
<td>24</td>
</tr>
<tr>
<td>2003</td>
<td>1447</td>
<td>1004</td>
<td>69.38</td>
<td>119</td>
</tr>
<tr>
<td>2002</td>
<td>1707</td>
<td>1063</td>
<td>62.30</td>
<td>159</td>
</tr>
<tr>
<td>2001</td>
<td>2020</td>
<td>1198</td>
<td>58.80</td>
<td>85</td>
</tr>
<tr>
<td>2000</td>
<td>1520</td>
<td>870</td>
<td>53.90</td>
<td>104</td>
</tr>
<tr>
<td>1999</td>
<td>1082</td>
<td>548</td>
<td>50.60</td>
<td>109</td>
</tr>
<tr>
<td>1998</td>
<td>999</td>
<td>406</td>
<td>40.60</td>
<td>187</td>
</tr>
<tr>
<td>1997</td>
<td>1075</td>
<td>260</td>
<td>24.20</td>
<td>270</td>
</tr>
<tr>
<td>1996</td>
<td>1209</td>
<td>213</td>
<td>17.60</td>
<td>655</td>
</tr>
<tr>
<td>1995</td>
<td>1332</td>
<td>77</td>
<td>5.70</td>
<td>601</td>
</tr>
<tr>
<td>1994</td>
<td>1596</td>
<td>77</td>
<td>4.80</td>
<td>32</td>
</tr>
<tr>
<td>1993</td>
<td>1310</td>
<td>79</td>
<td>6.00</td>
<td>98</td>
</tr>
<tr>
<td>1992</td>
<td>819</td>
<td>6</td>
<td>0.73</td>
<td>444</td>
</tr>
<tr>
<td>1991</td>
<td>844</td>
<td>2</td>
<td>0.20</td>
<td>612</td>
</tr>
<tr>
<td>1990</td>
<td>550</td>
<td>0</td>
<td>0.00</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>17773</td>
<td>6020</td>
<td>-</td>
<td>3499</td>
</tr>
</tbody>
</table>

In both the significant terror attacks on October 2001 on the Jammu and Kashmir Assembly, in which 29 died and December 2001 on the Indian Parliament attack in New Delhi, Pakistan was implicated. With 9/11 in U.S. an intervening variable, the cumulative effect proved too much for New Delhi, which launched Operation Parakram for an apparent thrust into Pakistan.

During the period between January 1990 and June 2000, there have been 45,586 incidents of terrorist violence of these 16,844 have been directed against security forces; nearly 5000-6000 terrorist incidents took place during 1993-1996. Terrorism in Kashmir has taken heavy toll, over 22,000 persons lost their lives, including 8,398 civilians and 11,361 civilians suffered injuries, 2,255 security personnel killed 6,535 injured, 11,479 militants lost their lives, 3,000 militants surrendered, 35,059 militants/suspects have been apprehended, 15,726 were arrested under TADA. Only 332 are in judicial custody.246

**Information Technology and Terrorism In Kashmir:**

The advent of new technologies, advanced means of communication and ever more sophisticated ways of moving money around have influenced the way terrorists operate and will continue to do so. Terrorist organisers no longer have to be in the same country to hit their targets.247 Terrorists’ increasing dependence on high technology, “to provide battle winning edge – between our military capabilities and those of potential adversaries may lead potential aggressors to adopt alternative weapons or unconventional strategies”. The terrorists attack on computer networks,

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246 Jyoti Trehan, Supra no.242, p.164.
paralysing communications, transportation, power systems and other enterprises that will foil, offset, reduce or circumvent the technological superiority of the opponent's use of information warfare. Significantly, at the moment, no cyber-based group (known hacktivist groups) such as the notable Pakistan cracker group 6-Force Pakistan, a group active since February 2000 which defaced 19 different sites within three days of the intifada recommencing.248

Terrorists have come to recognise that cyber warfare offer them new, low-cost, easily hidden tool to support their causes. The skills and resources of this threat group range from the morally troublesome to dangerous. Groups like Hizbullah, Hamas and Al Qaeda are using computerised files, email, and encryption to support their activities. While terrorists and extremists have long been using the Internet to communicate, raise funds, recruit, and gather intelligence, cyber-attacks offer terrorists the possibility of greater security and operational flexibility. They can launch a computer assault from almost anywhere in the world without exposing themselves.249 The Internet has changed terrorist communications networks from those of strong central control to ones with no clear centre of control due to its networked nature. Indeed, transnational terrorist organisations have begun to appreciate the full opportunities that cyberspace offers for their activities. The use of new/Internet-based technologies for coordinating, communicating and supporting the planning of terrorist (cyberbased and real world) activities; the ability to develop and support so-called 'virtual sanctuaries' where the

248 Ibid.
full C4I command control, communication and computer of the terrorists is conducted solely in cyberspace. In between, in terms of capability, come sub-state entities such as semi-organised crackers, hactivists, organised criminals and terrorists. Cyber threats emanating from such groups can be defined as 'all forms of electronic attack as well as physical attacks and threats to nation-state sovereignty.' Under this system, 'subversive networking' undermines state power through the utilisation of semi-autonomous cellular structures.

Terrorist through high technological devices cause financial crisis, buries a computer virus and hacker detachment in the opponents computer system in advance, while at the same time carrying out a network attack against the enemy so that the civilian electricity network, traffic-dispatching network, financial transaction network, telephone communications network and mass media network are completely paralysed. This will cause the nation to fall into social panic street riots and a political crisis.

President Bush's National Security Advisor Condoleezza Rice noted in March 2001 that it is a paradox of our times that the very technology that makes our economy so dynamic and our military forces so dominating also makes us more vulnerable. She warned: Corrupt (the information) networks, and you disrupt this nation... As a result of these

251 www.iaac.org.uk

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concerns a complex and overlapping web of national, regional and multilateral initiatives has emerged.\textsuperscript{254}

There have been a number of cases of cyber attacks, cracking of passwords, social engineering of important websites and the use of information technology by terrorists to supplement their physical operations. There are signs of the emergence of ‘new terrorism’ attuned to the information age. Terrorists are moving from hierarchical to network forms of organisation.\textsuperscript{255} Terrorist’s strategy and doctrine is changing from target destruction to systematic destruction. Terrorists are using the Internet for their internal command and control and for propaganda with the outside world. Cyber terrorism is not only about damaging systems but also includes IT in terrorist warfare, intelligence gathering, counter intelligence and disinformation. It could include planting an unknown virus, spreading disinformation through anonymous emails, cracking into a government website and changing the contents to suit the terrorist organisation cause.

Militants in Kashmir have taken to information technology to communicate, for propaganda and to avoid detection: An ‘excellent radio network has been established by “foreign militants”, for their operations in Jammu and Kashmir. According to the Indian Army Chief, they are using satellite phones, Internet and burst modes to communicate. In ‘burst system’, voice-mail, and data for several minutes are compressed and

\textsuperscript{254} Kevian O’Brien, Supra no.247, p.204.
\textsuperscript{255} Akshay Joshi, Information Age and India, ICW Knowledge World and IDSA, New Delhi, 2001, p.93.
transmitted in a single burst of a few seconds. It is difficult to detect and decode these messages.256

Pakistan has been carrying out a vitriolic propaganda war against India through radio and Television since independence. The domain has been expanded to the Internet. A Pakistani Internet hacker, 'Dr. Nuker' and his cyber cohort, one “Mr. Sweet” have struck almost 100 cyber facilities on the Internet in 1999. Dr. Nuker’s group called the Pakistan Hacker Club (PHC) is a cyber-terrorist organisation with a cause: freedom for Indian – controlled Kashmir. Dr. Nuker has warned, “In case any nation is involved in a cyber war with Pakistan we will prove our knowledge, ability and skills.257 Moreover, the Pakistan government’s site portrays ‘Bleeding Kashmir’.

Pakistan’s motives of initiating the Kargil conflict were to internationalise the Kashmir issue. It used Internet as a tool for propaganda. Pakistan, by not ruling out the possibility of nuclear war with India, tried to force the international community into a situation where it gets involved as a mediator to settle Kashmir issue. A “fact sheet” on Kashmir on the Government of Pakistan’s official website www.pak.gov.pk/kashmir/index-kashmir.html.258 states that a third India – Pakistan war over Kashmir is a possibility, a war that may result in a south Asian nuclear catastrophe. The world community, therefore, has all the reasons for settling Kashmir, according to fact sheet.259

In 1999, the electronic media and the Internet facilitated the cross-pollination of ideas all over the world. It has also brought the war to the drawing rooms. Obviously both nations would try to influence the public opinion in their favour. Indeed, Information Warfare is considered an absolute must for scoring vital diplomatic points and winning the support of the world, especially now, with the participative forum provided by the Net.  

The India League also put up a website (www.voguearmyout.com) which nailed the Pakistani military establishment as a state within a state with a finger on the nuclear button. The same day, The Washington Post wrote a pro-India editorial “War or Peace in South Asia”, pointing out that, “the reaction of Pakistan or its headstrong generals or its struggling civilian leadership to a prospective humiliation at the hands of India, makes for a pervasive nervousness”.  

In a Time Asia Poll, on June 23, 1999 (www.Time.com) initiated the netizens views veered heavily in favour of “India should control Kashmir”, with an overwhelming 81 percent responders clicking in India’s favour. Other manifestations of the information war during the Kargil conflict were the blocking of the Pakistan’s newspaper Dawn’s website, www.dawn.com by India.  

The strategic significance of Operation Vijay in Kargil was discernible in the article by Pakistani commentator Ikram Sehgal in the Saudi Gazette, June 20, 1999. He opined the “Indian Navy (IN) may test out the Pakistani Navy’s resolve by trying to quarantine or blockade the coastline...
as a pro quo to withdrawal of the Mujaheeedeen from the dominating ground in Kargil.263

Indeed, terrorism in Kashmir has long been about information – from keeping trainees for suicide bombings away from international media, through the ways that terrorist seek to create disasters that will make the front pages, to the related debates about counter measures that would limit freedom of press, increase public surveillance and intelligence gathering, and heighten security over information and communications systems. Terrorist tactics focus attention on the importance of information and communications for the functioning of democratic institutions.264 Globalisation provides access to information and communication technology and it is used for destructive purposes by the terrorist groups. As a consequence, terrorist acts have not only considerably increased but also have become more destructive in nature.

Violation of Human Rights in Kashmir:

"Half the people of this world has something to say but they cannot, the other half has nothing to say and it harps on saying it"

The changing scenario in Kashmir has posed new challenges and assigned new tasks and new missions to us. India is faced with a situation where a neighbouring country has officially become a sponsor of terrorism and subversion. Pakistan has resorted to the issue of human rights to deflect the western world’s attention from the genesis of the Kashmir problem.265


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Armed intervention in Jammu and Kashmir is part of Pakistan's official policy, paid killers are used to infiltrate borders and perpetuate murder, Mayhem and Sabotage and propagate terrorism among innocent population and against government. This is the most blatant form of violation of human rights. Terrorists violate human rights and the state only reacts to them.

There are now twelve international conventions relating to terrorism that have been adopted within the context of United Nations. While these conventions thus far lack a clear and commonly - agreed definition of terrorism. The General Assembly passed a series of resolutions on the subject "Human Rights and Terrorism" the first of which was adopted on 20 December 1993 (A/RES/46/122). In these resolutions, General Assembly has unequivocally condemned all acts, methods and practices of terrorism in all its forms and manifestations, whenever and by whomever committed, as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity of states, destabilizing legitimately constituted governments, undermining pluralistic civil society and having adverse consequences on the economic and social development of states. The General Assembly thus, called upon states, 'in accordance with international standards of human rights to take all necessary and effective measures to prevent, combat and eliminate terrorism.'

All Pakistani actions conform to its basic stand that the Kashmir issue is the "unfinished" agenda of partition. Faced with ruthless
terrorism, India has to make strenuous efforts to protect the lives of innocent men, women and children in Jammu and Kashmir. The media are evidently an integral part of the political power structure, reflecting the priorities and preoccupations of the dominant power groupings, and thereby supporting and perpetuating the basic norms and values of the dominant order and the business interests of the media.268

The dominant discourse on Kashmir characterises it as a dispute over real estate between India and Pakistan, and a matter of national prestige. Consequently, the situation inside the vale, or valley of Kashmir is viewed strictly in terms of the Indian state v/s Pakistan sponsored terrorism. The human rights issue is depicted to defame India.269

In reality, Kashmir emerged at the top of the human rights agenda of the world in the late 1980s as a fallout of the policies adopted by various Indian governments and sense of alienation among the people of Kashmir.

According to Balraj Puri, “One can trace the beginning of the Kashmir problem and its growth to its present dimensions of the denial to the people of the state of civil liberties, democracy and human rights including the right of freedom of speech, rights to protest and form an opposition party, right to vote and to elect a government of their choice.270

International human rights organisations, as well as several Indian civil rights groups, have documented in detail the atrocities committed on the people of Kashmir by both Indian security forces and militant groups.

During the last 10 years, thousands of ordinary people have lost their lives in Kashmir. Although official sources claim the number to be around 19,956 only as of September 1998. Reports by various non-governmental organisations put the number to be around 50,000. Various reports by both National and International human rights organisations – including the Committee for Initiative in Kashmir (CIK), Peoples Union for Democratic Rights (PVDR), People’s Union for Civil Liberties (PUCL), Asia Watch and Amnesty International – have given first-hand accounts of the human rights situation in the valley since 1980s.

The 1993 World Conference on Human Rights in Vienna declared “The acts, methods, and practices of terrorism in all its forms and manifestations... are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity and the security of states and destabilizing legitimately constituted governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.” Nationally and internationally, the protection of human rights in Kashmir is a topic of great significance. In constitutional law, the debate about basic rights predominates. Granville Austin has observed: The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement, the core of the commitment.

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to the social revolution lies in parts III and IV in the Fundamental Rights and is the Directive Principles of State Policy which are the conscience of the constitution.²⁷⁵

In a situation as complex, as the one prevailing in Kashmir at present the first priority is to stop violence from both sides for which restoration of the confidence of people and credibility of the leaders is of paramount importance. It remains the heart of the matter and will remain so whatever happens to 'Human Rights' in times to come.²⁷⁶

Though the Protection of Human Rights Ordinance, 1993 issued by the President of India defines human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution of India or embodied in the international covenants and enforceable in India.²⁷⁷ But Human Rights organisations have ignored the gross human rights violations against Kashmiri Hindus. Their silence is intriguing and puts their credibility to shade. These organisations have fallen victim to the dangerous ploy of terrorists and become tools in their propaganda machinery against India, have been fully used by the terrorists abroad to malign India.²⁷⁸

A recent report of the United States Defence Intelligence Agency claims that there are 'several thousand mercenaries' in Pakistan belonging to nearly 30 different countries. According to American media, these mercenaries are more than 10,000 in number. In April 1992, an American

²⁷⁸ Dinanath Raina, Kashmir Distortion and Reality, Supra no.265, p.250.
delegation led by Peter Burkley, a counter terrorist expert, after his visit to Pakistan, warned that Pakistan would be declared a terrorist state if it did not stop helping Kashmiri and other terrorists.279

Bahauddin Farooq, former Chief Justice of Jammu and Kashmir High Court, put it, “the abuse of human rights here is unprecedented... we have dealt with only the tip of the iceberg... in theory we are governed by the constitution, but in practice we are governed by methods unknown to law, unknown to any civilized society”.280

In denying the Pakistani estimate, India also overlooks the statement by M.K. Narayanan, who reportedly said the level of Indian security forces in Kashmir had skyrocketed to anywhere between 500,000 to 700,000 in 1994. Similarly, Voice of America has recently mentioned that India has deployed more than 500,000 security forces in Kashmir.281 Any estimate of killings must also take into account the admission by India’s former Chief of Intelligence, M.K. Narayanan that 70 percent of the Kashmiri youth (or 35 – 40,000 young men) who allegedly sought training in Pakistan had been neutralised.282

The figures mentioned by Voice of America (VoA) and Reuter are also significantly lower than those given by Indian journalists who claim a figure of 30,000 deaths or more.283

Farooq Abdullah, leader of National Conference, has been quoted in an interview with B.B.C. on November 4, 1995, as saying that 50,000

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279 Ibid.
281 Ibid, p.10.
282 The Hindu, November 18, 1994.
283 The Hindu, April 22, 1995.
Kashmiris have been killed.\textsuperscript{284} The All Party Hurriyat Conference (APHC) has estimate of over 40,000 fatalities.\textsuperscript{285}

As far as injuries are concerned, more than 20,000 Kashmiris have been wounded over the past six years on an average of over 3,500 injuries each year.\textsuperscript{286} More disturbing is the number of people who have been disabled by injuries sustained by Kashmiris during torture at the detention centres or by indiscriminate firing by Indian security forces. According to APHC the number of disabled people totals more than 30,000.\textsuperscript{287} According to Masood Hussain, Indian human rights specialist at least 50 percent of those detained have been subjected to inhuman treatment.\textsuperscript{288}

According to the Islamabad-based Institute of Policy Studies over 2,000 Kashmiris, mainly civilians, were arrested, during the course of 1994. An Indian daily has, however, reported a higher estimate of 2,270 arrests of only freedom fighters in 1994.\textsuperscript{289}

The number of people who have been forced to leave their homes or those who have gone into hiding out of fear for their lives; as well as those who have been reported missing exceeds 1,00,000. According to APHC the figure totals 1,35,000 Kashmiri Muslims.\textsuperscript{290} Of the numerous people arrested everyday a large portion succumbs to torture at various interrogation centres setup in every locality, while full extent of custodial killings remains a mystery. Human Rights Watch / Asia estimates that

\textsuperscript{284} Hindustan Times, January 17, 1996.
\textsuperscript{285} The Hindu, April 22, 1995.
\textsuperscript{286} Ibid.
\textsuperscript{287} Nazir Kamal, Supra no.280, p.13.
\textsuperscript{288} Rediance News Weekly, December 24, 1995, p.20.
\textsuperscript{289} The Tribune, January 16, 1995.
\textsuperscript{290} Nazir Kamal, Supra no.280, p.15.
there were 200 such deaths in the first half of 1994 alone. More alarming is a recent investigative report by six Indian civil liberties organisations, which mentions a rate of 300 killings per month in Kashmir as a result of encounters and custodial deaths.\textsuperscript{291}

Custodial killings have attracted some attention. According to \textit{Times of India} such killings had become a daily phenomenon.\textsuperscript{292} The \textit{Kashmir Times} cited police records as showing that 132 people had died in custody within one month alone.\textsuperscript{293}

According to Amnesty International, curfews and search operations inhibit the ability of lawyers, civil liberties groups and journalists to follow up reports of human rights violations, which occur in remote villages, that are difficult to reach.\textsuperscript{294} According to this report a rape has been systematically used as a means of punishing women suspected of being sympathetic or related to alleged militants as well as a weapon in the security forces' efforts to intimidate and humiliate the local population.\textsuperscript{295}

Thus the appalling state of the human rights situation in Kashmir is partly a consequence of the ineffectiveness of the administrative apparatus in the state. What American president George Bush has said is applicable when he said, "I cannot for the life of me understand mobilising demonstrations and demonstrating against your own country... when your sons and daughters are dying half-way around the world". The former Law Minister of Karnataka, Harnahally Ramaswami has suggested that persons who do not do their duty under Article 51-A of the constitution of

\textsuperscript{291} The Statesman, December 31, 1995.
\textsuperscript{292} Times of India, March 12, 1993.
\textsuperscript{293} Kashmir Times, April 26, 1993.
\textsuperscript{294} Amnesty International Report, 1995, p.18.
\textsuperscript{295} Ibid.
India should not be given their fundamental rights”. Those who burn the national flag, who do not respect the national anthem, do not deserve human rights”.296

For lakhs of Kashmiris who have lost everything because the administration both at centre and the state has considerably failed to protect their life, honour and property. They are simply shocked that the set-up that is designed and meant to protect the country’s border is unable to prevent the ingress of thousands of terrorists well equipped with latest weaponry.297

It is for Indians to deeply reflect why Kashmir has been so alienated. Our party leaders and government at the centre plays political games on the one hand and treats it as a law and order problem on the other. In view of the armed conflict in the valley, military operations cannot be avoided altogether. But the gross violations of human rights are unacceptable.

According to Jagadguru Shankaracharya Swami of Goverdhanpuri who after visiting Kashmir saw for himself the violation of human rights and said in a press conference in Srinagar. “This violence must be stopped. What is happening in Kashmir today is a blot on humanity” humanity is dying an unceremonial death at a place, which was once, abode of communal harmony, tolerance and amity. Mahatma Gandhi had seen a ray of hope in Kashmir, “but today not only human beings but also animals and flora and fauna are also being targeted here”. It is actually a misnomer created by politicians to further their own nefarious designs”.298

296 Dinanath Raina, Supra no.265, p.247.
297 Ibid.
298 Asghar Ali Engineer, Kashmir Can Autonomy be a Solution, Economic and Political Weekly, Vol.35 (27), July 1, 2000, p.2359.
States' failure to adhere to fundamental human rights norms makes it more likely that terrorist organisations will find it easier to recruit adherents among the discontented and disenfranchised and among the family and friends of those whose human rights have been violated. Failure to respect universal human rights norms not only undermines our shared values, it undermines international cooperation and public support so crucial to developing effective antiterrorism efforts. No nation, no matter how powerful, can solve the problem of terrorism on its own. All governments need the voluntary cooperation of every segment of its society to be effective in preventing acts of terrorism. Without adhering to international human rights standards, such cooperation will be more difficult, if not possible to obtain at the international, national and local levels. It appears that globalisation contributes to enhance the violation of Human Rights in Kashmir since it strengthens the position and operation of terrorists.

300 Ibid.