Chapter-6

IMPACT OF TERRORISM AND THE ENFORCEMENT OF HUMAN RIGHTS IN INDIA

Terrorism is a forceful and unlawful method to achieve the desired goal. Its sole motive is to overthrow the existing law and order machinery. It is a deliberate use of violence against civilians and armed personnel and the state. Terrorism poses a serious law and order problem and leads to disintegration of society. The incident of murder, torture, mutilation, kidnapping, arson and extortion create atmosphere of suspicion, fear and panic all around. Life becomes uncertain. The terrorists kill unarmed civilians including women and children. India is not the only country that has been facing the problem of balancing national security and human rights. At the United Nations as well as international human rights NGOs, there are serious global efforts to articulate the human rights concerns underlying states' processes in formulating national security policies. There are various impact of terrorism on society in different manners which are as mentioned below.

6.1 National Security

As terrorism emerges as one of the greatest threats to India’s internal security, the government, policy makers and strategic community continue their efforts to find an anti-dose to counter the menace of terrorism. Poignantly, the Mumbai terror strike in 2008 exposed the fissures in the India’s internal defense apparatus as it was caught unaware and unprepared. However, the incident provided the Indian government an important lesson to prepare itself and deal with the new-age terrorism. A stringent series of measures have since been initiated to revamp its existing homeland security apparatus to shield and secure the country against future terror aggressions. The Annual Report of the Ministry of Home Affairs\(^1\) 2009-2010, has identified a number

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\(^1\) Ministry of Home Affairs [hereinafter MHA]
of new measures undertaken by the government to strengthen the country to meet the grave challenge posed by global terrorism.

These include operationalisation of the National Investigation Agency\(^2\), establishment of four National Security Guards\(^3\) hubs to ensure quick and effective response to any possible terror attack, augmentation of the strength of Intelligence Bureau\(^4\) strengthening of the Multi-Agency Centre\(^5\) in the IB to enable it to function on a 24X7 basis and strengthening coastal security. With an alarming rate, the threat of terrorism is changing and becoming more and more deadly. Terrorism is no longer confined to a particular region or state, but it has become globalized and operates in a network system. With globalization and advancement in technologies, terrorism has also spread in the veins of all nations and India is no exception. Before 11 September 2001, terrorism was perceived as a local affair. It was condemned but not seriously dealt with by the international community.

However, the massive blow of 9/11 came as a wake-up call to the international community and shattered the earlier complacency. Today terrorism is no longer considered an internal affair of one state, but one that has an international connotation. Each act of terror, no matter where, is often linked to, or supported by terrorists somewhere else. Terrorism has swallowed global law and order. Terrorist activities have knitted their web across the globe and act as a threat to the society and lives of billions of civilians. Terrorism in India is very deep rooted and complicated to realize. It exists in many forms, starting from jihadi terror from inside or across the border to naxalism. Terrorism has been a social stigma of Indian society which has cut the very fabric of Indian society into pieces.

\(^2\) National Investigation Agency Act, 2008
\(^3\) National Security Guards[hereinafter NSG]
\(^4\) Intelligence Bureau[hereinafter IB]
\(^5\) Multi-Agency Centre[hereinafter MAC]
6.2. Rule of Law

Rule of law recognizes the supremacy of law and ensures protection against arbitrariness and abuse of power. It envisages a mechanism providing for fair and just treatment of an individual through the process of law. Rule of law also ensures that decisions would be made by following the known principles of law. Legislature, Judiciary and the executive are considered as the necessary instruments of governance in the rule of law. As far as India is concerned, it is the constitution which is supreme and is the source of all rights and obligation.\(^6\) The aspect of terrorism has raised a lot of issues.

Firstly, it is highly unclear as to what actually constitutes terrorism. There is till date no concrete definition of terrorism. Secondly, how does a Government deal with this problem? The second issue is important when we look at it in light of human rights concerns. To tackle terrorism, most governments have passed stringent laws that violate norms of due process and human rights. These very principles apply to the concept of rule of law in the international domain. The UN charter envisaged submission of the states to such conditions where justice and respect for obligations arising from international instruments could be maintained. The International Court of Justice and Security Council were formed to implement the international rule of law principles.

We saw the invocation of the TADA, POTA and more recently the UAPA (amendment), Act, 1967. All these legislations have violated due process mechanisms and prescribed strict procedure and penalties to tackle the menace of terrorism. This problem however, is not India specific. The detention of people in the United Kingdom, the terrorist laws in Spain and of course the measures of the United States are examples where developed legal systems are compromising civil liberties and rights in interests of national security. There is an unequivocal settlement that national

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interests are of primary importance. But what about rights and fundamental freedoms? Alan Dershowitz once emphasized that the Government loses credibility when it cannot tackle issues along due process concerns and resort to other means of prosecuting people.\(^7\)

6.3 Democracy

The immediate impact of terrorism is; destruction of property, loss of life, and loss of money, but the greatest loss of them all is uncertainty and fear, which impacts economic activity. India is the only country in the world, which has embraced all religions and cultures without hesitation and fostered all sorts of ideologies, whether it is political, religious or philosophical. The strength of India lies in its national values like secularism, democracy, fraternity, universal brotherhood and tolerance. The effort of fundamentalist and terrorist elements in disrupting the national secular fabric of India has threatened the unity and integrity of the nation. The communal and divisive forces are engaged in cultivating hatred and prejudice in the hands of the people, especially youth.

Considering the designs of anti-national elements within and outside the nation, it has become the imminent need of the nation and all authorities of the State and peace-loving and peace-promoting organizations within the country to contribute their mite to combat and defeat the divisive forces in all forms within and outside the nation. Taking swift actions against the enemies of mankind is a must. All terrorists are the enemies of mankind they cannot be classified as friends or sympathizers of some countries or some people and enemies of the others. Due to frequent and barbaric attacks of terrorists, Indian people are deeply wounded. However, it is the responsibility of Indians to remain calm and act out of wisdom, not simply out of anger or haste.

It is declared that terrorism violates humanitarian rights and human rights. Terrorism is against the principles and purposes of the UN Charter (1945). Article 33 of the Fourth Geneva Convention of August 12, 1949 and 4(2)(d) of Additional Protocol II to the Four Geneva Conventions outlaw and prohibit all measures of intimidation or of terrorism. Article 17 of the World Conference on Human Rights (1993) also declared that the acts, methods and practices of the terrorism in all forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments.

The Conference called upon the international community to take the necessary steps to enhance cooperation to prevent and combat terrorism. It is a paradox that with the advancement of the civilization the world has also faced and suffered countless terrorist acts of State and non-State actors. Terrorism poses unique challenges to the liberal democratic state. The transnational nature of terrorism necessitates cooperation between and among states to address this common threat. Comparative studies reveal that societies of liberal states must provide consensus for those anti and counter terrorist policies adopted by the state. If liberal democracies take police state-like action in response to terrorism, then arguably the terrorists have achieved their ends. If societies must condone such policies, then those societies of the cooperating states must reach a minimal level of consensus of how to view justice, human rights, rule of law, civil liberties, etc. the operating level of these traits in a society describes a society's political culture.

In short, terrorists target state legitimacy, and political culture is at the crux of this study because it reflects a society's legitimacy for its leaders and policies. It is also the missing element of many electoral democracies. Terrorism in India is widespread and there seems no end to it, at least for the present. The way it has been spreading in States like Jammu and Kashmir, Punjab, Andhra Pradesh, Assam, Manipur, Tripura, Nagaland, etc. and spilling-over other states alarmingly, is a matter of great concern.
The trigger-happy terrorists and extremists have been using all kinds of violence and automatic weapons and bombs to terrorize people and the administration.

6.4 Economy

Terrorist attacks, whether local or international, cause immediate human, economic and psychological repercussions of differing intensity. However, their impact does not stop there since most costs come from the indirect repercussions, which can be seen to vary greatly, as “the indirect costs of terrorist attacks vary in their distribution across activities, sectors, countries and time”. In order to get a better idea of the amplitude of the consequences of international terrorist attacks, there is a need to take a look at the primary impacts they have on the economy.

The most striking consequence of international terrorist attacks is the human loss. Terrorism causes heavy civilian mortalities. The more fatalities caused by a terrorist attack, the greater a psychological effect it will have on the population. This might not seem like a direct economical consequence but panic actually influences the economy dramatically. Panic affects the patterns of consumption and investment behaviour of individuals and companies and can then lead to distinct market disturbances.

According to Dr. Michael Williams, the main effect of terrorist attacks is their ability to disrupt the population’s spending pattern. After 9/11, the immediate response was a fall in confidence: “In the United States, consumer and business surveys showed falls in the overall confidence measures akin to those observed in the wake of the Iraqi invasion of Kuwait in 1990, and much larger than those following terrorist attacks in the 1990s” . Therefore, the perception of a terrorist attack plays a big part in the impact on the economy. It can for example lead to drops in demand in the tourism area. Indeed, “hotels, restaurants, travel agencies and other tourism-related businesses confronted a sharp drop in demand (immediately after 9/11), in the United-States but
also in the many other countries, in particular in the Caribbean and in the Middle East”.  

According to Economists, the already damaged Indian economy due to the global financial crisis will be further affected by the recent terrorist attacks in the city of Mumbai; however, the impact of the attacks on the economy is expected to be short lived.

In the recent past, this has made the city a more attractive target for terrorists that desire to shed India’s success. In 2003, 60 people were killed by car bombs, and in 1992 and 1993, Hindu-Muslim riots claimed another 1,000. In July 2006, 187 people were killed as coordinated bombs ripped through commuter trains in the crowded city. Throughout all the obstacles that Mumbai has faced, it has still managed to become a prominent capital of Asian finance that rivals Hong Kong and Tokyo. Its stock exchange is among the world’s busiest, its banking community is the envy of South Asia, and its restaurants and nightlife are comparable to those of any global cultural capital.

Hospitality and transportation tourism sectors are amongst the first areas to feel the pain. Hence, an affected tourism sector will impact the overall economy. Hotel occupancy has gone down 25% and rates plunged in western India. Civil aviation is another sector in the dumps. Overall damage to India’s economy is indeed significant. Analysts have already started giving initial estimates that suggest the loss in business due to the attacks to be about $100 billion, arising from crucial institutions, such as the stock exchanges, commodities and money markets, and business and commercial establishments which remained closed. Furthermore, the foreign exchange front got hit by $20 billion. Even though the terrorist attacks were devastating to the city and its people, it is just a matter of time before the situation worsens, as harsher

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consequences are expected on the long run. While the short-term impact is easy to predict, what happens down the line remains impossible to assess.\(^9\)

### 6.5 Impact on Human Rights

Terrorism and counter-terrorism both affect the enjoyment of human rights. Since 2005, Chhattisgarh, especially the Bastar-Dantewada forest area, has witnessed escalation of violence between the Maoists and the Salwa Judum. Civilians were routinely target sides, resulting in at least 300 deaths. Also, 45,000 adivasis displaced from their homes have been forced to live in special camp putting them at increased risk of violence. The Chhattisgarh state government claimed that it enacted the CSPSA (Chhattisgarh Special Public Security Act) to take action against the Maoists. Human Rights organizations in India have demanded of CSPSA as it contains several provisions similar to those in POTA. These include Violation of the principle of certainty in criminal law, Absence of pre-trial safeguards, Virtual impossibility of obtaining bail as there is no provision for remedy of appeal or review of detentions, Threats to freedom of expression and threats to freedom of association. Impact of terrorism and counter-terrorishts on human rights are as follows-

**The right to life**\(^10\)

Both international and regional human rights law recognize the right and duty of States to protect those individuals subject to their jurisdiction. In practice, however, some of the measures that States have adopted to protect individuals from acts of terrorism have themselves posed grave challenges to the right to life. They include “deliberate” or “targeted killings” to eliminate specific individuals as an alternative to arresting them and bringing them to justice. The Human Rights Committee has stated that targeted killings should not be used as a deterrent or punishment and that the utmost consideration should be given to the principle of proportionality. State policies should be spelled out clearly in guidelines to military commanders and complaints

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about the disproportionate use of force should be investigated promptly by an independent body. Before any contemplation of resort to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted. In other cases, States have adopted “shoot-to-kill” law enforcement policies in response to perceived terrorist threats. In the context of counterterrorism, the High Commissioner for Human Rights has emphasized the importance of ensuring that the entire law enforcement machinery, from police officers to prosecutors and officers operating detention and prison facilities, operates within the law. As noted by the Special Rapporteur on extrajudicial, summary or arbitrary executions, “the rhetoric of shoot-to-kill and its equivalents poses a deep and enduring threat to human rights-based law enforcement approaches. Much like invocations of ‘targeted killing,’ shoot-to-kill is used to imply a new approach and to suggest that it is futile to operate inside the law in the face of terrorism. However, human rights law already permits the use of lethal force when doing so is strictly necessary to save human life.

Special Rapporteur has further suggested that States that adopt shoot-to-kill policies for dealing with, for example, suicide bombers “must develop legal frameworks to properly incorporate intelligence information and analysis into both the operational planning and postincident accountability phases of State responsibility.” They must further ensure that “only such solid information, combined with the adoption of appropriate procedural safeguards, will lead to the use of lethal force.” The Human Rights Committee has stated that “the protection against arbitrary deprivation of life… is of paramount importance.. The deprivation of life by the authorities of the State is a matter of the utmost gravity Under international and regional human rights law, the protection against arbitrary deprivation of life is non-derogable even in a state of emergency threatening the life of the nation. The Committee considers that States parties should take measures to prevent arbitrary killing by their own security forces. In most circumstances, law enforcement officers must give suspects the opportunity to surrender and employ a graduated resort to force.
• **Right to Liberty**

All persons are protected against the unlawful person or arbitrary interference with their liberty. This protection is applicable in the context of criminal proceedings, as well as other areas in which the State might affect the liberty of persons. In practice, as part of their efforts to counter terrorism, States have adopted measures which have an impact on the liberty of persons, such as: pretrial procedures for terrorism offences, including provisions concerning bail and the remand of persons in custody awaiting trial; pretrial detention (detention before laying a criminal charge against a person for the purpose of further investigating whether that person was involved in the commission, or assisted in the commission, of a terrorist offence); administrative detention (detention to prevent a person from committing, or assisting in the commission of, a terrorist offence); control orders (imposing conditions on a person, short of detention, to prevent that person from committing, or assisting in the commission of, a terrorist offence, including the detention of a person awaiting determination of immigration or refugee status); and compulsory hearings (detention and compulsory questioning of a terrorist suspect, or non-suspect, to gather intelligence about terrorist activities).

As part of its efforts to counter terrorism, a State may lawfully detain persons suspected of terrorist activity, as with any other crime. However, if a measure involves the deprivation of an individual’s liberty, strict compliance with international and regional human rights law related to the liberty and security of persons, the right to recognition before the law and the right to due process is essential. Any such measures must, at the very least, provide for judicial scrutiny and the ability of detained persons to have the lawfulness of their detention determined by a judicial authority. Adherence to due process and the right to a fair hearing is essential for the proper safeguarding of a person’s liberty and security.

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**Prohibition against torture**

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute under international law. The prohibition of torture and other cruel, inhuman or degrading treatment does not yield to the threat posed by terrorism or to the alleged danger posed by an individual to the security of a State.

According to the Human Rights Committee, the rights enshrined in the International Covenant on Civil and Political Rights apply to all persons who may be within a State party’s territory and to all persons subject to its jurisdiction (see above). This means that a State party must respect and ensure the rights laid down in the Covenant—including the absolute prohibition of torture—to anyone within its power or effective control, even if not situated within its territory.

States must ensure that legal and practical safeguards to prevent torture is available, including guarantees related to the right to personal liberty and security. These are, for example, the right for anyone arrested or detained on criminal charges to be brought promptly before a judge and to be tried within a reasonable amount of time or to be released. They also include the right promptly to challenge the lawfulness of one’s detention before a court.

The Human Rights Committee, in its general comment No. 29, has confirmed that this right is to be protected at all times, including during a state of emergency, thereby highlighting the crucial role of procedural guarantees in securing compliance with the absolute prohibition of torture or any other form of inhuman, cruel or degrading treatment. Additionally, detainees must be given regular access to medical doctors and legal counsel. Finally, States should allow the regular and independent monitoring of detention centres.

The entry into force of the Optional Protocol to the Convention against Torture on 22 June 2006 is a significant development towards ensuring the practical protection of

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detainees against torture and other cruel, inhuman or degrading treatment. The High Commissioner for Human Rights has encouraged all States to sign and ratify this instrument as an important practical measure and a demonstration of their commitment to preventing torture and ill-treatment, and protecting the human rights of those within their jurisdiction.

- **Due process and the right to a fair trial**

Guaranteeing due process rights, including for individuals suspected of terrorist activity, is critical for ensuring that anti-terrorism measures are effective and respect the rule of law. The human rights protections for all persons charged with criminal offences, including terrorism-related crimes.

In July 2007, the Human Rights Committee adopted general comment No. 32, revising its general comment on article 14 of the International Covenant on Civil and Political Rights on the right to a fair trial and equality before the courts and tribunals. Article 14 of the Covenant aims at ensuring the proper administration of justice and to this end guarantees a series of specific rights, including that all persons should be equal before the courts and tribunals, that in criminal or civil cases everyone has a right to a fair and public hearing by a competent, independent and impartial tribunal, that everyone charged with a criminal offence should have the right to be presumed innocent until proved guilty according to law, and that everyone convicted of a crime should have the right to have his or her conviction and sentence reviewed by a higher tribunal according to law.

While targeted sanctions against individuals suspected of involvement in terrorist activity may be an effective tool in a State’s efforts to combat terrorism, such procedures pose a number of serious challenges to human rights. Measures should be taken to ensure a transparent listing and de-listing process, based on clear criteria, and with an appropriate, explicit and uniformly applied standard of evidence, as well as an effective, accessible and independent mechanism of review.

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13 http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf
for the individuals and States concerned. At a minimum, the standards required to ensure fair and clear procedures must include the right of an individual to be informed of the measures taken and to know the case against him or her as soon as, and to the extent, possible, without thwarting the purpose of the sanctions regimes; the right to be heard within a reasonable time by the relevant decision-making body; the right to effective review by a competent and independent review mechanism; the right to counsel with respect to all proceedings; and the right to an effective remedy.

- **Freedom of expression**

Incitement to terrorism is a strategy commonly used by terrorist organizations to further support for their cause and call for violent action. The Security Council has identified it as conduct which is contrary to the purposes and principles of the United Nations and direct States to adopt measures to prohibit and prevent it. Proscribing incitement to terrorism is integral to the protection of national security and public order, which are both set out as legitimate grounds for limiting freedom of expression in article 19 (3) of the International Covenant on Civil and Political Rights.

It is also consistent with its article 20 (2), which requires States to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Great care must be taken, however, to ensure that any restriction on the right to freedom of expression is both necessary and proportional. This is especially important given that freedom of expression is an essential foundation of a democratic society. Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed the view that this provision represents a best practice in defining the proscription of incitement to terrorism.

There must be an additional objective danger that the person’s conduct will incite terrorism. This last objective requirement separates incitement to terrorism from an act of glorification of terrorism. The requirement of intention in article 5 (2) reaffirms the

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subjective element within the definition of public provocation to commit a terrorist offence and requires the act of communication also to be intentional.

- **Freedom of association**\(^1\)

  The right to freedom of association, like the right to freedom of expression, is a platform for the exercise and defence of other rights, such as political participation rights and cultural rights. Human rights defenders often use this right as a legal basis for their action. It is central to a democratic society. It is often limited by States in their response to a real or perceived terrorist threat. While the right to freedom of association may be subject to derogations and limitations under most human rights treaties, clear safeguards must exist to ensure that they are not used to curb the rights of political opposition parties, trade unions or human rights defenders.

  With regard to human rights defenders, the Special Representative of the Secretary-General on human rights defenders has made clear that “any organization has the right to defend human rights; that it is the vocation of human rights defenders to examine Government action critically; and that criticism of Government action, and the freedom to express these criticisms, is an essential component of a democracy and must be legitimized in law and practice. The Special Rapporteur on human rights and counter-terrorism has, likewise, stressed the importance of ensuring that all decisions which limit human rights are overseen by the judiciary, so that they remain lawful, appropriate, proportionate and effective, and so that the Government may ultimately be held accountable for limiting the human rights of individuals.

- **The right to privacy**\(^2\)

  States provided their security intelligence services with powers of surveillance, including wiretapping and the use of tracking devices. Some States have significantly extended these surveillance powers in recent years. All of these practices include to collect information about a person. They therefore limit the privacy of such persons,

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\(^1\) [http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf](http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf)

\(^2\) [http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf](http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf)
as well as raising questions about how the data are to be protected. Interference with privacy also arises in the security screening and searching of persons. Any act which has an impact on a person’s privacy must be lawful, i.e., it must be prescribed by law. This means that any search, surveillance or collection of data about a person must be authorized by law.

Article 17 of the International Covenant on Civil and Political Rights prohibits States parties from interfering with the privacy of those within their jurisdiction and requires them to protect those persons by law against arbitrary or unlawful interference with their privacy. Privacy includes information about an individual’s identity, as well as the private life of the person.

Most States have stepped up security at airports and other places of transit, for instance by collecting biometric data from passengers (such as eye scans and fingerprints), photographs, passport details and the like.

The Human Rights Committee, in its general comment No. 16 (1988), has explained that States must take effective measures to ensure that information concerning a person’s private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the International Covenant on Civil and Political Rights. Effective protection should include the ability of every individual to ascertain in an intelligible form, whether and, if so, what personal data are stored in automatic data files, and for what purposes, with a corresponding right to request rectification or elimination of incorrect data.

- **Economic, social and cultural rights**

Attempt to address the human rights implications of terrorism and counterterrorism measures have tended to focus on the protection of civil and political rights, with little attention paid to their impact on the enjoyment of economic, social and cultural rights. It is clear that terrorism and measures adopted by States to combat it are both

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influenced by and have an impact on the enjoyment of the economic, social and cultural rights of affected individuals, as well as on broader development objectives. It will be impossible to achieve global security objectives without concerted efforts towards the realization of all human rights. Greater efforts must therefore be made to understand and address the linkages between terrorism and the enjoyment of economic, social and cultural rights.

The adoption of specific counter-terrorism measures may also have a direct impact on the enjoyment of economic, social and cultural rights. For example, targeted sanctions against individuals suspected of involvement in terrorist activity, such as freezing their financial assets or imposing travel restrictions on them, may be an effective means for tracking, and even preventing, terrorist activity. However, the current targeted sanctions regime poses a number of serious challenges, in particular related to the lack of transparency and due process in listing and de-listing procedures.

Targeted sanctions which result in freezing assets, imposing travel bans and other restrictions may also have serious consequences for the ability of the affected individuals and their families to enjoy economic and social rights, as their access to education and employment may be severely restricted. The effective use of humanitarian exemptions may be one important means for limiting the negative impact of targeted sanctions on the enjoyment of economic, social and cultural rights.

6.6 Human Rights Violation as a Catalyst for Terrorist Activities

A history of colonial subjugation, slow economic development, and years of dictatorial rule has left many states in domestic turmoil, both politically and economically. The rapid rate of over the past several decades has exacerbated, if not highlighted many of these domestic inadequacies and inequalities.
(a) **Political rights and terrorism**

Citizens who are able to protest within their regime are less likely to resort to terrorism. The more open the political system, the less likely individuals are to go outside system to participate political process. Conversely a citizen in a state with limited political rights is less likely to have an opportunity to work within the system to effect change.

(b) **Security rights of the individuals**

The second category of human rights is security rights when security rights are violated an incentive is created for the people to seek extra-systemic means of political expression. When uses violence against its citizens, opposition groups often feel justified in responding in kind. Red Brigade in Italy for example argued that their use of violence was justified because the resorted to violence.

(c) **Subsistence rights of the individual**

Many a time states violate the basic human needs most often refers to inability of the government to provide for citizenry and suggest not proactive abuse, but rather neglect. This to be intentional in many cases (Zimbabwe, for example) or simply a result of the state's inability to provide basic human needs, regardless citizens suffer. Combining the violation of political security rights and suboptimal levels of basic human needs, the conditions are ripe for terrorism. We need a powerful security regime as far as terrorist is concerned and finally we need strong and powerful legal regime.

(d) **Invoking section 166 Indian Penal Code**

We has very easily overlooked at the pertinence of this section which has got more value than making legislations which are draconian in nature. First invoke this penal section against the servants (security personnel) who perform their duty arbitrarily only then there can be a stop to this vicious circle of terrorism and again draconian
laws then again terrorism. There is Need to put a break somewhere. As the great legend Mahatma Gandhi rightly said “An eye for an eye will make the whole world blind”. The judiciary has to play an active role in first down the atrocities of the security personal with the quintessence character of this section of the Indian Penal Code.. We have to convince not just the formal institutions of government and the police, but also the public that security comes from human rights protection. Civilian police and the communities they are policing need to understand human rights not just as ideals but as practical tools.

In the context of countering terrorism, it is not just that some police practices are clearly violating human rights and undermining the rule of law. It is also that these practices are patently productive. At a time when successful policing relied upon good, reliable intelligence, police should be building strong relationship with the communities in which they operate. They can this if they simultaneously alienate and isolate those communities through police practice.

6.7  Terrorism a Threat to Development

India has had its share of terrorist attacks and is learning to live with it. Today, not only Mumbai and Delhi are high on list of terrorist but hi-tech hubs like Bangalore and Hyderabad have begun to beep on the terrorist radar. If Mumbai was shaken by the serial blasts in the local trains which left hundreds dead and injured and Delhi was in shock at the bombing that took crowded shopping area, the attacks in India’s emerging high tech hubs like Bangalore and Hyderabad in previous years came as an eye opener.

Today what is new is the act that the terrorist has become more sophisticated and knows how to attack in places where it would hurt the most. Take for instance, the Mumbai blast the seven blasts in a public transportation system is not the job of the amateur. The terrorist knows that India is globally emerging as economic superpowers in IT, BPO and even businesses. Over the last couple of year, intelligence agencies have continually sent warning signals of militant groups planning attacks in
Bangalore and the city going on high alert. Where all the global giants like Intel, IBM, Motorola, HP have development offices, has more than 1,500 It and BPO firms. Several Indian defense, space and scientific research institution also based in Bangalore.

The terrorist is looking at the other means of attack i.e. through technology. There are many companies here that are working on mission critical applicants for US firms. To hit back at government, all you need is to cripple the operations through technology and data theft.

More than 45,000 corers is what is deprived to our villages in terms of electricity and power, in terms of health care, in terms of education and in term of roads. The increase in budget involve in fighting terrorism since early 80’s is 2600 percent.

6.8 Anti-Terrorism Legislation and Human Rights Violation

The human rights violations committed by the state and its institutions have been brought to the forefront by both the judiciary and the NHRC. If we start the legal impact analysis of some of the primary legislations in India we shall come to the conclusion that most of them require serious reviews and proper enforcement of the same.

Important legislations that have been used for regulating terrorism and concerned activities are TADA (Terrorist and Disruptive Practices Act) 1987, Prevention of Terrorist Activities Act, 2002 and Unlawful Activities Prevention Act, 1967. These laws led to with respect to the human rights violation of the accused as well as the victims as a whole. The analysis of TADA, The act owes its genesis to Punjab, where in order to fight against the terrorist activities this Act was enacted. TADA depicts grave violations of some of the basic conventions pertaining to international human rights. India is a signatory and party to the international covenant on civil and political rights. However the legislation of TADA is a violent deviation against this global

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obligation. Article 2(3) of the covenant provides that any person whose rights and freedoms are breached shall have an effective remedy even if the violation is by one in his official capacity. Article 9 objects to arbitrary arrests or detention and the arrestee or the detainee shall be brought promptly before the judge and shall be entitled to trial within a reasonable time or to the release. Article 14 further states that every one shall be entitled to a fair and public hearing by an independent and impartial tribunal. The exclusion of the press and the public are lightly ignored by TADA. The judicial response to the same has been in the direction of upholding the basic human rights.

If we have a look on the data available to us then we found that under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the total number of detainees was around 76,000. Of these, 25% were dropped by the police without charges; trials were completed in only 35% of the cases and 95% of these trials ended in acquittals. The conviction rate was less than 1.5% and there were reports of human rights violations committed by the police abusing their excessive powers under the Act. This law was allowed to lapse in 1995 after pressure from national and international civil society groups, as well as the UN Human Rights Committee which monitors countries’ compliance with the International Covenant on Civil and Political Rights.

Dr A.S Anand in Hitendra Vishnu Thakur once said that “every terrorist may be a criminal but every criminal cannot be given the label of a terrorist only to set in motion the more stringent provisions of TADA. Supreme Court lawyer Prashant Bhushan said that most of the cases of TADA were in states like Gujarat, which were not affected by terrorism. The arbitrariness of TADA is evident from the fact that only one percent of the arrested was convicted. D.K. Basu vs. state of West Bengal the Supreme Court held that: “State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism: that would only be bad for the state, the community and above all the Rule of Law. The State must, therefore, ensure that the various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto them.
There is no lack of reports of it being abused for politically motivated arrests and torture. Cases such as many tribal women and children in the state of Jharkhand, were arrested and placed in custody for long periods under this law and many Muslims were held under the law in the state of Gujarat after anti-Muslim riots. The convictions in the state of Punjab under TADA though were less but the number of detentions was alarming. In Punjab there were 14,451 and in the state of 14049 were detained in a state of Gujarat. It has been argued by opponents that this Act has been used against trade unions and for detaining Sikhs, Muslims, Dalits and political opponents. Over 76000 people were detained under the TADA however the conviction rate is below 1%. The absence of a well formulated legislation is often seen as a reason for anarchy and lawlessness in the society.

The cases under TADA continued to exist long after the act got repealed, the newspaper reports of 1999 suggested that 3000-7000 cases still remained to be decided even 3 years after the TADA had been repealed in the state of Assam, nearly 1000 detenues were in prisons, until 2000, five years after the lapse of the act, trials had yet to be completed in 4,958 cases, of which 1,384 were still being investigated. One of the staggering realities that this act presents before us is that despite total arrests of 26000 only 14 had so far been convicted. There is dire need for defining terrorism because it assumes great threat to the world.

The prevention of terrorism act, 2002 act was passed subsequent to the law commission report on prevention of terrorism bill, 2000. The act like its predecessor in TADA was alleged to violate human rights and the basic tenets of human existence. Number of petitions were filed in the apex court regarding the same, The petitioners' main arguments that POTA lacked legislative competence and violated Articles 14, 19, 20, 21 and 22 of the Indian Constitution. The petitioners argued that POTA fell, in its pith and substance, under Entry 1 of List-II (the States' List); that is, POTA falls under "Public Order," upon which only the state governments, but not the central government, is competent to legislate. After the repeal of the POTA Legislation, the Unlawful Activities Prevention Amendment Ordinance Act, 2004 was promulgated. If
we analyze some of the state legislations one is reminded of the Maharashtra Control of Organized Crime Act, 1999, which boasts of a 76% conviction rate as opposed to paltry conviction rates under the central legislations dealing with terrorism.

6.9 Role of Security Personnel in Protection of Human Right

Section 2(d) defines as the right relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international conversant and enforceable by in India. Since there has been an increase in number of cases of terrorist activities, communal riots, activities of naxalism the role of security forces have become paramount and necessary. These forces although play an important role in protecting the borders their requirement is even more necessary in controlling civil unrest, enhancing the security at the important places control and maintain law and order whenever required.

The United Nations General Assembly adopted a resolution on December 17, 1979 that all security personnel shall respect and protect human dignity and uphold the human rights of all as well it applies to the armed forces, they have to abide by the international conventions against torture and other cruel punishments, principles of international cooperation in the deter arrest, extraditions and punishment against humanity.

Implementation of security legislations led to a gross violation of human rights in several states. Widespread abuses of Armed Forces Special Power Act in the North East states drew a criticism for ignoring impunity issues and recommending use of the Unlawful Activity Prevention Act. At least 400 people remained in jails under the repealed POTA and several continued special trails of proceedings of which failed to meet fair trial standards. The project deems to cover various issues relating to the violation of the Human Rights by the security forces when armed or unarmed. In the Guise of security cover violations are taking place.
The painful issues of how to protect human rights in times of terrorism and insurgency confronted the National Human Rights Commission within days of its establishment with the tragic civilians in Bijbehara, in the state of Jammu and Kashmir, in the course of a firing by the Para-military force. The commission took suo-moto cognizance of the incident and after reports, for which it had asked, concluded that excessive force had been used. There has been a strict vigilance by the commission on such kinds of violations. To cove more on the the security forces and the kinds of complaints the NHRC has been receiving and also the measures taken by the commissions on such complaints we will make a brief study of the NHRC reports.

When the armed forces are called upon to combat the terrorism or insurgency, they have to function within certain parameters. They have to follow the rule of law. The international humanitarian law is part of the human rights law applicable to the armed forces. The main principles of laws of war are based on the balance between military necessity and protection of human rights of civilians. The military necessity does not admit of (i) cruelty, (ii) infliction of sufferings on civilians, (iii) maiming or wounding except in fight, or (iv) giving torture to extort confessions. Another principle is that terrorism is not be countered by the State Terrorism. In other words the State has to take all measures in accordance with the national law and international law at the time of combating the terrorism. The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, gave powers to army to combat the terrorist acts directed towards overthrowing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people” and further enlarged it by adding activities “directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the union or causing insult to the Indian National Anthem and the Constitution of India.”

The Act also gave power to the armed forces to destroy any arms dump or any structure used as training camp for terrorists or utilized as a hide-out by terrorists. The
officer can also “arrest without warrant any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest”. In addition, the armed forces have the power “to enter and search without warrant any premises, to make any arrest, recover any person to be wrongfully restrained or confined or any arms, ammunition or explosive substances, believed to be unlawfully kept in such premises.”

The responsibility to protect the land against terrorism and to fight against terrorism has been entrusted to armed forces in Jammu and Kashmir. The Terrorism is another form of war. Terrorists respect neither the human life nor the liberty of civilians.

In 1994, the U.N. Declaration on Measures to Eliminate International Terrorism, it has been affirmed that:

“Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the consideration of a political, philosophical or ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.”

Sometimes allegation of excessive use of force by army personnel is leveled, but it was not found true. Such allegation was inspired by the enemy with a view to demoralize the soldiers and to create an adverse climate amongst the local people. The NHRC also expressed its opinion at such time that there is a need for restraint and use of minimal force required for effective action against terrorist forces. The Supreme Court also expressed the view that there is need for the exercise of restraint.19 The NHRC has observed a distinct improvement in last few years in the awareness and sensitivity level of the security forces to human rights. The Ten Commandments

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adopted by the Armed forces shows the sensitivity towards human rights at the command level.

Respect for human rights is an integral part of India military training. The human rights are closely connected with political rights embraced by the Constitution of India and the Protection of Human Rights Act, 1993. These rights embraces equality, dignity of human being, freedom of speech, press, assembly, exercise of religious rights, right to life and personal liberty. The Indian army always promoted democracy and human rights, participated in international peacekeeping and peace enforcement activities and offered humanitarian assistance wherever possible. They follow the following rules wherever there is involvement of army:

1. Respect for human life.
2. Respect the dignity of human being and integrity and unity of nation.
3. Respect and protect the property of all persons.
4. Protect the public from terrorism and insurgency.
5. Respect the privacy of women and others.
6. No one is subjected to torture or to inhuman or degrading treatment or behaviour.
7. Every detainee has a right to judicial trial.
8. Human rights violations do no go unpunished.
9. Contribute to peace in the society and respect the human rights and
10. Work as the guardian of democracy.

The Universal Declaration of Human Rights is the starting point for the improvement of human rights. The UDHR condemns cruelty and mandates the protection of home and family. The Indian Army does not fight only wars. The concept has changed and it works with the civilians to protect them from terrorism throughout the world. The Indian military is still learning, how best to deploy its forces to be helpful to the people in need.
### 6.9 Role of Police

When J.P. Ribeiro took over as Director General of Police, Punjab, people of the State began hoping that this might lead to some improvement in the situation and even serious curbing of the terrorists within a reasonable time.

There were grounds for such hope. The main reason was high reputation enjoyed by Ribeiro and his past record-in Bombay, Bhiwandi, Ahmedabad and elsewhere. His declaration that political interference would not be allowed to come in the way of police catching the terrorists, strengthened this hope. However, those in the know of things were conscious that the task was not easy and even Ribeiro would not find it so. There were more than one reasons for that.

Notwithstanding the high reputation enjoyed by the Punjab police once upon a time for its efficiency, serious negative factors had developed in this force. These became quite evident in the period preceding Operation Bluestar.

Many police officers had thinly disguised sympathies with Sant Jamail Singh Bhindranwale. At least one SSP invited the Sant more than once to lecture to Policemen gathered in the Police Lines. Licenses for weapons were given to a number of extremists on the basis of applications with false names and on the false ground that the applicants were Nizankaris. There were policemen who actively collaborated with the terrorists in killings etc. in the worst period prior to Operation Bluestar Amritsar had SSPs who were either in league with the extremists or paid obeisance to Sant Bhindranwale for the sake of their own safety. Many police officers promptly carried out all orders given to them from the Golden Temple in the name of the Sant.

It was in such a situation that Ribeiro took over. His first declaration that there would be no more re-organization of the Punjab police surprised many. Some thought that it was only a part of a strategy to do the necessary re-organization without causing further demoralization. It is now obvious that Ribeiro did not realize the extent of the rot in the Punjab police. Here are some instances of this even with him as the Director
General and with an SSP in Amritsar whose loyalty to his duty and his profession is not in doubt at all. Punjab police has no intelligence worth the name. Extremists have much better.

When Ribeiro took charge, he announced that a joint force would be formed out of Punjab police and the paramilitary forces. It seems that he has found the job to be well neigh impossible. The killings by the terrorists go on. According to press reports many terrorists too have been arrested and weapons recovered. It is not our case that all these reports are incorrect. Some dreaded terrorists have been nabbed. But the fact remains that the number of recovered sophisticated weapons which the terrorists use is very small as compared to the number of terrorists claimed to have been arrested. Possibly for this purpose, anti-social elements are also counted as “terrorists”. Some major operations undertaken by the police have proved a flop. The reason, most likely is prior information reaching the extremists from within the police. Hindus do not trust Punjab police. Sikhs do not trust the CRP.

A really effective security force must be ensured as soon as possible. The task may be difficult, but is not impossible. No force must be made to stay in any religious place.

Political interference has not stopped notwithstanding assurances given to Ribeiro. Some notorious smugglers have released under political pressure, notwithstanding the known fact that, smugglers generally have links with the terrorists. Political interference in favour of the extremists and antisocial elements must stop.

All parties, big or small, must place national interests above their narrow partisan and electoral interests. Maximum possible public opinion against the terrorists, especially of Sikhs peasantry, must be mobilized through joint and also separate efforts. Hindu opinion must be mobilized against the dangerous slogans of revenge and retaliation. Lives and properties of the Sikhs in All States outside Punjab must be fully protected.

On 13 December 2001, a white ambassador with at least five armed men entered the parliament complex. In the ensuring gun-battle, all the five attackers and nine others,
including eight personnel, were killed. The police investigation was concluded in a fortnight and four persons—one Mohammad Afzal Guru, his cousin Shaukat Guru, Shaukat’s wife Afsan Guru (alias Sandhu) and SAR Geelani, a Delhi University Arabic lecturer were arrested; while three other (including usual suspects Ghazi Baba and Masood Azhar) were declared the mastermind attack. The designated POTA court convicted all four, sentencing all but Afsan Guru to death. Geelani and Afsan were later acquitted by the High Court and their acquittal was confirmed Supreme Court. Shaukat’s sentence was commuted by the Supreme Court while Afzal’s death sentence was upheld.

Arundhati Roy’s introduction to this collection lists 13 disturbing questions that remain unanswered over five years and three court judgments after the incident. These include why the circuit television (CCTV) recordings of the incident were never released; what was the role of the Special Task Force (STF, part of the J & K Police) in this incident given that Afzal was a surrendered militant and admitted to working for the STF; what was the ‘incontrovertible evidence’ that led the Government to amass soldiers on the border with Pakistan and why all we about the five dead attackers is the (then) Home Minister LK Advani’s statement that they looked like Pakistanis? Cumulatively, she argues and alleges that the unanswered questions complicity, collusion and involvement of either the Government or some intelligence agency in attack rather than mere incompetence in the subsequent investigation.

Other forces also have such code of conduct but only solution that can be reached to counter the problem of violation of human rights is by proper implementation of the proper conduct above mentioned violations are not only crimes listed in the Indian Penal Code but are also violate the Constitution of India. Violation of our own Constitution is in a way non adherence with the international conventions and declarations. The enactments such as POTA and TADA or Armed Force Special Powers Act are draconian laws and would not solve the purpose of a secured society, there has to be the proper implementation of the Constitutional guarantees to its citizens, status to the security forces has always led to the misuse of their powers as
we have witnessed from the reports of National Human Rights Commission and various other sources. In the security so many innocent people are rounded up, taking the example of Punjab Mass burial case as to what happened when TADA law was implemented, mass killing of innocent people security forces having special powers to rape, molest, torture, murder, and what happened at the end when the TADA was repealed, the conviction rate was just 1.8%. With these exam can understand that security issues cannot be improved by giving special powers to security personals.

6.10 Terrorism in Assam and Punjab by Separatist Forces

Since January 1983, the Assam people demanded ‘Assam for Assamese’. They did not demand secession, but had started massacre of hundreds of Bengalis. The non-Assamese, consisted of persons from different States in India, such as West Bengal, Bihar and Rajasthan. Under article 19(1)(e) the citizens of India had a right to settle in any part of the territory of India. If their demand is accepted, people in other States may also follow, which would result in breaking the federal India into pieces. In fact there were illegal immigrants from Bangladesh, who were in fact ‘foreign nationals’. The Government of India raised such problem before the Government of Bangladesh. The Government of India was considering their case on humanitarian grounds. Apart from Assam, lacks of Bangladeshi Muslims infiltrated into West Bengal and after a few months their case was strengthened by the evidence of Ration Cards and the entry of their names in the electoral rolls etc. Same situation developed in Assam also. No independent State can tolerate such infiltrators. Subsequently the ULFA (United liberation Front on Assam) started a reign of terror by murdering non-Assamese and extorting money from them. It reached a point where people left the State as if there was no Government in Assam. Consequently, President’s rule was declared on 28-11-1990, after dismissing the Assam Government headed by Mahanta of Assam Gana Parishad. In 1992 elections took place, when Congress Government under Hiteswar Saikia was formed. This Government was struggling against the ULFA and Bodo militants. On December 5, 2006 the Supreme Court had directed to constitute sufficient number of tribunals under the 1964 Order to effectively deal with the cases
of foreigners who have illegally come from Bangladesh or are residing in Assam, and it be implemented within a period of four months.\textsuperscript{20}

In India Das v. State of Assam,\textsuperscript{21} the Supreme Court held that to be member of ULFA, a banned organization, was no evidence to show that the appellant was indulged in any of the violent act or had incited people to do violence.

The Sikh separatist movement in Punjab demanded a State for the Sikhs. The Anandpur Sahib Resolution, which was presented by the Akali Dal (Talwandi) at the World Sikh Convention, 1981 did not speak for secession from the Union or an independent State of Khalistan, which was at the back of the movement. In 1981, it was said that the agitation or ‘Khalistan’ was the work of a group of terrorists. At the 54\textsuperscript{th} All India Educational Conference of the Chief Khalsa Dewan, 1981 it was asserted that the Sikhs were a separate nation and should be admitted to the U.N. as a member. Akali Leader Bhindranwala demanded in 1983 a separate State of Khalistan and Sant Longowal said that Sikhs were a separate race. On 31\textsuperscript{st} October, 1984, when Prime Minister Indira Gandhi was killed by her Sikh Security Officer, in her residence at Delhi, a mass killing of Sikhs started in Delhi and other cities in India, as a result whereof about 3000 Sikhs were killed. In July 1985 a ‘Punjab Accord’ was signed between prime Minister Rajiv Gandhi and Sant Longowala, which provided that the Anandpur Sahib resolution would be referred to the Sarkaria Commission, some Hindi speaking area of Punjab would be transferred to Haryana in lieu of Chandigarh which would be given to Punjab from Haryana. In 1987, the President’s rule was imposed in Punjab, which continued up until 1992, when at the election the Congress (I) formed the Government with Mr. Beant Singh as Chief Minister. The Punjab Accord failed to make any settlement of the Punjab problem.


\textsuperscript{21} (2011) 3 SCC 380.
6.11 Problem of Cross-Border Terrorism in Jammu and Kashmir

The beauty of Jammu and Kashmir, as it is known as Switzerland of India attracts the visitors. When Pakistan could not get it by many attacks, it came to be ravaged by militancy and terrorism under ISI by killing thousands and thousands of civilian. When the twin Word Trade Centre Towers were attacked by terrorists on 11th September, 2001, the issue of terrorism has become global. Thereafter the terrorism in Jammu and Kashmir has attracted international attention instead of tourists.

India considers the cross-border terrorism as the core-issue, while Pakistan considered the Kashmir as the core-issue. The suicide bomb attack on Jammu and Kashmir Assembly building and the abortive attempt to blast the Srinagar airport were the unfortunate events which have compelled A.B. Vajpaye to announce that there was no question of his further meeting the Pakistani President at the U.N. General Assembly at New York, as Pakistan was behind such attacks. It has now been established that Al-Qaida network has its training camps in Pakistan and Pakistani Government funds them. USA has now started saying that the terrorists in Kashmir are not local ‘freedom fighters’ as they are either foreign mercenaries or perverted Islamic fundamentalists. With the attack on the twin towers on 11th September, 2001, USA has felt where the shoe pinches. It is said that had the US Government taken the issue of terrorism seriously as it was taking after attack on twin towers, the attack on twin towers would not have taken place. Pakistani terrorist groups had made attack on Indian Parliament, and have now started attacks on people in Markets of New Delhi, Railway compartments in Bombay and Masjid in Malegaon.

6.12 ULFA and Naxal Terrorism in India

- ULFA has Links with ISI and Bangladesh Spy Agency

The surrendered ULFA militants admitted on 6th February, 2009 that they had close links with the Pakistan’s Inter-Services Intelligence (ISI) and Bangladeshi spy agency DGFI and some other Islamic Organizations in carrying out violence in the
northeast. Without their support, it is not possible for anyone to have bases in Bangladesh. In fact Pakistan is a breeding ground for Terrorists. A battalion of ULFA was responsible for a number of killings, abductions and extortions in Assam. The ULFA had sent its cadre to Pak-Afghan border for training till two years ago.

- **Naxalites Act of Terror in India**

The Naxalite movement was started in 1967 from Naxalwadi village in West-Bengal. The movement which was started by Adiwasis against the police excesses has been slowly taken in hand by the Maoists and has turned into a violent political movement against the State. The Maoists-Naxalites are active in the States of Bihar, West Bengal, Jharkhand, Chhattisgarh, Madhya Pradesh, Andhra Pradesh, Tamil Nadu and Karnataka. These Maoists are in fact terrorists and are working against the State-power. They employ the young persons and with their help they declare the area as ‘free’ after occupying the same. This movement has been discussed and criticized in Parliament and State Legislatures many times. The UPA Government was not able to take actions against them because of their alignment with the communist parties during the period 2004-2009. In fact it is necessary to make the Police well trained with modern armament and to create employment for the youth, so that these separatists could be put under control. The Maoists are cunning persons, and therefore, the Political parties should untie on the issue of curbing these terrorists-separatists.

The country has witnessed 1,130 cases of Naxal violence during 2009, which left 591 civilians and 317 security forces dead. There has been increased level of Naxal violence especially in Chhattisgarh, Jharkhand, Bihar, Orissa, Maharashtra and West Bengal. A total of 197 Naxalites were killed and 861 arrested during the same period. The National Investigation Agency has been constituted under the national Investigation Agency Act, 2008 to investigate and prosecute offence under the Acts mentioned in the Schedule, which, inter alia, includes the Unlawful Activities

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22 Times of India, February 8, 2009.
(Prevention) Act, 1967 as amended in 2008. It has become a cancer for the Police force. Naxalites believe in getting power at the gun point. There are about 50 Naxal-Groups in the country and they are in contract with each other. In order to run their movement, they collect about 125 Crore rupees per year from the Mine-owners, big industrialists and businessmen.

There reasons for the rising trend of death of security personnel and civilians are as under:\(^{23}\):

(i) The State Governments do not pay heed to adequately staffing in vulnerable police stations, which the central forces are bound by operating procedures that are exploited by the fleet-footed Naxals;

(ii) There are 16 battalions (over 16,000 personnel) deployed in Chhattisgarh, but it still remains lax in ensuring a strong presence of police personnel in vulnerable areas while ultras lay ‘multiple ambushes’ and use land mines while deploying heavily armed, highly mobile groups;

(iii) Inspite of 37,000 para military personnel deployed in the battle against Maoists, the Governments in Bihar, Chhattisgarh, Jharkhand and Orissa have collectively reported about 82 percent of the total incident and over 77 percent of the total casualties.

The Union Home Minister has said that a military adviser has been appointed to prepare an action plan to deal with the Maoists-Naxalites. According to him the Naxal power has been under-estimated by the Government.\(^{24}\)

On April 6, 2010, in a 81 members company, 76 CRPF Jawans were killed by gunfire and IEDs blasts in a Maoist ambush at Dantewada, which is considered a single biggest blow in India’s long history of counter insurgency after independence. A mine protected vehicle and a mobile bunker were destroyed. The Maoists signaled a

\(^{23}\) Times of India, Jaipur, July 16, 2009.

\(^{24}\) Times of India, Jaipur, July 16, 2009.
transition from guerrilla warfare to mobile warfare. They also looted 82 weapons. From any angle this was a war declared by Maoists. Inspite of that, the Government is divided on using the armed forces and air power against Maoists.

In fact Maoists are controlling 83 districts out of the 220 districts which they operate. The year 2009 was also the bloodiest year in the fight against Maoists, in which 591 civilians and 317 security forces were killed by Maoists. Naxals attacks were carried out with unprecedented ferocity. The Naxals beheaded the police personnel and hijacked the trains.

The Government’s anti-naxals strategy rests on the following three planks:

(i) Pushing in the Central forces,

(ii) Giving money to the States for modernizations of Police,

(iii) Developing the Maoists-affected areas.

The Central Government has deployed about 60,000 personnel in the worst-affected area, but they have not been able to destroy the well organized economy of extortion, kidnapping and theft.

The Supreme Court of India have pointed out following reasons as the root cause of armed revolt, sufferings of people on account of both Maoist insurgency activities and counter-insurgency unleashed by State:

(i) Shortcomings of State in pursuing development paradigm enabling certain sections of society to grab the resources of the poor and violate their dignity;

(ii) For the above finding against the State, while relying on report of expert body constituted by the Planning Commission of India, judicial notice was taken of practice of Government reports understanding actuality of circumstances;
(iii) Policy of State in giving financial facilities to the rich, while instead of taking welfare measures for the poor, arming poor tribal youths in the name of counter-insurgency measures. This step was criticized by the court.

The State was reminded of its duty to provide security to all its citizens without violating human dignity.  

6.13 Terrorism and South Asian Countries

In this region of South Asia, no country can claim to have better record than India for controlling the terrorism and for respect of the civil liberties. Cross-border terrorism has created many problems in India due to the colonial past.

A. Pakistan

The Anti-terrorism law in Pakistan provides for military officers as part of judicial panels and they try the terrorist offences. The absence of democracy for a long period, posed threat to civil liberties. The human rights defenders faced dangers to life and liberty.

An internal document meant for restricted circulation has been published by Times of India on 10th June, 2008. It is based on the report submitted by George C. Francis Committee, headed by senior para-military forces officer and four other officials from the security agencies. According to this report there will be no let up in threats to India till at least 2025 from ISI of Pakistan. The ISI will keep alive terrorism in Kashmir. Despite recent efforts at peace between India and Pakistan, there is no change in ISI objectives which has incorporated the following actions on top priority:

(i) So-called ‘Liberation’ of Kashmir;

(ii) Revival of militancy in Punjab;

(iii) Use of Bihar-Nepal border for smuggling arms;
(iv) Use of explosives and fake currency;
(v) Co-operation with ULFA;
(vi) Control of insurgent networks from Bangladesh; and
(vii) Using certain Madarsas in Border States and in Indian States around Bangladesh.
(viii) Setting up of terror cells in South India;
(ix) Liaisoning with underworld in Maharashtra and Gujarat.

The Committee reported that big changes in demographics in terms of an illegal influx from Bangladesh cannot be ignored and also reported in details about menace of money laundering, tax evasion, existence of rogue off-shore banking facilities.

The Federal Bureau of Investigations (FBI) of USA resumed a direct role in investigations against the let in India, only after the 26/11 attack on Mumbai. The latest assessment of Multi-Agency Centre (MAC) the nodal agency for all terror-related intelligence under the Home Ministry holds there are 34 active and 8 ‘holding’ camps operational across the border. Both Pakistan/Northern Areas Pakistan occupied Kashmir (PoK) have 17 ‘active and 4 ‘holding or dormant’ camps each, says the MAC assessment, based on inputs from RAW, IB Military Intelligence and National Technical Research Organization, among others. After 26/11 many of these camps emptied out or relocated. The Prime Minster of India declared that India wants Pakistan to take ‘strong, effective and sustained action’ against the terror network targeting and from its soil.
B. Bangladesh

Many terrorist groups of Pakistan have opened their branches in Bangladesh and they operate from there to make terrorist attacks on many places in India. Huji is controlling and operating from Bangladesh and many activist of Bangladeshis were forced to enter India for terrorist activities. The judiciary is not able to help the arbitrary detentions and human rights violations. Violence against women and minorities is common in Bangladesh. Starting with border districts of West Bengal, Assam and Tripura in the early 1980’s, Bangladeshis are now in Delhi, Jaipur, Jodhpur, Bikaner, Jaisalmer, Ahmadabad, Surat, Mumbai, Mysore, Hyderabad and Chennai among others.

According to the BSF sources, around 400 Bangladeshis enter India everyday through Murshidabad, Majda and Cooch Behar in West Bengal. This makes their number around 12,000 a month and almost 1.5 lakhs illegal Bangladeshis per year. Most of these illegal migrants are tradesmen, low end-fitters, locksmiths, painters, cutters, welders, rickshaw pullers, cycle wallahs or plain labourers, whose services come handy for assembling bombs. Huji’s main aim is to establish an Islamic State in Bangladesh and assist in the formation of an International Islamic Caliphate. It has wide contacts with International Islamic terror groups especially in Pakistan.

C. Sri Lanka

The problem arising due to ethnic conflict and presence of LTTE is a negative influence for civil liberties. Assassination of a few top politicians and a similar attempt at the present President indicates seriousness of the situation. The Government of Sri Lanka has extended the ban on LTTE by two years in May, 2008. The Government of USA has also declared LTTE as a terrorist group. LTTE leader Prabhakaran has started his career with a bloodbath against not only Sinhala officials and civilians, but also fellow Tamil militants and political leaders. In the first week of February, 2009, Mr. Mahindra Rajapaksa, Sri Lanka President said that “for the last 30 years, the entire country was terrorised. We have now been able, within a short
period of 2\(\frac{1}{2}\) years, to completely defeat the cowardly forces of terror”. He said “One of the most heinous terrorist groups in the world had been defeated.”\(^{26}\) The military activities of Government against LTTE halted on 18\(^{th}\) May, 2009, when the army claimed that 18 of the most senior LTTE leaders including Prabhakaran had been killed. Prabhakaran was also responsible for the murder of Rajiv Gandhi, former Prime Minister of India in 1991.

D. Myanmar:

The Myanmar regime announced the release of over 600 inmates, after the U.N. Human Rights rapporteur Tomas Ojea Quintane ended a five-day visit during which he called for the progressive release of ‘prisoners of conscience’. This includes members for Suu Kyi’s opposition National League for Democracy and other political groups, who were arrested in May 2003 for their political or religious beliefs. The military junta, which is ruling the country unchecked since 1962 said that all detainees had committed crimes. They were released for the social consideration of their families and to take part in elections promised for 2010, part of a seven-step “roadmap to democracy”. The human rights groups have accused the regime of seeking to eliminate all political opposition ahead of the election.

6.14 Can Human Rights Apply To Terrorists Who Kill Innocents

In a seminar in New Delhi on “investigation and prosecution of offences relating to terrorism” Justice Arjit Pasayat, Judge, Supreme Court said on 28\(^{th}\) January, 2009 that “a person who used AK-47 to kill innocent persons could not be termed as a human being”. “If terrorists are not human beings, where is the question of their human rights being violated” We cannot conceive animal rights for them.” He also poured out his anguish and pain at the current trend of crucification of Police Officials by so-called human rights groups for every perceived fault in any police operation against terrorists. His views appeared to have found basis in the Batla House encounter,

\(^{26}\) Times of India, Jaipur 20\(^{th}\) May, 2009.
where Police Officer M.C. Sharma was killed and the subsequent controversy arose. We are magnifying the fault of the officials, but at what cost. Justice Pasayat said. “Today we are concerned with the rights of the terrorist but we are unmindful of the plight of the victims of terrorism. How many protest marches have been organized seeking to highlight the plight of poor daily wager, bystanders, with whose death his family leads a life of extreme penury. Terrorists sentenced to death are lodged in jail for a long time like the Parliament attach case convict Mohammad Afzal. If speedy trial in terrorist-related offences was essential, it was also the need of the hour to give effect to the sentences awarded to terrorists as keeping them for long years in jail after the verdict is sure to have a deleterious effect on the judgment rendered after speedy trials.”

6.15 International Humanitarian Law

According to Hans-Peter Gasser, international humanitarian law (IHL) can be defined as the whole of the international conventional or customary rules, which are specifically intended to regulate humanitarian problems arising directly from both international or non-international armed conflicts, and which restrict, for humanitarian reasons, the right of parties to the conflict to use means and methods of warfare of their choice and to protect people and objects affected by the conflict. This theoretical definition specifies the situations covered by IHL, i.e. armed conflicts of an international character or not of an international character. It also describes, albeit superficially, the contents of this body of norms by examining the traditional distinction between the “Geneva law”, namely the rules which tend to ensure the safeguard of people under the power of the enemy, and the “Hague law” which regulates the rights and duties of the belligerents with respect to the control of military operations and limits the choice of means for harming the enemy. Since the adoption of the two Additional Protocols to the Geneva Conventions of 1977, and a partial fusion of “Geneva law” and “The Hague law”, one often states that this practical

distinction has now been surpassed. For the purposes of the Competition, it is not
essential to know in detail the historical evolution of IHL as herein defined.
Nonetheless, at a minimum, a general knowledge of this evolution can be extremely
useful, in order to comprehend the context in which the various instruments make up
this corpus iuris.

Enforcing International Humanitarian law is one of the most difficult aspects of this
Interesting field of International law. We will specially discuss how international
humanitarian law works through to maintain balance of global peace and meet the
expectation of United Nation Declaration of Human rights.

While international humanitarian law has long generated a rich body of scholarship on
substantive legal issues, particularly in relation to combat situations and military
occupation, considerably less attention has, until relatively recently, been devoted to
its role in post-conflict scenarios. What consideration there was tended to focus on the
Nuremberg ²⁹ and Tokyo ³⁰ precedents emphasizing justice-as-accountability, with
occasional events, such as the Eichmann trial, serving as a catalyst for broader
discussion.

The reasons are obvious: there was little discussion of the role of international
humanitarian law in such situations because there seemed little to discuss (though this
begs the question as to whether the law might have played a larger role if a broader
debate on its possible contribution had emerged earlier). With the closing of the
Tokyo and Nuremberg Trials an internationally validated infrastructure came to an
end.

The absence of any similar ad hoc bodies, the unwillingness of the international
community to establish a standing tribunal with criminal competence in the area, and

²⁹ The Nuremberg trials have generated a vast body of literature. For some early writing see H.
Ehard, “The Nuremberg Trial against the major war criminals and international law”, AJIL, Vol.
43, 1949,p. 223
³⁰ B. Sharpe, Modesty and Arrogance in Judgment: Hannah Arendt’s Eichmann in Jerusalem,
1999,p.79
the limited use of humanitarian law by national criminal tribunals in post-conflict situations despite the creation of universal jurisdiction over grave breaches of the four Geneva Conventions of 12 August 1949 on the protection of war victims all contributed to a situation in which international humanitarian law seemed to be playing quite a limited role in the post-conflict arena, generating only sporadic academic interest. The picture has now changed almost beyond recognition.

Not only has the role of international humanitarian law in post-conflict situations become an area of increasing scholarly focus, there has also been a noticeable whittling away at the perceived isolation of this area of law, with the result that the links between humanitarian law and other areas of public international law have become more clearly visible. Three factors have contributed largely to these developments: the first has been the growing convergence of international humanitarian law and international human rights law, most obviously in the adoption, virtually verbatim, of the fair trial provisions of the 1966 International Covenant on Civil and Political Rights in the two 1977 Protocols additional to the Geneva Conventions.

The second factor involves two interrelated developments. One is the emergence in recent years of a trend towards structured (some would say choreographed) peace processes in relation to intractable or stalemated violent conflicts (examples include El Salvador, the former Yugoslavia, Palestine/Israel, South Africa, and Northern Ireland). Since the balance of forces or the circumstances in these conflicts were such that no side was able to achieve a military victory and thus to impose its will on the other(s), the negotiating processes have had to attempt to reconcile the interests and concerns of all sides.

This has frequently required that questions of past violations of human rights law and international humanitarian law be addressed. The other, related development has been the process of structured transition from military to civilian rule in recent decades; most obviously in Latin America (examples include Chile and Brazil). These
processes have generated a discourse on “transitional justice”, into which the post-communist transitions in Eastern Europe have fed.

Central to this inquiry has been the question of how democratic successor governments should deal with serious violations of previous regimes, with particular reference to the institutional vehicles for engaging with past violations. Its themes therefore mesh neatly with those which have emerged in recent peace processes; indeed, it is possible to subsume many legal issues relating to the latter under the general “transitional justice” umbrella.\(^{31}\)

Enforcing International Humanitarian Law is one of the most difficult aspects of this interesting field of international law. On one hand International Humanitarian Law in a certain sense constitutes a law beyond the law, i.e. a set of legal rules which becomes applicable after the prohibition of the use of force, one of the most fundamental tenets of international law, has been breached. On the other hand does International Humanitarian Law apply equally to the attacking as well as the defending party to a conflict? Finally is it illegal to retaliate in kind, once International Humanitarian Law has been violated by one party to the conflict. Both aspects can make it difficult to explain to the general public why respect for International Humanitarian Law is crucial. The question before us is which tools are available for the enforcement of International Humanitarian Law against non-state actors in modern asymmetric conflicts.

We will especially have a look at alternatives to courts as a tool of IHL enforcement. Courts, while often serving as a useful tool for IHL enforcement within the context of western armed forces, are in insufficient deterrent for enemies ready to killed innocent civilians with suicide attacks. Fundamental to all difficulties relating to the enforcement of international law is the classical and by now outdated point of view of the Westphalia legal system to the effect that only states (or international organizations of states) can be subjects of international law, a view that has been

\(^{31}\) [http://www.icrc.org/eng/resources/documents/misc/57jq7.htm](http://www.icrc.org/eng/resources/documents/misc/57jq7.htm),
confirmed in the UN General Assembly's *Declaration on the Inadmissibility of Intervention into the Domestic Affairs of States* (1965).

The principle of non-intervention is the most visible sign of this problem: in contrast to domestic law the international legal system lacks a higher authority independent of states which can exercise the force necessary in order to ensure compliance with the law. This problem comes to light especially when International Humanitarian Law is being violated: not only has the International Criminal Court in The Hague only a limited jurisdiction, military considerations will always play an important role in the decision-making process of those engaged in combat. Furthermore might terrorists want to gain a certain degree of legitimacy for their actions in violation of International Humanitarian Law by jumping on the relativism bandwagon.

For the enforcement of International Humanitarian Law political means holds true as for the enforcement of international human rights outside a framework providing for courts and commissions, i.e. that half-hearted political attempts at enforcing legal obligations will most often fail to be successful, since states' interests will collide with their obligations under international human rights law and International Humanitarian Law, especially in case the own security is concerned. Recent developments in the U.S. such as the treatment of prisoners in Guantánamo Bay, the USA PATRIOT Act etc. are indications of such a tradeoff of human rights and International Humanitarian Law in favour of a perceived safety. Negative sanctions, e.g. on regimes harbouring terrorists, are also not too likely to yield the results envisaged, since it is never the leadership but ordinary people who will suffer, as has been the case in Iraq, North Korea, Afghanistan and South Africa. The examples of Iraq and North Korea serve as reminders, that the toll paid by the civilian population due to sanctions imposed on the regime under which they live (and more often than not suffer, too) can backfire dramatically. Negative sanctions limited to e.g. UN Security Council-imposed arms

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embargoes, furthermore only work, if all states participate and the embargo is enforced as well, conditions that will only rarely be met in practice.

6.16 International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) is a private humanitarian institution based in Geneva, Switzerland. States parties (signatories) to the four Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005, have given the ICRC a mandate to protect the victims of international and internal armed conflicts. Such victims include war wounded, prisoners, refugees, civilians, and other non-combatants.

The ICRC is part of the International Red Cross and Red Crescent Movement along with the International Federation and 186 National Societies. It is the oldest and most honored organization within the Movement and one of the most widely recognized organizations in the world, having won three Nobel Peace Prizes in 1917, 1944, and 1963.

The International committee of the Red Cross established in 1863, works worldwide to provide humanitarian help for people affected by conflict and armed violence and to promote the laws that protect victims of war. An independent and neutral organization, its mandate stems essentially from the Geneva Conventions of 1949.

Based in Geneva, Switzerland, it employs some 12,000 people in 80 countries; it is financed mainly by voluntary donations from governments and from national Red Cross and Red Crescent societies. Since its foundation, the ICRC has played a humanitarian role in most of the conflicts that have taken place around the world. It has continuously worked to persuade States to expand the legal protection of war victims, to limit suffering. The ICRC, the national societies and their International Federation form the International Red Cross and Red Crescent Movement. In

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33 International committee of the Red Cross [hereinafter ICRC]
34 http://www.icrc.org/eng/who-we-are/overview-who-we-are.htm,
situations of armed conflict the ICRC coordinates the response by its Movement partners.

The ICRC has a permanent international mandate for its work. This derives from the 1949 Geneva Conventions agreed to by every State in the world and from the Statutes of the Movement. However, the ICRC remains a private organization governed by Swiss law and strictly independent in its governance and operational decisions. The Committee itself consists of up to 25 co-opted members, all Swiss. The ICRC's work respects the Movement's fundamental principles, notably those of neutrality, impartiality and independence. The ICRC can encourage states to implement rules of International Humanitarian Law on a national level and monitor the behavior of those involved in armed conflicts thanks to its experience and the ICRC's reputation for impartiality.

The ICRC can directly contact state authorities, deliver protests and if necessary verify alleged violations of International Humanitarian Law, especially if the ICRC acts under Art. 5(4) of the 1st Additional Protocol to the Geneva Conventions. Furthermore, national RC Societies play a key role in the process of disseminating knowledge of International Humanitarian Law with the aim of creating an environment in which there is not only space for International Humanitarian Law but which could best be described as a "culture of compliance" with International Humanitarian Law has an international commissioned been established by Art. 90 of the same Protocol which is tasked with the examination of all facts which allegedly constitute a grave violation of International Humanitarian Law within the meaning of the four Geneva Accords or the 1st Additional Protocol of an other significant violation of these texts.

The ICRC worked in India at the time of partition (1947-48) and in the ensuing conflicts between India and Pakistan (1965, 1971). A Regional Delegation was established in New Delhi in 1982, today covering India, Bhutan and Maldives. Its main focus is on visiting detainees held in Jammu and Kashmir and in Bhutan,
assisting civilians affected by violence in various parts of India and promoting international humanitarian law (IHL). The ICRC supports the activities of the Indian Red Cross and Maldivian Red Crescent Societies.

In India, ICRC delegates visit people arrested in connection with the situation in Jammu and Kashmir, who are held both within the state and in other parts of India, to monitor their treatment and living conditions. According to need, the ICRC distributes basic assistance to detainees as well as to their close relatives. In India and Bhutan, the ICRC helps detainees to re-establish and maintain contact with their families. The ICRC supports the humanitarian activities of the Indian Red Cross Society, such as emergency response, first aid, livelihood support and community health programmes. The ICRC strengthens the operational capacity of local IRCS branches in States affected by emergencies to help them provide the appropriate humanitarian response. It promotes Red Cross/Red Crescent principles and respect for the emblems and advocates in favour of neutral and independent humanitarian action. It also supports the Family News Service of the IRCS, which seeks to trace and reunite family members separated because of migration, displacement and disasters.

The ICRC offers its support and expertise to India’s National Disaster Management Authority, concerning the management of dead bodies during natural and man-made disasters. The ICRC assists in medical and health programmes, as well as safe water and sanitation projects in Assam, Nagaland and Chhattisgarh. A team of ICRC doctors and nurses supports the Primary Health Centre of Kutru, in Bijapur district, Chhattisgarh. Community workers increase awareness of hygiene among local communities in Bijapur district.

The ICRC also supports the IRCS and the Ministry of Health in physical rehabilitation activities run by a district rehabilitation center in Dimapur, Nagaland. It also maintains one physical rehabilitation programme in Jammu and Kashmir, and

35 Indian Red Cross Society [hereinafter IRCS]
supports one center in the city of Raipur/Chhattisgarh. An ICRC report noted a pattern of excessive force used by U.S. soldiers during raids at home or business, frequently occurring after midnight. The report noted that “ill treatment during capture was frequent “and that included “pushing people around, insulting, taking aim with rifles, punching and kicking and striking with rifles”. All of which looked like boy scouts picnic pranks compared to what happened at the infamous Abu Gharib.

Yet although this commission seems to be highly efficient in theory, things look different in practice. Therefore although the ICRC theoretically has a number of means to enforce International Humanitarian Law, the practical value of the ICRC’s means can be limited, making them a potential that cannot always be used fully.

6.17 Challenges faced by ICRC and international humanitarian law (IHL)

There is a special relationship between the ICRC and international humanitarian law, which expressly recognizes the mission of the ICRC and provides a legal basis for the mandate conferred on it by the international community. The ICRC has been at the origin of or involved in the codification of most of international humanitarian law as it stands today. The ICRC's most important operational challenge is to ensure access to victims of armed conflict and other situations of violence. Direct access to those people is essential if we are to understand their situation and try to address their needs. However, in a changing conflict environment, access is becoming more difficult because of security constraints. Security presupposes acceptance of the ICRC's presence and activities by all belligerents. To remain close to the victims and to communicate with all existing or potential parties to a conflict, the ICRC has developed a network of more than 230 delegations, sub-delegations and offices throughout the world. It works constantly to expand its network of contacts with all

36 http://www.icrc.org/eng/where-we-work/asia-pacific/india/overview-new-delhi.htm
37 Khan Rahmatullah, The War on Terrorism, Indian Journal of International Law, Vol. 45, No. 1, Pub. Indian Society of International Law, New Delhi,pp.15,16
weapons bearers, and with those who can influence them. However, such contacts are useless without the capacity to deliver on the expectations created by the ICRC's presence and mandate. It is therefore by being effective in the field and taking action to relieve the suffering of those affected by armed conflict that the ICRC gains its acceptance.

6.18 Amnesty International

According to the amnesty international report there was increasing concern at the erosion of human rights protection in the context of “anti-terrorism” measures against armed political groups, and continuing communal tensions. Systematic discrimination against vulnerable groups—including women, religious minorities, dalits and adivasis (tribal people)—was exacerbated by widespread use of security legislation, political interference with criminal justice system and slow judicial proceedings in a continuing climate of impunity.

Tensions remained high in the state of Gujarat in the aftermath of widespread communal violence in 2002. Witness to the violence and human rights defenders were threatened and concern grew about the impartiality of institutions of the criminal justice system in the state, including the police, prosecution service and elements of the judiciary. A committee constituted by the ministry of home affairs suggested recommendations for the reform of the criminal justice system which would potentially undermine human rights protection even further.39

In 2011, Amnesty International termed the Public Security Act 197840 “lawless law”. In 2012, this assessment continues to hold true. Despite seemingly positive political and legal developments in recent months, the PSA and its implementation in J&K continue to violate India’s obligations under international human rights law. Several provisions in the PSA facilitate arbitrary detention, in violation of India’s obligations

40 Public Security Act[Hereinafter PSA]
under the ICCPR. Amnesty International’s subsequent research in 2012 has also found that the manner in which authorities use the PSA in J&K results in further human rights violations. These include unlawful deprivations of liberty through the practice of ‘revolving door detentions’, detentions of children, torture and other ill treatment, the denial of medical care while in detention, and a limited realization of the right to reparations. Furthermore, instead of charging and trying persons suspected of committing offences in a fair trial in a court of law, the J&K authorities continue to circumvent the rule of law and the criminal justice system by resorting to detentions under the PSA.41

Recent data disclosed by the National Human Rights Commission (NHRC) on people killed in clashes with the police between 1993 and 2008, showed that of the 2,560 deaths reported, 1,224 occurred in “faked encounters” implying they were extrajudicial executions. By the end of the year, the NHRC had awarded compensation to the relatives of 16 victims. Convictions of those responsible for extrajudicial executions were exceptionally rare and proceedings in such cases remained slow.

In January, the Supreme Court ordered a Central Bureau of Investigation probe into the 2005 killings, allegedly by the Gujarat police, of Sohrabuddin, his wife Kausar Bi and accomplice Tulsiram Prajapati, after finding the state police investigation shoddy. In November, the Gujarat government constituted a new special police team to investigate the killings of Ishrat Jahan and three others at the hands of the Gujarat police in 2004.42

6.19. Human Rights Watch

Historically speaking violation of human rights in the name of counter-terrorism has become rampant and full of widespread of horrendous stories. As a reputed organisation, Human rights watched voiced the core issues which the innocent

41 http://amnesty.org.in/human-rights/research
accused couldn't afford due to poverty, alienation from society or what ever, as far as their state is concerned they have been presumed guilty by media, in fact which violates the structure of criminal justice system. Human Rights Watch further clarifies and unequivocally condemns all such terrorist attacks on the population and believes that the perpetrators should be appropriately prosecuted. We also understand the need to prevent further attacks, and the great public pressure on the Indian authorities to do so.

The bombings in Jaipur, Ahmadabad, and Delhi in 2008 killed a total of 152 people, and spread panic across India. Another two people were killed in serial bombings on July 28, 2008, in Bangalore. During a three-day period immediately after the Ahmadabad blasts in July, police defused 23 bombs in the Gujarati port city of Surat. In response, state police carried out massive sweeps of Muslim communities in those cities, as well as in areas such as Uttar Pradesh state that had suffered attacks in the recent past.

Hundreds of Muslim men were brought in for questioning; particularly those who were known or suspected members of the banned student group Students Islamic Movement of India (SIMI). Ultimately, police charged more than 70 suspects with involvement in the attacks and issued arrest warrants for more than three dozen others. Human Rights Watch has found credible evidence those state police units investigating the attacks engaged in widespread and serious abuses of suspects’ rights, such as arbitrary arrest and detention, torture, and other ill-treatment, including threats against suspects and their relatives. Police in Delhi may have deliberately killed two suspects in a staged shootout. These abuses are serious violations of both Indian and international law. In several cases, plainclothes police picked up suspects and yet, even with eyewitnesses present, did not register them as having been arrested for days or even weeks, putting them at particular risk of mistreatment.

Former suspects, relatives of suspects, and lawyers told Human Rights Watch that police held and tortured some detainees in secret interrogation centers. They alleged
that detainees were blindfolded and held in stress positions during all their waking hours, beaten, subjected to electric shock, or denied food and water. Many said police forced detainees to make false confessions, at times making them repeat a fabricated version of events until they had memorized it. In several instances reported to Human Rights Watch, the authorities threatened detainees into telling relatives they were guilty, or would deny them access to counsel and relatives.

Human Rights Watch did not hear similar allegations of abuse from suspects held by regular police following the Pune blast on February 13, 2010, even though Indian authorities quickly named Indian Mujahdeen (IM), assisted by Pakistani-American David Headley and Lashkar-e-Taiba (LeT), as the most likely suspects. According to rights defenders who monitored the investigations, the police in this instance did not arbitrarily round up Muslims. “No young Muslims were detained or ill treated,” said Kishore Jagtap, a Pune-based activist who had previously met with authorities to warn against arbitrary round-ups. Human Rights Watch sent repeated requests for comment on our findings to central Home Ministry officials, as well as to ranking government and police officials in the states we investigated. Only three officials responded, a police director from Maharashtra state, the police commissioner from the city of Baroda in Gujarat, and a ranking Delhi police official who spoke on condition of anonymity.

The right not to be subjected to torture and other cruel, inhuman or degrading treatment of punishment is a well-recognized non-derogable human right. However, the term ‘Torture’ has not been defined in the constitution or in any other penal laws in India. In order to protect the interest of the accused the Indian evidence act, 1872, in section 25, 26 and criminal procedure code, 1973 in section 162 have clearly

43 Art 5 of Universal Declaration of Human Rights, See also Article 2 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 of the European Convention For the Protection of Human Rights And Fundamental Freedoms
provided that confession made by and accused is inadmissible in evidence except in certain specified circumstances.  

In *Joginder Singh v. State of U.P*\(^4\)\(^5\), it was alleged that Joginder Kumar had been called to the police station in connection with a case. There after his whereabouts became unknown to his family members. The family members of the detained lawyer filed a writ petition in the nature of habeas corpus before the Supreme Court. The court voiced its concern about complaints of violations of human rights during and after arrest and categorically said that the precious right guaranteed by article 21 of the constitution cannot be denied to convicts, under trials and other prisoners of custody, except according to the procedure established by law. Similarly in another case of *Nilabati Behera v. State of Orissa*\(^4\)\(^6\), the court observed that prisoners and detenues are not denuded of their fundamental right under article 21 and only permissible restrictions can be imposed on the enjoyment of these rights.

Human Rights Watch received numerous credible accounts of police torture and other ill-treatment of suspects detained for the 2008 bombings. Methods included both physical and mental abuses such as beatings, electric shocks, stress positions, denial of food and water, sensory deprivation, and threats against suspects and their families. The level of abuse varied by the police force involved and how swiftly investigators were able to secure confessions or other incriminating information. In some cases, the police not only relied on torture to force suspects into incriminating themselves and others, they also fabricated confessions that they made the suspects sign and memorize, to repeat later in front of a magistrate. Relatives and lawyers of suspects told Human Rights Watch that detainees were made to sign blank papers or to memorize confessions handed to them by police.

In some cases reported to Human Rights Watch, former suspects alleged that police tortured or threatened them with the aim of making them provide confessions that

\(^{44}\) Mishra, Dhiraj Kumar *Torture and Third-Degree Methods : Some Reflections*, Nyaya Deep, Vol.12\(^{th}\) issue 3 July 2011, pp.16-17  
\(^{45}\) 1994 (4) SCC, p.260  
\(^{46}\) AIR 1993 SC, 1960
would implicate others. One man told us he was released in return for agreeing to provide false testimony for the prosecution. “Testimony was given by the police department to me to learn by heart and I had to recite the statement in front of all of them in court,” he told Human Rights Watch. “It was a totally false description. On this condition they released me.”

Lawyers and relatives counter that the suspects were too frightened to complain about torture because they were being returned to extended custody of the very police who were perpetrating the abuse Human Rights Watch also received complaints of police holding individuals in secret interrogation centers for one or more days. Three suspects and one human rights activist said that they were beaten and held in secret police interrogation centers in Maharashtra, Gujarat, and Uttar Pradesh.

Historically speaking violation of human rights in the name of counter-terrorism has become rampant and full of widespread horrendous stories. As a reputed organisation, Human rights watched voiced the core issues which the innocent accused couldn't afford due to poverty, alienation from society or whatever, as far as their state is concerned they have been presumed guilty by media, in fact which violates the structure of criminal justice system. Human Rights Watch further clarifies and unequivocally condemns all such terrorist attacks on the population and believes that the perpetrators should be appropriately prosecuted. We also understand the need to prevent further attacks, and the great public pressure on the Indian authorities to do so.

Nonetheless, as detailed in the report, the security forces in India, the world’s largest democracy, have time and again responded to these horrific attacks by committing numerous, serious human rights violations in their quest to identify and prosecute suspected perpetrators. These abuses are both unlawful under Indian and international law and counterproductive in the fight against terrorism.

47 The “Anti-Nationals” Arbitrary Detention and Torture of Terrorism Suspects in India, Human Rights Watch, February 2011, pp. 56-58

48 The “Anti-Nationals” Arbitrary Detention and Torture of Terrorism Suspects in India, Human Rights Watch, February, 2011
According to human rights watch findings authorities have failed to fully investigate whether the Delhi Special Cell police killed two bombing suspects on September 19, 2008, in a “fake encounter” that is, an incident in which police deliberately kill suspects but claim that they shot them in self-defense. In the incident, police raided Batla House, a housing complex in the Muslim neighborhood of Jamia Nagar, six days after the Delhi bombings. One police official, Inspector M.C. Sharma, and two Muslim youths, Mohammad Atif Ameen and Mohammad Sajid, whom authorities subsequently described as IM leaders, were killed.

Another police official, Head Constable Balwant Singh, was injured. Police seized a third suspect inside the apartment and said two others escaped. The police have given contradictory statements about the shootings. Initially, for example, they said Atif and Sajid opened fire, fatally wounding Sharma, and that they returned fire in self-defense, killing both of them. However, after the arrest of two more persons related to the Batla House incident in early 2010, the police claimed that one of those arrested, Shahzad Ahmed, had killed Inspector Sharma. More significantly, suspicious markings were found on the bodies of the two IM suspects when they were returned to their families for burial. Photographs of the corpses show four bullet wounds in the top of Sajid’s head, suggesting he may have been forced to kneel while he was shot, while the skin on Atif’s back appeared burned and peeled.

The police refused to conduct a legally required magisterial inquiry into the deaths, and were backed in that move by the Delhi lieutenant governor, who declared that a probe “would weaken the resolve of the police officers to fight against terrorists.” Indian courts rebuffed human rights groups’ repeated demands that they order an independent investigation. Human Rights Watch does not have sufficient information to determine whether the police’s fatal shootings inside Batla House were legitimate acts of self-defense. However, they believe such incidents should be thoroughly and independently investigated without exception, particularly given the broad pattern of fake encounters that Human Rights Watch and Indian human rights organizations have documented in many areas of India. Fake encounter killings amount to
extrajudicial executions in violation of the prohibitions against arbitrary deprivations of life under both the Indian Constitution and international law.

In its report on human rights in India during 2013, released in 2014, Human Rights Watch stated, "India took positive steps in strengthening laws protecting women and children, and, in several important cases, prosecuting state security forces for extrajudicial killings." The report also condemned the persistent impunity for abuse linked to insurgency in Maoist areas, Jammu and Kashmir, Manipur and Assam. The report also went on to state, "The fact that the government responded to public outrage confirms India’s claims of a vibrant civil society. An independent judiciary and free media also acted as checks on abusive practices. However, reluctance to hold public officials to account for abuses or dereliction of duty continued to foster a culture of corruption and impunity".49 From 1984 to 1994, the state of Punjab in northern India was engaged in a power struggle between the militant secessionist Khalistan movement and Indian security forces.9 The Indian government responded to the escalating Punjab insurgency by launching Operation Blue Star in 1984, storming the Harmandir Sahib, or Golden Temple complex in Amritsar—the center of Sikh religious and spiritual life, where some militant groups had retreated. The Operation was controversial and resulted in death of hundreds of civilians, militants and soldiers. After Sikh bodyguards assassinated Prime Minister Indira Gandhi, further violence ensued.50

According to a Human Rights Watch report, state security forces adopted “increasingly brutal methods to stem the insurgency, including arbitrary arrests, torture, prolonged detention without trial, disappearances and summary killings of civilians and suspected militants”. Militant organizations responded with increased

violence aimed at civilians, state security forces, and Sikh political leaders deemed to be negotiating with the government.  

Several international agencies and the UN have reported human rights violations in Indian-administered Kashmir. In a press release the OHCHR spokesmen stated "The Office of the High Commissioner for Human Rights is concerned about the recent violent protests in Indian-administered Kashmir that have reportedly led to civilian casualties as well as restrictions to the right to freedom of assembly and expression.". A 1996 Human Rights Watch report accuses the Indian military and Indian-government backed paramilitaries of "committing serious and widespread human rights violations in Kashmir." One such alleged massacre occurred on 6 January 1993 in the town of Sopore. *TIME Magazine* described the incident as such: "In retaliation for the killing of one soldier, paramilitary forces rampaged through Sopore's market setting buildings ablaze and shooting bystanders. The Indian government pronounced the event 'unfortunate' and claimed that an ammunition dump had been hit by gunfire, setting off fires that killed most of the victims." In addition to this, there have been claims of disappearances by the police or the army in Kashmir by several human rights organisations.

Many human rights organisations such as Amnesty International and the Human Rights Watch (HRW) have condemned human rights abuses in Kashmir by Indians such as "extra-judicial executions", "disappearances", and torture;⁹ the "Armed Forces Special Powers Act", which "provides impunity for human rights abuses and fuels cycles of violence. The Armed Forces Special Powers Act (AFSPA) grants the military wide powers of arrest, the right to shoot to kill, and to occupy or destroy property in counterinsurgency operations. Indian officials claim that troops need such powers because the army is only deployed when national security is at serious risk from armed combatants. Such circumstances, they say, call for extraordinary measures." Human rights organisations have also asked Indian government to

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repeal the Public Safety Act, since "a detainee may be held in administrative detention for a maximum of two years without a court order."

According to the estimates of Reporters without Borders, India ranks 122nd worldwide in 2010 on the press freedom index (down from 105th in 2009). The press freedom index for India is 38.75 in 2010 (29.33 for 2009) on a scale that runs from 0 (most free) to 105 (least free). In 2014 India was down ranked to 140th worldwide (score of 40.34 out of 105) but despite this remains one of the best scores in the region.

The Indian Constitution, while not mentioning the word "press", provides for "the right to freedom of speech and expression" (Article 19(1) a). However this right is subject to restrictions under subclause (2), whereby this freedom can be restricted for reasons of "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt of court, defamation, or incitement to an offence". Laws such as the Official Secrets Act and Prevention of Terrorism Act (POTA) have been used to limit press freedom. Under POTA, person could be detained for up to six months before the police were required to bring charges on allegations for terrorism-related offenses. POTA was repealed in 2004, but was replaced by amendments to UAPA. The Official Secrets Act 1923 is abolished after right to information act 2005

For the first half-century of independence, media control by the state was the major constraint on press freedom. Indira Gandhi famously stated in 1975 that All India Radio is "a Government organ, it is going to remain a Government organ..." With the liberalisation starting in the 1990s, private control of media has burgeoned, leading to increasing independence and greater scrutiny of government. Organisations like Tehelka and NDTV have been particularly influential, e.g. in bringing about the resignation of powerful Haryana minister Venod Sharma. In addition, laws like Prasar

52 "Press Freedom Index 2010", Reporters Without Borders
Bharati act passed in recent years contribute significantly to reducing the control of the press by the government.\(^{53}\)

### 6.20 National Human Right Commission

Two decades has passed since the National Human Rights Commission was established on 12 October 1993. This is the tenth annual report of the Commission. It seeks to carry forward the narrative of the Commission's efforts to fulfill the mandate conferred on it by the Protection of Human Rights Act, 1993, the objective of which was to ensure the 'better protection' of human rights in the country. The objective assessment of the Commission's endeavors must come from the people of India, whom it seeks to serve in all of their rich diversity and varying circumstances.

Not unexpectedly, given the seriousness of the issues that the Commission has faced and the variety of expectations concerning it, diverse views have been expressed on the worth of the Commission's efforts. This is as it should be, particularly in a democracy as vibrant as that of our Republic. But one fact does emerge clearly. An institution that was unknown ten years ago is now very much part of the life of the nation and, increasingly, of consequence to the quality of its governance. The use of torture violates numerous international, constitutional, and statutory protections, and has been repeatedly condemned by India’s Supreme Court and the National Human Rights Commission (NHRC).\(^{54}\)

Each day, hundreds of our compatriots seek the intervention of the Commission for the redressal of their grievances, stemming from what they perceive to be the violation of their human rights. They belong to all parts of India and to all of its communities. Within the past twenty years, there can be no doubt that the awareness of the rights guaranteed by the Constitution, and included in the international instruments to which India is a State party, has increased dramatically. This has not been unrelated to the efforts of the Commission to spread the message of human

\(^{53}\) [https://en.wikipedia.org/wiki/Human_rights_in_India](https://en.wikipedia.org/wiki/Human_rights_in_India)

\(^{54}\) *Kishore Singh v. State of Rajasthan*, AIR 1981 SC 625 at 999
rights throughout the country and to promote a culture of such rights. Indeed, and perhaps ironically, even the sharpest critics of the Commission often speak of it as if it has been in existence since the founding of the Republic and accuse the Commission of being unresponsive to human rights violations that occurred long before it was even established.

Extraordinary laws, it is argued, are a response to the ‘extraordinary situations’ that emerge primarily because of the openness and freedom which democracy allows. In other words, these laws are not inimical to democracy. They are rather integral to its functioning and as necessary correctives serve important restorative, curative and corrective purposes. It is worth noting how this dilemma also figures, albeit in different forms, in the voices of those who oppose such laws. The National Human Rights Commission (NHRC), for example, while arguing that the battle against terrorism ‘must be fought boldly and won’, stressed the need for observing and defending ‘national integrity’ and ‘individual dignity’ both central values of the Constitution. Significantly, the NHRC held that these values were not ‘incompatible as objectives but entirely consistent with each other’ and that there was ‘a need to balance the two’.  

The problem, which the criminal justice system in India faced, according to it, related to (a) proper investigation of crimes, (b) efficient prosecution of criminal trials, and (c) the long delays in adjudication and punishment in courts. None of these problems, however, could be solved ‘by enacting laws that did away with the legal safeguards that were designed to prevent innocent persons from being persecuted and punished’, nor by ‘providing for a different and more drastic procedure for prosecution of certain crimes’  

The position of NHRC on the proposed Prevention of Terrorism Bill was consistent with its stand on TADA which it reviewed within the first two years of its establishment in October 1993. The NHRC set out to adopt ‘a well-informed and

55 Supreme Court Cases (Criminal) 2002, p. 898  
56 Supreme Court Cases (Criminal) 2002, p. 898
unambiguous position’ on TADA, from what it identified as its non-negotiable ‘central preoccupation’ of ‘protection of civil liberties’. 57

The NHRC with regards to TADA wrote letters to Parliamentarians stating that the act depicted certain principal deviations from the regular law. The principal deviations were

a) Raising the presumption of guilt and shifting the burden on the accused to establish his innocence.

b) Drawing the presumption of guilt for possession of certain unauthorised arms in the specified areas.

c) Making confessions before a police officer admissible in evidence.

TADA provided for a long term detention of large number of persons suspected of committing heinous acts against the state without charges being brought against them. According to the union home ministry, the data of October, 1993 depicts that the total number of detentions under TADA was 52,268, the conviction rate of those tried by designated courts under it was .81% ever since the law came into force. Punjab had a conviction rate of .37% out of the 14,557 detainees.

A public interest litigation was brought on behalf of undertrial prisoners charged under TADA. The Supreme Court in the case of Shaheen Welfare Association V Union Of India, examined the cases pending in various states and the number of designated courts entrusted with the trial of these cases. The petitioner requested the court for directions:

a) Respondents should file a list of detenues lodged in different jails in different states under the TADA,

b) For the release of TADA detenues against whom prosecution did not have proper evidence and where the procedure established by law had not been followed.

It conducted from this premise, what it called a ‘full-fledged examination of all aspects of TADA’ especially as reports and complaints of its arbitrary and abusive use ‘began flooding the Commission within weeks of its establishment’. Inscribing the question of TADA on its regular agenda, the Commission ‘invited periodic meetings’ with officers of the Central and State governments, and visited various regional states on its own fact-finding investigations. As early as 6 June 1994, the Commission admitted in Srinagar that it had ‘learnt enough to have serious doubts about the worth and terms of the Act’, and began contemplating seeking a review of the Supreme.

The NHRC followed thereafter a ‘three pronged strategy’, whereby it continued to monitor the implementation of the Act, prepared a dossier for possible recourse to the Supreme Court and as the date for the renewal of the Act drew near, it resorted to a ‘direct approach’ of sending letters to Parliamentarians recommending that the life of the Act should not be extended when it expired on 23 May 1995.58

The letter made it clear that the Act made ‘considerable deviations from the normal law’, was ‘draconian in effect and character’, and, ‘incompatible with [India’s] cultural traditions, legal history and treaty obligations’. It concluded with the crucial observation that it was the Parliament which had ‘entrusted the Commission with the charge of maintaining human rights and that’ the Commission found it difficult to do so unless the draconian law was removed from the statute books’.59

The NHRC in its annual report suggested that there was no need for enactment of a legislation like the POTA Act, the problem that need to be first addressed before enacting a new law according to the NHRC were:-

a) Proper investigation of crimes

58 It must be remembered that POTA came with a provision that required that the Act be reviewed by the Parliament every three years. For TADA this period was two years. By inserting specific provisions of POTA into the amended UAPA, the government has managed to give permanence to these provisions. While POTA and TADA came up for periodic review before the legislature, opening them to political debate and public scrutiny, the inclusion of POTA provisions in UAPA has removed them from such periodic scrutiny

59 ‘On Godhra, Gujarat rejects POTA review panel report’, Indian Express, 10 June 2005
b) Efficient prosecution of criminal trials

c) Long delays in the adjudication and punishment in courts.

The cases under TADA continued to exist long after the act got repealed, the newspaper reports of 1999 suggested that 3000-7000 cases still remained to be decided even 3 years after the TADA had been repealed in the state of Assam, nearly 1000 detenues were in prisons, until 2000, five years after the lapse of the act, trials had yet to be completed in 4,958 cases, of which 1,384 were still being investigated. One of the staggering realities that this act presents before us is that despite total arrests of 26000 only 14 had so far been convicted. The need for defining terrorism assumes great importance in the world today for the simple reason that this year in India in a span of just 11 months more than 65 blasts have occurred and the misfortune is that convictions under these have been negligible.

Earlier, Justice Verma, the then Chairperson of the NHRC, while sounding a note of caution on POTO, suggested that within the constitution both ‘national integrity’ and ‘individual [human] dignity’ formed core elements, and therefore, one could not be sacrificed for the other. Strategies to counter terrorism, he suggested, should aim at reconciling human dignity with the country’s integrity. In this process, he suggested that public interest could outweigh individual interest, but not to the extent that any one of them could be rendered totally redundant. In the discharge of its statutory function of reviewing safeguards for the protection of human rights, the NHRC addressed itself first to two questions viz., was there a need for the enactment of the proposed law (POTA) and, if there was, what was the kind of new law that needed to be enacted. The NHRC’s ‘considered unanimous opinion’ as stated in its annual report (2001–2002) was that there was ‘no need to enact the above law’ since the kind of actions that the Prevention of Terrorism Bill 2000 set out to identify in Section 3, were ‘substantially taken care of under the existing laws’.  

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60 Supreme Court Cases (Criminal) 2002, p. 924
Until 2003, the commission has registered 3,75,758 cases indicate emphatically that the people of India are increasingly aware of their rights, and that they want the Commission to intervene to have their rights respected and protected. In that sense, it can with reason be asserted that the Commission has contributed to a deepening of the meaning of democracy in the country.

Free and fair elections are central to the concept. But democracy does not stop with electoral triumph. It exists to ensure the rights of the people of the country, in all of their diversity and varying aspirations. Those rights are guaranteed by independent institutions, functioning without fear or favoring such a context, the rule of law is not a luxury, nor is justice and the protection of human rights incidental issues. They are the heart and soul of the democratic enterprise. They are also essential to the creation of a State at peace with itself and at peace with the world. For without justice and respect for human rights, there can be no lasting peace, nor can a democracy be true to its intrinsic principles. Moreover, the ‘avowed justification’ for the new law and the special procedures including special courts that the law prescribed, such as, the difficulty of securing convictions under the criminal justice system, and delay in trials, were not, in NHRC’s opinion, addressed by the proposed law.

Acts of terrorism and militancy, of late, have spread their tentacles all over the world, thereby affecting the lives of innocent people indiscriminately. India alone has witnessed some of the worst forms of terrorism and militancy in the recent past. Terrorists and militants, undoubtedly, are the sworn enemies of human rights and there can be no equivocation on this matter. Terrorism and militancy, in all forms and manifestations, must be fought and defeated; if at all the human rights of people are to be protected, for the right to life, the target of terrorists, is the most basic right, without which human beings can exercise no other right. The crucial question that arises next is the means to be adopted to achieve this goal. The NHRC has all along maintained that anti-terrorism and anti-militancy measures must be carried out by the State in conformity with the Constitution, the laws of the land, and the treaty obligations of the country.
The NHRC further believes that the menace of terrorism and militancy must not be left to the agencies of the State like the police and the armed forces alone, rather it should be collectively fought by all sections of the society. That is why it has continued to lay emphasis on the socio-economic dimensions of the problem and also called for an effective enforcement of laws and good governance to ensure transparency and accountability in dealing with those who may be guilty of human rights violations.

K.S. Subramanian, a retired officer of the Indian Police Service (IPS) and former Director of the research and policy division of the Union Home Ministry, dismissed POTA as legally and philosophically flawed, manifesting ‘narrowly defined’ national security concerns and ‘a conservative perspective on criminology’ that relied on ‘crime control’ model of criminal justice. The complexity of the ‘non-conventional crime’ that POTO sought to address, he argued, was not taken into account by the Act, that is, the patriotic, ideological and revolutionary contexts of violations of criminal law, as well as ‘state terrorism’ or ‘the crimes committed under the cover of official and semiofficial government positions’. Moreover, of immediate concern was not the inadequacy of existing law, but ‘their lackadaisical, often corrupt, implementation compounded by poor supervision’. 61

The voice of the NHRC, a statutory body and part of the institutional structure of the state, represents a discordant note in the official chorus of ‘securing the state’. The position of the NHRC not only disrupts the cohesion of the official position, ironically it also becomes constitutive of the dilemma that democracy induces by opening up

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61 The three Committees were headed by former High Court Judges—Justices Usha Mehra, S.C. Jain and P.N. Nag, respectively which conducted detailed hearings in all these cases, and gave detailed orders for each of the 1,006 accused giving reasons as to why POTA could not be applied to them. The Jain Committee which reviewed the ‘Reviews slap misuse slur on terror law’, Hindustan Times, 29 September 2005. In Delhi 43 persons were case booked in Godhra case, for example, has given an 80-page order arguing against the application of POTA in the 19 POTA cases, of which the POTA Review Committee chaired by Justice Usha Mehra examined 10 cases in which 31 persons were implicated. The other members of this Review Committee were A.A. Ali a retired IAS officer, Ganesh Jha, retired Inspector General of the Central Industrial Security Force, and J. Minhas, a retired IAS officer. ‘Kai Nirdoshon par bhichala POTA kasota’, Rashtriya Sahara, 26 September 2005
spaces for debate. Yet, arguments both in favour of and against extraordinary laws traverse common grounds in so far as both see extraordinary laws as the domain where issues of individual dignity and national security necessarily collide. While arguments in favour build up into a position that presents extraordinary laws as instruments essential for the resolution of the contest, the latter develops into a position of strategic opposition, attempting to strike a balance by introducing the notion of ‘limits’, or the ‘extent’ to which national or public interests could weigh down the individual.

The invocation of limits may however push concerns about civil rights in the realm of dispute, keeping alive the possibilities of their relegation when the so-called interests of the larger community were at stake. Thus, in 1950 when Sardar Patel introduced the Preventive Detention Act (PDA), he is said to have spent sleepless nights in his unease at introducing a measure that was ‘repugnant to the ideal of free and democratic government’. Much of the anxiety also emanated from the realisation that the PDA was not merely a law being brought to deal with an emergent or ‘aberrant’ situation. It was in fact the enunciation of a basic policy, making what has been termed by Upendra Baxi as the Preventive Detention System (PDS), a parallel yet integral component of the Criminal Justice System (CJS).62 Sardar Patel’s anxiety was resolved, however, by his conviction that the curtailment of the liberties of a few did not matter.

The Commission intervened in the matter of violence that occurred between the ruling party supporters and the Bhoomi Uched Pratirodh Committee (BUPC) – an organization to channelize the protest against the proposed land acquisition by the State Government and resultant police firing on 14 March, 2007 and the incidents of group clashes in November, 2007 in Nandigram area of East Midnapur District of West Bengal. The incident has its origin in the decision of the State Government of West Bengal to set up a Special Economic Zone (SEZ) and a chemical hub in an area of about 10,000 acres in Nandigram area of East Midnapur District of West Bengal.

The police firing on 14 March, 2007 resulted in death of 14 persons and injuries to 300 people including 52 policemen. In the subsequent event of blockade and group clashes from 6th to 12th November, 2007, seven persons were killed and 32 persons, including 16 police personnel sustained injuries. Several houses and other properties were damaged either fully or partially. The Commission, after considering the reports of the State Government and its own investigation team, made certain general observations regarding the role to be played by the ruling party, opposition, media etc. It also constituted a Committee under its Secretary General for suggesting quantum of compensation for damage that occurred and to ensure that monetary relief does not fall into wrong hands and reaches the genuine persons. The Committee visited the areas and has made recommendations which have been accepted by the Commission and conveyed to the State authorities for implementation. The petitioners Ms. Nandini Sundar & others in their complaints before the Supreme Court of India prayed for directions to the State Government (i) to refrain from supporting the activities of the Salwa Judum, (ii) independent and impartial inquiry into the incident of killings, abductions, rapes and gross violation of human rights by the security forces and the Salwa Judum activists, in endeavouring to counter the Naxalites and to investigate the killings by the Naxalites, (iii) grant of compensation etc. The Supreme Court of India on consideration of the matter on 15.4.2008, directed thus:-

“After hearing both sides, we feel that in view of the serious allegations relating to violation of human rights by Naxalites and Salwa Judum and the living conditions in the refugee settlement colonies, it will be appropriate if the National Human Rights Commission examines/verifies these allegations. We leave it to the NHRC to appoint an appropriate fact finding Committee with such members as it deems fit and make available its report to this Court within eight weeks”

Pursuant to the directions of the Supreme Court of India, the Commission deputed a Fact Finding Team comprising its Deputy Inspector General of Police, two Senior Superintendents of Police and other officers in the Investigation Division to inquire into the allegations of large scale human rights violations by Salwa Judum activists,
naxalites and security forces in the State of Chhattisgarh. The team of the Commission undertook strenuous visit to the remote tribal and forest areas for collecting facts. There were incidents of attack on police by some groups during the visit of the team. Threat to their lives did not deter the team from performing their assigned task and they completed the visit displaying enormous courage. The report of the team was being finalized for submission before the Apex Court for its consideration.\(^{63}\)

At stake for him were the liberties of millions of people threatened by the activities of some individuals, the reference being to the ‘Telengana disturbances’, the recurrent ‘labour troubles’ and the fact that a large number of detenus under colonial laws were being released by the courts on the grounds that the laws were not consistent with the Constitution of independent India.

### 6.21 Law Commission Report

Law Commission of India is an executive body established by an order of the Government of India. Its major function is to work for legal reform. Its membership primarily comprises legal experts, who are entrusted a mandate by the Government. The Commission is established for a fixed tenure and works as an advisory body to the Ministry of Law and Justice and works in close co-ordination and under the general instruction of Ministry of Law and Justice. It generally acts as the initiation point for law reform in the country. Internally, the Law Commission works in a research-oriented manner. Employing a number of research analysts (and even law students from 2007), the Commission works upon the assigned agenda and primarily comes up with research based reports, often conclusive and recommendatory. The permanent member of the Commission generally are responsible for framing the exact topic and reference to work upon and often takes the services of eminent law experts and jurists who are familiar with the matter under

63 http://www.asiapacificforum.net/members/full.../india/.../apf.../APF_2008.doc
review. These experts may either work part-time with the Commission or may have been requested to contribute to specific reports or issues under review.64

The law commission of India headed by a former judge of the Supreme Court, recommended in April 2000 the adoption of a law designed to deal firmly and effectively with suspected terrorists and their activities, thus departing from the liberal investigation and trial procedure normally in use. The commission was of the view that the impact of terrorism, both internal and external, over the past few decades in India fully justified the measures envisaged in the proposed legislation. When the very existence of the society is at stake, they opined, drastic measures meant to strengthen law enforcement and the maintenance of public order are a necessary evil.

The law commission while examining the prevention of terrorism bill, 2000 observed:

*Law commission is of the opinion that a legislation to fight terrorism is today a necessity. It is not as if the enactment of such legislation would by itself subdue terrorism. It may, however, arm the state to fight terrorism more effectively. There is a good amount of substance in the submission that the Indian penal code (IPC) was not designed to fight or to check organized crime of the nature we are faced with no. The act of terrorism by its very nature generates terror and psychosis of fear among the populace. Because of terror and the fear, people are rendered sullen.*

With the spurt in terrorism in recent years, many countries have enacted appropriate and stringent anti-terrorism laws. India too has had various enactments for dealing with terrorism in the past – (i) The Terrorist and Disruptive Activities (Prevention) Act, 1987 (allowed to lapse in 1995), and (ii) The Prevention of Terrorism Act, 2002 (repealed in 2004), Unlawful Activities (Prevention) Act, 1967 (as amended by the Unlawful Activities (Prevention) Amendment Act, 2004) and the National Security Act, 1980. However, some of these legislations were allowed to lapse/repealed as it was contended that the powers conferred on the law enforcement agencies had the potential, and in fact, had been misused.

The Law Commission in its 173rd Report (2000)\textsuperscript{65} examined this issue and highlighted the need for a law to deal firmly and effectively with terrorists. Commission in its 173rd Report on Prevention of Terrorism Bill, 2000, had recommended a separate legislation to deal with the menace of terrorism. The draft bill as recommended by the Law Commission of India included provisions such as definition of terrorist acts, enhanced punishment for such acts, possession of certain unauthorized arms, special powers of investigating officers regarding seizure and attachment of property representing proceeds of terrorism, constitution of special courts, protection of witnesses, confessions made to police officers to be taken into consideration, enhanced police custody, constitution of review committees, protection of action taken in good faith etc.

The need for a comprehensive anti-terrorism legislation cannot be better illustrated than by the judgement of the Apex Court in the Rajiv Gandhi assassination case\textsuperscript{66}. While the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 have generally been decried as being harsh, none of these could be applied to the perpetrators of the act as the Apex Court held that neither was it a terrorist act u/s 3(1) nor were the activities of the perpetrators ‘disruptive’ u/s 4 of the TADA Act. The Law Commission, while examining the Prevention of Terrorism Bill, 2000 (173\textsuperscript{rd} Report), observed as follows:

Law Commission is of the opinion that a legislation to fight terrorism is today a necessity in India. It is not as if the enactment of such a legislation would by itself subdue terrorism. It may, however, arm the State to fight terrorism more effectively. There is a good amount of substance in the submission that the Indian Penal Code (IPC) was not designed to fight or to check organized crime of the nature we are faced with now. The act of terrorism by its very nature generates terror and a psychosis of fear among the populace. People become helpless spectators of the atrocities committed before their eyes. They are afraid of contacting the Police authorities about

\textsuperscript{65} http://arc.gov.in/8threport/ARC_8thReport_Ch4.pdf

\textsuperscript{66} [State vs. Nalini and ors. (1999) 5 SCC 253]
any information they may have about terrorist activities much less to cooperate with
the Police in dealing with terrorists. It is difficult to get any witnesses because people
are afraid of their own safety and safety of their families. It is well known that during
the worst days in Punjab, even the judges and prosecutors were gripped with such fear
and terror that they were not prepared to try or prosecute the cases against the
terrorists. That is also stated to be the position today in J&K and this is one reason
which is contributing to the enormous delay in going on with the trials against the
terrorists. In such a situation, insisting upon independent evidence or applying the
normal peace-time standards of criminal prosecution, may be impracticable. It is
necessary to have a special law to deal with a special situation. An extraordinary
situation calls for an extraordinary law, designed to meet and check such
extraordinary situation.

There can be no doubt that there is serious threat to the security of the country from
terrorists who are highly organized, motivated and possessing links with international
terrorist groups or organizations. The existing penal laws in India were not enacted to
deal with this situation and there is ample evidence to indicate that terrorists have
been able to escape the law either by exploiting the loopholes in the ordinary law
and/or by intimidating witnesses to subvert justice. The Commission has, therefore,
carefully considered how this situation can be best tackled. There is definitely a need
to have stringent provisions to deal with terrorists. The Commission also recognizes
that there could be a propensity to abuse such provisions. However, when faced with
the need to protect national security and integrity, there is ample justification for
having strong anti-terrorism provisions in the law. In fact, many western countries
with strong traditions of democracy and civil liberty have enacted such legislations to
deal with the threat of terrorism and their laws contain provisions pertaining to
constitution of special fast track courts, making release on bail extremely difficult for
the accused, enhanced penalties cutting the source of funding for terror activities etc.
The Commission is of the view that while terrorism is indeed an extraordinary threat
which requires special legal provisions to deal with it, there is also need to provide sufficient safeguards to prevent its misuse.

Law Commission of India, in its 173rd Report recommended that-

- A comprehensive and effective legal framework to deal with all aspects of terrorism needs to be enacted. The law should have adequate safeguards to prevent its misuse. The legal provisions to deal with terrorism could be incorporated in a separate chapter in the National Security Act, 1980. The Commission, feels that assassination of important public figures, as also murder of public functionaries by way of revenge or with a view to subdue others in the organization, should be categorized as a terrorist act.

- There is need to define more clearly those criminal acts which can be construed as being terrorist in nature. The salient features of this definition should inter alia include the following:

  i. use of firearms, explosives or any other lethal substance to cause or likely to cause damage to life and property and essential infrastructure including installations/establishments having military significance.

  ii. Assassination of (including attempt thereof) public functionaries. The intent should be to threaten the integrity, security and sovereignty of India or overawe public functionaries or to terrorise people or sections of people.

  iii. Detention of any person or threat to kill or injure any person to force the government to act or abstain from acting in a particular manner.

  iv. Providing/facilitating material support, including finances, for the aforesaid activities.

  v. Commission of certain acts or possession of certain arms etc. by members or supporters of terrorist organizations which cause or are likely to cause loss of life, injury to a person or damage to any property.
Regarding grant of bail, the law should provide that:

i. Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard;

ii. Where the Public Prosecutor opposes the bail application of accused to release on bail, no person accused of an offence punishable under this Act or any rule made there under shall be released on bail until the Court is satisfied that there are grounds for believing that the accused is not guilty of committing such offence. Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-section (i) of this section shall apply.

iii. A Review Committee should review the case of all detenus periodically and advise the prosecution about the release of the accused on bail and the prosecution shall be bound by such advice.

For terrorist and other related offences, it should be provided that Section 167 of the CrPC shall apply subject to the modification that in sub-section (2), the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively.

Confession before the police should be made admissible as recommended in the Report on Public Order. But this should be done only if comprehensive police reforms as suggested by the Commission are carried out. Till such time confessions should continue to be made before judicial magistrates under Section 164 CrPC.
The following legal provisions should be included regarding presumptions: If it is proved –

i. That the arms or explosives or any other dangerous substance were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of similar nature, were used in the commission of such offence; or that by the evidence of an expert the fingerprints of the accused, or any other definitive evidence were found at the site of the offence or on anything including arms and vehicles used in connection with the Commission of such offence the Court shall draw adverse inference against the accused.

ii. If it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence of terrorism, the Court shall draw adverse inference against the accused.

A statutory Review Committee should be constituted to examine each case registered, within 30 days of its registration. The Review Committee should satisfy itself that a prima facie case has been made out by the investigation agency. This Committee should review each case every quarter.

Provisions for constitution of Special Fast Track Courts exclusively for trial of terrorism related cases may be incorporated in the law on terrorism. Other specific provisions related to such Special Courts may also be incorporated. Such Courts may be set up as and when required.

Provision for penalizing unauthorized possession of certain specified arms and ammunition in notified areas and unauthorized explosive substances, weapons of mass destruction and biological or chemical substances of warfare in notified as well as non-notified areas, may be incorporated in the law on terrorism.
There is need to re-examine certain offences which have inter-state or national ramification and include them in a new law. The law should also prescribe the procedure for investigation and trials of such offences. The following offences may be included in this category:

1. Organised Crime
2. Terrorism
3. Acts threatening national security
4. Trafficking in arms and human beings
5. Sedition
6. Major crimes with inter-state ramifications
7. Assassination of (including attempts on) major public figures
8. Serious economic offences

A new law should be enacted to govern the working of the CBI. This law should also stipulate its jurisdiction including the power to investigate the new category of crimes.

The Commission would like to reiterate the recommendations made in its Report on ‘Public Order’ on the creation of a specialized Division in the CBI to investigate terror offences. b. It should be ensured that this Division of the CBI is staffed by personnel of proven integrity and who are professionally competent and have developed the required expertise in investigation of terrorism related offences. The autonomy and independence of this agency may be ensured through a laid down procedure of appointment and assured fixed tenure for its personnel. The Commission has already recommended that the legal provisions to deal with terrorism could be incorporated in a separate chapter in the National Security Act, 1980 (NSA). Accordingly, various recommendations made in this chapter on different aspects of the legal framework to deal with terrorism may be incorporated in the National Security Act.
After the repeal of POTA, as mentioned earlier, a number of provisions from that Act have now been incorporated in the Unlawful Activities Prevention Act either in TOTO or in a modified form. The Commission has examined whether the Unlawful Activities Prevention Act is the appropriate legislation to incorporate provisions to combat terrorism. After due consideration, the Commission is of the view that instead of the Unlawful Activities Prevention Act, it would be more appropriate if a new chapter on terrorism is made a part of the National Security Act, 1980. A prime consideration which weighed with the Commission in making this recommendation is that the Unlawful Activities Prevention Act deals primarily with the effective prevention of certain unlawful activities of individuals and associations and connected matters, whereas the National Security Act deals with prevention of those activities which are prejudicial to national security and integrity and also contains provisions for preventive detention which do not find place in normal laws. Terrorism as has been stated earlier in this Report is much more ominous than a mere unlawful activity: it is a grave threat to national security and integrity. The National Security Act is therefore more relevant for incorporating provisions to deal with terrorism. It was for the same reason that the Commission in its first report on 'Right to Information' had recommended that provisions of the Official Secrets Act dealing with official secrecy required in the interest of national security and integrity, be included in the National Security Act.