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EDITORIAL NOTE

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Conflict between Human Rights and Anti-Terrorism Laws: An Analysis with Special Reference to India

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Abstract:

The objectives of this research paper are to analyse the situation prevailing in some parts of the country. Moe specifically Kashmir and North Eastern part of the country. Historically, these regions are not having any independent character but today they are engulfed into the fire of terrorism and cross-border insurgency. Though it is low intensity conflict but made a huge economic and social loss to the country. Government of India has tried to control the situation with the help of the union armed forces and to regulate the prevailing situations; some stringent laws have also been imposed to protect the interest of the armed forces.

In this paper, emphasis has been focused on the AFSPA, 1958(Armed Forces Special Powers Act, 1958), applied on the Kashmir valley and north eastern part of the country. In this paper we have to analyse its importance and effects vis-à-vis International and Domestic Human Right laws.

Various provisions of the act which are considered to be controversial are discussed in this paper with specific emphasis on human rights violation by the union armed forces.

We have to evaluate that how it is important to control terrorism and insurgencies with the help of laws like AFSPA. In the same time researcher want to find out the way to harmonize, these two conflicting areas of law.

Introduction:

Terrorism is the acts of unlawful violence and war. It feeds off the personal suffering by luring governments into actions that abandon hard-earned freedoms of modern civilization. All terrorist acts are motivated by two things:

Social and Political Injustice: People choose terrorism when they are trying to right what they perceive to be a social or political or historical wrong—when they have been stripped of their land or rights.The belief that violence or its threat will be effective, and usher in change. Many terrorists in history said sincerely that they chose violence after long deliberation, because they felt they had no choice.Terrorism is the affected, use of violence to bring forth

fear. Terrorists know what they are doing and their targets are planned in advance. Terrorism may be motivated by political, religious, or ideological ideas. The base of terrorism is to produce fear in someone to make a government change its political attitude. Although it is relatively new in the mainstream world, extremists have practiced terrorism to generate fear and compel a change in behavior throughout history. Before the nineteenth century, terrorists usually recognized innocents - people not involved in conflict - and made sure not to harm them. But now terrorist don't care who they hurt, they just want to get the point across like the acts of September 11, Mumbai bomb blasts etc.[1]

The ground realities in India are stark and statistics provide a grim reminder of the increasing threat that terrorism constitutes. India has lost over so many lives to terrorism over the last decade in the major irregular and sub-conventional wars that have afflicted the country. A majority of these fatalities have occurred in J&K and in the Northeast alone as a result of the proxy war in the former, and a range of separatist insurgencies in the latter. A significant number of deaths have also occurred due to Left wing extremism(referred to as Naxalism in India) and retaliatory violence in some areas of the States of Andhra Pradesh, Maharashtra, Madhya Pradesh, Orissa, Chhattisgarh, Jharkhand, Uttar Pradesh, West Bengal and Bihar.[2]

Historical Background of Anti-Terrorism Legislation

India is facing multifarious challenges in the management of its internal security. There is an upsurge of terrorist activities, intensification of cross border terrorist activitiesand insurgent groups in different parts of the country. Terrorism has now acquired globaldimensions and has become the challenge for the whole world. The reach and methodsadopted by terrorist groups and organization take advantage of modern means of communication and technology using high tech facilities available in the form of communication system, transport, sophisticated arms and various other means. This hasenabled them to strike and create terror among people at will. The criminal justice system was not designed to deal with such type of heinous crimes. In view of this situation it was felt necessary to enact legislation for the prevention of and for dealing with terrorist activities.

[1]SajiCherian, 'Terrorism and Legal Policy in India', Vol.XV available at www.satp.org access on October 26, 2016

[2]Siddharth, 'Anti-Terrorism Laws in India and the need of Pota' available at www.legalserviceindia.com access on November 2, 2016

Counter-terrorism legislation is, moreover, entirely consistent with a jurisprudential history of special laws that have been enacted from time to time to deal with special situations, and India's record is no exception. The first preventive detention law was introduced by the British in 1793, and was aimed solely for the purpose of detaining anybody who was regarded as a threat to the British settlement in India. The East India Company in Bengal subsequently enacted the Bengal State Prisoner's Regulation, which was to have a long life as 'Regulation III of 1818'. An extra-Constitutional ordinance, opposed to all the fundamental liberties which the colonial state would later pretend to be bound by, Regulation III provided for the indefinite confinement of individuals against whom there was insufficient ground to institute any judicial proceeding. Regulation III was the most effective tool in the hands of the British to quell any political violence.[3]

The beginning of the 20th century witnessed an increase in the revolutionary movement in India, with the birth of many underground groups pursuing the goal of independence through violent means. The period also marked the emergence of several legislations to quell the rising tide. In 1908, the government passed the Newspapers (Incitement to Offences) Actand the Explosive Substances Actand, shortly thereafter, the Indian Press Act, the Criminal Tribes Act, and the Prevention of SeditiousMeetings Act. A majority of these legislations were aimed at breaking the back of therevolutionary movements by curbing meetings, printing and circulation of seditious materials and propaganda, and by detaining suspects. The Foreigners Ordinance of 1914 sought to restrict the entry and movement of foreigners in India. The Defence of India Act (1915)allowed suspects to be tried by special tribunals, whose decisions were not subject to appeal.The Defence of India Act was to expire shortly after the end of the World War I and the British Government had to come up with a new law to counter new tendencies.

Based on the recommendations of Justice Rowlatt, Chairman of the Committee appointed to curb seditious movements in India, the Rowlatt Act, also known as the Anarchical and Revolutionary Crimes Act, was passed in 1919, giving unbridled powers to the colonial Government to arrest and imprison suspects without trial and crush civil liberties. The violent movement was blunted in the 1930s by the tough regulations passedby the Government, including the Constitutional Reforms of 1935.

[3]Supra note 2

Terrorism has immensely affected India. The reasons for terrorism in India may vary vastly from religious to geographical to caste to history. The Indian Supreme Court took a note of it in Kartar Singh v. State of Punjab,[4] where it observed that the country has been in the firm grip of spiraling terrorist violence and is caught between deadlypangs of disruptive activities. Apart from many skirmishes in various parts of the country, there were countless serious and horrendous events engulfing many cities with blood-bath, firing, looting, mad killing even without sparing women and children and reducing those areas into a graveyard, which brutal atrocities have rocked and shocked the whole nation Deplorably, determined youths lured by hard-core criminals and underground extremists and attracted by the ideology of terrorism are indulging in committing serious crimes against the humanity.

After attaining Independence, the violence witnessed during Partition forced the Government of Free India to pass the **Punjab Disturbed Areas Act, Bihar Maintenance of Public Order Act, Bombay Public Safety Act, and Madras Suppression of Disturbance Act**, aimed at curbing forces that were using religion to incite violence. The rise of the Naxalite (Left-wing extremist) movement prompted theWest Bengal government to pass **the West Bengal (Prevention of Violent Activities) Act of 1970**. The last three decades have witnessed a number of legislations being enacted to tackle various specific contingencies: **Jammu and Kashmir Public Safety Act (1978); Assam Preventive Detention Act (1980); National Security Act (1980, amended 1984 and 1987); Anti-Hijacking Act (1982); Armed Forces (Punjab and Chandigarh) Special Powers Act (1983); Punjab Disturbed Areas Act (1983); Chandigarh Disturbed Areas Act (1983); Suppression of Unlawful Acts Against Safety of Civil Aviation Act (1982); Terrorist Affected Areas (Special Courts) Act (1984); National Security (Second Amendment) Ordinance (1984); Terrorist and Disruptive Activities (Prevention) Act (1985, amended 1987); National Security Guard Act (1986); Criminal Courts and Security Guard Courts Rules (1987) and the Special Protection Group Act (1988).**

Preventive detention legislations both before and after independence have been in vogue to control crime and criminal activities for public benefit. Various legislations by Indian government were enacted to curb and control nefarious activities viz. Punjab Distributed Areas Act, Bihar Maintenance of Public Order Act, Bombay Public Safety Act and Madras Suppression of Disturbances Act. These Acts conferred wide power to security forces to

[4][1994] 3 SCC 569

detain and arrest any person in the name of public order. **In 1950 the Prevention Detention Actwas passed and in 1958 Armed Forces Separate Powers Actwas passed to arrest unrest in North East region. In 1971 Maintenance of Internal Security Act (MISA)was passed.**[5]

Although these laws were enacted to meet special situations, most of them were not directed against the larger menace of terrorism. Anti-terrorism laws in India have always been a subject of much controversy. One of the arguments is that these laws stand in the way of fundamental rights of citizens guaranteed by Part III of the Constitution and violated the Human Rights. The anti-terrorist laws have been enacted by our legislature and upheld by the judiciary though not without reluctance. The intention was to enact these statutes and bring them in force till the situation improves. The intention was not to make these drastic measures a permanent feature of law of the land. But because of continuing terrorist activities, the statutes have been reintroduced with requisite modifications.

At present, the legislations in force to check terrorism in India are the NationalSecurity Act, 1980and the Unlawful Activities (Prevention) Act, 1967. There havebeen other anti-terrorism laws in force in this country a different points in time. Earlier,the following laws had been in force to counter and curb terrorism. The first law made inindependent India to deal with terrorism and terrorist activities that came into force on 30Dec 1967 was The Unlawful Activities (Prevention) Act 1967 (UAPA).

The UAPA was designed to deal with associations and activities that questioned the territorial integrity of India. When the Bill was debated in Parliament, leaders, and cutting across party affiliation, insisted that its ambit be so limited that the right to association remained unaffected and that the executive did not expose political parties to intrusion.

So, the ambit of the Act was strictly limited to meeting the challenge to the territorialintegrity of India. The Act was a self-contained code of provisions for declaring secessionist associations as unlawful, adjudication by a tribunal, control of funds and places of work of unlawful associations, penalties for their members etc. The Act has all along been worked holistically as such and is completely within the purview of the central list in the 7th Schedule of the Constitution.Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) was the second major act came into force on 3 September 1987. This act had much

[5]Surat Singh (2006), Law Relating to Prevention of Terrorism, New Delhi

more stringent provisions then the UAPA and it was specifically designed to deal with terroristactivities in India. When TADA was enacted it came to be challenged before the Apex Court of the country as being unconstitutional. The Supreme Court of India upheld its constitutional validity on the assumption that those entrusted with such draconic statutory powers would act in good faith and for the public good in the case of Kartar Singh v. State of Punjab.[6]

India's obligation under ICCPR and other Human Rights Treaties: India has bound by the international law, both under treaty laws and customary international law. The ICCPR to which India has been a party since 1979 outlines a series of rights and corresponding obligations that are relevant when interpreting the act and its application. These include the right to life, the prohibition of torture, cruel, inhuman and degrading treatment, the right to liberty and security of the person, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence, the right to freedom of assembly as well as Article 2(3), which provides for the right to an effective remedy to anyone whose rights protected by the covenant have been violated. Since 1968 India is also a state party to the International Convention on the Elimination of All Forms of Racial Discrimination [7] (hereinafter referred as ICERD). Article 1 (1) of the ICERD defines "racial discrimination" widely as including "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms". The ICERD further mandates states parties "to amend, rescind or nullify all laws and regulations which have the effect of creating or perpetuating racial discrimination".[8] India signed the convention against torture and other cruel, inhuman or degrading treatment or punishment in 1997.[9] India still not ratified it, the very act of signing entails an international obligation not to defeat the treaty's object and purpose[10].

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the prohibition of racial discrimination, the right to life, the right to liberty and security and the right to an effective remedy have also been recognised as customary international law. These

[6] Supra note 4
[7] 660 UNTS 195
[8] Article 2(1) (c) ICERD
[9] 1465 UNTS 85
[10] Vienna Convention on the Law of Treaties, 1155 UNTS 331, Article 18 (a)

are rules binding on states as a matter of state practice and *opinion juris*[11] irrespective of whether or not a state is a party to a particular treaty. Unlike for states parties to a treaty, adherence to customary international law is not monitored by a treaty body but subject to monitoring by UN charter bodies, such as the UN Human Rights council and its special procedures[12].

Violation of International Human Rights Laws vis-à-vis Indian Armed Forces

According to the report of amnesty international considers the AFSPA and the equivalent Act in Jammu and Kashmir to amount to de facto derogation from the non-derogable rights provided for in the ICCPR. Amnesty international is concerned that the AFSPA violates international human rights law, specifically the right to life, the right to liberty and security of the person and the right to remedy. In addition, it enables violation of the right to be free of torture or ill-treatment as enshrined in the ICCPR.

The organization has received reports of human rights abuses in the states of Jammu and Kashmir and the northeast. These areas stricken with armed conflict. While amnesty international has received reports of human rights violations facilitated by the AFSPA in various states in the northeast the cases documented in this reports are primarily from the state of Manipur where armed opposition has been particularly active since the 1950s.

In the northeast region of India, insecurity prevails due to the internal armed conflicts, which have been raging for decades. The main causes of insurgency in northeast are Tribal's and ethnic clashes, irredentist claims and problems associated with illegal immigration and narcotics trafficking. The increased use of small arms and light weapons would make the problem more serious. The kidnapping and extortion become the main sources of income for insurgents[13]. In Manipur, what began as a movement for self-determination for the Naga people is today far more complex. The troubled political history of Manipur has been perpetuated by a multitude of factors including anger at economic under- development, drug smuggling and corruption. Human rights abuses are a feature of daily life in Manipur.

[11] *Opinion Juris* denotes the sense of a certain practice being followed as a matter of legal obligation. North sea continental shelf (Federal Republic of Germany v. Denmark and Netherlands), international court of justice, judgment of 20 February 1969, I.C.J. Reports, 1969, at para.77

[12] UN General Assembly Resolution 60/251 of 3 April 2006,

[13] India's troubled northeast: insurgency and crime, IISS comments, Vol 10 Issue 6, July 2004, available at www.iiss.org/stratcom.access on 23.4.2016

In these areas, the AFSPA as well as other state and national security laws are in force giving security forces wide-ranging powers and facilitating human rights abuses. In response to India's third periodic report in July 1997, the UN Human Rights committee remained "concerned at the continued reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violation, in particular with respect to Articles 6, 7, 9 and 14 of the covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups.[14]

The Prohibition of Torture, Cruel, Inhuman and Degrading Treatment under Article 7 of the ICCPR

a). **Requirement under Article 7 of the ICCPR**: Article 7 does not define torture. The human rights committee has emphasized that article 7 protects both the physical and mental integrity of the individual,[15] and therefore relates not only to acts that cause physical pain "but also to acts that cause mental suffering to the victim"[16]. Beyond this no other definition has been incorporated rather adopted a flexible approach and had stated that:

The covenant does not contain any definition of the concept covered by article 7 nor does the committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment the distinctions depend on the nature, purpose and severity of the treatment applied.[17]

The committee[18] has adopted both definition contained in Article 1 of the UN convention on torture and other cruel, degrading or Inhuman Treatment or Punishment[19] and developed by

[14]CCPR/C/79/Add.81, para 18.

[15]Human rights committee, general comment no.2: prohibition of torture and cruel treatment or punishment, UN Doc.HRI/GEN/1/Rev.1 (10 March 1992)

[16]*Ibid*

[17]*Ibid*

[18]The UN Human Rights Committee

[19] "for the purpose of this convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishment him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

the European court of human rights in its jurisprudence on article 3 of the European Convention on Human Rights.[20]

The prohibition of torture, cruel, inhuman and degrading treatment or punishment imposes an obligation on states to take legislative, administrative, judicial and other measures to prevent acts of torture and ill- treatment:

The aim of the provisions of Article 7 of the international covenant on civil and political rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the state party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.[21]

b). **Lack of safeguards and its compatibility with article 7 of the ICCPR**

Persons who are in custody or who are subjected to any form of arrest, detention or imprisonment are particularly vulnerable and therefore require special protection.[22] The body of principles for the protection of all persons under any form of detention or imprisonment,[23] which is used by the committee when interpreting article 7 of the ICCPR, provides for safeguards applicable in the custodial context. This comprises confidential access to a lawyer,[24] notification of the next-of kin (or other appropriate person) of the whereabouts of a detainee,[25]a medical check-up upon admission to the place of detention and the provision of adequate medical care and treatment throughout the duration of detention.[26] These safeguards imply that incommunicado detention, which is conducive to torture and ill-treatment and may amount to torture or ill-treatment, should be abolished.[27]

The AFSPA grants military officers broad power to detain individuals without providing any safeguard against arbitrary detention, contrary to the state's obligation to adopt legislative

[20]Vuolanne v. Finland, Human Rights Committee, UN Doc.A/44/40, at 311 (7th April 1989)
[21] Human Rights Committee, General Comment No.20
[22]*Ibid*
[23]Adopted by the UN General Assembly Resolution 43/173 of 9 December 1988
[24]*Ibid*, Principles 17 and 18
[25]*Ibid, principle 16*
[26]*Ibid*, Principle 24; Mika Miba v. Equational Guinea, Human Rights Committee, UN Doc. CCPR/C/51/D/414/1990 (8 July 1994) at Para 6.4.
[27]Human Rights Committee, General Comment No.20, at para. 11.

measures aimed at preventing torture. The main objections against the Act[28] are that act has not provided any safeguard against arbitrary arrest or detention. However, it is argued that arrested person would not get any opportunity to contact with outside world. Therefore by implementing the act is amounting to sanctioning "Secret Detention".[29]

The human Rights committee has recognized that prolonged incommunicado detention may amount to inhuman treatment (or torture, depending on the circumstances) within the meaning of article 7 of the ICCPR.[30] As held by other human rights courts, the suffering and fear inherent in this form of detention constitutes inhuman and degrading treatment.[31]

c).Use of "Necessary Force" and its compatibility with Article 7 of the ICCPR

Law-enforcement official may use force "only when strictly necessary and to the extent required for the performance of their duty".[32] Law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of suspect offenders but must not use force going beyond that requirement.[33] Whenever the lawful use of force is unavoidable, law-enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence and the legitimate objectives to be achieved. This entails minimizing damage and injury, ensuring that medical assistance and medical aid are rendered to any injured or affected persons and notifying their relatives and close friends at the earliest possible moment.[34]

The act also vests military officers with the power to use "necessary force" at any time when effecting arrest or entering and searching the premises. While the use of necessary force is the recognized standard, in practice there does not appear to be any guidance or jurisprudence

[28]Armed Forces (Special Powers) Act, 1958

[29]Special Rapporteurs on the promotion and protection of human rights and fundamental freedoms while countering terrorism and on torture and other cruel, inhuman or degrading treatment or punishment, working groups on arbitrary detention and on enforced or involuntary disappearances, Joint study on global practices in relation to secret detention in the context of countering terrorism, UN Doc.A/HRC/13/42 (19 February 2010)

[30]Polay Campos v. Peru, Human Rights Committee, UN Doc.CCPR/C/61/D/577/1994 (6 November 1997), at para 8.6

[31]Avdo and EsmaPali, Human Rights Chamber for Bosnia and Herzegovina, case no. CH/99/3196, Decision on admissibility and merits (11 January 2001) at paras.73-74

[32]Code of conduct for law enforcement officials, adopted by the UN General assembly resolution 34/169 of 17 December 1979, Article 3

[33]*Ibid, commentary to article 3(a)*

[34]Basic Principles on Use of Force and Firearms by Law Enforcement Officials

that would define the term in line with international standards or ensure that the force used was indeed necessary.

Position of Human Rights during the War and Insurgency:

In times of war or other public emergencies, the international instruments make a distinction between 'derogation' and 'limitation' .In times of war or other public emergencies the "state is free from the obligations of human rights". This is called derogation. This exception is founded on the need for preserving the life and the existence of the nation itself. The derogation in other words means that though a law violates a guaranteed human right, it will not be unconstitutional or invalid during the period of war or proclamation of emergency[35].

Whilst derogation operates as a complete exception to the human rights guaranteed by the international instruments, the guarantee of each of the right permits limitation or restriction on the exercise of these rights. In short, they are not subject to judicial review. According to Lord Wright the onus of the government on a charge of unlawful imprisonment during a period of emergency is discharged by producing an order of detention issued by a competent authority and within his legal powers, which is otherwise regular on his face[36].

Harmony between the individual and the state is perhaps an inevitable necessity. Promoting human progress in other words means realising a healthy balance between the interest of the individual and those of the people in a democratic society[37].

Lord Denning observed, "Personal freedom means the freedom of every law-abiding individual to think what he will, say what he will, and go where he will… but this freedom must be matched with the peace and law of the community. "The maxim *SalusPopuliSupremaLexAsto*, that is, the safety of the people, is the highest law. On this rationale, on the concept of necessity, resets the rational of self-defence.[38]

It will be useful to note that in the final text of Article 4 of the International Convent on Civil and Political Rights, it was recorded that "In times of public emergency which threatens the life of the nation and existence of which is officially proclaimed, State party to the present convent may take measures derogating from their obligations under the present covenant to

[35] Air comde.R.V..Kumar and Gp.Capt.B.P.Sharma, "Human Rights and The Indian Armed Forces" Sterling Publishers Private Limited, First Edition (1998)

[36] *ibid*

[37] *ibid*

[38] *ibid*

the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the grounds of race, religion, sex, language or social origin". It must, however, be remembered that there are certain non derogable rights even in emergencies, they are also known as "Paris Minimum Standard".[39]

Society can tolerate terrorism as long as it is no more than a nuisance. Once insecurity spreads and terrorism becomes a real danger, the authorities should no longer be blamed for disregarding human rights. On the contrary, more repressive measures would be required irrespective of the price that has to be paid in surrender of human rights. The legal aspects of human rights during such situations are very complex. There are some who hold the view that terrorism in simple terms is a criminal activity and crimes cannot be eradicated by soft options. Others feel that in a democratic society the rule of the law has to prevail under all circumstances. In our view it is a question of fact. The situation and the remedy have to be judiciously tackled. The security forces should not be lightly blamed as apart from other matters, it can ultimately lead to the future security of the state itself, besides affecting moral and ready obedience of superior officers by the forces. As observed by Justice Krishna Iyer. "When we witness the terrorism the movements multiply menacingly, humanists' world over must refuse to lend moral support these satanic incarnations". The term 'internal' security seems to have not yet been subjected to any interpretation by Supreme Court of India, but as we said earlier, all will depend upon the relevant facts and circumstances of the situation[40].

Another aspect worth considering is the responsibility of the State, who by their policies and political decisions places the security forces in such situations where they are likely to be involved in such ugly situations. But that aspect is beyond the scope of the present book. Though the problem of terrorism is not entirely new to the Indian subcontinent yet it has had to face and is facing the menace of terrorism in one form or another. Be it secession in Kashmir, religious fundamentalism in Punjab, ethnic strife in North Eastern States, conflict of ideologies in Andhra Pradesh and Bihar, compounding this are the terrorist attack in Southern India in the form of Tamil militancy and connected issues of Lankan ethnic crisis. But it must be said to the credit of the Armed Forces of India that these situations have been and are being well handled. In evaluation the human rights record of the Indian Army one must also

[39] *Supra*

[40] The following case law may be of some help. Dilawar v. State of Gujrat AIR1991 Sec. 56, Kartar Singh v. State JCT 1994 (2) SC 423, Syed Usman v. State of Maharashtra 1993 286 (CDB-Bombay), A.K. Roy v. Union of India 1982 SC 710

take into account the unusual circumstances and the hostile terrain in which they have to operate. They are not facing a regular Army or a declared war. They have to operate with the snipers, terrorist, or mercenaries who have no code of conduct or moral principles of warfare. The soldier has to constantly guard against sudden attack by apparently innocent persons or a grenade wrapped in a flower pot.[41]

International and Constitutional Obligation on Indian Armed Forces

The important factors which contribute a lot to develop the atmosphere of human Rights came from our constitution. The primary objective of the Indian constitution is to protect an individual from the state atrocities and arbitrariness which disturbed the very fabric of our society during the British Raj. After independence, our forefathers had decided to make a society free from all kinds of bias and prejudices. Therefore, we introduced fundamental rights in part III of the constitution. It is fundamental because without them an individual will not grow in its full extent. Somehow, it was a replica of Bill of Rights and Universal Declaration of Human Rights. The individual equality and liberty are the primary objectives of Indian constitution as it specifically mentioned in the preamble of the constitution. Apart from that six fundamental freedoms have made it a complete document to protect an individual against all kinds of discrimination. State cannot suspend the Right to Life and Liberty even in case of National Emergency. It show that how far we are concern about the individual rights and liberty. However, in case of violation, Supreme Court has a duty to protect an individual against such kinds of violations. Constitutional framer made them justiciable because they know that state may become autocratic and arbitrary when his interest is on stake. State will not work in derogation with the constitution. In case of violation of fundamental rights state would certainly liable for the acts of its agents. State is vicariously liable for the acts of its agents, no sovereign immunity would claim specially in case of violation of fundamental rights.

The right to security of person and property is the most cherished right which everyone would expect the law enforcement agencies to protect. A criminal would accept the protection of his freedom from torture or cruel, inhuman or degrading treatment. A victim of crime would accept the perpetrator of that crime to be prosecuted and punished. And the society would accept the law enforcement agencies to ensure security and tranquillity. The physical security and respect for human dignity are the common expectations of everybody.

[41] *Supra*

CONCLUSION

The problem is not in the legislation, but in the system that implements the law.Therefore, it should be understood that the problem which we are now dealing with requires various kinds of provisions. Legitimate power has to be given because this is an extraordinary situation. Extraordinary situations require extraordinary remedies. Terrorism has several consequences that have to be faced in the context of a growing threat to the country. References have repeatedly been made to laws in other countries. It is very dangerous to quote selectively. Therefore, the situation of terrorism should be dealt with it under the normal procedure. Learning from this experience, the people who are opposing this law to once again reconsider their stand because posterity eventually will decide that this country, for its integrity, sovereignty and unity certainly needs this law. Quite clearly, there is a crying need to fight the menace of terrorism united.

So, it becomes very necessary in a country like India that if a law regarding terrorism is enacted it should be made so stringent that the culprit be bought to book and does not go scot-free just because of the loopholes and lacunae's in the ordinary law. Therefore stringent legislation should be either made or brought back for curbing terrorism.

Besides, we need to invest hugely in building human resource capacities within our security personnel, establishment of specialized forces with unique skills to deal with terror and forensic abilities, which can prevent incidents of this nature. Moreover, role of armed forces have not undermine because of their unique organizational capabilities.

And last not the least, the protection and promotion of Human Rights under the rule of law isessential in the prevention of terrorism. If human rights are violated in the process of combating terrorism, it will be self- defeating. A lack of hope for justice can also provide breeding grounds for terrorism. The remedy requires mature response. Much of the reluctance in accepting the need for special anti-terrorism legislation is based on the fallacy of equating ‘terrorism’ with other forms of violence, and the consequent argument that the prevailing or ‘ordinary’ laws that have been enacted to deal with the latter are sufficient to take care of the former. However, it was widely believed that terrorism was a response to injustice and that the terrorists were people driven to desperate actions by intolerable conditions, be it poverty, hopelessness, or political or social oppression. Following this reasoning, the only way to remove or at least to reduce terrorism is to tackle its sources, to deal with the grievances and

frustrations of the terrorists, rather than simply trying to suppress terrorism by brutal force.Finally, it would be right tosay with certainty that human rights and anti-terrorism laws are not anti-thesis to each other, rather they provide a working atmosphere to implementation of anti-terrorist laws under the supervision of Human Rights.

Reference:

1. SajiCherian, 'Terrorism and Legal Policy in India', Vol.XV available at www.satp.org access on October 26, 2016
2. Siddharth, 'Anti-Terrorism Laws in India and the need of Pota' available at www.legalserviceindia.com access on November 2, 2016
3. [1994] 3 SCC 569
4. Surat Singh (2006), Law Relating to Prevention of Terrorism, New Delhi
5. Article 2(1) (c) ICERD
6. Vienna Convention on the Law of Treaties, 1155 UNTS 331, Article 18 (a)
7. *Opinion Juris* denotes the sense of a certain practice being followed as a matter of legal obligation. North sea continental shelf (Federal Republic of Germany v. Denmark and Netherlands), international court of justice, judgment of 20 February 1969, I.C.J. Reports, 1969, at para.77
8. UN General Assembly Resolution 60/251 of 3 April 2006,
9. India's troubled northeast: insurgency and crime, IISS comments, Vol 10 Issue 6, July 2004, available at www.iiss.org/stratcom.access on 23.4.2016
10. CCPR/C/79/Add.81, para 18.
11. Human rights committee, general comment no.2: prohibition of torture and cruel treatment or punishment, UN Doc.HRI/GEN/1/Rev.1 (10 March 1992)
12. The UN Human Rights Committee
13. Vuolanne v. Finland, Human Rights Committee, UN Doc.A/44/40, at 311 (7th April

1989)

14. Human Rights Committee, General Comment No.20

15. Adopted by the UN General Assembly Resolution 43/173 of 9 December 1988

16. [1]Armed Forces (Special Powers) Act, 1958

17. Special Rapporteurs on the promotion and protection of human rights and fundamental freedoms while countering terrorism and on torture and other cruel, inhuman or degrading treatment or punishment, working groups on arbitrary detention and on enforced or involuntary disappearances, Joint study on global practices in relation to secret detention in the context of countering terrorism, UN Doc.A/HRC/13/42 (19 February 2010)

18. Polay Campos v. Peru, Human Rights Committee, UN Doc.CCPR/C/61/D/577/1994 (6 November 1997), at para 8.6

19. Avdo and EsmaPali, Human Rights Chamber for Bosnia and Herzegovina, case no. CH/99/3196, Decision on admissibility and merits (11 January 2001) at paras.73-74

20. Code of conduct for law enforcement officials, adopted by the UN General assembly resolution 34/169 of 17 December 1979, Article 3

21. Air Comde.R.V..Kumar and Gp.Capt.B.P.Sharma, "Human Rights and The Indian Armed Forces" Sterling Publishers Private Limited, First Edition (1998)

22. The following case law may be of some help. Dilawar v. State of Gujrat AIR1991 Sec. 56, Kartar Singh v. State JCT 1994 (2) SC 423, Syed Usman v. State of Maharashtra 1993 286 (CDB-Bombay), A.K. Roy v. Union of India 1982 SC 710.