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## ACTING CHAIRPERSON NHRC PREFACE

The death, destruction and misery of the Second World War gave birth to the United Nations when its Charter was signed on June 26, 1945. The idea of human rights predates the United Nations but it achieved a formal and universal recognition only after setting up of this body. The main objective of U.N. is “to save succeeding generations from the scourge of war” and “to reaffirm faith in fundamental human rights”. Article 1 of the Charter states that one of the aims of the United Nations is to achieve international cooperation in “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. Even before India had attained independence, it signed the Charter on October 30, 1945 and that shows its commitment to the cause of human rights.

The articles of the Charter have the force of positive international law as a Charter is a treaty and therefore a legally binding document. All United Nations Member States must fulfill in good faith, the obligations to observe, promote and respect human rights and to cooperate with United Nations and other nations to attain this aim.

On December 10, 1948 in Paris, the General Assembly, after thorough scrutiny and nearly 1400 rounds of voting on practically every word and every clause, adopted the Universal Declaration of Human Rights (UDHR). It is the primary international articulation of the fundamental and inalienable rights of all members of the human family and represents the first comprehensive agreement among nations as to the specific rights and freedoms of all human-beings. Among others, these include civil and political rights such as the right not to be subjected to torture, to equality before the law, to a fair trial, to freedom of movement, to asylum and to

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freedom of thought, conscience, religion, opinion and expression. It also includes economic, social and cultural rights such as the right to food, to clothing, to housing, to medical care, to social security, to work, to equal pay for equal work, to form trade unions and to education. Originally intended as a “common standard of achievement for all people and for all nations” over the years, the UDHR has become a cornerstone of customary international law and all Governments are now bound to apply its principles. The Constitution of India was in the process of making when the Universal Declaration of Human Rights was adopted by the U.N. General Assembly and many of these rights were given a concrete shape in our domestic law by incorporating them in Part III and Part IV of the Constitution dealing with Fundamental Rights and Directive Principles of the State Policy. We celebrate Human Rights day to renew our faith and commitment to the principles it set forth.

On December 20, 1993, the General Assembly of United Nations voted unanimously to create the post of U.N. High Commissioner for Human Rights but our country had taken the lead in this regard by constituting the National Human Rights Commission on October 12, 1993 soon after the President of India had promulgated the Protection of Human Rights Ordinance on September 28, 1993. The current U.N. High Commissioner for Human Rights Ms. Navanetham Pillay was appointed on 1st September, 2008. She is from South Africa but of Indian descent. Her forefathers had migrated from India.

It is the responsibility of the State and its agencies to protect the Human Rights of everyone. It does not mean protecting the human rights of only those who are accused of or suspected to have committed serious crimes and completely ignoring the human rights of vast majority of law abiding people of the country who suffer at their hands. Terrorism has spread its tentacles in many parts of world but India is one of its biggest victim. Many countries including USA, UK, Australia and others enacted tough legislations with the primary object of protecting the life and property of the people soon after the attack on World Trade Centre and Pentagon on 9/11, containing provisions which according to some human rights activists violate human rights. But they have succeeded in containing terrorism and in protecting human rights of innocent majority.

The German Parliament enacted Air Transport Security Act in 2005, Section 14 (3) whereof gave power to the Minister of Defence to direct shooting of a passenger plane if it could be assumed that the aircraft would

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be used against the life of others and if the downing is the only means of preventing the present danger. There was lot of criticism of the legislation as shooting down a civilian plane, that too on mere suspicion, would have resulted in killing of innocent people. The Minister gave a statement that such a power would never be used but it was necessary to have such a power. Ultimately the Supreme Court of Germany struck down Section 14(3) as unconstitutional.

Having regard to the gravity of the situation being faced by the country, especially the problems of the law enforcing agencies in gathering intelligence, taking timely action to prevent acts of terrorism, collecting evidence and securing conviction of the perpetrators of such crimes in courts and at the same time ensuring that Human Rights are not violated, the Commission is bringing out the Journal for the year 2009 on the subject 'Terrorism and Human Rights' on Human Rights Day.

10th December, 2009

*G. P. Mathur*  
(G.P. Mathur)





## SECRETARY GENERAL

### NHRC

#### From the Editor's Desk

The National Human Rights Commission's Journal is an endeavour to stimulate and promote discourse and research on various contemporary human rights issues. Since its inception in 2002, the journal has generated a great deal of interest amongst the scholars and practitioners of human rights. The articles from a crosssection of people including jurists, academics, public servants and others, published in previous issues of the journal, have not only enriched the literature on human rights but also helped in bringing into focus some key human rights issues.

The year has been an eventful year for the Commission. A number of initiatives were taken by the Commission including organizing seminars and conferences on several important issues like human rights education in schools, human rights defenders and regional workshops on mental health. The first conference of the National Human Rights Institutions (NHRIs) of South Asian countries organized in April 2009 at New Delhi was a landmark event commencing a new era of regional cooperation amongst NHRIs in the region.

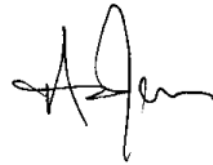
The menace of terrorism has become a matter of serious concern world over. Though India has been a victim of terrorism for long and she was cautioning the world against it, the menace has now engulfed many regions in the world. Terrorism is one of the biggest violation of human rights. On the other hand, actions by the State to combat terrorism, at times, invite criticism by human rights activists. The issue being of a great contemporary interest, the Editorial Board decided that the theme of this year's journal should be "Terrorism and its various facets".

In this year's journal, effort has been made to include articles from

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eminent persons on various aspects of terrorism including Impact of Recent International Developments on Terrorism; Critique of Recent Legislations on Terrorism in India from Human Rights Perspective - Do We Need Special Laws; Role of Education in Preventing Terrorism through Creation of Awareness and Educating People; Economic Consequences of Terrorism in India's North East; A Critique on the Issues and State Policy on Naxal Menace in Contemporary India; Root Causes of Naxalism - How a Person Becomes a Naxalite; Terrorism and Human Rights; Law, Terrorism and Human Rights; Combating Terrorism, Naxalism and Protecting Human Rights; Extremism, Rule of Law and Human Rights; Human Rights in the Age of Terrorism - A Balancing Act; Terrorism, Insurgency and International Humanitarian Law (IHL) with Reference to India; Terrorism -An Assam and J&K Experience; Terrorists and Human Rights.

I hope the Commission's journal for 2009 will be found useful by all who are concerned with human rights issues and will also generate interest amongst others to come forward for better protection of human rights of all. I shall also appreciate suggestions for improving the quality of the journal.



(Akhil Kumar Jain)

10th December, 2009

## Impact of Recent International Developments on Terrorism

*R.S. Kalha\**

Terrorism is not a new phenomenon. In more recent times and particularly since 1934 it has been on the international agenda. At that time the League of Nations took the first and far-reaching step towards outlawing the menace of terrorism by discussing a draft convention for the prevention and punishment of terrorism. Although the Convention was eventually adopted in 1937, but as has been the bane of most such efforts, it never came into force.

Since the end of the Second World War when the present UN system came into existence, sixteen universal instruments (thirteen instruments and three amendments) against international terrorism have been elaborated within the framework of the United Nations system relating to specific terrorist activities. Member States through the General Assembly have been increasingly coordinating their counter-terrorism efforts and continuing their legal norm-setting work. The Security Council has also been active in countering terrorism through resolutions and by establishing several subsidiary bodies. At the same time, a number of programmes, offices and agencies of the United Nations system have been engaged in specific activities against terrorism, further assisting member states in their counter-terrorism efforts.

In September 2006 in order to consolidate and enhance these activities, member states of the UN embarked upon a new phase in their counter-terrorism efforts by agreeing on a global strategy. The strategy marks the first time that all member states of the United Nations have agreed to a common strategic and operational framework to fight terrorism. The strategy forms a basis for a concrete plan of action: to address the conditions conducive to the spread of terrorism; to prevent and combat terrorism; to take measures to build state capacity to fight terrorism; to

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\*Former Member, National Human Rights Commission

strengthen the role of the United Nations in combating terrorism; and to ensure the respect of human rights while countering terrorism. The strategy builds on the unique consensus achieved by world leaders at their 2005 September Summit to condemn terrorism in all its forms and manifestations.

However before we can assess the impact of such major international developments on the scourge of terrorism, it is important to keep in mind what we mean by terrorism. This aspect becomes important as there is no one single definition that is generally acceptable to all members of the international community. It is said that there about 109 different versions defining terrorism. A common definition of terrorism is the 'attempt to organize violence on a systematic and organized way to intimidate or force a government or a community to act in a way indicated or to accept demands/conditions etc'. But even this does not find universal or unanimous endorsement.

There are several reasons why the international community has not been able to find a common definition. And since a common definition is unavailable, common action too is difficult to sustain. Even the United Nations finds it difficult to come to a common conclusion. Its members have struggled long and hard to find a common definition. The most important reason is that those who live in occupied or areas where oppression is prevalent, find it extremely difficult to eschew violence as a means of action to rid themselves of an oppressor or an occupier. Take the example of those living in occupied West Bank and Gaza: do they or do they not have the rights to rid themselves of the occupier by using violent methods? If self-defence is recognized in the UN charter as the inherent right of all nations in the world, then how can such a right be denied to those that are fighting occupation? Arab diplomats have continued to argue that any comprehensive definition of terrorism must include the phenomena of "state terrorism" and distinguish it from the right of self-determination. According to this argument, Israel is guilty of state terrorism in the occupied territories, while Palestinians are "freedom fighters".

The Israelis, on the other hand, have a different take on it: a Palestinian who deliberately kills an Israeli child is a terrorist, while an Israeli who deliberately kills a Palestinian child is a 'soldier' or a 'settler'.

The Organization of Islamic Conference (OIC) and the League of Arab States are insisting that any universally accepted treaty should exempt

from consideration as terrorists all those engaged in conflicts against “foreign occupation”. This includes even national liberation movements, including the Palestine Liberation Organization (PLO) and the Lebanese-based militia, the Hezbollah, both of which have been battling Israeli occupation.

On the other hand there are those who take the view that no matter what has happened, no one should take to violence and in any case all disputes should be settled by peaceful means and not by recourse to arms. Significantly those that are dispossessed or those living under occupation find little to commend this view.

Till the events of 9/11 in the United States, the international community took a fairly detached view of terrorism. The western world thought that it was immune from this disease and that all such action took place within the deprived communities of the third world. Whenever countries such as India took up this issue prior to 9/11 and pleaded for worldwide action, they were fobbed off with the plea that the root causes of why terrorism takes place also needed to be addressed. It was the generally held view in the western world that as this was essentially a third world phenomenon, it need not be taken too seriously. However the events of 9/11 changed all that as did the US invasion of Iraq which set off a wave of terror acts principally against western targets. The western perception of terrorism also underwent a sea change.

Although a definition of terrorism has eluded the UN, yet several meaningful steps have been taken. One of the most important of these instruments is Resolution 1373 of the United Nations Security Council passed on 28<sup>th</sup> September 2001. This Resolution requires member states, amongst other things, to ‘prevent and suppress the financing of terrorist acts’ and furthermore to ‘take necessary steps to prevent the commissioning of terrorist acts’. While Resolution 1373 requires states to take action, it does not define what terrorist acts are or what the targets of that action are. All that is left to individual states to determine. Secondly there is no mention of what action is contemplated if states themselves are active actors on the stage of terrorism. Some states are in the business of using terrorism to advance foreign policy objectives.

Very often those states that use terrorism as a foreign policy tool find it exceedingly difficult to prosecute those of its citizens that are caught in the act of committing terrorist crimes. Far too often such persons are

treated as 'national heroes' and states are loathed touching them for fear of attracting national opprobrium. This is a reality for not too long ago such states themselves were nurturing such proponents of terrorism. Political allies of such states too render assistance; albeit this is done in a clandestine manner. Such states are in perpetual denial and even when caught red handed usually take the plea that there is insufficient evidence to prosecute the perpetrators. This in turn leads to vigilante justice; for those that are caught are often very brutally treated. It is only in civilized, democratic countries such as India where the rule of law prevails that perpetrators of such heinous crimes receive a fair trial and proper justice.

Very often complaints are received that draconian measures to eliminate terrorism violate basic human rights. One such example was the alleged terrorist detainees at Guantanamo Bay. These are some of the most sensitive concerns. Controversy has emerged over cases in which individuals have been detained or subjected to financial restrictions without appeal or other due process. In some cases government officials have used the fight against terrorism as a justification for suppressing longstanding dissident or minority groups, some of which have been advocates of greater democracy and human rights in their nation. More broadly, the more robust counter-terrorism measures are taken, the more wide ranging will be government surveillance, stringent law enforcement, tighter border controls, stricter regulation of finances. These no doubt will invariably encroach upon individual and social rights and threaten basic liberties. What is needed is a viable policy that takes into account not only the need for greater surveillance and stronger measures to combat terrorism, but also is sensitive enough to take into account the concerns of well recognized human rights groups. Human rights defenders also need to keep in mind that the rights not only of the affected groups have to be kept in mind, but also those of the security forces. It is no easy task to keep law and order intact in insurgencylike situations.

UN declarations and resolutions have been unequivocal in urging strict adherence to human rights standards in the global fight against terrorism. The then Secretary-General Kofi Annan stated in September 2003:

'There is no trade-off to be made between human rights and terrorism. Upholding human rights is not at odds with battling terrorism: on the contrary, the moral vision of human rights—the deep respect for the

dignity of each person—is among our most powerful weapons against it. To compromise on the protection of human rights would hand terrorists a victory they cannot achieve on their own. The promotion and protection of human rights . . . should therefore be at the centre of anti-terrorism strategies.’

In January 2003 when the Security Council adopted Resolution 1456 urging greater international compliance with UN counter-terrorism mandates, at the same time it also reminded states of their duty to comply with international legal obligations, “in particular international human rights, refugee and humanitarian law”.

A strong case can be made that protecting human rights and strengthening democracy are essential over the long term to the fight against terrorism. Terrorist movements often arise in societies where civil and human rights are denied and opportunities for political expression are lacking. Protecting human rights and guaranteeing the freedom to voice dissenting views without government interference can help to prevent the rise of political extremism and terrorism. Nothing will erode support for counter-terrorism mechanisms more quickly than a perception among ordinary law-abiding citizens that such programmes will inevitably compromise basic freedoms.

Another political challenge is the question of enforcement. The International community wisely decided not to sit in judgment of UN member states or to report to the Security Council on states determined to be noncompliant. The question of what the Security Council should do about states that refuse to implement counter-terrorism mandates has become more pressing. Will the Council be willing to consider the imposition of sanctions against states that have received technical assistance, yet still refuse to comply with Resolution 1373 mandates? On the other hand what should the international community do in case the violator is a member of the P-5? Take for example, the recent brutal crackdown by the Chinese in Tibet just prior to the Olympic Games and more recently in Xinjiang [Sinkiang]? The Security Council even if it tried would be deadlocked with the Chinese threatening to veto any action. These and other challenges comprise the tasks ahead for UN counter-terrorism efforts. Other states complain that any action contemplated is usually subservient to serving the interests of the accuser country. In the world today it is exceedingly difficult to distinguish between correct and just action from motivated action. The international community still has not been able to

find the right path.

One of the most urgent reforms that is necessary is the enlargement of the UN Security Council. The presently constituted Security Council reflects the consensus of 1945 and the situation as it existed at the end of the Second World War. At that time there were about only 45 members of the UN with a large number of countries still under colonial bondage. At present there are over 192 members and a large number are newly liberated countries. These new states need a voice. Their concerns, their economic wellbeing and the need for security are of paramount concern to them and unless the international community can find a method to give them a voice, counter-terrorism measures will largely remain on paper. One such method suggested is the enlargement of the Security Council to reflect the realities of today. Here again international consensus remains elusive simply because the present members are loathe to give up their positions and there is also no consensus amongst the aspirants on who should be elevated.

Needless to say while the world continues to debate the important issue on how to tackle terrorism, how to put the requisite mechanisms in place the issue will not go away. It needs urgent attention as the havoc it plays with the lives of innocent people is only likely to get even more aggravated. One method that can be applied straightaway is to use the power of the press, both print and visual, even more effectively. Who can forget the horrendous TV pictures of the happenings at Abu Gharib beamed into our drawing rooms that overnight turned a liberator into an oppressor? However while utilizing the power of the press it should also be ensured that the ownership is as widely dispersed as possible. We have seen how the concept of the imbedded press was also used during the Iraqi invasion in 2003. With more technology advances it has become impossible to black out harsh repression. Even in the most closed of societies such as Myanmar it became impossible for the authorities to black out pictures of their harsh crackdown of demonstrators.

Thus while a lot more needs to be done, the picture is not all that bleak. With even more people becoming conscious of their legitimate rights, governments will not find it easy to hide behind the curtain of censorship. Neither will international institutions such as the UN and its system, as they too will come under increasing scrutiny. A vigorous press, both print and visual is the need of the hour coupled with a strong and determined civil society.





# Critique of Recent Legislations on Terrorism in India from Human Rights Perspective - Do We Need Special Laws?

*Prof. (Dr.) Ranbir Singh\**

## A Brief Introduction

Defining terrorism has become a thorny and insoluble problem for students and experts on the subject alike. There is no single accepted definition for the phenomenon of terror, something that is sweeping across the world today. The real problem is that one nation's "terrorist" is another's "freedom fighter". The current impasse between India and Pakistan is an indication of this. However, for the purpose of furthering the understanding of the issues raised by this paper, it has been chosen to interpret the term "terrorism" to mean "an attempt to destabilise democratic societies<sup>1</sup>". It is not a new phenomenon. It has haunted humankind for long. Political and religious acts of violence have been perpetrated by many groups throughout history. It posed and continues to pose a threat not only to the domestic political order of concerned states, but also to the international order.

## The New, Sophisticated Global Terrorism

With the drastic advents in technology, the terrorist incidents have assumed the capability to wreak utmost havoc and unleash greatest destruction on life and property. The technology of transportation about the planet has advanced to the point where it has become increasingly easy to plan and implement highly destructive terrorist actions in the territory of another state, whether the technique of destruction is by

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<sup>1</sup> The use of violence against random civilian targets in order to intimidate or to create generalized pervasive fear for the purpose of achieving political goals.

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electronic or kinetic intervention, or by conventional explosive, nuclear, chemical, or biological weapons. The diffusion of modern technology, the astonishing proliferation of information about the ways and means of conducting terrorist actions, and the amplification of the damage that terrorists now seem capable of wreaking, seem likely to make terrorism more attractive to would-be users and, as a result, of vastly heightened concern to an increasingly large class of potential targets.<sup>2</sup>

In the light of the fact that now, more than ever, we live in an increasingly complex and well-connected world, where there are no linear chains of cause and effect. Technology plays an important role, both in uniting and dividing us. Terrorism, has acquired a sophistication of its own, that has now become a matter of serious concern to the international community<sup>3</sup>. Unlike earlier, the new terrorism is now not confined to a specific area or region in geographical terms. It is, in that sense, truly global. Marked improvements in communication systems, weaponry and computer technology have rendered substantial assistance to it, by equipping it with the power to transcend national barriers undetected, and at will. Such technological innovations have also led to increasingly potent capabilities. A terrorist attack carried out in one country may be orchestrated from another. New aspects of terrorism may involve an increased use of biological, chemical or even nuclear facilities. Terrorists are tapping the opportunities offered to them by globalization to increase their nefarious activities. Greater cooperation among nations is also marred by bureaucratic delays, domestic corruption and disunity, improper understanding of the real nature and roots of international terrorism, a pathology of racial hatred, misgivings and suspicions and primarily the overall failure to consent on who terrorists are and which actions may be deemed to be acts of terrorism.<sup>4</sup>

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<sup>2</sup> Deva, Yashwant, "Counter-insurgency and counter-terrorism: Old perceptions but new challenges", as published in "Encyclopaedia of International terrorism", Volume 1, 2002, p. 147.

<sup>3</sup> See Kerry Ann Gurovitsch, Legal Obstacles to Combating International State-Sponsored Terrorism, 10 Hous. J. Int'l L. 159, 159 (1987); Brian M. Jenkins, International Terrorism: A New Mode of Conflict, in International Terrorism and World Security 13, at 26-27 (David Carlton & Carlo Schaerf eds., 1975).

<sup>4</sup> John F. Murphy, Defining International Terrorism: A Way Out of the Quagmire, 19 Israel Y.B. Hum. Rts. 13, 14 (1989); Mark Gibney et al., Transnational State Responsibility for Violations of Human Rights, 12 Harv. Hum. Rts. J. 267, 287 (1999).

## Combating Terrorism

It is high time we established a concrete legal regime of primary and secondary liabilities in this regard, thereby setting up a comprehensive framework in the international arena dealing with such legal challenges. Governments adopt various means of combating terror, these broadly categorized under the following heads:

1. International conventions and general international law
2. Military force
3. Diplomacy
4. Implementation of anti-terror legislations, and
5. Economic sanctions.

## International Measures to Counter Terrorism: Recent Developments

International measures have included adoption of new conventions such as the Inter-American Convention Against Terrorism of June 3, 2002<sup>5</sup>, which provides for regional use of a variety of legal tools that have been employed effectively in the past against terrorism and transnational organized crime. Accelerated efforts have also been undertaken toward implementing the 1997 Convention for the Suppression of Terrorist Bombings<sup>6</sup>, which imposed binding legal obligations on parties to prosecute or extradite terrorists and provides an international framework for cooperation among states directed toward prevention of terrorism and punishment of offenders. The 1999 Convention for the Suppression of the Financing of Terrorism<sup>7</sup>, which criminalized financing of terrorist activities and established an international legal framework for cooperation in preventing such financing and punishing offenders, has also been given further impetus.

Perhaps the most significant development was the adoption by the

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<sup>5</sup> Inter-American Convention Against Terrorism, S. Treaty Doc. No. 107- 18, AG/RES. 1840 (XXXII-O/02). See Ved P Nanda, *Foreword: Combating International Terrorism*, 31 *Denv. J. Int'l L. & Pol'y* VI

<sup>6</sup> G.A. Res. 52/164, U.N. GAOR, 52d Sess., 72d Mtg., U.N. Doc. A/RES/52/64 (1997).

<sup>7</sup> G.A. Res. 54/109, U.N. GAOR, 54th Sess., 76th Plen. Mtg., Agenda Item 160, U.N. Doc. A/RES/54/109 (2000). For the status of these and other such instruments, see Status of international conventions pertaining to international terrorism, extract from the Report of the Secretary-General on Measures to Eliminate International Terrorism, U.N. Doc. A/57/183, para. III.A, (2002) as updated on 10 December 2002.

<sup>8</sup> S.C. Res. 1373, U.N. SCOR, 56th Sess, 4385th Mtg., U.N. Doc. S/RES/1373 (2001).

UN Security Council of its Resolution 1373 on September 28, 2001<sup>8</sup>. In this resolution, the Security Council stressed its determination to prevent acts of terrorism<sup>9</sup> and called for all “States to work together urgently to prevent and suppress terrorist acts<sup>10</sup>,” to prevent and suppress the financing of terrorism, and to “find ways of intensifying and accelerating the exchange of information.<sup>11</sup>” Further, the Security Council had adopted Resolution 1368<sup>12</sup>, which unequivocally condemned “in the strongest terms horrifying terrorist attacks” and regarded them “as a threat to international peace and security<sup>13</sup>.” Also noteworthy was the report of the General Assembly’s Sixth Committee’s working group, which was earlier constituted to develop measures to eliminate international terrorism.<sup>14</sup>

To illustrate the efforts of international organizations, the World Bank and International Monetary Fund have accelerated their work on anti-money laundering and combating the financing of terrorism<sup>15</sup>. And the Commission on Security and Cooperation in Europe is enhancing its efforts in the war on terrorism<sup>16</sup>. Finally, although the statute of the International Criminal Court<sup>17</sup> was not drafted with terrorism as its primary focus, nevertheless, terrorism is a crime within the Court’s jurisdiction.

From the above, it is self-evident that the United Nations has not been dormant or submissive, contrary to what critics may argue.<sup>18</sup>

**International Legal System:** States may use the international legal system to hold states accountable in damages for state sponsorship and

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<sup>9</sup> Id., Preamble.

<sup>10</sup> Id.

<sup>11</sup> Id., para. 3(a).

<sup>12</sup> S.C. Res. 1368, U.N. SCOR, 56th Sess, 4370th Mtg., U.N. Doc. S/RES/1368 (2001).

<sup>13</sup> Id., para. 1.

<sup>14</sup> Measures to Eliminate International Terrorism: Report of the Working Group, U.N. GAOR 6th Comm., 56th Sess., Agenda Item 166, U.N. Doc. A/C.6/56/L.9 (2001).

<sup>15</sup> See generally Matthew Levitt, Iraq, U.S., and the War on Terror, Stemming the Flow of Terrorist Financing: Practical and Conceptual Challenges, 27 SPG FLETCHER F. WORLD AFFE 59 (2003).

<sup>16</sup> See, e.g., Commission on Security and Cooperation in Europe report, “Hearing Before the Commission on Security and Cooperation in Europe,” CSCE 107-2-2 (May 8, 2002).

<sup>17</sup> Rome Statute of the International Criminal Court, U.N. Doc. A/ CONF. 183/9 (1999), available at <http://www.un.org/law/icc/statute/romefra.htm> (last visited February 12, 2006).

<sup>18</sup> Art. 5 crimes are genocide, crimes against humanity, war crimes, and the crime of aggression. See art. 6-8 for definitions of these crimes. Under the statute, natural persons who commit these crimes are within the Court’s jurisdiction.

support of terrorist activities committed by private persons. The bringing of claims through diplomatic channels and before judicial tribunals educated in international law will not only increase state accountability for international terrorism, but will also create a much needed opportunity to change and clarify international norms relating to terrorism and state responsibility. Customary norms of international law evolve in response to the changing needs of the international community. As the threat of international terrorism increases, states may wish to impose criminal sanctions on states for the use of terrorism, create enhanced duties of due diligence for the prevention and punishment of terrorism, and relax evidentiary standards for attributing terrorist acts to the state. There is certainly an urgent need in the international community to hold states responsible for the violation of international law and accountable for their participation in terrorist activities. It is submitted that the answer(s) do NOT lie in a new convention. The *application* of the law of state responsibility to terrorist activities may prove to be one effective weapon among many in combating state sponsorship and support of international terrorism.

### **United Nations in fighting terrorism**

Importantly, the United Nations alone can provide for a universal definition and standardized international legal framework to deal with international terrorism. It is our best hope, and we must capitalize on the opportunities it offers towards a more peaceful transnational environment and collective security. By way of preliminary caution, one would need to recognize that the way the United Nations deals with this challenge politically and the legal and eventually military methods the organization uses, or authorizes, in its collective action against terrorism on the basis of Chapter VII of the UN Charter will define its future role in the global system.

### **Fight Against Terrorism: An Indian Perspective**

#### **I. Conceptualization**

India's vulnerability to insurgency and terrorism is but natural owing to the presence of ethnic, religious and linguistic minorities and adherence to a democratic system. These realities are both an asset and a liability. Whereas divisive forces of new fundamentalism, linguistic chauvinism, and ethnic parochialism have plagued the nation, unity in diversity is a

laudable concept for people to rally round<sup>19</sup>. It must be mentioned that a democracy is that kind of a political system which tolerates dissent to a fair extent. This unhappiness often leads to the growth of extremist ideologies, which in turn has the potential of leading to violence. This does not of course give rise to the presumption that dictatorial and authoritarian regimes are free from the disease of terror, a point demonstrated by military-ruled Pakistan which is still struggling to cope with sectarian violence and a fast spreading conservative Islamic militancy.

Any political system must change with the times and not stagnate. Legal means for redress must always remain open. Whereas conciliation amongst disparate sections of society is desirable, appeasement and compromise on principles is not<sup>20</sup>. Neglect, persecution and exploitation are but some of the factors responsible for leading to a feeling of alienation amongst people. A situation of this kind provides an ideal breeding ground for terrorists who often hijack the ideology of the majority and manipulate it to suit their own sinister designs. The best way to defeat an insurgency or a terrorist grouping is to prevent it. Therefore, the foremost duty of the government is to stamp out official indifference and callousness, provide opportunities, and inspire a sense of nation building and national integration and to resolve all disputes, especially those amongst States within a federal setup in an impartial manner. Actions such as these would go a long way in preventing the growth of the terrorist ideology amongst certain disaffected sections of the populace by ensuring that no effort is spared to eliminate the reasons leading up to this disaffection in the first place. Prevention is infinitely better than the cure, and this adage finds particular resonance in the opposing spheres of terror and counter-terror.

## **II. Reasons for Rising Terrorism and its Consequences**

There are complex reasons for the rise in terrorism in the present time. One of the most significant is that in nearly 14 years of strife in Jammu & Kashmir (J&K), where life has been virtually brought to a standstill by terrorism in the State, there have been just 13 convictions in cases related to terrorism, of which eight concern relatively minor offences such as illegal possession of arms or illegal border crossings. This is the record in a state where 30,750 people have been killed in the conflict

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<sup>19</sup> Deva, Yashwant, "*Counter-insurgency and counter-terrorism: Old perceptions but new challenges*", as published in "*Encyclopedia of International terrorism*", Volume 1, 2002, p. 147.

<sup>20</sup> Ibid.

between 1988 and 2001, 11,377 of them civilians.

Terrorism clearly became a mad violator of human rights, according to the National Human Rights Commission, in the wake of the very recent Mumbai terror attacks in which numerous people were killed. The NHRC further went on the remark that a terrorist had no religion. He does not believe in the tenets of religion because no religion preaches such insane violence. Therefore, terrorism of whatever hue must be unequivocally condemned by all. In what can be called one of India's worst terror attacks in Mumbai, militants attacked high profile landmarks, including the Taj Mahal Palace and Tower Hotel, the Oberoi Trident Hotel, Metro Theatre and the Chhatrapati Shivaji Terminus (formerly Victoria Terminus) railway station. At least 101 people, including a foreign tourist and four top police officers, were killed and over 250 injured. The crisis continued for days with terrorists holding people hostage in the two five-star hotels.

This abdication of responsibility goes much further. Indeed, in situations of persistent mass violence, the entire system of civil administration is effectively suspended. The only agencies of the state that continue to function, at varying levels and with varying degrees of effectiveness, are the uniformed services – the police, the paramilitary forces and the Army – and sadly, it is these services that come in for the greatest measure of abuse and harassment once a degree of order is restored. With the agencies of civil administration either withdrawing from areas afflicted by widespread violence, or even evolving complicit arrangements with the forces of violence and subversion, the entire gamut of the tasks of development and governance are simply abandoned.

These are natural consequences, on the one hand, of gradual processes of erosion within all institutions of government in the country and, on the other, of dramatic transformations in the nature and range of the internal security threats that confront the modern state. The tectonic shift in the character and scale of these threats was brought home dramatically by the 9/11 attacks in USA, as also by mounting evidence thereafter that many terrorists groups have been exploring the possibilities of the acquisition and use of a range of weapons of mass destruction (WMD). What is needed, consequently, is a comprehensive reappraisal of all contemporary threats to national security, and a refashioning of the nation's responses in terms of the legislative and institutional framework, and of

executive action.

Underlying any such reassessment must be a clear understanding that, today, very small minorities can directly and significantly threaten, undermine and, through determined, persistent and extreme violence, even destroy the edifice of the state and the integrity of the nation – and this is especially true where they act with foreign support and safe havens. The arguments that the manifestations of terrorism are located in ‘root causes’ of poverty and popular discontent, though they may have some grains of truth, are consequently far from an accurate reflection of reality. Terrorist movements today can be sustained by minuscule groupings, sometimes composed entirely or predominantly of foreigners, often exclusively supported by hostile states, and increasingly indifferent – if not inimical – to the hopes and aspirations of local populations [More than 85 per cent of the civilian victims of terrorism in J&K, for instance, are Muslims, something of a problematic for ‘Islamic *mujahiddeen*’ to consistently explain away in terms of a ‘struggle to protect oppressed Muslims’].

Unfortunately, on every occasion when the issue of internal or national security legislation, or any of its components, such as counter-terrorism legislation or legislation against organized crime, have been discussed in the recent past, an entirely irrational, even hysterical response has greeted any such proposals, and it has generally been argued that the IPC is capable of dealing with every existing and emerging challenge. This is interesting, and ascribes to the IPC something of a sacred and immutable character – which no statute book in a changing world can ever enjoy. This is particularly the case where patterns of criminal action have assumed proportions that undermine the very fundamentals of the institutions of democracy and of civil society. It is high time we understood the dangers and possibilities of a *terrorised society*, and the inadequacy of the conventional law – which approaches criminal conduct as an individual infraction violating individual rights – to deal with movements that collectively subvert and disrupt the structures of governance and enforcement themselves.

### III. What is Needed

Confronted by such movements demands not only ‘more stringent’ laws, but real-time legislative responses that accommodate each significant transformation of criminal conduct. We may disagree with the basics and



content of such legislation, but the speed and proportions of the American legislative response to the 9/11 attacks, and before these, to the attacks on the World Trade Centre in 1993, are what will be necessary if democracies are to defend themselves effectively against fanatical forces that accept no limits of law or conventional morality on the violence they are willing to inflict on others to secure their ends. This does not imply a blind and submissive acceptance by all Americans to every legislative excess of the Bush administration, and a vigorous democratic discourse is certainly in evidence on the new legislation, and its provisions can be expected to be amended and diluted over time, and in the light of the evolving experience. What is missed, however, is the fact that this swiftness and scale of response made it possible to avert many potential follow-up strikes that had evidently been planned by the Al Qaeda, and as new cells and evidence is uncovered, it is clear that at least some lives have been saved and possible catastrophes averted, without extraordinary and irreversible harm being inflicted.

The point here is that the unending search for an elusive ‘consensus’ that has stalled all national security legislation in this country, even as criminal audacity expands exponentially in a legislative vacuum, is an unacceptable and potentially disastrous response to the rising crises that confront us. Parties will have to rise above partisan interests and legislate on crucial issues in this context, and will have to do so quickly in order to stem the rising tide of anarchy and the growing power of those who threaten not only the state, but civilisation itself. All such legislation would and must remain open to amendment in the light of evolving experience – and such processes of review must not be structured around a one-time and all-or-nothing approach that has characterized debates in the past. If elements of a law are found to be susceptible to abuse or to have caused unacceptable hardship to the innocent, these – and not the law in entirety – must be rejected and redrafted.

#### **IV. Implications for Human Rights**

None of this implies any dilution in our national commitment to human rights. It means, conversely and precisely, a review of the institutional mechanisms and processes for the protection of these rights to ensure that it is these that are, in fact, protected, and that their protection does not inadvertently extend to criminal intent and operations. If we are to take human rights even half-way seriously, we will have to recognize

that terrorism, low intensity warfare and their linkages with organized crime have created new and unprecedented dangers to the unity and integrity of the country, to the survival of democratic governance, and to the very possibility of human rights. It is, consequently, necessary to devise new laws, procedures and processes that help contain this menace and protect the people from the depredations of a merciless and utterly unprincipled enemy.

It must, of course, be accepted that the possibility of abuse of laws will always exist, and we will have to define safeguards with each legislation to limit the possibility and scope of such abuse. We must, however, understand at the same time that weak laws, or the absence of appropriate legislation, yields greater dangers, both of the victimization of innocents by wrongdoers, and – bluntly put – in the form of resort to extra-legal solutions by those charged with the protection of lives and property, and the preservation of order. Without order, and without a concomitant security of life and property, there can be no freedom and no rights.

## **V. Prevention of Terrorism Act, 2002 (POTA)**

*Draconian, Repressive, Unconstitutional:* For a sizeable section of the Indian population, the very mention of POTA immediately brings up such adjectives to the mind. Indeed, this Act, passed on the 23<sup>rd</sup> of March in the Fifty-third Year of the Republic of India, though passed presumably with the praiseworthy intention of preventing and dealing with terrorist activities, has managed to stir quite a hornet's nest on the question of its compatibility with the Constitution of India.

On the other hand, we have the constant reassurance by the Government of India that the act has been meant to curb the growing menace of terrorism and contains inbuilt provisions to safeguard against its possible misuse. Singing a similar tune are political bigwigs and high ranked officials, most notably among them, Justice A.S. Anand, the then Chairman of the National Human Rights Commission. To quote him, "There are apprehensions that POTA can be misused. Any law can be misused. What we have to see is whether there is an in-built mechanism to safeguard the Act from being misused. It has." He however admitted that those provisions are not enough.

POTA was brought into existence for the sole purpose of crushing the evils of terrorism. In the course of events it has to be very critically

analysed whether the said act achieved the purpose for which it was enacted and more importantly, whether it was against constitutional provisions. Though POTA was found to be not violative of the Constitution of India [People's Union For Civil Liberties and Another Versus Union of India (2004) SCC 580], but at the same time the provisions of the Act has to be safeguarded from arbitrariness and violation of civil liberties under the Constitution of India. From the Human Rights perspective this has also to be assured that the wide powers given to the police are not misused and found to be violative of the 'Rule of Law'. In the above case also, the Supreme Court observed:

*“Terrorist acts are meant to destabilize the nation by challenging its sovereignty and integrity, to raze constitutional principles, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow democratically elected government, to promote prejudice and bigotry, to demoralize the security forces, to thwart economic progress and development and so on. This cannot be equated with a usual law and order problem within a State. On the other hand, it is inter-State, international or cross-border in character. Fight against the overt and covert acts of terrorism is not a regular criminal justice endeavour. Rather, it is defence of the nation and its citizens. Terrorism is definitely a criminal act, but it is much more than mere criminality. To face terrorism the country needs new approaches, techniques, weapons, expertise and of course new laws. In the abovesaid circumstances Parliament felt that a new anti-terrorism law is necessary for a better future. This parliamentary resolve is epitomized in POTA” [ (2004) 9 SCC page 584].*

#### VI. Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA):

In early 1984, Parliament enacted the Terrorist Affected Areas (Special Courts) Act, which established special courts to adjudicate certain “scheduled offenses” related to terrorism in areas designated by the central government, for specified time periods, as “terrorist affected.”<sup>21</sup> TAAA

<sup>21</sup> Terrorist Affected Areas (Special Courts) Act, No. 61 of 1984 [hereinafter TAAA]. To guide the central government's designation of “terrorist affected areas,” TAAA broadly defined a “terrorist” as a person who “indulges in wanton killing of persons or violence or in the disruption of services or means of communications essential to the community or in damaging property” with intent to “put the public or any section of the public in fear,” “affect adversely the harmony between different religious, racial, language or regional groups or cases or communities,” “coerce or overawe the Government established by law,” or “endanger the sovereignty and integrity of India.” Id. § 2(1)(h). As one critic noted at the time, the definition is “wide enough even to cover legitimate trade union activity.” A.G. Noorani, *The Terrorist Act*, ECON. & POL. WKLY., June 22-29, 1985, at 945.

instituted a stringent bail standard under which an individual accused of a scheduled offense could not be released if the prosecutor opposed release, absent reasonable grounds to believe the accused was not guilty, and extended the time during which an individual may be detained pending investigation from 90 days to one year.<sup>22</sup>

Most of these provisions were incorporated into the more sweeping Terrorist and Disruptive Activities (Prevention) Act of 1985, which was enacted in the wake of Indira Gandhi's assassination. Unlike the TAAA, which deemed certain existing substantive offenses terrorist-related only if they were committed in specific geographic areas designated for limited periods of time as "terrorist affected," TADA explicitly defined a series of new, substantive terrorism-related offenses of general applicability, which could be prosecuted by state governments throughout the country without any central government designation that the area in which the offense took place was "terrorist affected."

However, enactment of a powerful, nationwide antiterrorism law without sufficient safeguards to constrain its misuse and ensure national uniformity in its application led to human rights abuses and disparate patterns of enforcement throughout the country. The procedural rules under TADA departed from the ordinary rule of evidence and criminal procedure in several respects. While ordinary law precludes admissibility of any confessions made to police officers, TADA provided instead that confessions to police officers could be admitted as substantive evidence as long as the officer's rank was superintendent or higher; the confession was recorded in writing, audio, or video; and the confession was voluntary.<sup>23</sup> The stringent bail and pre-trial detention provisions and the special procedural rules for the special courts under the TAAA also were included under TADA.<sup>24</sup>

Laws such as TADA have been a focal point of criticism, since they purported to provide both the legal and symbolic authority for many of these rights violations. Critics frequently noted the facial inconsistency of many of TADA's provisions with human rights norms under

<sup>22</sup>Id. § 15(5); see HRW, PUNJAB IN CRISIS, *supra* note 3, at 157-58.

<sup>22</sup>Id. § 15(5); see HRW, PUNJAB IN CRISIS, *supra* note 3, at 157-58.

<sup>23</sup> Id. § 15; see *supra* subsection II.B.2. Before recording the confession, the police officer needed to explain to the person making the confession that he is not required to confess, and that if he does, the confession could be used as evidence against him. TADA § 15.

<sup>24</sup> Id §§ 9-19.

international law and the Constitution.<sup>25</sup> Considerable evidence suggests that in its application, TADA's sweeping powers were predominantly used not to prosecute and punish actual terrorists, but rather as a tool that enabled pervasive use of preventive detention and a variety of abuses by the police, including extortion and torture.<sup>26</sup> In the Punjab, advocates extensively documented evidence that thousands of individuals, virtually all of them Sikhs, had been arbitrarily arrested under TADA and detained for prolonged periods without being told the charges against them. Human rights violations associated with TADA were not limited to the Punjab. To the contrary, police often committed similar abuses even in states that lacked the acknowledged problem of political violence found in the Punjab. As in Punjab, advocates presented considerable evidence that in other states TADA was similarly used to facilitate extortion, illegal arrests and detentions, torture, and other human rights violations. While the precise contours of this pattern varied from state to state, depending on the local social and political context, TADA's provisions were consistently used in an arbitrary and discriminatory manner to target political opponents, religious minorities, or Dalits and other lower caste groups, or to prosecute ordinary criminal offenses with no connection to terrorism.<sup>27</sup>

Statistics documenting detention and conviction rates under TADA provide further evidence suggesting the law's misuse. While precise numbers have varied, the overall picture is clear and consistent: large numbers of individuals were detained under TADA, but only a miniscule fraction of them were ultimately convicted of anything. Together with qualitative evidence concerning TADA's application, data suggests that TADA functioned more as a tool to enable preventive detention and police abuse than as a meaningful and effective criminal law.

## **VII. Armed Forces Special Powers Act 1958 (AFSPA):**

The Armed Forces Special Powers Act (AFSPA) remains in effect in Nagaland, Manipur, Assam, and parts of Tripura, and a version of the law was in effect in Jammu & Kashmir. Forty-eight years have passed since AFSPA was enforced in North-East India and sixteen years have passed

<sup>25</sup> E.g., HRW, PUNJAB IN CRISIS, *supra* note 3, at 148-58; REDUCED TO ASHES, *supra* note 208, at 87-99.

<sup>26</sup> E.g., REDUCED TO ASHES, *supra* note 208, at 181-82. The threat of charges under TADA was often used to threaten the same individuals more than once. *Id.* at 182.

<sup>27</sup> See, e.g., *id.* (discussing discriminatory use of TADA in Rajasthan against Muslims and Sikhs, in Bihar

since it was imposed on Jammu & Kashmir. For decades, human rights activists in India have called for a repeal of the AFSPA and expressed opposition to human rights abuses in areas where it is in force. Calls for repeal continue.

Wording of the AFSPA enacted by Parliament in 1958 is indeed blood curdling to even read let alone act out. The Act states that any commissioned officer, warrant officer, non-commissioned officer or person of equivalent rank in a disturbed area may fire upon or use force even to the point of causing death if he is of the opinion that it needs to be done to maintain public order. He may arrest, without a warrant, any person against whom a reasonable suspicion exists and may use the above mentioned force to effect the arrest, as well as enter and search without warrant any premises to make any such arrest if reasonable suspicion exists. Any person arrested under this Act is to be taken to the nearest police station and placed in custody without any delay. If this wasn't enough, the Act gives sweeping immunity to anyone acting under it. It states verbatim "Protection to Persona acting under Act: No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act."

The very wording of the Act itself begets heinous misuse. When one considers it in tandem with a corrupt state and police machinery, as is the case in many parts of India, the human rights violations skyrocket upwards. AFSPA's provisions enable security forces to arrest people and enter property without a warrant, and to shoot to kill even in circumstances where they are not at imminent risk. It is widely believed that the AFSPA has facilitated grave human rights abuses, including extrajudicial execution, "disappearance", rape and torture.

The law provides a person in detention the right to a prompt trial; however, due to a severe backlog, this was not the case in practice. Human rights organizations reported that 60 to 75 percent of all detainees were in jail awaiting trial, drastically contributing to overcrowding. Human rights organizations asserted that approximately 65 percent of those detained were found innocent. Due to persistent burden on the judicial system, there were numerous instances in which detainees spent more time in jail under pre-trial detention than they would have if found guilty

and sentenced to the longest possible term. Under the AFSPA no one can start legal action against any member of the armed forces for alleged abuses under the AFSPA without the permission of the central government. Some action have been taken in recent years to bring those guilty of human rights violations to justice, but government approval to prosecute those accused of abuses is very rarely given. Amnesty International has remained concerned that the AFSPA has enabled many perpetrators to escape punishment.

### **VIII. Unlawful Activities Prevention Act, 1967**

The UAPA essentially further revised the age-old Unlawful Activities Prevention Act, 1967 that has been in force and utilized for the last forty two years. This statute was quietly amended shortly before the much-celebrated repeal of the Prevention of Terrorism Act (POTA) by the same government. Unfortunately, even as many committed to democracy and rights heralded the death of POTA, few wrote about these revisions to the UAPA that went further than POTA or the Terrorist Activities (Prevention) Act, 1987 (TADA), or for that matter any so-called anti-terror laws, including negating periodic legislative review, and dropping safeguards like Section 58 of POTA which made it an offence if a police officer ‘exercised power corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this act.’

Specific provisions of POTA pertaining to definition, punishment and enhanced penalties for ‘terrorist activities’, and specific procedures, including the banning of ‘terrorist organizations’ and interception of telephone and electronic communications were inducted into UAPA. It is important to point out that ‘extraordinary laws’ like TADA and POTA, as they have been referred to, to come with provisions that enable any investigation or legal proceeding that may have been initiated while the acts were in force, to continue as if these acts had not expired. This means that the ceremonial repeal of any such ‘extraordinary’ law post the initiation of state action – whether by the police or the courts – is pointless.

Further, in the context of the law, exceptions in fact reshape the general law by virtue of precedent and resultant jurisprudence. Interestingly, when confronted with exceptions to well established and familiar rules of evidence and procedure, judges usually balk at the application of the exceptional law, since they lack precedent and the amended law often

seems counterintuitive to legal principles and training.

### **IX. National Investigation Agency Act, 2008 (NIA)**

In the aftermath of the horrific Mumbai terror attacks and resultant siege in the heart of India's commercial capital in November 2008, the ruling UPA government quickly pushed through a significant piece of legislation- National Investigation Agency Act, 2008 (NIA). There was a consensus after the Mumbai Attacks, that India needs a national body that can coordinate and oversee the investigation and enforcement of criminal activities that have national or cross-border repercussions. However the NIA act was passed with no comprehensive analysis of the issues, no review of existing legislation, and without extending an invitation to the States or civil society to suggest possible alternatives. The haste in which this Act has been conceived has left unresolved many issues about the NIA's constitutional validity, functioning, and scope. The NIA act creates a new agency as well as special courts and both the aspect of the Act has opened the floor for debates.

The NIA states that notwithstanding anything in the Police Act, the central government will constitute a special agency to be called the National Investigation Agency for investigation and prosecution of offences under the acts specified in the 'Schedule'. The significant aspect is that it creates a national level 'investigation' agency, as opposed to the refinement, reorganization and enhancement of 'intelligence' capacity, despite the fact that the Mumbai attacks, if anything, represents a failure of intelligence gathering, i.e. warning systems to pre-empt such attacks. Investigation usually connotes a police-based function, i.e. a post-fact process. So, the foremost question raised is how the agency is going to prevent such terror acts.

Secondly, the very constitutional validity of such national agency has been challenged on the basis that the areas of 'policing' and 'public order' lies within the legislative competence of the states and not the Centre, as per Article 246 read alongside the Seventh Schedule of the Constitution.

Earlier committees, tasked with examining a possible national investigation agency, have repeatedly pointed out that it should be clearly understood that the aim of creating such an agency, by whatever name



called, cannot be to usurp the powers of the State, but on the other hand, it should be an agency meant to *assist* them in the nation's fight against terrorism and inter-State or trans-national organized crime which jeopardise national security. However, the NIA act gives absolute power to the Centre to investigate throughout India any offences listed in the attached schedule of the Act. The schedule even though includes only eight specifically mentioned terrorrelated crimes including hijacking, any terror attack, any violation of the Atomic Energy Act and anything against the law on weapons of mass destruction, it in reality includes all forms of crimes. This is because the schedule include the acts covered under the Unlawful Activities (Prevention) Act, 1967 which has been promptly amended in 2008 itself, along with drafting of the NIA act, to expand the definition of terrorism to 'any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.' This amendment has raised two concerns – First, NIA may now investigate all kinds of activities that until now have lain in the exclusive jurisdiction of the state and secondly the amendment to definition and other provisions virtually reinstates the old POTA definition of terrorism that the government had earlier repealed.

Another critique of the Act is that on the process of decision making the Act states that the central government will first make a determination that an event on the ground is actually a Scheduled Offence and then decide whether it wishes to direct the NIA to investigate it. The basic fault with this provision is that these determinations are to be made by the political executive rather than a professional expert. This is being critiqued by saying that for confidence to build in policing bodies, the decision making process needs to be seen as being outside all extraneous political considerations and in the hands of a professional expert.

Second, the competency of the agency can also not be guaranteed. The NIA is to have a Director General (DG) at the top (at present it is Mr. Radha Vinod Raju, a Jammu & Kashmir cadre IPS officer, who has been part of the CBI for over fifteen years) with over 100 investigators, including 25 IPS officers. So, the agency will be managed by the same upper level officers from the existing system that clearly could not prevent terror attacks like the Mumbai attacks before. So, it seems fair to question

the utility of yet another agency staffed with the same people from the same system.

The NIA also enables the central government to constitute Special Courts for cases or classes of cases that may be notified – essentially cases covered under the Schedule. This is merely a continuation of the same ‘exceptional’ process whereby alleged terrorists are tried in Special Courts with little acceptable evidence, resulting in the kind of scenario that the case above dealt.

The rules to guide the Special Courts are ambiguous and not clearly mentioned in the NIA act. The interpretation of the Act actually contradicts the ICCPR (Article 14) when it denies the public trial of an offence and does not presume an accused to be innocent until proved guilty according. The Act also does not make clear if the accused can seek legal aid. This is going to lead to a Kasab-like scenario where an accused would be facing serious difficulties in securing his basic human right to be represented legally in a fair way, due to the radical approach of the society as well as the presumption that he has committed the offence.

So even though a national act is required and the NIA has teeth, its loopholes cannot be overlooked and there is need to brainstorm more on certain aspects of the Act and amend it accordingly.

## **X. Recommended Steps**

National Security Legislation is not just a question of definition of crimes or new patterns of criminal conduct and the prescription of penalties. It relates to the entire system, institutional structures and processes that are required to prevent and penalise such crimes, to preserve order, and secure the sphere of governance. The mounting failure on these counts is clear evidence that the system has deficiencies – and this should be sufficient grounds for a pragmatic and comprehensive reassessment.

Defining – and perhaps constantly redefining – possible legislative solutions to our present predicament will demand enormous sagacity on the part of the nation’s collective leadership. It is neither possible nor the intent, here, to enumerate some simple solutions or preconceived formulae that will magically resolve all problems. A fair beginning can, however, be made if the areas that demand urgent legislative attention and reform are

reasonably and clearly identified.

- A comprehensive set of counter-terrorism laws, as well as laws to combat organized crime must be drafted and given a permanent place in our statute books. Terrorism and organized crime are not transient crises, but have emerged as stable long-term threats to national security, and it is delusional to believe that 'special' and temporary laws are adequate to deal with the problem. The proposed laws would need to take into account, at least, the following areas of concern:
  - A clear conceptualization and definition of the complex patterns of crime that constitute 'terrorism' and 'organised crime.' It is crucial, here, to bear in mind that these are unique categories of criminal behaviour. While the actions – murder, intimidation, extortion, possession and use of illegal arms, etc. – that terrorists and organized criminal gangs carry out may be separately covered by existing laws, their character and context is fundamentally transformed by the element of massive, often transnationally co-ordinated activities. The threat these activities constitute, and the damage they inflict, is incalculably greater than any pattern of individual criminal activity – the whole, to borrow the gestaltist principle, is greater than the simple sum of its parts. These threats can only be contained if this is explicitly recognized, and legislation targets not only the executioners of terrorist action, but the entire network of support that makes such action possible.
  - The transfer and use of illegal revenues is the lifeblood of both terrorism and organized crime, and stringent laws must be devised to deprive criminal and subversive groupings of funds. This will require the implementation of harsh penalties on illegal transfers and money laundering, as well as the criminalization of a range of economic offences, including the use of such resources in legitimate businesses.
  - The activities of the 'fellow travellers of terrorism' must also be brought under scrutiny. This includes a range of front organisations, political actors, non-governmental organisations, businesses, etc., who provide the needed 'overground' support

that makes the 'underground' activities of extremists possible.

- The framework of counter-terrorism policy must be clearly articulated. This is not just a question for the political executive to determine, some limits of law must be placed on what is or is not permissible. Elected governments have in the past & made every principle of rule of law and constitutional governance negotiable under threat of terror. Statutory limits must now be placed on how much governments can actually 'put on the table' or 'negotiate' in such situations. The present system has created a structure of incentives that actually reward terrorists and extremists. This will have to be dismantled. Those who intercede with terrorists on the government's behalf must also be statutorily prohibited from any negotiations or commitments that would require constitutional changes. Such changes are an exclusive prerogative of Parliament and cannot be offered or discussed by any emissary of government without prior Parliamentary approval.
- Existing 'surrender' policies must also be brought under statutory review. Current practices have created more problems than they have solved. There must be some limitations on the 'rewards' and incentives that attach to the surrender of terrorists, to amnesty or dropping of prosecution for criminal offences against those who surrender, etc., and practices must be brought in line with the principles of the rule of law.
- There is now a strong international mandate for effective laws against terrorism, and this includes various United Nations resolutions that impose a duty on all member states to legislate effectively to control the activities of terrorists and their support organizations. It is now time to bring Indian laws into conformity with this mandate, and also to establish efficient structures of international co-operation and exchange of intelligence to counter the international threats and networks of terrorists and organized crime actors.
- The burgeoning wave of terrorism that is sweeping across the country – and indeed, the entire world – demands a suitable, coherent and comprehensive 'use of force' doctrine. It must be

clear that the ideas and orientation that were devised to deal with civil riots and transient political violence, are entirely inadequate to confront the scale, intensity and character of contemporary terrorist violence. As the lethality and the linkages of terrorist groups grow, this orientation will become more and more a hindrance to a co-ordinated and effective response.

- Terrorism and low intensity warfare have imposed new structural challenges on law enforcement that we are yet to accommodate even at a conceptual level. Our police and paramilitary forces continue to operate under mandates and legal provisions drafted by the British colonial government, and these have, at best, been tinkered with after Independence. The Evidence Act is another anachronism in need of urgent amendment, and must swiftly incorporate the use of emerging technologies and devices in the prosecution of crime.
- Although low intensity wars and widespread terrorism have ravaged many parts of the country for decades now, these conflicts are still conceived of by the national leadership and the so-called 'intelligentsia' as 'non-military threats', and an ill-equipped Home Ministry is required to deal with them. The entire orientation to low intensity conflicts is of 'emergency deployment' – stop-gap arrangements to deal with what are still thought of as transient emergencies. The result is that the Army is repeatedly called out in these conflicts, supposedly to 'aid civil authority'. The fact is, neither the police nor the army, by virtue of their basic orientation and training, is properly equipped to handle these crises. In view of the future threat potential of low intensity wars, it is crucial that a radical reformation of internal security forces be initiated, creating the skills, knowledge, attitudes and infrastructure necessary to confront this danger, and possibly raising entirely new forces to grapple with this specific hazard.
- The parameters within which each agency of government must respond to such challenges need to be clearly assessed, and the powers, the range of extraordinary actions permitted in these situations, and the applicable legal criteria and context of

evaluation of these actions - whether these are the same as those applicable in peacetime or are to be akin to articles of war, or are to be redefined in terms of the new category of 'low intensity wars' – have to be clearly determined and suitably legislated. In the absence of such legislative intervention, enforcement agencies and security forces will continue to fight with their hands tied behind their backs – and this situation is not only entirely unacceptable, it is suicidal.

- The legislative framework must provide for the suppression and containment of subversive and extremist activities by religious institutions and organizations. The present system has made a 'holy cow' of any group or organization that claims religious inspiration or affiliation, virtually placing these outside the bounds of the law. While Constitutional freedoms, including the freedom of belief, must be vigorously protected, the abuse of such freedoms for activities and ends that lie outside the intent and objectives of these Constitutional provisions must be punished with equal vigour. This will be something of a tightrope, but it has to be walked.
- Existing provisions and penalties on mass communal violence are also far from sufficient. The record of convictions for major riots in this country is abysmal. Even where thousands have been killed – as in 1984 – there have been virtually no convictions. This is not just a matter of 'political will', but is, in fact, evidence that existing laws are insufficient. Current provisions look upon the riot as an individual transgression. There is no legal instrument available to contain the processes of violent religious mobilization and engineered mass riots. Worse, where political and state collusion are a fact – as they inevitably have been in most recent cases of mass rioting – there must be some overriding legislation that initiates mandatory processes of prosecution and extraordinary penalties.
- Border management and the illegal movement of populations across international borders is another problem that has been neglected for decades in search of a 'consensus' that will never be found. In the interim, the demographic destabilization that has taken place, particularly in India's Northeast, has already resulted in enormous

violence, and threatens to acquire proportions that are far more dangerous to the nation's security and integrity than any existing threat. This is, again, an area that demands immediate legislative attention and the imposition of statutory obligations on governments to prevent and punish such illegal movements of populations.

The very first imperative of an effective policy on internal security, consequently, requires the definition of the basic principles on which all action and policy is to be constructed. No such principles are reflected in our present policies, and there is little evidence to suggest that they exist. Once defined, these principles must be strictly adhered to, circumscribing the range and content of actions and negotiations that any government or official may engage in with regard to, for instance, terrorists or organized crime syndicates, or in situations of crisis generated by the actions of such agents of disorder. Our responses to terrorism in the past have not been reality-based. The Indian state must start educating itself on how it is to tackle individuals and groups trying to destroy it. And it must learn how to arm and protect those who put their lives at stake in the defense of India's unity and integrity.

## **Conclusion**

In the light of the aforementioned submissions and analysis, it is evident that once the realization dawns that terrorism has become a mutant of war, then the methodology of state reaction becomes much simpler. All the panoply of options and policies that would normally come into play during a regular war needs to be considered here—keeping in mind always that terrorism has to be fought much more through the mind than mere physical threat or persuasion. Thus, a strong media policy is as important as equipping the armed forces with weapons and technology that is suitable for anti-terrorist operations. Our responses to terrorism in the past have not been reality-based. The Indian state must start educating itself on how it is to tackle individuals and groups trying to destroy it. And it must learn how to arm and protect those who put their lives at stake in the defense of India's unity and integrity. This demands a massive and unprecedented effort, one that has to be exerted within a timeframe that grows shorter by the day if it is to have a hope of success. And finally, India being a democratic country has strong democratic norms, any

solution to terrorism through laws and systems have to be within the framework of constitutionalism, rule of law and protection of human rights norms and standards.





# Role of Education in Preventing Terrorism through Creation of Awareness and Educating People

*Prof. J.S. Rajput\**

*“I learned from my illiterate but wise mother that all rights to be deserved and preserved come from duty well done. Thus the very right to live accrues to us when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define duties of man and women and correlate every right to some corresponding duty to be first performed”.*

*Mahatma Gandhi*

## The Context

The progress and development of the human race on earth has been a continuous and evolving process that always moves ahead. During the last couple of centuries, there is so much to be recalled to be happy about: end of slavery, rejection of apartheid, death of colonialism, great scientific discoveries including man’s landing on the moon, deep human access in the secrets of nature; and this list can indeed be very long. Systems of governance also changed with times. Democracy was visualized as the best alternative that would bring in dignity, self-respect and equality of opportunity even to the most deprived, exploited and marginalized in the society. Though a global phenomenon, these aspirations are comprehensively included in the Preamble of the Constitution of India which promises to secure to all its citizens “JUSTICE; social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALTY of status and of opportunity; and to promote amongst them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation”. There could hardly be any statement that best summarized the hopes and expectations of the thinkers and

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intellectuals on one hand and of the suffering masses on the other. The Constitution of India has explicit provisions on fundamental rights but had nothing initially on the fundamental duties. It was drafted and finalized by persons of exemplary sacrifice and devotion to the nation. They had followed noble ideals to liberate the country, promote national integration and communal harmony, secularism and the preservation of the rich culture and heritage of India. They presumed these as basic values initially nurtured by family, tradition and the community. These were to be internalized by every citizen. In fact they found the fundamental duties as an integral part of life. It was presumed that these were being covered under the very Preamble of the Constitution. However, the trends and practices that followed in the subsequent two-three decades clearly established the need for an explicit amendment in the Constitution of India in 1976 to include fundamental duties. It has to be viewed as a serious initiative to augment the struggle for giving human rights to each and every individual, irrespective of his/her position in the socio-economic and cultural hierarchy. It is clear from the contents of Article 51 (A):

It shall be the duty of every citizen of India -

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of

inquiry and reform;

- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

On 12<sup>th</sup> December 2002 the following was added after (j) under 86<sup>th</sup> constitution amendment

- (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”

A perusal of these would, once again, establish the organic relationship between fundamental rights and fundamental duties. It is well established that the traditional Indian society is duty and sacrifice oriented. The joint family system, the village level cohesion and community fellowship are some of the traditional examples of the duty-orientation of Indian society that could be seen in every nook and corner of the country. It is also a fact that Indian society, because of various factors and reasons, got embroiled into practices that created segregations of various types. What followed as a consequence were exploitation, neglect and humiliation of a very large section of the society. The caste system deprived generation after generation of their basic human rights for ages. The Constitution took note of the rights of such groups and made provisions for abolition of abhorrent practices and for prevention of exploitative practices and traditions. It also made clear and effective provisions for positive discriminations to empower groups of people to assert their rights and avail of the same.

In the beginning of the 21<sup>st</sup> century, the global village is a universally insecure habitation. Think of 9/11 and one could enlist umpteen instances of insane human killings. While the world was worrying about the ever-increasing nuclear weaponry that could destroy the planet several times, fundamentalism and terrorism have opened another threat of disastrous magnitude. Can any one ignore the gross violation of human rights that is happening in countries like Iraq, Afghanistan, Pakistan, Nepal, Bosnia, Palestine and several other countries? It is violence, it is retaliation by state and external agencies that has deprived millions of their basic human rights. The Naxalite violence that has already spread to over one-third of all the districts of India is no small threat in the realm of terrorism.

The world needs a culture of peace. Its multi-dimensionality was illustrated by Martin Luther King Jr. when he said “Peace is not only the absence of war but the presence of justice and brotherhood”. The present position is that no family, no nation can live in peace unless the neighbouring families and other nations of the worlds are also living in peace. This is an era of connectivity and, hence, mutual dependence. Indian thought is very clear on how it can be achieved – no happiness, joy of life or peaceful existence can be enjoyed unless one achieves ‘peace within’! The need to internalize the concepts of Ahimsa, universal brotherhood, compassion, service to others are generally lost in an environment of visible world-wide erosion of social and moral values in the present context. The transgression of the eternal human values can happen only at the cost of the rights of others or at the cost of damaging the man-nature relationship. Violence is bound to be the outcome in some form or the other. A climate of peace can be created only when it is accepted as a shared agenda and all concerned agree to strive together to achieve it.

The seeds of moral orientations are sown initially at home by the parents, family and the immediate community. Gradually children begin to observe ‘how far others are practicing what they preach to them’! The schools comes next. Here again the practices and the models that teachers put before them make greater impact than what is ‘taught’ to them on a routine basis on ‘how to become good individuals and citizens’! As they grow up, they become keen observers of the ‘degeneration of social and moral values in the society’ (O.S. Dewal; 2008) all around and particularly amongst those who were supposed to be role models or even icons for them. Such a background becomes conducive to get attracted towards a value-less conduct and young persons could easily fall prey to vested interests that thrive on exploitation of the innocent and gullible and indulge in violence and terrorism of varied nature. These are also the main causes of violence that one faces and witnesses in everyday life. A peace loving society that is living a valuebased community life and is ever alert to the changes that take place all around as a rule of nature shall never produce violence and hence could be free from fear. Even that has limitations. No society can remain in peace in isolation to others! It is a global village in which all are neighbours; whether they like it or not. Consequently, everyone has to learn to be ‘neighbourly’ to everyone else.

If that be so, no transgression of human rights would be possible.

What are the major factors that a common person comprehends about the expanding dread of terrorism? What makes young boys fall for the terrorists? How are they able to recruit them and prepare them to become suicide bombers? How do they generate and spread communal frenzy and create violence of the most obnoxious variety? While scholars and researchers are obviously busy analyzing the socio-economic, ethnic and cultural contributing factors, for the common person it is mere “exploitation of ignorance by the crafty, wily and the value-deprived”. Terrorism is unscrupulous exploitation of religion, poverty and ignorance. It shall continue to flourish so long ignorance and illiteracy submerges reason, logic and human values. Terrorism is being related to religions which is the harrowing trend and has already caused irreparable damage to the thread of social harmony and religious amity in multireligious countries. India has suffered terrorism of various varieties for decades together. It comes both from religious fundamentalists and also from the blind followers of certain discredited ideological moorings; the Naxalites. They mostly net the ignorant, deprived and socially neglected. Of course their leadership has the support of the conservative clergy and a certain set of intellectuals still adhering to failed ideological loyalties. Misinterpretations of religious practices and principles by the insecure clergy influence the gullible easily. They do not hesitate to convert young boys in their early teens as human bombs. The systemic exploitation of natural resources by vested interests supported by the corrupt in the state systems has consistently contributed in generating the right climate for Naxalites and Maoists.

### **Education, Tensions and Sins**

What facilitates the access of the terrorists to young persons and the masses? It is their poverty, unemployment, the vice-like grip of the clergy and above all, their ignorance and inability to see through the designs of the vested interests. .When it comes to ignorance, education must come in full force in the 21<sup>st</sup> century. It should have the boldness to include in its curriculum the essence of secularism which is the prime requisite for “learning to live together and work together”. In a secular society, interpretations of secularism need to present with all the sensitivity it deserves in a pluralistic society. Religion is a reality. The Indian society is religious and, in no way, it comes in contradiction to the Indian state

being secular. Those who understand Indian tradition and culture would accept it unhesitatingly that a truly religious person would necessarily be secular. Only such a person would evolve to see goodness in all religions. He would be most suited to highlight the eternal commonalities of all religions and the singularity of the highest objective of all religions. Such a person would be in peace with others as he would be in peace with himself. This comes out very interestingly in one of the conversations that Gandhiji had with Sir E. Stanley Jones. (Gangrade, 2001)

**Stanley Jones:** You are the leading Hindu of India. What would you say to me as a Christian, as to what Christians should do to make Christianity more naturalized in India – not a foreign thing, identified with a foreign government and a foreign civilization, but a part of the national life of India and contribute its power to India's uplift and moral change?

**M.K. Gandhi:** First, I would suggest that all of you Christians, missionaries must begin to live like Jesus Christ

Second, that you practice your religion without adulterating it or toning it down

Third, that you emphasize love and make it your working force, for love is central in Christianity

Fourth, that you study the non-Christian religions more sympathetically to find out the good that is in them to have a more sympathetic approach towards people

Obviously, this analysis is universally applicable to all the adherents of their respective religions. It would benefit everyone who, following these four, gets converted to his/her own religion! When that happens, there is no scope left for any ill will against neither any religion nor any individual. In the absence of illwill, biases and prejudices, the vacant space has to be, naturally, occupied with love, brotherhood and understanding.

The present position is that terrorism and fundamentalism are often being related to one or the other religions. Basically, it is also being understood that a person becomes a religious fanatic or a fundamentalist only because his upbringing deprives him of the right education and the true realities of his/her own religion. This could be because of ignorance of the same in the immediate environment, a planned strategy by the set

of clerics to sustain their hegemony that survives on ignorance, a well thought out strategy to indoctrinate young boys and girls during the initial tender and sensitive years. Examples of all these categories are before the nations of the world. Violence in Sri Lanka, Iraq, Bosnia, and Naxal inflected districts of India has certainly different motivational factors behind it. It can however be safely stated that essentially it all arises due to the lack of education in eternal human values, proper understanding of ones own traditions, practices and cultures and , of course, falling prey to vested interests.

Why has there been such an erosion of human values. The world has become an insecure place for practically every one, even the mightiest, as was evidenced by 9/11. When developing nations should be taking care of the hungry and malnourished, they are spending huge amounts on security and defense preparedness! In certain cases, internal security requires more attention than the external threat. Where has the world faltered? While annihilating colonialism, apartheid and making sincere efforts to do away with caste and racial discriminations, did the global leadership ignore certain basic essentials in the process of development and growth? Has the content and process of education been deficient on crucial counts to bring the world to the tensions that it is suffering at this stage? These tensions have been identified in the Report to UNESCO of the International Commission on Education for the Twenty-first Century entitled "Learning: The Treasure Within" (UNESCO, 1996) and include :

- The tension between the global and the local
- The tension between the universal and the individual
- The tension between tradition and modernity
- The tension between long-term and short-term considerations
- The tension between the need for competition and concern for equality
- The tension between extraordinary expansion of knowledge and human being's capacity to assimilate it
- The tension between the spiritual and the material.

The above were identified in 1996 and have definitely a much higher measure of magnitude at the present juncture than any evidence of diminishing of the tensions even in a single category. Examine these in

the light of what Gandhi had written in 1925, on what he called the seven sins:

- Politics without principle
- Pleasure without conscience
- Commerce without ethics
- Knowledge without character
- Science without humanity
- Wealth without work
- Worship without sacrifice

If the education process was geared to take note of the seven sins that Gandhiji had identified much earlier, the world today would not have been pitted face to face with the seven tensions. These are issues and concerns that are timeless. These persist because of certain well known and well understood inherent weaknesses of human kind that are, once again, universal and independent of region, caste, creed or religion. If one sits to examine the curriculum of universal elementary education, is it possible to ignore the fact that the tensions and sins mentioned above must constitute the core of essential human concerns in the globalized world. So long the seven sins are continued to be committed, the seven tensions shall continue to rise in the same proportion. The first major step is to scrutinize the pace of universal and eternal human values in the comprehensive curriculum of teaching and learning in schools and institutions. Now, when the source of learning is no more mainly confined to the family and the schools, several other sources also come in the picture. Media, both electronic and print, has totally absolved itself of social obligations and is insensitive even to the requirements of children. In an examination-oriented system, the situation becomes more acute as little time is made available in schools and other institutions to inculcate and nurture values, ethics and morals. This deserves a detailed analysis and consideration.

Delivering the Convocation Address to fresh graduates of the Mysore University on December 16th, 1962 Professor D.S. Kothari remarked: "The mention of atomic age immediately calls to our minds the unprecedented peril, both in depth and extent, which faces mankind in the shape of a possible misuse, deliberate or accidental, of nuclear



knowledge. Indeed, nothing less than civilization and human survival are at stake. If this simple fact is not widely apparent and forcefully realized as it ought to be, it is largely because there has not been enough serious and sustained effort to inform us about it.” (Kothari, 2000) At that stage eminent scientists were concerned about the dreaded possibility of the extinction of human species as a consequence of struggles for political authority and the unquenchable urge for economic hegemony. The Cuban crisis was fresh in the minds of people when professor Kothari delivered the Convocation Address in Gujarat in which he goes on to elaborate things further: “The balance of terror has to be replaced by common-links of cooperation and common endeavour in the pursuit of high ideals and goals. The present unfortunate and tragic situation is essentially a reflection of the widening gap between rapidly expanding scientific and technological knowledge on one hand and political wisdom, statesmanship and ethical values on the other. Science and spirituality or ‘atom’ and non-violence are not in balance. It is the imbalance that mankind must seek to redress.”

And this imbalance, perceived over half a century ago, is now a dreadful reality. Fundamentalism and terrorism were not so frequently seen in usage at that stage but the decline in value systems had already begun to show its ugly face. Never before mankind had so much of knowledge and wisdom to understand, explore and utilize for its own benefit than the secrets of nature. Never before were the conditions so conducive for making contacts, continuing dialogues and rendering humanitarian help at any point of the globe as is available to mankind today. All this has been possible through the sustained endeavour that humankind had put in exploring the forces of nature for several millennia. It is another fact that never before there was so much of hunger, poverty, violence and bigotry as of today. Never before, fundamentalism was such a serious threat as of today! And it is so in spite of the fact that now it is possible that every child could be given the level of nourishment needed, global distribution system can be put to practice. But this is not happening. The basic fundamental right of every human being born on planet earth to get food, cloth and shelter is being denied by those who are supposed to be the trustees of the future generations. In one of the *hadith*, the Prophet said “The son of Adam has basic rights on three things, a house to live in, a piece of cloth to cover his body, a loaf of bread and water” (Akbar; 2009). One could quote such prescriptions from every civilization

and every religion. That this knowledge and awareness has remained a sealed book for all these years is a contributing factor for the suffering of the millions even in the 21<sup>st</sup> century. One must reflect back on the last century and visualize the glorious efforts to expand education to everyone; to enable them to know what is their due and how they are not only being deprived of their share but in the process are also being exploited, humiliated and kept away from the light of education, knowledge and learning. Masses were never allowed to have access to education and learning. In some places, it was caste system, elsewhere the colour of the skin or even royal claims to divinity and the dictates that flowed from the exalted ones! The contemporary times were well articulated by Dr. Radhakrishnan: "If there is any phenomenon which is characteristic of our times, it is mingling of people, races, culture and religions. Never before has such a meeting taken place in the history of our world" (Radhakrishnan, 1968). In such an intermingling, there can be no place for prejudices based on ethnicity, religion, race or any other count. The situation once again highlights the role of education, educational institutions and the process of teaching and learning

### **In Schools and Colleges**

It is the schools and colleges in countries like India where practically every classroom is a multireligious congregation and same applies to the set of teachers in any particular establishment. Essentially the teacher, and more particularly the teacher trainer, could play a critical role in imparting education that would prepare "soldiers of communal harmony and human values".

The 1986 National Policy on Education, revised in 1992 (NPE 1986/92) very clearly noted "the growing concern over the erosion of essential values and an increasing cynicism in the society". As expected it emphasized the need for curricular changes to make education 'a forceful tool for the cultivation of social and moral values'. It went ahead to plead further: "In our culturally plural society, education should foster universal and eternal values, oriented towards the unity and integration of our people. Such value education should help eliminate obscurantism, religious fanaticism, violence, superstition and fatalism". The National Council for Teacher Education (NCTE) developed a curriculum framework for teacher education in 1998 (NCTE, 1998) and summarized the essence of the tasks before the teacher education institutions in the following words:

“Increasing delinquency, violence, terrorism and fissiparous tendencies and use of inappropriate means to get one’s ends served are threats to national integration and social cohesion. Democracy, violence and terrorism cannot coexist. Education has to develop a peace-loving personality and the programme of teacher education has to contribute in this regard.”

This was the need of the times and also a chance to link education to Indian ethos, values, heritage and culture, the essential ingredient to perceive a model of national education. The essential spirit of the policy recommendation found a forceful endorsement in the 86<sup>th</sup> Report of the Department-Related Parliamentary Standing Committee for the Ministry of Human Resources Development (Value Education, 1999). This was a report on value education and was submitted to both the Houses of Parliament of India on February 26, 1999. As per the standard practice it was passed on to the concerned ministry for implementation with the authority of the Parliament of India behind it.

Two of the recommendations pertained to values and religions in very clear terms. It identified Truth (Satya), Righteous Conduct (Dharma), Peace (Shanti), Love (Prema) and Non-violence (Ahimsa) as the universal values which could become the foundations of education programmes. The Committee also emphasized that in view of the diversities of all perceptible types in the country, young persons must imbibe national values. They should be familiar with the history of India’s freedom struggle, cultural heritage, constitutional obligations and the features comprising our national identity. The most prominent and ‘bold’ recommendation was concerning religion. The Committee went ahead with the following:

“Another aspect that must be given some thought is religion, which is the most misused and misunderstood concept. The process of making the students acquainted with the basics of all religions, the values inherent therein and also a comparative study of philosophy of all religions should begin at the middle stage in schools and continue up to the university level. Students have to be made aware that that the basic concept behind every religion is common, only the practices differ. Even if there are differences of opinion in certain areas, people have to learn to coexist and carry no hatred against any religion.”

The process of the renewal of the school curriculum completed in the year 2000 (NCFSE, 2000) seriously considered the above-mentioned

recommendations as an expression of the continuity of India's heritage of acceptance of diversity, which emanated out of the ancient Indian storehouse of scholarship knowledge and wisdom. In a world torn asunder practically every day due to religious fanaticism and terrorism, the value of non-aggression has to become the key concept spread over the entire process of teaching and learning. Whatever be the other reasons and causes, the two-nation theory that led to the bleeding partition of India was certainly an outcome of lack of mutual trust and absence of true understanding amongst the two major communities of India divided on religious lines. If only the human values common to both the religions had been internalized across the board, the politicians would not have been allowed to play that disastrous game. No further justification would be needed in the current times to strive hard to let all the young persons know the basics of all the religions and develop mutual respect. This alone can lead to reestablishing the much needed social cordiality and religious harmony in India. This could be achieved only when the citizens are prepared with an attitude to not only strive to do 'good' but also remain ever alert to work and suffer for 'good'. Their endeavour must always aim to achieve the most sought after: *Satyam, Shivam Sundaram*; Truth, Beauty and Goodness. Help comes in achieving this attitudinal transformation from the inheritance of history, culture and customs. help comes from the inherited traditions, scriptures, epics and literature, the value of which, despite planned efforts to demolish it, is universally recognized and realized. Such an education cannot be organized except on a "religious basis". While pleading for such an education, C. Rajagoplachari wrote: "To misunderstand the 'secularity' to which people think we are pledged, and to treat religion as untouchable is one of the many unfortunate follies our government has fallen into. It is not impossible, or even very difficult, to deal with and include in a nation wide effort to make men truly religious, each in the way shown by his or her own religion, and add to it a spirit of understanding and respect for other people's religion and way of life". In continuation, this outstanding statesman- cum- scholar gives an advice in terms a basic principle: "The conclusion of the matter as I see it is that parliamentary democracy will be a waste of expense and produce no good unless this true education of the people is undertaken by a general consensus among all statesmen and politicians". (Rajagoplachari, 1978)

The world of today is sick as it suffers violence, bloodshed, terrorism, distrust and bigotry practically everywhere and at every moment. The world of tomorrow needs a healing touch and a curative balm to put it back on the health track. The quintessence of ancient Indian culture has survived all possible onslaughts over the ages but has survived as it accepts unbreakable unity and the universality of all human beings. In terms of values it can be put in five inter-related ideals that find consistent mention in practically all the epics and scriptures that Ancient Indian seekers of the ultimate truth have presented to the humanity. Conflicts, strife, wars, battles and violence occur at various intervals, mostly due to ignorance, ego and misinterpretations. The five ideals mentioned earlier that survive eternally: Truth (Satya), Dharma (Righteous conduct), Peace (Shanti), Love (Prema) and Non-violence (Ahimsa) are acceptable in every society, faith and religion. These could be expressed in various ways but the essence remains unchanged. Those who internalize these will find equal substance in every religion and faith, an essential requirement for the very survival of the planet earth and the existence of humanity on it. It is a great irony of the present times that religions, which actually should be leading towards social cohesion and religious harmony, are being used to achieve just the opposite. India's age-old wisdom very clearly predicts the way out: "Samavaya eva Sadhuh – Concord alone is correct and proper". This wisdom was not confined only for discourses and discussions amongst the learned scholars but was put to practice as a way of life at each stage.

Once it is accepted that there is a divine spark and limitless potential in every individual irrespective of caste, colour, creed or religion, there shall be no place for aggression, fundamentalism and, hence, violence and terrorism. The human ingenuity would be in a position to devote itself with greater commitment and devotion to further its quest for the search of truth in order to make life better for his fellow human beings. A.P.J. Abdul Kalam (What can I give You, 2006) recalls this aspect of the Indian culture in an universally comprehensible manner, recalling the advice of Gandhiji's mother: "Son, in your entire life if you can save or better someone's life, your birth as a human being and your life is a success. You have the blessings of the Almighty". It enlightens the path in search of solutions to the problems of humanity.

## **From Violence to Peace**

It was in 1900 that Gandhiji put down his ideas of the emerging world and what approach would suit India if it were to save itself from the degeneration of human values and norms. These published as *Hind Swaraj* created world wide interest, appreciation and even ridicule. Gandhi was only forty years of age at that time. The small compilation with heavy, pragmatic and prophetic comprehension of the socio-economic and cultural changes and their implications is being discussed even today in its centenary year. Gandhi himself said that his book: “teaches the gospel of love in place of clamour for hate. It replaces violence with self-sacrifice. It pits soul force against brute force”. In 1921 Gandhiji stated that *Hind Swaraj* sums up his philosophy of life. It is the essence of his life vision, a philosophy for human welfare. It was the philosophy of Sarvodaya that encompasses a dream, a blueprint and a road map in the march ahead to build violence-free world. And it was put on paper a hundred years ago. The world faced much violence even in the first half of the 20<sup>th</sup> century. Of the 70 million killed during the two world wars, half were women and children. Over 140,000 and 70,000 were massacred when human decisions to drop atomic bombs on Hiroshima and Nagasaki were executed. (Kanti Shah, 2009) What happened in the second half of the 20<sup>th</sup> century is probably a far darker side of the ‘progress and development’ that became the key words for the newly independent nations all around the globe. There was no let-off in the violence, exploitation, mutual distrust, bigotry and deceit. Over ten million people lost their lives in Vietnam, Korea, Laos, Cambodia, Afghanistan, Iraq, and Bosnia, India has experienced terrorist attacks in Jammu & Kashmir for several decades by now. Sri Lanka suffered internal strife of the worst nature severely for around two decades. Every nation and every national in every part of the globe now lives under a sense of persistent insecurity that began with the nuclear arms race and is now a permanent threat to the very survival of humanity on earth. And, secondly, who is not under threat of fundamentalists and terrorists? Obviously, the arms trade is flourishing. The US controls around 50% of the global arms trade. Even the poor and developing nations spend a very substantial part of their GDP on defense budget. In US, one out of every ten people live off charity which comes to about 25 million surviving on charity or state social security. Such provisions are not available

in poor and developing countries and millions around the globe sleep hungry every day.

Gandhiji consistently pleaded and practiced what he had envisioned in 1909 in the *Hind Swaraj* referred to above. Can any one deny the immense need for creating a society “founded on the philosophy of love and nonviolence holding high humane and cultural values”? Such a society would have to adhere to certain eternal values and love for each other and respect for each other and nature shall become internalized in the individual and social psyche. Consumerism leads to violence of varied varieties and has to be abjured. Education can make a visible difference if its content and pedagogy are kept in harmony with the changes in relevant sectors.

### **Task Ahead**

People have high hopes from education, which shall certainly get universalized in the first quarter of the 21<sup>st</sup> century if not earlier. The content of education and its pedagogy have to remain dynamic and flexible. Its suitability shall be determined by the pace of dynamism and capacity to anticipate issues and concerns of the people and the society. It would also be adjudged by its capacity to absorb the new and discard obsolete. The entire content shall have to be built around democratic values that must include the essence of democracy: sovereignty, socialism, secularism, justice, liberty, equality, fraternity, individual dignity, national integrity and the like.

The objective of countering violence and to eliminate the very roots of terrorism must be integrated in the process of education in a manner that it works both explicitly and implicitly. The content and process of teacher education and school education must prepare student teachers and students to imbibe democratic values and more particularly internalize the concept of secularism as practiced in India for over two millennia as a recorded historical fact. A sense of pride amongst the traditional practices that have encouraged social and religious amity deserves to be generated. Equally important is the need to discard every effort that creates a void amongst different set of communities and people. Programmes for people’s awareness could also be organized by schools and colleges with students take a leading part. Awareness generation materials play a very substantive role on such occasions. Empowerment issues, what good is being done

and what could be availed of if the right information is made available to the target group could also help substantially. Issues of exploitation of natural resources by the state is being propagated, and sometimes correctly, by certain terrorist groups in tribal areas to make the life of the community further harsh and hard, resulting in massacres and avoidable bloodshed. Here again, institutions and NGOs could use educated persons from the community and prepare them to let everyone know the real facts. Struggle for rights and against exploitation is a duty but before that, the acquaintance with the issue has to be perfect and based on facts.

Schools and teacher training institutions must have lessons like “Symphony of Human Rights and Duties” or “Eternal Human Values and Human Rights”. Activities and materials developed around these ideas would generate an understanding for values and that would include caring for the neighbour in the global village. Activities like the annual function could give a chunk of time for the presentation of items that convey the essence of the relationship between rights and duties. Both the teachers and teacher educators deserve some training in understanding how to decipher facts from fiction. Various human rights lobbies are doing wonderful work, often educating people in their rights and pointing out the exploitation to which they are being subjected to.

The UNESCO Report “Learning: The Treasure Within” explicitly recommends that children must be helped to let “them discover who they are. Only then they would be ready to put themselves in other people’s shoes and understand their religion, culture and practices. That would lead to the growth of an emphatic social bonding and would pay rich dividends in future life (Rajput J.S. 2006). Education now needs a thorough overhaul that would focus its objectives on creating a value-based society that honours the human rights of everyone and provides an environment of peace to ‘work together for global prosperity. Wars, it said, are won on the playfields of the educational institutions. Terrorism is the worst of the wars that has been against humanity and the eternal human values that represent the essential unity of the human race. The soldiers against it shall emerge from the classrooms fully equipped with unbeatable weapons of Truth, Peace, Nonviolence, Righteous Conduct and Love.



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# Economic Consequences of Terrorism in India's North East

*H.N. Das\**

Terrorists unleashed great violence and destruction in North East (NE) India during the second half of the twentieth century. Thousands of people have been killed all over NE in bomb blasts, grenade attacks and assassinations. Hundreds of crores of rupees worth of public and private property have been destroyed in these activities. This has affected the economy in several different ways. Families have been shattered due to death of earning members. Communities have been affected by the loss of markets and the disruption of communication. Economic activities were stunted by erosion of investor confidence. The entire growth process has been slow in the NE in the past three decades mainly because of terrorist violence and destruction. However, it is also to be noted that this terrorism had its genesis in the agitations over economic backwardness and the fear of loss of ethnic identity.<sup>1</sup>

In this essay it is proposed to examine the ways in which the economy of NE has been affected by terrorism. The analysis will be based mainly on the reports of incidents in the media.

The Nagas were the first to resort to terrorism. Their non-violent movement began in 1918, when they formed the Naga Club as a common platform for all Nagas to unite and to express their grievances to the British. This Naga Club used to periodically demand separation of Naga inhabited areas from India. In 1929 the Naga Club submitted a memorandum to the Simon Commission in which they demanded that the British India Government “leave us alone to determine for ourselves as in ancient times”.<sup>2</sup> The Nagas started becoming violent after they formed the Naga National Council (NNC) in 1946 under the leadership of A.Z. Phizo. The formation of NNC was on the basis of the following premise: “Nagas had no affinity with India whether racially, historically, politically,

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culturally, religiously or any otherwise. Therefore, Nagaland is not part of Indian territory neither are Nagas Indians”<sup>3</sup>. Phizo inspired hundreds of youths to join NNC. He got the support and active help of Charles R. Pawsey ICS, the last British Deputy Commissioner of the erstwhile Naga Hills district of Assam. Soon after its formation NNC went underground and started terrorist activities. Meanwhile Phizo fled away and took political asylum in the United Kingdom. Later the Nagas formed the National Socialist Council of Nagaland (NSCN) which continued terrorism. NSCN got divided into two groups – the Khaplang group and the Isaac Muivah group. There is now a ceasefire agreement with the Government of India (GOI) but sporadic violence continues.

Since 1946 Naga terrorists have caused extensive damage to the region’s economy by resorting to violence and destruction in Nagaland, Assam and Manipur. During this period substantial funds for economic development have poured into the State of Nagaland from GOI. These funds have primarily benefited north Indian businessmen and contractors, Bangladeshi and Bihari labourers, Naga politicians and Naga and non-Naga bureaucrats and technocrats. Through them substantial portions of money went to the terrorists.<sup>4</sup> The general impression is that the percentage of fund actually received by those for whom the schemes and programmes were intended is rather small.

Funds directed to the other states of NE from New Delhi in recent years are also substantial. A media report makes the following shocking statement: “Surprisingly, shortage of funds is not the root cause of poverty in the region. The expenditure of [the] eight North East states is almost Rupees 30,000 crore a year – which means Rupees 10,000 per person per year is spent annually. In states like Arunachal Pradesh, Nagaland and Manipur more than 80 percent of the amount comes from New Delhi. According to some estimate, as high [a sum] as Rupees 20,000 crore comes as a direct transfer from the Central Government to the North Eastern states.”<sup>5</sup> This report on the present situation is revealing. But the point that needs to be emphasized is that in the past when NE needed funds, New Delhi rarely helped. With the advent of terrorism, however, New Delhi started directing massive funds for development. These funds did not always reach the poor. Moreover, such ad hoc fund transfers failed to achieve cohesiveness of NE with the rest of India.

In Assam, almost two centuries of neglect and isolation, ever since

the British occupation of the Brahmaputra Valley in 1826, has produced a deep sense of ambivalence – there is resentment against mainstream India, but at the same time there is reluctance to abandon the Indian identity. After partition, Assam and NE got physically delinked from the rest of India. The only conduit which remained was the narrow 22-kilometre corridor through West Bengal. The rail link, hurriedly built after partition, has become the lifeline between NE and the Indian heartland. The geographical distance increased the feeling of isolation. A feeling of discrimination also emerged which fomented separatist movements and ultimately terrorism. The general feeling in NE is that its natural resources, particularly oil, has been continually extracted from this area and the region's rich forest wealth has been denuded for the benefit of the rest of India. But when a refinery or a gas cracker, based entirely on local natural resources, has to be built, New Delhi feels that NE is not suitable, or is unsafe as the region is too near the international borders.<sup>6</sup>

Within Assam, many ethnic groups, particularly the Bodos, seek to consolidate their own identity. Each of these groups feel discriminated by the ethnic Assamese. This led to the setting up of the Bodo Territorial Council beside the two Autonomous District Councils of Karbi Anglong and North Cachar Hills under the Sixth Schedule of the Indian Constitution. Recently, seven other councils for the Misings, Rabha-Hajongs, Sonowal-Kacharis, Thengal-Kacharis, Deuris, Barrack Valley tribes and Tiwas have also been set up. Ethnic trouble has led to the setting up of seven other Development Councils for the ethnic groups of Moran, Motok, Ahom, Chutia, Koch-Rajbangshi, Tea Tribes and Gorkhas. Two more are being created for Amri Karbis and Sarania Kacharis. Hundreds of crores of rupees have been allocated to these councils. The allegation is that there is rampant corruption in these councils. The terrorists take advantage of this situation and force the council functionaries to disgorge substantial amounts of Government funds to the terrorist outfits. Therefore, neither has the political situation stabilized at the grass roots level nor has the economic conditions of tribal and ethnic groups improved. The situation is similar in the other states of NE. Exact figures are not available, but terrorism has affected the economy of all the states of NE.

Terrorism in NE is carried out through well organized and heavily

armed underground outfits. The United Liberation Front Asom (ULFA) is one such outfit. It had declared certain economic policies in conjunction with the objective of making Assam politically and economically independent. A booklet that ULFA circulated some years ago on Assam's tea industry is a revealing document – it sought to provide an idea of how the industry could 'help' in the economic regeneration of Assam. In the early 1990s, ULFA cadres had taken a group of tea planters through a maze of roads in Dibrugarh district to a remote and abandoned tea estate bungalow, avowedly for holding discussion on the subject. The planters were blindfolded. What transpired has not been officially divulged. But the 'invitation letter' to the tea planters said that economic development of Assam would be discussed.<sup>7</sup> This meeting resulted in extortion of more money from the planters.

In practice, however, except for a few Robin Hood-style adventures, ULFA has done nothing for the economic development of Assam. The organization's fellow travelers set up a few agricultural farms, but even these disappeared within a short time. On the other hand, ULFA has extorted substantial amounts of money from the tea barons as also from other industrial and business establishments in Assam. One of the tea companies listed an amount of Rs 1 crore on the balance sheet as security-related expenditure. The entire amount is believed to have been given to ULFA. Moreover, various sums of monies were talked about as ransom amounts paid for the release of kidnapped tea executives. In return for such huge payments most tea gardens earned comparative respite from terrorist attacks. Not a single day's works was lost because tea gardens were exempted from bandhs, etc. As far as physical violence is concerned, a number of cases have been reported. But it is believed that the number could have been several times more if payments had not been made to the terrorist organizations. The murder of Surendra Paul (brother of Lord Swaraj Paul) of the Assam Frontier Tea Company is an important tea industry related assassination. Paul was gunned down in upper Assam by ULFA for reportedly resisting their attempts at extortion.<sup>8</sup> He was also accused of discriminatory treatment against some of his Assamese employees.

It would be of interest to note that there have been some cases of collusion and collaboration by tea industry executives with ULFA. In the case of Tata Tea, for instance, the company's senior executives were alleged

to have travelled in a clandestine manner to meet ULFA cadres in Bangkok. Tata Tea is also said to have provided travel and medical expenses for ULFA's cultural secretary, Pranati Deka, during her pregnancy. Deka gave birth to her child in a Mumbai hospital, the expenses for which were paid by Tata Tea. The issue of a possible nexus between Tata Tea and ULFA generated much controversy, and certain arrests were made by the Government. It is generally opined that Tata Tea probably had to engineer linkages with ULFA under duress. But the episode highlights the considerable influence wielded by ULFA in upper Assam and in the tea industry. It is also interesting to note that nothing has been done by the Government to pursue the police case against Tata Tea.<sup>9</sup> Earlier the General Manager of Tata Tea had been kidnapped and kept in captivity for almost a year.

Other terrorist organizations, which were established later, have also been following ULFA's example of extortion by means of terror, threats, physical and mental violence and kidnappings. According to Nitin Gokhale, "audited accounts revealed that even companies such as Williamson Magor had paid over rupees one crore in 1994-95 and 1995-96 to the National Democratic Front of Bodoland..... smaller companies such as Bhergaon Tea Estate paid up to Rs. 25 lakh (it faced kidnappings twice in two years)."<sup>10</sup>

The oil sector too has been badly affected by terrorist activities. Oil was the target of the Assam movement launched by the All Assam Students' Union (AASU) in 1979. AASU's most significant slogan was "Tej dim, tel nidiu" (we will give blood, not oil). When the oil blockade was launched by AASU, New Delhi got rather worried because till the 1980s Assam supplied a substantial portion of India's oil requirement. The then Union Home Minister, Zail Singh, visited Assam in the wake of the oil blockade. During discussions with AASU, he made a special request to the leaders to lift the blockade. The manner in which he made his request seemed to imply that the students' organization could carry on with their agitation programmes, but they should lift the oil blockade because the national economy was getting hurt.<sup>11</sup>

An estimate prepared by a security agency will show the extent to which the oil industry has been affected by terrorism. In the past sixteen years, there have been 1681 bomb explosions in Assam, many of which affected oil installations. Oil India Ltd (OIL) and Oil and Natural Gas

Corporation (ONGC) lost over Rs.3500 crore in militant-related activities during the period. The oil industry is now reported to be seriously considering a proposal to convert the oil pipelines in Assam into explosion resistant pipelines.<sup>12</sup>

Meanwhile, the explosions continue and the industry is incurring huge losses. A report in the media indicated that OIL spends Rs.20 crore every year on security cover for its oil wells and other installations in Assam and that ONGC is reportedly going to raise a dedicated battalion of its own at an initial cost of Rs.40 crore in order to guard its installations in Assam. The battalion's upkeep will cost an additional Rs.20 crore per year.<sup>13</sup> Such expenditure impinges on the profits of these companies – money that would have otherwise gone to GOI's coffers.

In November 1990, the then Governor of Assam, Devi Das Thakur, in his report to the President of India, estimated that the amount extorted by ULFA, until the time of submitting the report, was more than Rs.400 crore.<sup>14</sup> Similar indications about the huge sums extracted by the other militant organizations are also available from media reports and from raids and seizures conducted by the army, police and paramilitary forces. Large sums of money are required to run terrorist organizations. ULFA's annual expenditure for running the headquarters' organization alone, excluding the cost of arms and ammunitions, food and clothes of its huge armed battalions, seem to exceed Rs.30 crore. The ULFA budget for 2001-02, for instance, presented at the ULFA general headquarters in Bhutan's Sukhni Basti on the 18<sup>th</sup> March 2001 gives a detailed breakup of expenditure on different items.<sup>15</sup> Today the expenditure must have gone up several fold.

The major portion of such funds seems to have come indirectly from government sources. Terrorists can easily blackmail corrupt officials because they know the illegal activities of such officials, as also those of unscrupulous businessmen. Such people pay up easily. One senior ULFA cadre, who was the quartermaster in charge of a camp, revealed during interrogation that 'officials' and other 'important functionaries' who had earlier been paying money to ULFA were still working in government in different capacities. He claimed that many of them are still paying money to the outfit. The cadre also spoke of a businessman from Nalbari, who was paying regular extortion money to the outfit.<sup>16</sup>

It is often remarked that GOI is the main source of funds for the



terrorist organizations in NE. It is also commonly believed that government, public sector and bank officials pay the terrorists from what they siphon off from provisions for development programmes and projects. Such funds also go to insurgents, in the same way, from out of allocations from the World Bank, the Asian Development Bank, the World Health Organization, the United Nations Development Programme and other multilateral and bilateral agencies. Officials pay up out of fear or as a result of threats, or because of blackmail. Rural development has been identified as a lucrative sector and it is estimated that as much as seventy per cent of all funds available to the Government of Assam (GOA) under this head is systematically siphoned off by ULFA and surrendered ULFA (SULFA), contractors, civil servants as well as members of the political executive. Sources estimate that 'of the total rupees 11.65 billion made available under this head [rural development] during the period 1992-93 to February 1998, less than rupees four billion went into legitimate schemes. There is little evidence of projects executed on the ground that supports the claim that even a fraction of this amount was spent as "legitimate" expenditure.'<sup>17</sup>

There are many cases of payment of Government funds directly to the terrorist outfits. A number of Block Development Officers and other officers of the Government have been arrested for payment of money to these outfits. The most glaring instance of an attempt at such payment was discovered by the police on April 2, 2009 when four youths were arrested along with Rs.1 crore in cash and some weapons on the Assam-Meghalaya border. Two of them were drivers. But the other two, Phajen Hojai and Bipul Kemprai, were members of the Jewel Garlosa faction of Dima Haram Daogah (DHDJ), popularly known as the Black Widow. DHDJ is probably the most dangerous and daring terrorist outfit. The youths confessed that they were taking the money for payment to DHDJ. The money had been earlier withdrawn from the Government Treasury at the instance of Mohit Hojai, Chief Executive Member of the North Cachar Hills Autonomous District Council and RH Khan, Joint Director of the Social Welfare Department. Both of them were arrested on May 30, 2009. Jewel Garlosa himself and his accomplice were arrested in Bangalore on June 1, 2009. GOI have handed over these two cases, as the first such cases, for investigation by the National Investigation Agency.

It is in this way that the national and state priorities for economic

development have been distorted – funds meant for development have been diverted for destructive and anti-social purposes. The gravity of the situation can be discerned from the statement of a former union minister for rural development, Venkaiah Naidu, who once reportedly warned that GOI would stop disbursing rural development funds to those states where the bulk of the funds go to the coffers of extremist outfits.<sup>18</sup>

Business people who are subjected to periodical illegitimate ‘taxation’ by the terrorists have resorted to the practice of making up for their losses – as a result of extortion – by creating artificial scarcities and consequently raising the prices of goods and commodities. The most affected by such illegitimate taxation are the people below the poverty line (BPL), who till recently formed 36.09 per cent of Assam’s population as against the all-India average of 26.10 per cent. There has been a revision of the BPL figure last year. What is important, however, is the fact that even the BPL people, including those living in remote areas, are periodically made to pay ‘goonda tax’ out of their meagre earnings. These include peons, menials, daily-wage earners and pan-bidi shopkeepers. This situation has led to further impoverishment of these people.

Under the pretext of controlling the movement of terrorists, a section of the police set up numerous checkpoints. In reality these double up as checkpoints for collecting large sums of money from truck drivers and such others. According to a past government estimate, there were as many as 184 such checkpoints in Assam at one point of time. A few years ago, several of these illegal checkpoints were demolished and the guilty police personnel involved in this illegal activity were transferred. Again these checkpoints have resurfaced and have actually proliferated. Extortion through checkpoints, especially in the case of truck drivers, has really become a nuisance. Many truck drivers refuse to come to Assam or to pass through Assam to go to the other NE states primarily for this reason. Some unload their cargo at the border which is then picked up by trucks from Assam. Such practices not only cause delay but have resulted in unjustified increases in the prices of essential commodities brought from outside the state. Unfortunately, such practices still continue.

There has also been a flight of capital from Assam. This is clear from the steadily declining credit-deposit ratio of banks and the diversion of surplus funds and earnings by industrial establishments of the state to units outside in the name of diversification. Some tea companies have

taken out surplus funds to units outside Assam. The credit-deposit ratio has declined from 50.20 per cent as on 31 December, 1991 to 31 per cent on 31 December, 2001 and 29.27 per cent in 2003. There has been some increase since then so that the ratio has become 50.48 percent by March, 2008. A committee appointed under the integrated rural development programme of GOI even found a flight of capital from rural to urban areas of Assam due to the threat posed by the terrorists. The committee also found that 'an upsurge in insurgency in Assam' was responsible for "practically no developmental activities in rural areas."<sup>19</sup>

The flight of capital is manifest in Siliguri's unbelievable growth in recent times at the expense of Guwahati and other towns in Assam from where a number of traders and businessmen have partially shifted. Taking away their capital stocks from Assam, these businessmen have set up shop in Siliguri. Consequently, West Bengal's tax collection is reported to be going up in Siliguri. Similarly, some industrial units from Assam are now shifting to Byrnihat area of Meghalaya due to threats particularly by the so-called syndicates of the Beltola area of Guwahati, many of which consist of SULFA or surrendered members of ULFA. These syndicates are extortion units, allegedly having official blessings, which levy 'goonda tax' from each commercial transaction and on every consignment of goods produced.

Large-scale destruction of public property-such as roads, bridges, buildings, schools, flora and fauna, factories, public and private vehicles-by different Bodo terrorist outfits have also had a telling effect on the economy. For quite some time, many Bodo-inhabited areas remained cut off and inaccessible due to destruction in the wake of violence following agitations by the All Bodo Students Union and the Bodo terrorist organizations such as the National Democratic Front of Bodoland (NDFB) and the Bodo Liberation Tigers (BLT). More than three lakh people were displaced and had to take shelter in refugee camps due to ethnic clashes in Bodo areas. There have been many instances of attempted ethnic cleansing. Some clashes have occurred as a result of psychological reaction due to forced stay for inordinately long periods in the refugee camps. These people were distraught because their houses were torched, their kins killed and their harvest destroyed. More importantly, their spirit was damaged beyond repair. The Bodos, Santhals, Koch-Rajbongshis and Bangladeshi Muslims suffered equally. There were periods when all

economic activities had ceased in certain areas.

Similar destructions have taken place in the districts of Karbi Anglong and North Cachar Hills, primarily due to similar problems created by Karbi and Dimasas terrorist organizations, as well as Naga terrorist organizations attempting to gain a foothold in the area in their quest for a greater Nagalim. It must also be mentioned that illegal tax collection by both factions of NSCN is organized and systematic. This applies to both Nagaland and Manipur. There is a virtual parallel economy in these two states. Almost everyone living in the areas under the influence of NSCN have to pay a certain percentage of earnings as illegal tax. Therefore, a portion of the development fund for Nagaland and Manipur go to the 'war-coffers' of NSCN. NSCN also get paid for each terrorist that they train for other outfits. That is why NSCN is called the "mother of all terrorist outfits".

In this connection one aspect of India's socio-economic structure needs attention. After the economic reform process was set in motion in the country in the 1990s, the rise of the Indian middle class has been accelerated. This class cannot be exactly defined, but can be known "culturally, through consumption patterns and psychographic."<sup>20</sup> They mainly belong to the services sector and have high disposable incomes.<sup>21</sup> The middle class in NE and Assam in particular, has benefited from money diverted from the allocations for development plans. This has been in the shape of bribes, kick backs and illegal siphoning off of plan money. In the past two decades, terrorism in Assam has added fuel to the general trend of bribery and corruption among the middle class. Financial gain from terrorism has further enriched a section of the middle class and also added to their numbers.

Middle class businessmen often take their cash away to places outside the state and invest it in New Delhi, Jaipur, Ajmer, Jodhpur, Kolkata, Siliguri, Bangalore and Mumbai. They spend conspicuously. The wealth of the middle class is reflected by the artificial boom in Guwahati as revealed by a survey conducted by the Federation of Industries and Commerce of the North Eastern Region (FINER) and a later report.<sup>22</sup> In Guwahati city alone, over seven hundred apartment buildings have come up in the period 1997-2001, involving an investment of Rs.1400 crores. Probably triple

that number have come up later. Thousands of other commercial and residential buildings have also been constructed. The economically better off people in Guwahati used to spend Rs.1.5 crore on 'eating out' in restaurants every month. That was in 2001. This figure has gone up substantially in recent years. This type of development has taken place in quite a few other towns in NE including Shillong, Silchar, Tinsukia, Aizwal and Kohima. It is true that a portion of the money has come from legal earnings; however, it is believed that the major portion of the spending has emanated from black money. A study by researchers of the New Delhi-based Institute for Conflict Management has revealed several ways in which funds have been diverted through corruption.<sup>23</sup> A series of articles in the media, particularly the *Telegraph*, showcased the interiors of residences where the affluent live in Guwahati city. The photographs accompanying the articles show elegant living rooms, kitchens and bedrooms. These photographs by S. H. Patgiri are quite revealing. Some SULFA members seem to have spent on conspicuous consumption the huge sums of subsidy given to them by the government as also the loans advanced to them by banks at the time of their surrender which were meant for their rehabilitation through self-employment. They are reported to be having a hand in every type of *economic* activity from which they raise a 'tax'. In a report in the Economic Times, the following facts have been revealed: "Security-related expenditure in the North East has been over rupees 100 crore annually from 2000-01 onwards. A 10 to 20 percent of leakage of development fund in some states goes to militants. Militants in Nagaland and Manipur levy illegal tax on all business operations. Every government employee pays a part of his salary to militants. Some militant outfits charge an oil tanker Rs. 3,000 per trip, followed by trucks carrying cooking gas cylinders at Rs. 2,000, and those carrying cement at Rs. 1,000. They charge a truck Rs. 7,000 and a tourist bus Rs. 12,000 annually as 'permit fee' to operate."

In the general elections held in Nagaland in March 2008, as many as 58 candidates were reported to be crorepati's. The figures were worked out jointly by a few NGOs and social activists in the "Nagaland Election Watch (NEW)" which has been described as "a first of its kind disclosure of criminal, financial and educational backgrounds of contestants."<sup>24</sup> In Meghalaya 27 candidates were reported to be crorepati in the general

elections held in March, 2008. In the general elections held in October, 2009, as many as 63 candidates were reported to be crorepatis in Arunachal Pradesh. One candidate declared his worth to be Rs.209 crore. These are small tribal states which were poor till recently in terms of per capita income and wealth. It would be interesting to know how many thousands of other people have become crorepatis out of money siphoned off by various means from Plan funds of the NE states. Most of these crorepaties live outside NE region. They pay the terrorist outfits in order to escape death and kidnapping.

The situation is uncannily similar in the other states of NE as well. In Manipur, for example, the terrorists have virtually stopped all economic activities in the evening hours. Between dusk and dawn, when the state takes a back seat, the terrorists take over. Beside the numerous bomb blasts, explosions and other destructive activities, they raise substantial amounts of money by devious means. Many Manipuri middle class families have temporarily shifted to places outside Manipur. The usual practice seems to be that the earning member remains behind while the others, especially the school and college-going children, live outside the state. In Guwahati there are several hundred such Manipuri families. A majority of Manipuri young men and women now prefer to study in colleges and universities outside the state.<sup>25</sup>

In Nagaland, although destruction of property as well as killings have gone down considerably after the ceasefire, except for occasional killings between the two factions of NSCN, extortion and 'tax collection' continue. These practices have been institutionalized. Rates of payment to the terrorist organizations are fixed and have to be made on a regular basis. No one can avoid such payment and no one is usually hurt unless there is a default in payment.

In Tripura, the situation has now become much better. The Tripura Government has been able to implement development work at tremendous speed and to control terrorism to a considerable extent. The cumulative annual rate of growth in Tripura is more than nine per cent. Even corruption and diversion of development funds have been controlled to a great extent by the enlightened government of the present Chief Minister, Manik Sarkar. If Tripura can steer clear of terrorist activities its growth

rate will further accelerate in the near future.

In Arunachal Pradesh and Meghalaya terrorism seem to be low. Therefore, the economic consequences of terrorism are still peripheral. In Mizoram, after the terrorist activities of 1960s, there has been a modicum of peace. Mizoram has become so peaceful that the Government is apprehending that it will miss out on New Delhi's largesse and packages. However, New Delhi has provided Mizoram a 'peace bonus', in order to allay such misgivings.

The only positive result of terrorism has been that GOI has now developed a proactive outlook towards NE. It is taking active steps to assist economic development of NE. For this purpose GOI has created the non-lapsable pool from out of ten per cent of the budget allocations of a number of ministries and departments of GOI. This fund is to be spent for NE. The pool is carried forward from year to year and is not allowed to lapse at the end of a particular financial year. Grants out of this fund are made to projects and schemes recommended by the State Governments of NE. This will hopefully improve the economic situation and reverse the feeling of neglect, discrimination and colonial exploitation. However, if diversion of money continues to insurgent outfits even these funds might dry up. No economic development can take place unless the misuse of such funds by politicians, bureaucrats, bank managers, contractors and their cohorts is stopped.

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# A Critique on the Issues and State Policy on the Naxal Menace in Contemporary India

*Om Prakash\**

## Abstract

*The Naxal movement in India has a history of nearly four decades. States having lopsided economic development and still poor in human development indicators are the worst affected one. The paper has attempted to focus on the issues such as: what are the central issues, this movement rooted in socio-economic structure but having a violent character; what should be the proper approach to tackle this problem from the perspective of governance; why this internal security problem need to be addressed on priority; what are the recent trends in Naxal movement in India; can the red terror be addressed merely as a law and order problem or a wider perspective is needed to look into the movement; and lastly what remedies to formulate as a policy guideline for the state, administrators and other agencies? The paper has also viewed the problem from a human rights perspective, where not merely the police, paramilitary personnel or Salwa Judum activists but also the Naxal groups have violated the basic tenets of right to live, natural rights and human right.*

*Key Words: Naxalism, Red terror, Human Rights, Violence.*

## Introduction

The Naxal movement trace its ideology to the Chinese leader Mao Tse Tung's idea of organized peasant rebellion, which rejects parliamentary democracy and believes in capturing political power through prolonged armed struggle based on guerrilla warfare by building up bases in rural and remote areas and transforming them first into guerrilla zones and then as liberated zones. The eventual objective is to install a Naxal/Maoist

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government. In Maoist thought, “political power comes from the barrel of the gun”, and the peasantry can be mobilized to undertake an armed struggle involving guerrilla warfare.

The term “Naxalism” originates from Naxalbari, a small village in West Bengal where Charu Majumdar, Kanu Sanyal and Jangam Santhal organized a violent uprising in 1967, trying to develop a revolutionary opposition against the official CPI(M) leadership. They organized the All India Coordination Committee of Communist Revolutionaries (AICCCR), and broke away from CPI(M). Uprisings were organized in several parts of the country. In 1969 AICCCR gave birth to the Communist Party of India (Marxist-Leninist). Practically all Naxalite groups trace their origin to the CPI(ML). However the Maoist Communist Centre (MCC) evolved out of the Dakshin Desh-group. MCC later fused with People’s War Group to form the Communist Party of India (Maoist).

### **British Policies in Colonial India**

The red terror which is gradually getting today an all India character is primarily a legacy of the colonial state in India. The Permanent Settlement of 1793 introduced by Lord Cornwallis, then the Governor General of India, brought the western feudal relationship in India which was based on private ownership of land, while in India since ages there was a communal ownership of land where land does not belong to the king, feudal lord or any individual but to the village community. The haphazard and complex land relations, accumulation of vast tracts of land in the hands of a few were the result of the British policies in order to create a landlord class which can act as a reactionary element against the people and a support base for the interest of the British Raj in India. However, the absentee landlordism further exposed the people for to severe exploitation in the hands of the intermediaries of the Zamindars.

### **Policies in Independent India**

After 1947 the Government of Independent India passed *the Abolition of Zamindari Act, 1948* modified in 1954 and similar other legislation were passed but still the feudal elements manipulated and land ceiling laws could not be implemented *in toto* a in large part of the country, especially in Bihar and Uttar Pradesh. The lopsided development created

backward and underdeveloped areas, which is today the nodal centre of Naxal activities. In Uttar Pradesh the Zamindars were permitted to retain land that were declared to be under their personal cultivation, without properly and loosely defining the term “personal cultivation” which gave the scope to retain most of their land by the Zamindars. However the Kumarappa Committee on Agrarian Reforms had laid down that only those who put in a minimum amount of physical labour and participate in actual agricultural operations could be said to be performing personal cultivation.<sup>1</sup> The draft bills were prolonged indefinitely to suit the interest of the feudal and after the enactment of the law the Judiciary was used to defer the implementation of the land ceiling laws.

### **Issues in Underdeveloped Areas**

Dalits and adivasis comprise about one fourth of India’s population, out of which Dalits constitute 16 per cent and Adivasis eight per cent.<sup>2</sup> Most of them live in rural areas.<sup>3</sup> It is interesting to look into the issues which are the life blood for extremism in such tribal and dalit dominated backward areas. The various commissions and reports, such as: National Commission on Scheduled Castes and Scheduled Tribes; The Government of India Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration, 2004; Report of An Expert Group to Planning Commission on Development and Challenges in Extremist Affected Areas, 2008; and also various Civil Rights Group’s report have identified a number of issues and problems which have been the trigger for people’s mobilization towards violence and left extremism.

The way the moneylenders had been exploiting the people, has a long history in pre-colonial India. The issue of usury, land alienation and widespread displacement due to various big infrastructure projects viz., big dams, mining, roads etc. have caused mammoth protest in contemporary India in the form of ecological movements.<sup>4</sup> The forest

<sup>1</sup> For detail please refer A Vaidyanathan, “The Indian Economy since Independence (1947-70)”, in Dharma Kumar(ed) *The Cambridge Economic History of India*, Delhi, 1984.

<sup>2</sup> Census of India, 2001.

<sup>3</sup> Report of An Expert Group to Planning Commission of India on Development and Challenges in Extremist Affected Areas, 2008, p. 3 (80 per cent of Dalits and 92 per cent of Adivasis live in rural areas.)

<sup>4</sup> Narmada Bachao Andolan and movements involving Sardar Sarovar Projects has attracted significant international attention regarding displacement of the people and involving issue of their resettlement.

issues, insecure tenancy, imperfect market conditions, limited employment opportunities, political marginalization, illiteracy, human rights violation, poor health and nutrition, loss of tribal rights and command over resources, administrative failure in implementation of the protective regulation are the various causes of grievances on the part of the dalits and tribal of rural India. In the recent times, in order to establish Naxal control over common property- such as minor irrigation sources, rivers and sandbanks etc., has become a major agenda of struggle against the feudal and mafia groups.

It has been observed that the development paradigm pursued since independence has aggravated the prevailing discontent among the marginalised sections of society, since this is insensitive to the needs and concerns of the poor, causing displacement, destroying social organizations, cultural identity, and resource base and has generated multiple conflicts undermining their communal solidarity and making them increasingly vulnerable to exploitation.<sup>5</sup>

Grievances on wages, equal wages for equal work for men and women, better working conditions, homestead land etc. are more or less common demands of the rural folk throughout the country. Issues of corruption in village panchayats and block offices where money intended for relief to the rural poor or for the benefit of small and middle peasants is siphoned off by corrupt officials in league with powerful landlords and other elite groups are also important in unrest and mobilization towards extremism. One of the Naxal leaders has indeed expressed her justifications to resort to violence, "We have been suffering for generations. We are the one who slog in the fields to feed the people of this country. But in exchange we get hunger and humiliation. And if we can't get rid of those who are responsible for this situation, we will never find a release from this. We must remove them."<sup>6</sup> But despite of such inherent anguish and disappointment from the state and it's elitist policies violence can have no takers.

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<sup>5</sup> Report of An Expert Group to Planning Commission of India on Development and Challenges in Extremist Affected Areas, 2008.

<sup>6</sup> Krishna Bandyopadhyay, "Naxalbari Politics: A Feminist Narrative", *Economic and Political Weekly*, April 5, 2008, pp. 52-59.

## **Nature and Trends of Naxalism in the Recent Times**

It has been observed that some of the district courts in areas controlled by the Naxalites witnessed a drop in criminal cases. The district court at Palamu in Bihar recorded just 1,600 cases in 1997 against 2,400 the previous year. More people are interested to approach the Naxalite courts where the sentences vary from imposition of fine and public lashing to chopping off limbs and death sentence. These 'Jan adalats' even settle domestic problems including Muslim divorce and maintenance. However, such practices can't be allowed to continue which is against the rules of governance, human rights and rule of law.

Although Naxalists have addressed some issue of poor governance in a few areas, for example, distributed government lands among poor, helped the Scheduled Tribes to occupy forest lands, helped in increase of wages for *bidi* workers and *tendu* leaf gatherers, also check begging or forced labour, opened schools, and constructed check dams, roads and health centers in rural areas, the methods used for doing these were illegal, criminal, violent and objectionable. Not only this, such measures are required for their very survival and having their root among these deprived people. According to the police, the Naxalites collect at least Rs 100 crore a year from government offices and contractors of *tendu* leaves, *katha*, coal, bauxite and timber. They use the money for purchasing arms and ammunition and expansion of their network.

The issue of violation of human rights has surfaced time and again. In its 1996-97 report, the National Human Rights Commission stated that the evidence on record did not show in any of the cases that any prior attempt was made by the police to arrest the deceased persons. The report observed that in none of these encounters, police personnel receive any injury. Also no attempt was made to ascertain the identity of the police officers who fired the bullets that caused the deaths, and that no attempt was made to investigate the circumstances under which the police opened fire. The report concluded that the Commission felt it necessary to conclude that the procedure followed by the police was opposed to law".<sup>7</sup>

The targeted violence by Naxals estimated to have killed at least 460

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<sup>7</sup> Report of National Human Rights Commission, 1996-97.

people in the first half of 2006. This estimate provided by New Delhi based Asian Centre for Human Rights (ACHR), indicated that the total fatalities includes 90 security personnel, 189 suspected Naxalites and 181 civilians in the Naxal affected states during January – June 2006.

### **Spreading the Tentacles of Red Terror and Human Rights Violation**

By 1995, the mass organizations in the Dandakaranya region, which received the various streams of Bengali refugees from East Pakistan after the partition of India, had swelled to a membership of 60,000 and the latest sources shows the membership is over one hundred and fifty thousand.<sup>8</sup> These members are the avowed supporters of Naxalites. Merely in 2005 in the reported 380 incidents of attack the people killed were 165.<sup>9</sup> The Naxal Movement today is active in about 125 districts spread over 12 states.<sup>10</sup> According to a recent estimate Maoist activity has spread to 231 of the 626 districts in the country.<sup>11</sup> According to Union Home Ministry sources 11 areas out of 40 districts are the most sensitive.<sup>12</sup>

On July 1, 2001, nine left wing extremist outfits active in India, Nepal, Sri Lanka and Bangladesh formed an umbrella organization, the Coordination Committees of Maoist Parties and Organizations (CCOMPOSA) with a purpose to unify and coordinate the activities of the Maoist parties and organisations in South Asia.<sup>13</sup> At the fourth conference of the Coordination Committee of the Maoist Parties and Organisations of South Asia (CCOMPOSA) in August, 2006 held in Nepal, the Maoists of the South Asian countries passed the resolution to advance the armed struggle for the seizure of power in the respective countries and they became successful in their endeavour in Nepal. The

<sup>8</sup> Sudhakar, "A Saga of Twenty five years of Glorious Struggle", *People's March*, January 2006.

<sup>9</sup> *The Hindu*, April 1, 2006.

<sup>10</sup> Report of An Expert Group to Planning Commission of India on Development and Challenges in Extremist Affected Areas, 2008, P. 3.

<sup>11</sup> Venkitesh Ramkrishnan, "Taking on Maoist", *Frontline*, November 6, 2009, p. 6.

<sup>12</sup> *Ibid.*

<sup>13</sup> The CCOMPOSA comprises the naxal group from India such as: People's War Group (PWG); Maoist Communist Centre (MCC); Revolutionary Communist Centre of India (MLM); Revolutionary Communist Centre of India (Maoist) from India; from *Bangladesh*: Purba Bangla Sarbahara Party (Maoist Punargathan Kendra); Purba Bangla Sarbahara Party; Bangladesh Samaywadi Party (ML); from *Nepal*: Communist Party of Nepal (Maoist); from *Sri Lanka*: Communist Party of Ceylon (Maoist).



linkages between the Nepalese Maoists and its Indian counterparts are a cause of concern for India having 1,690 k.m. of porous border with Nepal. All these South Asian Maoist organizations and parties are also members of an international organization called the Revolutionary Internationalist Movement (RIM).

Internal security is in constant threat due to ideological, strategic and organizational linkages between the CPI-Maoist and the CPN-Maoist and misuse by the terrorist outfits. The evidence of linkages are also confirmed by the annual report of the Directorate of Revenue Intelligence of India for the year 2004-05, which states that arms belonging to Nepali Maoists are finding their way to the underworld.<sup>14</sup> India's intelligence agencies have evidence to prove that Naxalites are being used by Pakistan's ISI for drug-trafficking and pumping fake currency notes. In return, the ISI is providing the Naxalites with sophisticated weaponry and the know-how for making and using improvised explosive devices. The cache of weapons and ammunition seized from them by the police are the evidence for this.

Under new banners and fronts, the Naxal groups are making regular recruitment of cadres as armed Naxals, technology experts cadres, informers etc. on salary basis. It is said that an armed cadre joins at a monthly remuneration between Rs.6000 to Rs.10000 whereas a qualified techie cadre starts at a salary between Rs.8000 to Rs.15000 per month depending on their qualification, expertise and area of operation. They have set an effective system of incentives and cadre promotion based upon the performance and capability in handling different operations.

The Maoists have set up specialized technical wings, which employ Information Technology experts on monthly payment to draw up plans to develop more potent explosives, tap governmental messages and get the latest on techniques on guerrilla warfare. The experts also draw maps of different government installations and sketches of jails. The Maoists have developed technology to prepare dangerous landmines. Their technical wing is equipped with the latest technology. They have computers, laptops and experts and they possess the technology to intercept the wireless messages of police, decode them and pass it on to their red

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<sup>14</sup> Annual Report of the Directorate of Revenue Intelligence of India, 2004-05.

squad. It is estimated that they have spent more than Rs. 2 million on their technical wings.

Ample and continuous financial resource is required for survival of Naxalite groups with such a vast cadre base and for running the armed movement. They have a better control of the thick dense forests stretching from north Bihar bordering Nepal to north Kerala passing through Jharkhand, West Bengal, Bihar, Orissa, Chattisgarh, Maharashtra, Madhya Pradesh, Andhra Pradesh and Karnataka. They have mapped this long forest strip as the red corridor with the plan to make it the liberated Maoist Zone. They have control over the teakwood and timber trade in the forests of Vidarbha region in Maharashtra and they have almost complete control over the forest produce marketing. Besides, they have set a parallel administrative system in the tribal dominated pockets of Chattisgarh, Andhra Pradesh and Orissa, wherefrom they collect all the taxes from people. Even, in many parts of Orissa, they undertake large-scale marijuana cultivation and illegal trading of it to generate revenue for their survival and operations. Now, being ambitious to have a greater control over the national economy, the Naxals have eyed upon the iron ore mines in Chattisgarh and Orissa as most of the iron ore mines are easy approachable from the Red Corridor boundaries.

The USA has designated the Communist Party of India (Maoist) as a Group of Concern.<sup>15</sup> In 2005, Naxalite violence had claimed 669 lives including 153 police personnel in 1594 incidents as against 556 casualties in 1533 incidents in 2004. The quantum of Naxal violence has shown a marginal increase of about four percent in 2005, over 2004, while resultant casualties have however gone up by 18.1 percent.<sup>16</sup>

In Orissa a recently tabled white paper on the law and order situation of the state, the state government admitted that out of thirty districts of the state, Naxals are active in 14 districts. Infectious diseases have been the order of the day since decades with high infant mortality rates. However, even though the state is poverty-stricken, surprisingly less than five per cent of the populations have access to subsidized food aimed at

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<sup>15</sup> The US State Department's Country Reports on Terrorism, 2006.

<sup>16</sup> Union Home Ministry Status Paper tabled in Parliament on the problem of Left-wing extremism in India on March 13, 2006.

poverty alleviation.

According to government sources, 76 districts in the nine States of Andhra Pradesh, Bihar, Chattisgarh, Jharkhand, Orissa, Maharashtra, Madhya Pradesh, Uttar Pradesh and West Bengal are badly affected by Naxal violence though in varying degrees.<sup>17</sup> Karnataka, Tamil Nadu and Gujarat are coming under the Naxalite affected map. Kerala can be considered a targeted state, as no serious incidents was reported in the last two years.<sup>18</sup>

The extremists showed it's real face when they kidnapped 14 daily wage labourers from Pudamal village of Sambalpur on February 8th 2005 and demanded one lakh as ransom.<sup>19</sup> This depicts the fast changing character of the Maoist. The ideological group is being converted to a mafia and criminal group. In July 2005, the Director General of Police, Chattisgarh, Mr O P Rathore, said that more than 40, 000 square miles spread over 10 out of the 16 districts of the state was under the operational sphere of the Naxalites.<sup>20</sup>

National Human Rights Commission has observed serious human rights violation by Naxalites in it's report on Chattisgarh in the following words: "Whenever any villager tried to question their conduct or raise his voice, he was silenced for ever. In some of the massacres, many innocent victims were killed by the Naxalites in the most despicable manner, including repeated stabbing and slitting of the victims' throats in front of other hostages or villagers after trial in so-called 'Jan Adalats'".<sup>21</sup> However, Commission has also indicted Salwa Judum for the human rights violation as Salwa Judum activists are engaged in beating up and forcing the people to join them in rallies and processions.<sup>22</sup>

Orissa is probably the only state where narco-terrorism finds a place in the modus operandi of Left wing extremism. It has been reported several times in the local media that Naxals are into marijuana cultivation and smuggling. Inaccessible areas of Malkangiri and Redhakhhol have long

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<sup>17</sup> Ministry of Home Affairs Annual Report, 2005-06.

<sup>18</sup> Ministry of Home Affairs Annual Report 2005-06

<sup>19</sup> *Sambad*, 10th February 2005.

<sup>20</sup> *The Asian Age*, 22 July 2005.

<sup>21</sup> National Human Rights Commission, Chattisgarh Enquiry Report, 2008, p. 24.

<sup>22</sup> *Ibid*, p. 29.

spread marijuana cultivation fields owned by the Naxal groups.

A surrendered Naxalite member summarizes the three decades of Naxal Movement in Chattisgarh in the following words: “For 25 years, they have been here. Earlier they would sweet-talk us, promising to stop exploitation of Adivasis; they said they would form the government. They made fools of us. They harass us after the police ask questions; they even take away our young girls. Then, they began to kill. They claim to hold *Jan adalats* before doling out punishments or execution orders, but I never saw one.”<sup>23</sup>

Among the various affected states, Kerala in recent time has faced the problem of left extremism. The State police are expecting “direct action” from Left extremist groups, similar to the one which was carried out by “Porattam” at the Kerala Nodal office of the Asian Development Bank (ADB) consultancy in April 2002, as a reaction to the economic policies pursued by the State Government. Police sources said that members of “Porattam”, who carried out the attack at the ADB consultancy office have close links with the “Ayyankali Pada” which shot into prominence when it took hostage the then Palakkad District Collector on October 4, 1996. They are very much unlike hardcore Naxalite groups which employ guerrilla tactics to carry out terror attacks and such groups have a highly committed cadre drawn from among intellectuals, impressionable youth, Dalits, Adivasis and labourers in Kerala.<sup>24</sup> In 2008 the People’s March magazine, which is suspected to be the unofficial mouthpiece of the CPI-Maoist, has been banned by the Ernakulam district administration in Kerala.<sup>25</sup>

### **Time for Action: Is There a Way Out ?**

Salwa Judum or anti-Naxal movement initiated by the government has so far not acted as a very credible and long lasting solution. Over 300 people have been killed by Naxalites in Chattisgarh in the aftermath of the Salwa Judum campaign. We need a remedy which can treat the roots of the problem.

Modifications are required in Land Acquisition Act and also effective

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<sup>23</sup> Annie Zaidi, “Resisting the Rebels”, *Frontline*, Volume 22, Issue 21, Oct. 08 - 21, 2005

<sup>24</sup> *The Hindu*, May 01, 2002

<sup>25</sup> *The Indian Express*, Feb 29, 2008.

implementation of protective laws in favour of Schedule Castes and Schedule Tribes. There is need for extension of Panchayati Raj, and equally important are the policy of negotiations, engagements and talk. "The challenge is to mix perfect policing policy with a well coordinated, sensitive and holistic national approach to address the grievances of sections of the jobless and the poor."<sup>26</sup>

As per the Union Home Ministry statistics, the Ministry sanctioned Rs. 200.14 lakh for Security Related Expenditure (SRE) during the year 2005-06. For the same period it has also released Rs. 500 lakh as advance under the head of SREs.<sup>27</sup> Naxalism is an inter-state problem and the states need to adopt a collective response to combat it. The states are required to improve effective and sustained police action against Naxalites and their infrastructure. The states from where Naxal activity, and not Naxal violence, is reported should have a different approach with special focus on accelerated socio-economic development of the backward areas and regular interaction with NGOs, intelligentsia, civil society groups etc. to minimise over ground support for the naxalite ideology and activity.

Mass media should also be extensively used to highlight the futility of Naxal violence and loss of life and property caused by it and developmental schemes of the government in the affected areas so as to restore people's faith and confidence in the government machinery. Competent officers are needed to be posted with a stable tenure in the Naxal affected districts with greater delegation and flexibility to deliver better and step up government presence in these areas. There is also a need to have an effective surrender and rehabilitation policy for Naxalites and related such incentives which can bring them back in the mainstream.

The other focus areas should be to distribute land to the landless poor as part of the speedy implementation of the land reforms, ensure development of physical infrastructure like roads, communication, power etc. and provide employment opportunities to the youth in these areas. While the overall counter action by the affected states in terms of Naxalites killed, arrested, surrendered and arms recovered from them has shown much better results in 2005, there is an urgent need to further improve

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<sup>26</sup> Amarnath K. Menon, "Guns And Postures", *India Today International Edition* April 17, 2006.

<sup>27</sup> Annual Report, Ministry of Home Affairs, 2005-06.

and strengthen police response by the states by improving actionable intelligence collection and sharing mechanisms and strengthening their police forces.

There is need to modernize the police force in terms of modern weaponry, latest communication equipment, mobility and other infrastructure. The insurance scheme for police personnel and community policing can further help if implemented on a committed level. In order to supplement the efforts of the states in providing an effective response to the Naxal violence, central para military forces have been deployed on a long-term basis. However, there is a need to have a proper coordination between the police and paramilitary forces.

The Central Government has provided financial assistance of Rs. 2,475 crore for 55 Naxal affected districts in the nine States of Andhra Pradesh, Bihar, Chattisgarh, Orissa, Jharkhand, Maharashtra, Madhya Pradesh, Uttar Pradesh and West Bengal under the Backward Districts Initiative (BDI) scheme of the Rashtriya Sam Vikas Yojana (RSVY).<sup>28</sup> Under the Scheme, an amount of Rs. 15 crore per year has been given to each district for three years so as to fill in the critical gaps in physical and social development in the Naxal affected areas. The Planning Commission has been requested to include other Naxal affected areas under their Scheme of Backward Regions Grant Funds (BRGF) for which an outlay of Rs. 5,000 crore were set apart from the fiscal year (2005-06) onwards.<sup>29</sup> However the proper utilisation of these funds and grants has to look into for the development of the affected districts.

In order to address the areas of disaffection among the tribal, the government has introduced the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, in Parliament on December 13 2005.<sup>30</sup> Further, to

<sup>28</sup> The Backward Districts Initiative under the Rashtriya Sam Vikas Yojana has been initiated with the main objective of putting in place programmes and policies with the joint efforts of the Centre and the States which would remove barriers to growth, accelerate the development process and improve the quality of life of the people. The scheme aims at focused development programmes for backward areas which would help reduce imbalances and speed up development. [Planning Commission, Government of India.

<sup>29</sup> The National Common Minimum Programme spoke of the creation of a Backward States Grant Fund. The Mid-Term Appraisal of the Tenth Five Year Plan highlighted that regional imbalance had increased, particularly over the past 15 years. Apart from inter-state inequalities, regional disparities persist within all States, including the relatively prosperous ones. The Centre thus needs to play a stronger equity promoting role.

<sup>30</sup> *The Hindu*, December 14, 2005.

facilitate social and physical infrastructure in the forest areas, Ministry of Environment and Forests has, as requested by the MHA, issued general approval to allow such infrastructure by utilising up to one hectare of forest land for non-forest purposes. However, making a protective legislature and implementing are two different things. We have enough protective legislation in our country but due to poor implementation the problem has reached to this chronic level.

If land reforms are taken up on priority and the landless and the poor in the Naxal areas are allotted surplus land, this would go a long way in tackling the developmental aspects of the Naxal problem. The states have been instructed to focus significant attention on this area to accelerate developmental activities and create employment opportunities in the Naxal affected areas with special focus on creation of physical infrastructure in terms of roads, communication, power as also social infrastructure such as schools, hospitals, etc.

Human Rights Watch has also suggested some measures to deal with the problem such as:

1. Indian security forces must end the practice of extrajudicial executions of alleged Naxalites and their supporters, and allow the National Human Rights Commission and independent civil society organizations to investigate such allegations.
2. The government must cease the sponsorship of and take steps to dismantle armed vigilance groups that commit human rights abuses.
3. The government should ensure that internally displaced persons are protected according to the United Nations Guiding Principles on Internal Displacement.
4. The Naxalites must immediately cease committing abuses of human rights, including killings and abductions, and allow the National Human Rights Commission and independent civil society organizations to investigate such incidents.
5. The Naxalites must immediately end all recruitment of persons under the age of 18 and demobilize all individuals under 18

from all forces under their control.<sup>31</sup>

The diversification to produce for the market, withdrawal of various subsidy regimes and exposure to global trade has been an important factor in hurting the poor in several ways.<sup>32</sup> Radical groups seek justification for their methods of violence from structural violence which is implicit in the social and economic system.<sup>33</sup>

The tensions must be contextualised in terms of social, economic and political background. The people's right to livelihood and a dignified and honourable existence must be brought back on the agenda. The State has to adhere strictly to the Rule of Law. The right to protest, even peacefully, must be recognised by the authorities, who are instead inclined to meet even non-violent agitations with severe repression. What is surprising, given this, is not the fact of unrest itself, but the State's failure to draw the right conclusions from it.<sup>34</sup>

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<sup>31</sup> Human Rights Watch Report, *India: Draconian Response to Naxalite Violence*, New York, April 2006.

<sup>32</sup> Report of An Expert Group to Planning Commission of India on Development and Challenges in Extremist Affected Areas, 2008, p. 1.

<sup>33</sup> Ibid, p. 2

<sup>34</sup> Ibid., p. 3.



## Root Causes of Naxalism-How a Person Becomes a Naxalite?

*K.B. Saxena\**

Naxalism is the most significant political movement since independence. It has been the most long-lasting though it has had its ups and downs. Despite its fragmented nature a continuing thread with some variations can be seen in the ideological thrust, strategy and tactics of mobilization of different groups within its fold. It is the only movement which having started in one police station of a single district in West Bengal in 1967 has expanded its activities covering over 460 police stations in 160 districts across 14 states despite the police force and infrastructure having grown manifold during this period. The movement's capacity to challenge the state has also enormously increased considering the incidents of violence and casualties resulting from them. The movement is viewed with greater anxiety in the government because it is most intense precisely in areas which are rich in natural resources and, therefore, targeted for fast-track industrial development. These are also the areas which have a history of mass protests by the peasantry against colonial policies. The movement is also unique in that it tends to mobilize the most subdued and socially marginalized sections and lays bare, as probably no other movement has done, the sharp fissures in the society, politics and economy. Unlike the political mass movements with violent underpinnings featuring in the border areas, Naxalites do not seek to secede from the Indian union to establish a sovereign independent state of their own but only to capture political power through armed struggle to restructure society.

A movement with such clarity of goals and sharply carved out strategies is usually spearheaded by a well knit organization. Though the Naxlite movement continues to be fragmented in separate small groups, after 1977 three organized political formations – CPI (ML)- Liberation,

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CPI (Maoist) and CPI (ML) have emerged with their distinct programmes, policies and strategies of revolution. Although all of them share the broad ideological goal of overthrowing the government and capture of state as a prelude to revolutionary restructuring of society, their strategies of achieving it in respect of mobilization of people, role of armed underground cadre, participation of people in their actions, solving people's grievances differ. Basically it is the approach to parliamentary politics and the pursuit of armed struggle that differentiates the three formations (Mohanty, 2006). The groups which are not banned participate in the elections and also have representatives in the elective bodies. Their mass mobilization activities are, however, severely constrained by formal and informal prohibitions imposed by the local administration. After the merger of CPI (ML) (People's War) with Maoists Community Centre (MCC) in September, 2004, CPI (Maoists) have emerged as the dominant Naxalite group and the most visible face of the movement. Its mode of struggle has emerged as the defining feature of Naxalism and determines the nature of state's response to the movement and civil society's attitude in the matter.

Social and political movements do not arise in vacuum. They are rooted in the objective conditions of life and respond to the deepseated frustrations of the people with the existing social, economic and political order, its institutions and practices and the notions of development, participation and governance which they challenge and seek to change. The state becomes central to this enterprise since it carries the legitimate monopoly on the means of violence, functions as an arbiter for allocation of socially valued goods and upholder of existing institutions and practices, and shapes relationships between citizens, organized interests, institutions and political system. It makes binding decisions, claiming to represent and aggregate various social interests and enforces adherence to them (Jerkins and Klandermans, 1995).

Although Naxalite movement is spread over 12 States, the most acutely affected ones happen to be Andhra Pradesh, Bihar, Chhatisgarh, Jharkhand, Maharashtra, Orissa and West Bengal. But the number of incidents and the casualties resulting from them are concentrated in Chhatisgarh, Jharkhand, Bihar, Orissa, Andhra Pradesh and Maharashtra in that order. These states feature dense forests with predominance of the tribal population followed by dalits and other backward communities.

The tribals and dalits are among the poorest of the poor and the most socially marginalized sections of the society. They are also the most peace loving communities who are not easily persuaded to challenge even a locally dominant authority let alone resist the state power. But they are also the groups for whom the movement has great appeal and who form its large support base. Of them, those who are conceptually wedded to the ideology of the movement and engage in executing the directives of the party are only a few thousands. The rest of the population only lends tacit support. Some among them may be doing so out of fear rather than genuine attraction to its programme. There must, therefore, be something compelling in the social situation which drives these people to lend this support. Three committees constituted by the Government of India one in 1960s, the second in mid 1980s, and the third in late 1980s have looked into the causes of disaffection in the population in these areas. There are, in addition, academic studies and reports of the civil society groups. All these reports with varying emphasis have brought out the factors contributing to the growth of radical left movements. Yet, no attempt has been made to address the issues involved holistically. It is, therefore, in the social conditions of these groups and their existential experience that we shall have to explore why their level of tolerance has reached a breaking point. This exploration would refer to the status of these groups in the country as a whole since disaggregated information is not readily available in respect of the states affected by the movement. However, there are no reasons to believe that the problems of these groups in the affected states would be any better than what the overall national picture in respect of them presents.

### **Structural Violence**

The social conditions of the dalits and the tribes are deeply conditioned by the agrarian and social structures. The agrarian structure is determined by the pattern of land holding, access to land and other productive assets and social relations evolved on that basis. The social structure is embedded in the caste based Hindu social order in the case of dalits and the hegemonic relations between the culturally distinct tribals and the predominant non-tribal population in the case of tribes which influences all facets of their lives. The two structures combinedly produce oppressive conditions for these groups and reinforce each other in this process. The land holding pattern is highly skewed and the dalits constitute

the largest percentage of landless persons. A significant percentage among them does not even have a secure homestead land. The tribals, who at one time were privileged to own some land, have recorded the fastest pace of landlessness among different social groups in recent times. The two constitute bulk of the agricultural labourers and workers in the unorganized sector. The dalits, in the absence of opportunities for wage employment elsewhere, are dependent upon the landowners for providing them avenues of livelihood in the rural areas. The conditions generated by this relationship are extremely exploitative. These include payment of very low wages, long hours of work, debt-bondage, control over produce from owned land, if any, humiliating treatment and physical assault in the case of non-compliance of employer's orders. The other dimension of agrarian structure is reflected in the arrangements for cultivation of land where a landless or a near landless person leases in land from the land owner and undertakes to cultivate it as a tenant or sharecropper. With no bargaining power due to unequal status and absence of alternative employment, the landowners take the lion's share of the produce without contributing anything to the production of the crop and do not bear any risk if the crop fails. The tenant has no security and can be evicted at any time. This leaves the poor cultivator with not even sufficient share/income to subsist. These conditions produced by the agrarian structure are worsened by caste based social structure which institutionalizes social exclusion, imposes degrading occupations on the dalits, heaps numerous indignities in social intercourse including sexual exploitation of their women, blocks all avenues of social advancement to perpetuate domination. This oppressive regime is enforced by physical violence as evidenced in the numerous atrocities dalits face. In the case of tribals, the agrarian structure has deprived them of access to natural resources vital to their subsistence traditionally. This is being done through alienation of their owned land by force, fraud and manipulation, displacement from land, habitat and livelihood due to acquisition of land by the government, and denial of access to forest resources. It has robbed them of the fruits of their labour through low wages, usurious money lending, un-remunerative returns for their produce (forest and agricultural), and debt bondage. The multi-faceted exploitation in all spaces of social intercourse by the non-tribals accompanied by social indignities constitute, in short, the social conditions of the tribals. These conditions produce a never ending structural violence which is an integral

part of their daily lives.

This violence become even more tyrannical and insufferable because of the deep injustices and violence of the state machinery - police, civil, forest, excise and development, and institutions which have been mandated to combat it. This happens when the dalits and tribes approach the state functionaries for seeking justice against violations of law, denial of entitlements and acts of oppression by the persons belonging to the dominant communities. Far from getting justice, they face an indifferent, unresponsive and, quite often, even hostile machinery which is in collusion with their tormentors. For example, in the case of physical violence and other criminal offences committed by the dominant landed castes on the tribes and the dalits, the latter's complaints quite often are not registered. Rather, in many cases, false counter-cases are registered against the victims on the complaints of the accused persons. Even when complaints of victims are registered under pressure from above, deliberate flaws are built into the investigation of cases to spoil the case and facilitate the acquittal of the accused. In addition, pressure is exerted on the victims to enter into a compromise with the accused and withdraw the case. The other instances of such violence occur when no action is taken against refusal to deliver possession on land allotted to a dalit or a tribal by the government or dispossession from the land already under valid occupation, denial of minimum wages, forced labour, alienation of tribal land, and social boycott for protesting against injustices, imposition of degrading practices etc. The registration of numerous petty cases under forest, excise laws is yet another facet of this violence which results in incarceration of the poor tribals who cannot even find a bailer when a bail is granted. The violence is also inflicted when civil and political rights are denied, protest against failure to get justice is suppressed, the entire community is punished for transgressions of the individuals, and when excesses of officials fail to get investigated fairly and punished.

This structural violence is unrecognized, un-noticed and silently borne by the victims and becomes invisible in the public policy discourse on the Naxalite movement which entirely focuses on the uni-dimensional violence of the Naxalites for calibrating its response. It is to seek freedom from precisely this structural violence that the tribals, dalits and other poor of the area are attracted to the naxalite formations since other political parties fail to incorporate this concern as a political agenda of top priority and

vigorously pursue it to get justice delivered.

## **Human Development Deficits**

### **Poverty**

The structural violence contributes to and is also reinforced by human development deficits in respect of all accepted indicators which are lower in the case of these communities when compared to the other social groups. These pronounced disparities have a debilitating effect on the psyche of the affected population and a cause of their seething resentment. Of these indicators, poverty tops the list. It constitutes the greatest source of misery and degradation in life. The dalits and the tribals are among the poorest sections of the society. At the national as well as the state level in the Naxalite belt, they are at the bottom of the ladder. In fact, Bihar, Orissa, MP, Chhatisgarh, West Bengal, UP are states which account for 58% of the dalit population but 70% poor among them and 49% of tribal population but 63% of the poor among them. The percentage of dalits below poverty line was 36.8 (rural) and 40 (urban) and of tribals 47.3 (rural) and 33.3 (urban) compared to 28 (rural) and 25.77 (urban) for the nation (GOI, 2008). The incidence of poverty is higher than 50% among the tribals in Orissa (73%), Jharkhand (including Bihar 59%), MP (including Chhatisgarh 57%) and between 35-50% in West Bengal, Maharashtra, Assam and UP (including Uttaranchal). Similarly, the incidence of poverty is the highest in Bihar, Orissa, Madhya Pradesh, West Bengal, UP and Assam. The states of UP, MP (including Chhatisgarh), Bihar (including Jharkhand) and West Bengal have concentration of poor dalits. The rate of decline of rural poverty between 1994-2000 was also lower (2.5%) among the tribals and (4.86%) among the dalits compared to 6.03% in the case of the other communities. It is evident that neither the state intervention nor market liberalization policies have registered the desired impact on alleviation of poverty (Radhakrishna and Ray, 2005). The Poverty and its slower amelioration have a great deal of linkage with the lack of productive assets which enables households to generate income and engage in dignified and sustained employment. This is corroborated by the incidence of landlessness which is higher among the dalits and tribals than other communities. On a comparative scale, 10% of the dalits (at the ground level, the percentage is much higher) are landless and 77% are near landless while for those excluding the dalits and tribals, the percentages are 4.8 and 63 respectively. The largest

number of them are agricultural labourers (45.6%) there being low incidence of diversified occupation among them. The level of urbanization among dalits is half (11%) of the level for the other communities (22%). The non-farm workers among them is 24% while the percentage is 36 for others. In urban areas too, dalits are largely engaged in traditional or low status occupation - sweepers, cobblers, washermen, etc. As for the tribals, the head-count ratio of poverty is much higher not only in comparison to the other groups but even the dalits and the rate of decline slower and the percentage decline the lowest. Though the tribals had a much better landholding than the dalits at the time of independence, the incidence of landlessness has grown faster in their case because of largescale displacement and alienation of their land by the non-tribal immigrants to their area. But even in respect of those who own land, not all are able to cultivate it because a large portion of tribal land is unfit for cultivation. In respect of the rest, lack of resources do not permit its cultivation (Radhakrishna and Ray, 2005). This also explains why 38.13% of them are agricultural labourers. The incidence of regular employment in the urban areas in their case is also the lowest (4.10%) even in comparison to the dalits (7.4%) while it is far higher for others (17.89%). The concentration of tribals in agriculture (more than 70% are dependent on agriculture) makes them extremely vulnerable because the tribal land is poor in soil fertility and almost entirely rain-fed. Only 26% of the land owned by the tribals is irrigated compared to 53% in respect of the other communities. The region is mono-cropped and productivity very low. The agricultural activity is also extremely vulnerable to climate fluctuations (most frequently visited by drought) and the produce by market fluctuation and, therefore, yields low income.

### **Food Insecurity**

Both the dalits and tribals suffer from acute food deficiency but the tribals face it far more than the dalits. As per official data, nearly 1% of the tribal households do not have sufficient food in any month of the year while nearly 3% of the households face food shortage for some months in a year which is an underestimate. The food insufficiency affects 6% of the tribal households while the level is 4-5% in the case of dalits. In either case, it is far higher when compared to the other groups. Nearly 71.6% of tribal households are food deficit for 2-3 months and 5% for six months and above (Radhakrishna and Ray, 2005). The

incidence of starvation deaths, characteristic of extreme impoverishment, is the highest in the tribal areas where families are forced to sell their children for survival. Hunger is also the greatest cause of indebtedness among the tribes as they borrow money for consumption at very high rates of interest during the lean agricultural season when there is no employment.

### **Low Per-capita Consumption**

These depressing indicators in respect of productive assets, employment and food insecurity lead to low per-capita consumption expenditure – an indication of low purchasing power. In the case of tribals, approximately 50% of rural households are concentrated in the consumption class of less than Rs.340 while the corresponding percentage in the case of dalits is 40% and for others 17%. In the urban areas, 52% of the tribal households are in the consumption class of Rs.577 as against 29% of the other groups. The inequality and the ratio of poverty between the tribals and others have increased over the years (Radhakrishna and Ray, 2005). As per the Report of the National Commission for Enterprises in the Un-organized Sector, 392 million people live with an average per capita consumption of Rs.20 a day (NCEUS, 2006). There is little doubt that the dalits and tribals constitute the largest segment in this category particularly in the states which are affected by Naxalite activities.

### **Literacy**

But poverty is not an economic phenomenon alone. It has social dimensions as well which are reflected in other human development indicators. The level of literacy is the most important of them. The dalits had been deprived of education for centuries under the then existing social order and the tribals remained cut off from the mainstream educational facilities until the intervention of the Missionaries during the colonial period. Despite the policy of universalisation of education, the level of literacy as per census data (2001) among the dalits is 67% (male) and 42% (female) and among tribals, 59% (male) and 35% (female) as against 79% (male) and 58% (female) in the case of others. The literacy gap between the dalits and others in percentage points 14 and between the tribals and others 22 (GOI, 2008). In respect of the states affected by the Naxalite movement, the literacy rate is 28% for Bihar, 41% for Jharkhand, 41% for MP, 52% for Chhatisgarh, 37% for Andhra



Pradesh and 37% for Orissa (GOI, 2008). The population of dalit males in primary schools, high schools and higher education is 21%, 19% and 2.1% respectively compared to 48%, 36% and 4% for the nondalit/tribal males. The gender disparity in literacy is most acute in the case of tribals. The female literacy level in their case is 32% in the rural areas, 60% in the urban areas as against 53% and 79% respectively for others. The attendance in schools was recorded in respect of only 61% of the tribal children in the age group of 5-14 years in the rural areas which was lower even to the dalit children (68%), not to speak of other groups (81%). The overall averages conceal the fact that figures are even lower (50% and less) for states of Jharkhand, West Bengal, Andhra Pradesh, Madhya Pradesh and Orissa. 2/5 of the tribal children are out of school. The lower enrolment and higher dropout rate of the tribal children is indicative of the higher incidence of child labour. Nearly 7% of the tribal children are engaged as child labour which is substantially higher than those of the other groups including dalits (Radhakrishna and Ray, 2005).

## **Health**

The situation in respect of health status is even worse. The infant mortality rates, indicative of the reach of primary health care is as high as 84.2 per thousand in the case of tribals and 83 per thousand in the case of dalits compared to 61.8 in the case of others. Their limited access to health care is evident from the fact that barely 42% of the pregnant dalit women could get ante-natal care from a doctor compared to 64% of the other communities and 28% only could consult an ANM. In the case of the tribes, only 18% could have their deliveries in a health facility compared to 51% among the other communities and 33% in the case of dalits (GOI, 2008). The position in respect of the under 5 mortality is 119.3 in respect of the dalits and 126.6 in the case of tribes compared to 82.6 for others (MTA, 2005). The disparity is also reflected in the high morbidity, low level of immunization, high level of malnutrition among women in these communities. The nutritional levels in these groups are truly disturbing. The percentage of children with anemia is 78% in the case of dalits and 79% in the case of tribes. The incidence of anemia among women is the highest (64.9%) in the case of tribes while it is 40-50% in the case of other social groups. The estimated 46.3% of the tribal women suffer from body mass of <18.5 kg/m and 13.5% have height <145 cm. (Mishra et al, 2003). These parameters influence outcomes of pregnancies and

state of children that are born with longterm health consequences. The child malnutrition affects 61% of tribal children under five years of age while 53% of tribal adults suffer from chronic energy deficiency. The crude death rate is also higher among the tribals. The most chronic malnutrition areas in the country are in the tribal belt of Maharashtra, Madhya Pradesh and Orissa. The under 5 mortality per 1000 is 119.3 in the case of dalits and 126.6 in the case of tribals as against 82.6 for others. Here too, the overall percentages for these communities conceal a more depressing picture in respect of the states where the naxalite movement is strong. The data from NHFS III (2005-06) brings out the caste differentials in relation to the health status. It records low level of contraceptive use among the dalits and the tribes compared to the forward castes and reduced access to ante-natal care, institutional deliveries and complete vaccination coverage. The incidence of stunting, wasting, underweight in children is also higher among these groups. Similar differentials were documented in the NHFS II (1998-99).

### **Drinking Water, Sanitation, Housing**

The situation in respect of access to drinking water also reveals wide disparities. Only 15.2% of the tribal households and 27% of dalit households have a drinking water facility in their premises compared to 45.2% among the general population. While 28.2% of the tribal households have drinking water sources away from the premises, this percentage is 19.5 for the dalit households and only 14.4 in respect of the households of general population. Merely, 20% of the tribal households have the privilege of tap drinking water as against 32% of the dalit households and 40.1% households in the case of general population. The percentage of villages where there is zero improvement in drinking water source is the highest where the tribals reside (23.5%) while it was the lowest (6%) in the case of general population. The position in respect of sanitation is even more dismal. Only 17% of the tribal households and 23.7% of the dalit households have latrine facilities against 42.3% of the general category households. The percentage of households with connectivity of waste water outlet is only 21.8% for the tribals and 42.9% for the dalits when compared to 50.6% for the general population. Only 24.4% of the tribal household have a pucca house while this percentage is 42.8 for the dalit households and 57.7 in the case of general category social segment. This percentage is the lowest in

Chhattisgarh (8.2%), followed by 12.9% in Orissa. The access to electricity is enjoyed only by 36.5% of the tribal households and 44.3% of the dalit households in comparison to 61.4% of the rest of the social groups. As elsewhere, these figures for the tribals as a whole would usually be lower in respect of the states affected by the naxalite movement (Planning Commission).

### **Disparities in Infrastructure**

The wide disparities in human development are also accompanied by a huge gap in the availability of development infrastructure (roads, bridges, transport networks, telecommunication facilities) as well as social infrastructure (schools, health centres, piped water supply schemes, power distribution lines) and production infrastructure (irrigation, storage godowns for PDS, cold storage for preservation of marketable produce, outlets for supply of seeds, fertilizers, pesticides, veterinary centers, banking units – commercial and cooperative) in the Naxalite affected areas. Geographical inaccessibility, hilly and undulating terrain, scattered habitations, sparse population with low density have provided convenient alibis for this neglect, such as economic non-viability, high cost, difficulty in operations and maintenance (MTA, 2006). The infrastructure is not merely inadequate but at a lower level of gradation than the rest of the country. There is a candid admission by the government that this lack of critical infrastructure results in the inability of tribal areas to meaningfully absorb funds, including institutional support (MTA, 2006). This gap in infrastructure is widening at a faster rate. Besides, even the meager infrastructure that exists in the region is deteriorating due to poor maintenance and, therefore, becomes increasingly non-functional due to lack of funds. The non-functionality of social infrastructure is even more seriously compromised by the absence of teachers from schools, doctors and paramedics from health centres, and service providers in respect of other vital services. These functionaries who largely come from the developed regions of the state and higher social groups are disinclined to work in the tribal areas. This explains why the people in these areas receive poor services.

### **Social Exclusion**

These disparities in human development attainments are not caused by bias in policies or paucity of resources but are rooted in the social

structure which excludes these groups from the benefits of development and access to social services. The social status of the dalits is determined by birth, reinforced by degrading social practices and vocations imposed on them and sustained by social sanctions and physical force. The dalits and tribes in every walk of life and all stages suffer from numerous discriminatory and exclusionary practices which deny entitlements and equal access to opportunities by the higher caste groups in the case of the dalits and by the non-tribal groups in the case of tribes. This can be observed in the prevalence of untouchability experienced by the dalits notwithstanding its abolition. The untouchability practices include exclusion in drawing water from a public well, access to a temple and participation in religious procession, entry into a village shop, restrictions in wearing clothes of choice and movement within the village, house entry, access to village level institutions, prohibitions on marriage processions through village road and discrimination in treatment while receiving services of the barber, postman, washer-man, potter, priest and the grocery shop keeper as also in village festivals, cultural events, sitting arrangement of students in the village schools, separate earmarking of seats in village panchayats and serving of tea and snacks in separate cups and plates. The extent of prevalence of these practices is not uniform and varies across states (Throat, 2002). On the economic front, discrimination is practiced in the labour market, input market, access to social services and participation in some category of jobs. This bias can be observed in refusing to hire dalit or tribal candidates in the case of employment despite fulfillment of formal qualifications and favouring less qualified candidates of the other castes, wage rate, share of rent, rate of interest charged, fees for services, working conditions, opportunities for upward mobility (Thorat, 2007) and in the sale of items from shops owned by the dalits. The restrictions are also imposed on the change of traditional occupation by them. The dalits also face differential treatment and restrictions in access to land, labour, capital, credit education and other inputs and services required for participation in commercial activities (Thorat, 2007). This translates into denial of jobs, denial of access to capital market through denial of sale, purchase or leasing of land, sale and purchase factor inputs and commodities and consumer goods. The social barriers also exist in the formal urban labour market even for the highly qualified dalits and tribals. Despite public policy to support entrepreneurship among these groups, they account for only 10% and 4.6% of the private enterprises in

the country compared to 40% and 45% in respect of the OBCs and higher castes respectively in the rural areas and even less in the urban areas. The bulk of even these are household enterprises (Thorat and Sadane, 2009). The patterns of exclusion and caste discrimination pervade the public sphere as well including a number of state institutions and interactions that occur within them (Shah et al, 2006). It also afflicts government services, as brought out, for example, in a survey conducted in 531 villages of five states which exposed such practices in Mid Day Meal Scheme and Public Distribution System. The dominant caste communities bar dalit children from the Mid Day Meal Scheme, oppose engagement of dalit cooks, segregate seating arrangement, serve separate meals, give dalit children inferior or insufficient food. The dalit's access to PDS is compromised by differential treatment in the quantity of grains supplied, price of grain charged, favouritism to the higher castes, untouchability in the mode of distribution and ownership of PDS shops (Throat and Lee, 2005). While the discrimination listed above also takes place, though less so, in the case of tribals, they are far greater victims of fraud by the non-tribals in every walk of life – in the transactions of the market, access to services, social intercourse, economic activities etc. This exclusion and discrimination is directly linked to lower income and higher poverty.

The social inequality driven by the hierarchical social structure and cultural differentiation and the inferiority it generates overwhelms economic inequality and is reinforced by it. This hurts the victims more than poverty and deprivation and explains why restoration of dignity is on the top of the agenda of the naxalites which the existing system has been unable to accomplish.

### **Affirmative Action: Constitutional Scheme**

To be sure, the Indian polity has laid down an elaborate architecture of protection and affirmative action to deal with structural violence taking into account these social and economic disparities and the exclusionary practices. The Constitution was the first major step to invalidate the oppressive social structure and give equal rights to all citizens. The fundamental rights liberated the dalits from untouchability practices and guaranteed them equality before law and all freedoms to the dalits and the tribals on par with the other citizens. The affirmative action for them is comprises of reservation of jobs in public services, reservation of

seats in educational institutions and representation in the central and state legislatures, and later extend to the PRIs. In addition, national commissions, as statutory watchdog bodies, have also been created to ensure that the constitutional provisions and state policies designed for their welfare are implemented. In the case of tribes, there are additional safeguards taking into account their distinct identity, culture, institutions and practices on the one hand and seclusion from the mainstream Indian caste society and vulnerability to exploitation by them on the other. This is reflected in a governance arrangement for the tribal areas different from the pattern in the non-tribal areas. The arrangement consists of demarcating territories where tribals inhabit and designating them as the Fifth and Sixth Schedule Areas. The tribal areas in the states affected by Naxalites activities are included in the Fifth Schedule (Article 244 [1]). Under the provision of this schedule, the Governor of the state has extraordinary power to protect the tribes from the impact of laws and policies made by the central and state governments for the rest of the population. The executive power of the Union extends to the giving of directions to the state governments in respect of the administration of the area. The Governor has the power to annul or amend any law of the Centre or the state in its application to the Scheduled Areas. He has also been empowered to make regulations for the peace and good governance of any area in a state particularly in relation to transfer and allotment of land and regulation of money lending. A Tribal Advisory Council is required to be constituted in every state having Scheduled Areas to advise the governor on any issue concerning welfare and advancement of the tribes referred by him. The consultation with the Tribal Advisory Council is mandatory before framing a regulation. The Governor of each state, having Scheduled Areas, is required annually or whenever so required by the President, to make a report to the President regarding the administration of the Scheduled Areas. The Constitution also mandates continuous and periodical review of tribal affairs for which there is a permanent commission (Article 338) to oversee the working of safeguards for the tribes and submit a report annually which is required to be discussed in the Parliament. In addition, another commission is to be appointed at any time (Article 339) for a special review of the status of the tribes in the scheduled areas. As a special arrangement, it has also been provided that the Government of India shall meet the costs of schemes of development for promoting the welfare of the Scheduled tribes in the

state or raising the level of administration in the Scheduled Areas.

## **Affirmative Action: Policy Architecture**

### **Protection**

The constitutional provisions are given effect to by the government policy. The policy architecture in the case of dalits and tribes is three-dimensional, covering protection, development and participation. The first dimension relates to their protection from violence - physical and mental exploitation. This was ensured by giving effect to the elimination of untouchability for which the Untouchability Offences Act, 1955 was enacted. This was later replaced by the Protection of Civil Rights Act, 1976. To protect these groups against the physical violence inflicted by the higher castes, the SCs/STs (Prevention of Atrocities) Act, 1989 was enacted. The disgusting practice of imposing degrading occupations on the dalits has also been addressed. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 is the most important in this regard. The other degrading practice is known as the Devdasi system. The state governments of Karnataka, Andhra Pradesh and Maharashtra where this practice is prevalent have also made laws to do away with the customary ritual of dedicating young girls from the dalit community to the local deity which virtually resulted in their sexual enslavement. The policy of protection also extends to the land holding of the tribals. In the case of tribes, states have laws since colonial times (some have enacted them later) which prohibit alienation of the tribal land to the non-tribals. The laws also exist for regulating non-institutional money lending so as to prevent usurious rates of interest. The recently enacted Scheduled Tribes and other Traditional Forest Dwellers act (Recognition of Rights Act), 2006 is the latest protective instrument which has also undone the historical injustice to the tribes by legalizing their customary access to the forest land and minor forest produce. The elimination of economic exploitation has been pursued through labour welfare laws providing for minimum wages, equal remuneration for male and female workers, abolition of bonded labour system, prohibition and regulation of child labour and regulation of terms and conditions of work in respect of the inter-state migrant labour. The exploitation caused by lack of productive assets has been tackled through land reforms laws under which protection is provided to the tenants against eviction by the land owner and payment of excess rent,

conferment of secure rights on homestead land and allotment of house sites to the shelterless, and distribution of cultivable land to the landless.

### **Policy Architecture: Development**

The second dimension of policy architecture relates to development which is addressed through specialized mechanisms of financial allocations for poverty alleviation and human development entirely focused on these groups, and infrastructural inadequacy in respect of the areas where they reside. These mechanisms are known as the Special Component Plan for the dalits and the Tribal Sub-Plan for the tribes which seek to ensure that the requisite percentage of plan funds are spent on activities which benefit them directly. In various sectoral schemes and programmes, specified share has been earmarked for these groups in the guidelines in order that they receive proportionate benefits from them.

### **Policy Architecture: Participation**

The participation of the communities in governance constitutes the third dimension of policy frame. By way of participation, besides reservation of seats in the Central and state legislatures and the PRIs, these groups have representation in the Cabinet at the state and central level, decision making positions in the political parties, committees of the Parliament and statutory commissions created for safeguarding their entitlements and interests. In the case of tribes, the Panchayats (Extension to Scheduled Areas) Act, 1996 departs from the pattern of Panchayats in the non-scheduled areas and restores some degree of self-governance to the tribes. This law provides for mandatory consultation with the gram sabha of the village in the Scheduled Area in matters relating to the management of natural resources and development activities.

### **Gaps in Implementation: Protection**

#### **Violence and Indignities**

That this elaborate policy architecture has failed to liberate the dalits and tribes from structural violence is evident from the status of implementation of these measures. The gaps in implementation are too huge to be of comfort to them. The assault on dignity carried out by the untouchability practices continues in diverse forms in the rural as well as urban areas, more open in the former but more subtle in the latter. The



implementation of the PCR Act, 1976 is extremely poor. There has been a perceptible decline in the cases registered since 1998 and no case has been registered in 8 states including some of those affected by the Naxalite movement. In respect of the registered cases, the conviction rate is a measly 2.72% while the acquittal rate is 23.24% with nearly 75% cases pending for trial. A huge number of complaints are still at the level of investigation. There is no seriousness in identifying untouchability prone areas to pursue elimination of its practices (NHRC, 2004). The institutional arrangements for administration of this law like setting up of special courts and creation of a special prosecution machinery do not exist in many states. Lest the non-registration of cases give the impression that the untouchability practices are on the wane, a recent all India survey brought out its wide prevalence in 80% of the villages. As per the findings of this survey, the untouchability practices also pervade the public sphere including a number of state institutions and interactions that occur within them (Shah et al, 2006). The laws relating to the abolition of manual scavenging is not implemented at all and there are virtually no cases registered under the Act. Despite a rehabilitation scheme for the liberated scavengers in operation since 1992 and sufficient funds having been allocated for this purpose and an exclusive financing corporation set up for providing economic assistance to the liberated scavengers, the goal of freeing the country of this scourge remains unrealized. The existence of National Commission for Safai Karamcharis since 1993 has also made no difference to the situation. Even the country's capital - Delhi is not free from prevalence of manual scavenging. The implementation of laws relating to the abolition of Devdasi practice and rehabilitation programmes for the rescued Devdasis are as gloomy as the situation in respect of the implementation of laws concerning them.

The atrocities against the dalits and tribes continue to be committed with no let up in the incidence. Two dalits are assaulted every hour. Three dalit women are raped and two dalits are murdered and two dalit houses are burnt every day (Anand, 2009). And this, by all indications, is an underestimate. The states of Bihar, Uttar Pradesh, Madhya Pradesh, Andhra Pradesh, Gujarat and Rajasthan account for the largest number of cases of atrocities registered. The Atrocities Act has had no deterrence as the conviction rate in the cases is a mere 11.04% while the

acquittal rate is 88.96%. There are numerous complaints about non-registration of cases, intimidation by police officials when complainants approach them, pressures exerted on the victims to compromise with the perpetrators of violence, serious and deliberate flaws built into the investigation of cases when registered to facilitate acquittal of the accused, registration of false counter cases against the victims at the behest of the accused persons, poor quality of prosecution in courts and even bias in judgments of the trial and higher courts. This is compounded by the victimization of complainants in different ways including social boycott with no effective protection available from the state agencies against it. Still worse, there is even political resistance overt and covert to the registration of atrocity cases in some states. There are instances of some state governments having withdrawn cases under the Act already under investigation or trial (NHRC, 2004). This further demoralizes the victims and emboldens the perpetrators. On the other hand, there is a perceptible increase in the number of cases registered against the victims. This happens particularly when the dalits and the tribals put up some resistance against the injustices meted out to them which shows how powerful the caste hierarchy continues to be. There is a newer trend of inflicting violence out of jealousy in situations where the dalits have improved their economic position which is unpalatable to the higher castes. The massacre of two dalit girls in village Kherlanji of Maharashtra state being the recent case of this type

The atrocities are committed against the dalits and tribals not merely by the higher caste social groups but also by the police and security agencies during the course of investigation of criminal cases and while carrying out search and seizure in combing operations and fighting insurgency. The victims are warned against reporting the matter. These cases rarely come on record. In the case of tribes, the atrocities also take the form of large scale filing of cases under the Forest and Excise Acts for petty offences under which the victims are incarcerated for months due to their inability to furnish a bail.

### **Protection: Land Rights**

The protective laws and alienation of the tribal land by the non-tribals meet the same fate. The alienation continues unabated. It is, in fact, on the increase. The alienation of tribal land takes place both by the

non-tribals and the state. As per official reports, 3.75 lakh cases of alienation of tribal land by the non-tribals have been registered for restoration, covering 8.5 lakh acres of land which is a small fraction of the area of land actually alienated. Of these, only in 1.62 lakh cases, the claims were decided in favour of the tribals covering an area of 4.47 lakh acres while 1.55 lakh cases covering an area of 3.63 lakh acres have been rejected by the revenue courts on various grounds. The Expert Group on Prevention of Alienation of Tribal Land and its Restoration has noted that there were serious procedure and practice related anomalies in disposal of cases. The scale of pendency (for more than 10 years) was quite large. Huge expenses were incurred and time spent by the tribals in fighting cases left them impoverished. In the cases rejected, the tribal's claim was dismissed on flimsy grounds. The restoration courts, according to the group, 'appear no better than 'Kangaroo Courts' with sheets of justice weighted heavily in favour of the non-tribals and large scale corruption everywhere. Even when case was decided in favour of the tribals, there was endless agony and even despair in getting possessions delivered. Besides, in overwhelmingly large number of cases, where land was restored, the adversary party went in appeal thereby negating the restoration order' (MoRD, 2004). The expert group found, therefore, the figures of restoration unworthy of reliance.

But this is not the only dimension of their misery caused by deprivation of land. Much greater alienation of land takes place through compulsory acquisition by the government for development projects. This has made the tribals increasingly landless and displaced them from habitat, livelihood and environment as well without any rehabilitation. The tribals have faced the brunt of this development induced displacement. They constitute more than 40% of the approximately 60 million displaced persons between 1947 and 2000 (Fernandes, 2006). The 3/4<sup>th</sup> of the displaced tribals have not received even a minimum of rehabilitation. It is significant that the Naxalite movement has taken roots in precisely those states where there has already been large scale displacement of the tribals. Yet the future is more ominous for the tribes as more extensive land acquisition is in the pipeline since the areas they inhabit are rich in natural resources. This has been the most potent cause of their disaffection and alienation from the state. Yet the proposed amendments to the law of acquisition and reformulation of the policy of

rehabilitation make no commitment to stop acquisition of the tribal land or even to reduce it. This happens despite the Supreme court judgment in the Samtha case.

In this case, the Supreme Court clarified that “the object of the Fifth and Sixth Schedule is not only to prevent acquisition,...but also to ensure that tribals remain in possession and enjoyment of lands in Scheduled Areas for their economic empowerment, social status and dignity of their person: The Constitution intends that land always should remain with the tribals. Even the government land should increasingly get allotted to them individually and collectively”. The response of the government to this judgment has been negative. First, it tried to amend the Fifth Schedule itself to neutralize the judgment but later tried to get it reversed by the court in the course of other judgments. This reversal has been done in the cases relating to BALCO and Vedanta companies. But state governments also circumvented the judgment through the subterfuge of creating a legal fiction of state enterprise as the agency to which the land could be transferred which, in turn, leased it out to corporates (Balagopal, 2007).

But displacement from land through land acquisition is not the only way the government deprives the tribals of their land. The other, more disturbing and without even the rationale of a ‘public purpose’, is dispossession through survey and settlement operations and environmental considerations. The tribal occupation of land beyond 10 degree slope have not been recorded while preparing land records and instead the land has been declared forest and ownership recorded in the name of government. The tribals have thus become encroachers on their own land. These areas have a forest cover where the tribals carry out shifting cultivation. This injustice has been done ostensibly to prevent cultivation of fragile hill slopes. In addition, the land use has been changed and plantation carried out on these lands. The tribals were forced to give up their cultivation. The affected people are among the most primitive tribes. This explains why the government owns most of the land in such areas. In this manner, the tribals are dispossessed of about 8 lakh acres of land under their occupation without their consent. To this date, the tribes have got no justice though this fact has been documented in Report of the Study Group on Land Holding System of Tribes (1985-86) and the

Report of the Commissioner of Scheduled Castes and Scheduled Tribes, 1960s-61 (Roy Burman, 2009).

Besides the formal alienation of land through encroachment and fraud or through acquisition by the government or by way of survey and settlement operations, the tribals also lose land when there is large scale migration of the non-tribals to the area where they reside. This generally happens when some development projects are located there. The non-tribals who are more cunning create such pressures that tribals are either forced to transfer their land cheaply against the provisions of law or migrate from the area out of fear. They get little help from the administration against forces which unleash such pressures. This phenomenon is known as secondary displacement which remains invisible in the public policy discourse and is not even considered for compensation or rehabilitation of the persons so displaced. They are also demographically overwhelmed which disempowers them in numerous other ways which leads to the loss of identity as well.

### **Protection: Rights in Forest**

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 was enacted to douse the flames of widespread unrest among the tribes on account of their eviction from forest – a major cause of the spread of Naxalite movement. The government had announced that all title deeds in respect of occupations of forest land shall be distributed by the end of 2009. But the implementation of the Act is being frustrated by the forest bureaucracy. This is being done by continued eviction of the tribals from their existing occupation of land, their relocation from wild life sanctuaries and national parks without consent, notifying wild life sanctuaries prior to the implementation of the Act, taking over the functions of the forest rights committee by the forest officials, forcible plantation on land under cultivation of the tribals, ignoring community rights, calling the gram Sabha at the panchayat level rather than at the village level etc. These violations of the provisions of the Act are vitiating the outcome of implementation process, thus defeating the objectives of the Act and frustrating the affected tribals. Besides, a number of environmentalists (proxy for the forest officials) have also filed writ petitions in various courts challenging the validity of the Act itself. If this drift is not

checked, it would reinforce the feeling among the tribals that they cannot get justice from the system.

## **Protection: Economic Exploitation**

### **Land Reforms**

Coming to the 'Development' dimension of the policy architecture, the negative picture gets buttressed rather than neutralized. The land reforms have virtually bypassed the dalits and tribals. The abolition of Zamindari and tenancy reforms benefited only the upper crust of the peasantry which had recorded proof of their cultivating status. The dalits, in any case, were largely agricultural labourers. In the few cases, where they cultivated land as tenants, they were at the lowest rung of ladder of tenancies with an oral leasing status which could be terminated at will. They did not, therefore, get any benefit from these laws. After the implementation of tenancy reforms, the large landowners and absentee landlords let out their land to tenants on oral lease to subvert land reforms. The dalits continue to be the largest segment of such informal and insecure tenants and get no protection of the law because their tenancy status is not inserted in the land records. This is because the lessors frustrate any attempt to register tenancy and provide security to the lessees while the tenants are too weak and unorganized to resist the landowners. The revenue bureaucracy has generally a pro-landowner orientation. In any case, most of the dalits (and a large number of the tribals) are landless or near landless and work as agricultural labourers who could benefit only from redistribution of land acquired through ceiling or Bhoodan operations or allotted from the pool of land owned by the government. The implementation of ceiling and Bhoodan laws has been very dismal. Very little land (less than 2% of the estimated) could be acquired through these modes. The dalits and tribals did get some land under these programmes. But here too, a large share was cornered by the other castes even though the policy guidelines unambiguously prioritized these groups for allotment of such land. But even where land was allotted to the members of these groups, a large percentage of them has failed to get possession over it. Quite a few have been evicted after the possession was delivered or entangled in litigation by the illegal claimants of other castes. The allottees of land get little genuine relief from the implementing agencies despite repeated campaigns having been organized to sort out

this mess. Also, the land allotted under these programmes was, by and large, uncultivable and could be reclaimed only with huge input of financial resources which the allottees of land were too poor to arrange. But they also failed to get modest assistance from the government despite a central scheme for providing it to such beneficiaries having been in operation for this purpose for many years. The situation continues. It is to be seen whether such lands could be made cultivable with help from NREGS under which public works can be taken up on assigned lands.

In respect of the homestead land too, legal provisions exist to confer ownership rights on the occupants of their dwellings existing on private or government land. There is also a policy to allot government land to all shelter-less persons for construction of a house. But here too the implementation is poor. This has led to an acute distress among the affected persons most of whom belong to the lower castes. In some states, the concerned persons are also agitating for implementation of this policy. In the access to common property resources on which the poor in general and the dalits and tribals in particular depend heavily for their survival, the situation is far from reassuring. The dalits are discriminated in a variety of ways by the land owners of upper and middle castes in the village. They have restricted or no access to village grazing land which reduce their capacity to rear animals. Similar is the situation in regard to accessing fish ponds (Planning commission, 2007<sup>b</sup>). They corner best part of the common land for their exclusive use. In many cases, they encroach upon portions of land adjacent to their owned land or dalit dominated settlements. The efforts to regain access to encroached common land by the dalits leads to severe punitive measures imposed by the dominant castes. The access of dalits and tribals to common property resources has also been adversely affected by public policies which have resulted in shrinkage of its area and degradation of its quality. These policies include intensification of agriculture, privatization of land through land reforms, diversion of land for non-agricultural purposes and commercialization of its products. The transfer of management of the CPRs to the PRIs led to weakening of use regulations, adherence to user obligations, and investment of efforts and resources for conservation and development which also impacted on the access of these groups. The access of tribals to the CPRs in forest was considerably curtailed and, in

some cases, denied by the forest laws, specifically the Forest Conservation Act, 1980, the Wild Life Protection Act, 1972 and amendments in the Indian Forest Act. The revised forest policies, plantation policy favouring commercial species in place of the natural vegetation, allocation of forest land to the industry for cultivation of raw material and the paradigm of conservation for protection of wild life by displacing tribals from the forest have also contributed to the loss/decline of access of the tribals to the forest. The interventions made by the Supreme Court in the Godavarman case had a more devastating effect on the tribals. Millions of tribals were evicted from the forest accentuating social unrest and alienating the tribals from the government further. The areas affected by the Naxalite movement have a very high forest cover. Therefore, the tribals have been the most adversely affected by these policies. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 has restored some of the rights denied to them by other forest laws. But, as mentioned earlier, the implementation of the Act is being thwarted by the forest bureaucracy thereby negating its intended benefits.

### **Labour Welfare**

As for the labour welfare laws, the enforcement is even weaker than other pro-poor legislations. It is negligible in respect of vocations in the unorganized sector. The enforcement activity has virtually ceased in the existing neo-liberal economy where there is increasing pressure for giving complete freedom to the employers to hire and fire labour. The dalits and tribals are overwhelmingly employed in vocations in the informal sector. The largest of this segment consists of agricultural workers. The Minimum Wages Act does apply to them but its implementation is very weak. The agricultural worker is too weak and unorganized vis-à-vis the employer and, still worse, is dependent upon him for survival. He/she also fails to get the requisite support from the enforcement machinery. The adjudicating process is dilatory and extremely frustrating. There is widespread lack of political will to energize the implementation process for fear of alienating the land owners. The Equal Remuneration Act is violated with impunity for the same reasons. Similar is the fate of laws relating to handloom workers, *beedi* workers, brick kiln workers etc. who constitute bulk of non-farm workers in the Naxalite areas. As a result,



the workers in such vocations are acutely exploited. The trade unions have concentrated their activities in the organized sector, leaving the unorganized workers more vulnerable. Besides, a large part of the 90% of the work force which is in the informal sector is not even covered effectively by labour welfare laws and is, therefore, completely at the mercy of the employers. The enforcement of the Bonded Labour Abolition Act is openly resisted by the states who are always in a denial mode about the existence of such labour. This has disappointed even the National Human Rights Commission, entrusted with the responsibility of monitoring its enforcement by the Supreme Court. The implementation of the Inter-State Migrant Labour Act is even worse with virtually nothing to show by way of enforcement and providing relief to the affected workers. This is due to the total indifference of the states receiving migrant labour as they are influenced by the parochial consideration to protect the employers from their state rather than render justice to the worker who is his victim. The Child Labour Act, despite the sensitive interventions of the Supreme Court, fares no better in respect of its implementation as would be borne out by the increasing incidence of child labour visible across the country. The inhuman exploitation and even torture of child labour is frequently reported in the media when some children are freed from the clutches of the heartless employers by the NGOs. The cases of such detection are negligible and even in respect of them, the freed children come back to the same employers because they are not rehabilitated as per the prescribed guidelines. The largest percentage of child labour comes from the dalit and the tribal households.

### **Gaps in Implementation: Reservation**

The reservation of jobs in public services though a potent instrument of status enhancement touches upon a very small section of the two communities which is privileged to have access to education. The performance in respect of this programme, therefore, does not have any major impact on the large sections of their population. Even so, the implementation of this policy too faces the stiffest resistance from the higher caste groups who resort to frequent litigation and open agitation against it. It is relatively better implemented where there is centralized direct recruitment through competitive examination. But here too, the process of recruitment is subverted by persons from the higher castes who

manipulate to obtain false caste certificates of their status as dalits and tribals. The provisions, in any case, are very poorly implemented in autonomous government funded institutions. The scientific, technological and professional vocations have negligible representation of these groups. Though the share of dalits and tribals in government service has improved significantly during the last fifty years, the only categories where these groups have reached very near to their entitled percentage are the lowest C and D level posts. It is much less in A&B level posts. The shortfall is very high in scientific and technical jobs and posts in the universities. The representation of dalits is the largest in 'D' category posts. This is because the 'D' category consists of a large number of posts of safai-karamcharis which no person from other caste groups would like to occupy. Where, however, the dalits and tribal candidates have entered group C, B and A level positions, they have been able to upgrade their status though they continue to face caste discrimination in numerous subtle ways. But even the limited benefits from reservation provisions have considerably narrowed by the ongoing efforts of disinvestment, privatization of PSUs, virtual stoppage of further recruitment, downsizing the establishments, combining posts at several levels and above all failure to enforce them. The reservation of berths in higher educational institutions is far below their share of population. By the late 1990s, only 7.8% of dalit and 2.7% of tribal students were enrolled in these institutions. But even among them, only a third may be pursuing desirable programmes or institutions which would facilitate their access to better jobs (Planning Commission, 2007<sup>b</sup>). The programme, therefore has had very limited impact on eliminating structural violence.

### **Gaps in Implementation : Development**

The development programmes for the dalits and tribals have not made much of a dent on the social and economic conditions of a vast section of these two groups. This is borne out by the human development indicators - poverty, literacy, health access to social amenities referred to earlier which show wide gaps in the status of these groups when compared to the other communities. The institutional mechanisms of Special Component Plan and Tribal Sub-Plan have also failed to bridge this gap. A scrutiny of implementation of these two sub-plans shows that the state governments are reluctant to earmark the required allocation of funds for

the communities and place them at the disposal of the nodal department. The planning is uncoordinated and ad-hoc. Still worse, the allocated funds remain substantially under-utilized and eventually lapse. There is also disinterestedness to work out a time bound strategy to bridge the development gaps between them and the rest of the population and to design occupation specific schemes to improve their status. Even at the central level, a substantial number of Ministries fail to make any provision under these sub-plans on the ground that their activities are not divisible. As for the extension of credit by the banks, the picture is even more bleak. The reluctance of banks to extend credit to the members of these communities is widespread. They are considered unbankable as they have no collateral security to offer. Even in the programmes where a subsidy component is provided to the banks under the self-employment programmes to induce them to lend, the credit extension is too meager to be of effective use and that too after a lot of efforts and pressures. The situation has worsened after the reforms initiated on the recommendations of the Narasimhan Committee. The financing and development corporations set up exclusively for these groups to provide capital for self-employment suffer from poor management, low recovery of loan advanced, absence of dedicated field agencies to process proposals and oversee projects and delay in release of share capital by the central and the concerned state governments (Planning Commission, 2007<sup>a</sup>). Overall, the failure of development efforts to improve the conditions of the dalits and tribals can be attributed to, a) inadequate investment of public resources, b) non-utilization, wrong utilization and diversion of earmarked, allocated or committed funds for their benefit, c) deficiency in planning, d) poor project preparation, e) absence of monitoring, f) unresponsive and even biased delivery system, g) resistance from the non-dalit/tribal communities, h) absence of participation in programmes by beneficiaries and i) powerlessness of the communities to exert requisite pressure. The Panchayati Raj Institutions have made no difference to the situation. This overall picture, however, does not imply that a small section of these communities (referred to as the elite) with benefit of reservation, education and social capital have not improved their status. But the overwhelmingly large number of the dalits and tribals do not show signs of significant change in their status.

## **Gaps in Implementation: Participation**

With regard to the participation which constitutes the third dimension of policy architecture, the two communities continue to be politically marginalized. This constrains their ability to influence decisions which affect them vitally. The Constitution does facilitate their participation in the polity through fundamental right to equality, elimination of discrimination and reservation of seats in the state and central legislatures, and lately in the PRIs and Municipalities. A minimum representation has also been ensured by way of inclusion of a Minister in the central and state cabinets from these communities. One Standing Committee of the Parliament exclusively devoted to their problems also provides additional space for participation concerning problem specific to them. These entitlements have, however, not resulted in their effective participation. The political equality in the matter of right to vote and contest election is compromised by exertion of dominance by the higher caste groups through denial of access to the polling booths, pressures to vote as per their dictat and in the case of noncompliance, threat of physical assault and social boycott etc. Booth capturing is another method to rob them of their right to vote. In addition, the discrimination is practiced by enforcing separate lines/timings at polling booths, separate seating arrangements in the Panchayats, refusal to permit the dalit elected heads to function, hoist national flag, access panchayat records and even enter office. The practice of influencing their voting behaviour at the time of election by distribution of cash, food, alcohol etc. is quite widespread. The dalit and tribal candidates being resourceless and not adequately funded by their parties are dependent upon persons with money and influence for getting elected even from the reserved constituencies. This compromises their ability to take up issues of their communities and protect their interests after getting elected or being appointed to an office.

The right to hold office is frustrated by refusal to accept the reserved status of the constituency by the locally dominant community, as for example, in Jharkhand where elections to PRIs have been stalled, and in Madurai district of Tamil Nadu where, in some panchayats, elections could not be held for many years due to the opposition from the locally dominant caste. The dalits and tribals, when elected, are also manipulated by the dominant communities to serve their interests. The

dalit and tribal Ministers in the state and central cabinets are usually assigned portfolios carrying lesser importance, have the lowest position in the perceived ranking of the Ministers and have little autonomy to initiate policy changes. Outside the arena of government, political parties have provided no genuine space for sharing power beyond a tokenistic representation in the decision making institutional arrangements. There is dominance of upper/middle castes in the executive positions of these political formations and elsewhere in politics. There is little effort to mobilize members of these communities and give them leadership positions.

The reality in respect of PESA, 1996 lays bare the illusion of self-governance conveyed by the text. Notwithstanding its constitutional status, the states are reluctant to amend their Panchayati raj laws in harmony with it. Cosmetic amendments were introduced to give semblance of compliance under pressure. But in effect, action of the states in compliance of the law has effectively undermined the gram sabha or circumscribed its powers. The states of Maharashtra, Andhra Pradesh, Madhya Pradesh, Chhattisgarh, Orissa and Jharkhand which are all affected by the Naxalite movement have virtually deconstructed its provisions through numerous legal contortions, and thus reducing it to nullity (Equation, 2007). No guidelines have been issued by the Government of India about the implementation of PESA keeping in view its true spirit even after 13 years of its enactment. The reluctance to enforce PESA sincerely has shattered the faith of tribals in the system as it was one law which had generated a great deal of hope and enthusiasm among them.

The National Commissions entrusted with the responsibility to protect the interests of these communities are as weak as their constituents. They have no executive power to deliver justice in respect of the complaints received by them. Their power is purely advisory. Their reports are presented to the Parliament late and rarely discussed. The governments have showed little enthusiasm to seriously pursue their recommendations with the concerned agencies. The bureaucracy simply ignores them. The Commissions themselves feel virtually irrelevant at this state of indifference. There is little inclination in the government to make them vibrant watchdog bodies by strengthening their powers and treating them

with the importance they deserve.

### **Governance**

The analysis made above makes it evident that the policy architecture represented by three streams of intervention – protection, development and participation has failed to achieve their intended objectives and have, therefore, made no contribution to reduce let alone eliminate the structural violence inflicted on the dalits and tribals.

The gaps in policy architecture and ground realities emerging from its implementation makes it abundantly clear that the interface of dalits and tribals with the governance structures holds the key to the understanding of Naxalite movement and appreciation of its violent manifestations. But the movement is also significantly related to the relationship which these communities have with the larger society around them. The state-people interface is multifaceted and covers all organs of the government as well as the economy and political formations outside it. The interface with the larger society is reflected in its institutions and practices as also the thinking and behavior of its members. Governance was expected to influence relationships of these marginalized groups with the state as well as society so as to create a feeling of inclusion among them. The first was to be achieved by formulating laws, policies and programmes to remove constraints and disabilities in enjoyment of freedom and equality. The second was to be realized by vigorously promoting social change. That this has not been achieved is a testimony of the failure of governance. The result is lack of confidence and trust in the established authority and deep alienation of people from the government. Far worse, it has generated in them a feeling of helplessness and despair.

### **Delivery System**

The governance failure is multi-dimensional. One facet of this is the inefficient delivery system. The overwhelming majority of bureaucracy/technocracy comes from the land owning dominant castes or urban middle class whose values are deeply embedded in the attachment to private property, cultural superiority, purity – pollution driven behaviour and assertion of their dominance. The structures of political power are also occupied by persons from this social segment. It is this coalition of interests which deeply influences governance at all levels

and explain why programmes for the poor and the marginalized do not get delivered and the social outcomes of policy architecture continue to remain negative.

The delivery system has a number of negative features which have frustrated the effectuation of policy mandates into positive outcomes. The bureaucracy/technocracy is generally indifferent to the problems of the poor but more specifically to those of the dalits and tribals. This results in low priority assigned to those programmes whose implementation would address their problems. But much smaller problems of the dominant groups elicit their proactive and positive response. More devastating constraint is the social bias (caste-cum-class) in personnel manning the delivery system which leads to the ineffective implementation of programmes at best and neglect at worst. This also happens due to the absence of genuine internal accountability within the organization and absence of pressure exerted by the disempowered sections from outside. The existing institutional arrangements of internal and external accountability are either non-functional or ineffective. No punitive cost is attached to the poor performance nor reward to the good one.

### **Paradigm of Development**

The other facet of governance is the paradigm of development pursued to achieve progress and modernization. This paradigm reflects the aspirations of dominant social and economic groups and serves their interests but has wholly negative effects for the poor in general and the dalits and tribals in particular. The model of economic growth relies heavily on the exploitation of existing natural resources through large infrastructural and manufacturing projects. These projects require huge areas of land which is acquired by the government. This causes displacement, landlessness, loss of livelihood and impoverishment not to speak of social disruption of those affected. It involves reverse transfer of assets from the poor and the marginalized groups to the corporates, exacerbates inequity and further disempowers the former. It is significant that the areas affected by Naxalite activities, being resource rich, have emerged as the prime locations for such projects threatening even more displacement of the tribal communities who are concentrated in these areas. This is the single most identifiable cause of their resentment in

recent times which has led to the widespread resistance against acquisition of their land. The tribes have suffered disproportionately in the past from this pattern of development which has produced the sinister phenomenon described as 'internal colonialism' wherein the local tribals get impoverished while the immigrant non-tribals coming to the developed area flourish and prosper. The social effects of this development have been devastating – social disintegration, devaluation of culture, loss of political autonomy and identity and a sub-human level of existence. (Areparampil, 1989). The SEZ Act has intensified this process, enlarged the area of displacement and intensified impoverishment of those displaced. The pattern of activities to be pursued under SEZs would aggravate inequities and reinforce pattern of internal colonialism. With the dismal record of rehabilitation, the displaced poor, particularly the tribals are driven to despair. The proposed changes in the Land Acquisition Act, 1894 do not provide any relief to the tribals from the acquisition of their land. The Rehabilitation and Resettlement Policy, 2007 neither assures land in place of the land lost nor guarantees dignified and sustained employment. This is indicative of the level of insensitivity to the problems faced by these groups at the highest level.

### **Environmental Degradation**

Another dimension of this model of 'development' is the degradation of environment which also causes social injustice. The tribal heartland, the centre of Naxalite movement, is the worst affected in this regard due to concentration of mining and industrial projects. The mining projects have turned agricultural land in the vicinity of projects barren, polluted water sources, denuded forests, defiled the air and degraded the quality of life of the people who live and work in the area. The change in land use deprives people of their traditional source of livelihood and life supporting benefits from the forest. The immense air pollution has devastating health effects – T.B, silicosis, cancer and even the lesemia which have increased mortality rates and lowered life expectancy. The commercial exploitation of bio-diversity through mass tourism generates severe competition for limited forest resources and causes social and cultural disruption in the tribal communities. The laws and regulatory arrangements to check environmental degradation are weak in fixing responsibility of the polluter and liability for payment of compensation,



and ineffective in implementation. The regulatory authorities tilt in favour of the industry which has financial and political clout. Even social protests bring no relief to the affected persons as they are powerless. This environmental degradation threatens not merely the current level of existence of the people in the area but the future generations as well. The pattern of economic growth ignores huge social and human cost which the people in this region have to pay.

### **Justice Administration**

The third dimension of governance relates to the administration of justice, i.e. punishment for violation of laws and institutional arrangements for conflict resolution and grievance redressal. The greatest frustration is caused to the people when crimes and injustices are not punished and disputes and conflicts are not settled by the state apparatus fairly and in time (Singh, 1994). It is then that they look for alternative modes of getting justice and settling disputes. There are stories from Naxalite areas about persons who took up arms when faced with such acute injustices like dispossession from land, rape of their women, deprivation of fruits of labour, incarceration in false cases and violence of the law enforcing agencies with no action against the guilty persons by the concerned agencies. The existing justice administration system has failed the people belonging to these groups. The authorities which deal with investigation and prosecution are insensitive and tilted in favour of those who violate laws and commit crimes. The judicial system is too formal, remote, slow, expensive and technical besides being user-unfriendly to be of any help to the weak and the poor. Both are ridden with corruption and their process are vulnerable to manipulation by the persons from the dominant social groups. The dalits and tribals feel that the system is not meant for them but only for the rich and the powerful. They get entrapped in it as accused rather than as complainants. They have no faith in it (Daghamvar, 2006). It is not surprising that the Naxalite system of dispensing instant justice, however abhorrent to the liberal mind, attracts them. The discourse on Alternative Dispute Resolution as an answer to the ills of the existing system is also irrelevant to the needs of these groups as also the other poor. The genesis of ADR lies in the needs of the business class and government who want quick resolution to save resources and time. The poor require a simple, inexpensive, user-friendly system of justice

administration at the village/panchayat level. There is no thinking in the government to design such a system. What is being attempted is a new law to set up judicial courts at the block level called the Gram Nyayalayas to reduce the distance people have to travel as well as their expenses. But these courts would continue to operate with the existing rules of evidence and processes of adjudication and would, therefore, be riddled with the same problems witnessed at a higher level. The Nyaya Panchayats are also being contemplated to take the administration of justice lower down and make it user-friendly. But given the existing unequal power structure in the village, there is little hope that the marginalized groups would get justice against their powerful adversaries even in this fora. Besides, Nyaya Panchayats would only deal with minor offences.

The mechanism for redressal of grievances in the domain of civil administration is even more important for these groups. This is because a larger number of complaints such as those relating to land, wages, deprivation of entitlements and harassment of lower level officials fall in its jurisdiction and its processes of disposal are less formal and time consuming. Here too, the complainants fare no better. The officials are not easily approachable. The complaints are not entertained and when registered under pressure, enquiries remain pending for a long time. Still worse, enquiries into the complaints are eventually carried out by the same persons against whom allegations of omissions and commissions have been made. The higher level formations routinely accept reports received from the subordinate formations which falsify the complaints and defend their action. In this manner, delivery of justice is frustrated. There is lack of transparency in disposal of complaints and reluctance even to inform the complainant about the outcome of his complaint let alone give him/her a chance to contest the findings in the reports. The complainant is totally frustrated because he/she is unable to get grievances redressed and at times, even a personal hearing. Still worse, this mechanism is influenced by political intervention and manipulated by powerful persons. The grievance redressal system is most unresponsive when the complaints relate to the excesses of the local officials particularly the police and security officials. Here, even the statutory agencies like the national and state commissions have proved totally ineffective. In these circumstances, the system of governance far from providing comfort to

the victims who suffer structural violence operates in a manner that accentuates the crisis of confidence in the system.

### **Approach to Collective Action**

The fourth dimension of governance is the approach to deal with the collective action of people (social and political movements) in respect of the unaddressed problems. This social mobilization takes place when the aggrieved people have exhausted other channels of seeking redressal of injustice or when a particular issue/policy vitally affects a social group as a whole and, therefore, a collective approach is necessary to raise it. The reaction of local officials to this assertion is almost invariably negative. It is perceived as a challenge to the authority (Shah, 2002). Rather than treating it as a wake up call to deal with the issues involved, the administration responds with taking police action against the leaders to deter them from such action. This police action may range from disallowance of mobilization and protest, harassment of leaders to filing criminal cases with serious charges against them and use of force against the supporters. This repudiation of democratic space further alienates the affected people from the system and often creates conditions for more aggressive mobilization, leading, at times, to violence. More repressive action follows. If there is no political intervention to resolve the issue, the social unrest spreads and the movement takes a violent turn. The strategy of governance in such situations is to break the movement by application of draconian laws and retaliatory violence. In this chain of action and reaction, the underlying causes of collective action recede to the background and management of violence assumes primacy. This is known as law and order approach which is focused on maintaining public order at any cost (Subramanian, 2007). This approach of governance to social and political violence diminishes respect for rule of law and concern for human rights, condones excess of security forces, shrinks democratic space and leaves the affected population deeply wounded. A number of insurgency movements have followed this trajectory. The governance thus contributes to the deterioration of the already inflamed social situation.

### **Democracy**

Democracy is considered to be the greatest antidote to the social

discontent and its potential spillover to violence as it provides a safety valve through which the discontent of the people gets an outlet and can, therefore, be addressed timely and in an orderly manner. The institutional democracy and its processes have, however, significantly failed in this endeavour. Their non-performance lies in the indifference towards the widespread structural violence which members of these communities face in their daily lives and their failure to get justice from the system. It is also reflected in the lack of determination and corresponding efforts to break the feudal agrarian power structure, humanize corporate attitude to labour and eliminate caste ridden social order to promote social equality. It has also failed to enforce equity in governance and accountability of the bureaucracy. No interest is shown in proactively working for participation of the under privileged groups in a manner that can empower them to influence decision making in their favour against the dominant and powerful groups. The structures of national political parties reflect the same class-caste divide which is so representative of the governance structures. The existing representation of the dalits and tribals in the organization of political parties is tokenistic rather than empowering even though these groups constitute a sizeable vote bank. The leaders of political parties since independence have shared the same disinclination to act tough against the rural power structure which has subverted the implementation of progressive (pro-poor) laws and defeated the objectives of programmes introduced to benefit the weaker sections. None of them have demonstrated the resolute will to break the class and caste biases and conveyed a clear message to this effect to the bureaucracy and society at large. At a political level, the leaders of all political parties have failed to use democratic space to engineer social change so as to eliminate hostility of the dominant groups to equity promoting measures empowering the dalits and tribals. In the context of the naxalite movement, the fragility of democracy gets particularly exposed when one observes the virtual withdrawal of political parties from the affected areas and cessation of political activities therein, leaving a disquieting vacuum for the radical left groups to demonstrate their relevance. There is no sign of a concerted political response to the radical violence of the Maoists by way of a peaceful alternative to restore their faith in democracy. The greatest resentment of persons from the marginalized groups in the naxalite

area against democracy lies in the unwillingness of its institutions and leaders to challenge the dominant view which gives primacy to the maintenance of public order as the main strategy to curb the movement rather than addressing their social concerns arising out of structural violence and collapse of institutions to render social justice. The silence of democracy towards violence inflicted on the people by the state supported non-state actors under the cover of a spontaneous people's resistance to the naxalites is even more hurting. The institutional democracy, therefore, fails to generate trust in its ability to rescue the people from the onslaught of structural violence as well as spiral of violence resulting from the strategy of state to deal with the naxalite movement. It ends up by providing support to it.

### **Policy Response to Naxalism**

How does the approach of the government to deal with the Naxalite violence measure up to this understanding of the roots of Naxalite movement. Is it adequately sensitive to the factors contributing to its growth? To answer this question, it would be useful to refer to the programme outlined by the Maoists and compare it with the strategy outlined by the government to deal with them. The programme of Maoists concentrates on agrarian reforms involving redistribution of land to the landless, equal rights to the women in ownership of land, agricultural development with guaranteed remunerative price for the produce, fixed wages and hours of work for male and female workers, abolition of contract and child labour, guaranteed employment and social insurance and elimination of regional inequalities. In respect of the tribals, the programme involves liberating them from the trader-contractor-money lender nexus and upholding their demands for self-identity, dignity and autonomy. These programmes are expected to liberate the poor and socially marginalized groups from the structure of violence they experience in their daily lives and thereby democratize Indian society (Gupta, 2006). This goal is sought to be achieved by first carrying out a 'new democratic revolution' through armed struggle for seizure of power as its principal task. The party would then continue to engage in protracted people's war directed against the forces of imperialism, feudalism, capitalism and supporting struggles against social oppression, untouchability and castism, self determination of nationalities and equality of women.

Shorn of the radical rhetoric, the programmes outlined by the Maoists seem to be not very different from those already introduced / supported by the government. But this apparent similarity gets exposed when we look at the poor record of implementation whether of land reforms or abolition of untouchability or enforcement of labour laws etc. as discussed earlier in this paper. In fact, over the years, and particularly after the onset of neo-liberal economy, these issues disappeared from the public policy discourse. In many cases, equity oriented policies have been replaced by market oriented policies. The larger society is apathetic to these issues which have also ceased to interest major political parties as they all support the current paradigm of economic growth.

As for the specific policy response to deal with naxalism, some critical policy statements are relevant. The Prime Minister, in his address to the meeting of the standing committee of the six Naxalite states on April 13, 2006, recognized that factors such as exploitation, artificially depressed wages, iniquitous socio-political circumstances, inadequate employment opportunities, lack of access to resources, under-developed agriculture, geographical isolation and lack of land reforms contributed to the movement (Gupta, 2006). The latest report of the MHA (Ministry of Home Affairs) has lamented that the Naxalites try to benefit from the overall underdevelopment and from sub-normal functioning of field institutions like police stations, tehsils, development blocks, schools, primary health centers and anganwadi centres, which administer and provide services at the ground level, and identifies issues of good governance, development, regular functioning of critical field institutions and public awareness essential for dealing with naxalite activities, in addition to core policing requirements. The government has characterized its approach as 'holistic' since it covers the arenas of security, development, administration and public perception (MHA, 2009). In his address at the DGP's and IG's conference recently, the Prime Minister emphasized that 'left wing extremism required a nuanced strategy – it cannot be treated simply as a law and order problem. Despite its sanguinary nature, the movement manages to retain the support of a section of the tribal communities and the poorest of the poor in many affected areas. It has influence among certain sections of the civil society, the intelligentsia and the youth. It still retains certain élan. All this adds to the complexity

of the problem. I expect you to keep this in mind as you devise newer and better strategies to deal with this problem' (PMO, 2009). These statements maybe compared with the programme outlined by the government to tackle the Naxalite problem to see whether there is harmony between the two. This programme is focused on pursuing effective and sustained police action against Naxalites, prohibiting peace dialogue by the states with naxalites unless they give up crime, violence and arms, formulating of effective surrender and rehabilitation policies for Naxalites who shun crime, violence and arms, extensive use of media to highlight the futility of the Naxal ideology and violence and providing assistance to the states in effective policing. The strengthening of police organization and security apparatus which forms the core of this programme includes assistance for providing secure police station buildings, trained personnel, basic amenities for personal, specialized equipment, weaponry and vehicles, strengthening state intelligence setups, optimization of existing training capacity and creating additional capacity, raising specialized units trained in counter-insurgency and jungle warfare, expeditious filling up of vacancies in state police forces, improvement in police population ratio and expeditious investigation and prosecution of naxalite crimes. The financial assistance of the central government is also being provided to the state governments for deployment of central paramilitary forces, setting up of COBRA battalion, counter-insurgency, anti-terrorist schools, sanctioning IR battalion, modernization of state police forces, hiring helicopters, appointment of special police officers, surrender and rehabilitation programme, filling up critical infrastructure gaps in affected areas and technical support. Elaborate Central institutional mechanism for review and coordination has been established at two levels – Home Ministry and Cabinet Secretariat for a coordinated strategy. The development measures are, no doubt, included in this 'holistic' approach which stress on qualitative implementation of central and state development schemes with fair deal to the deprived sections, fair and firm land administration with attention on maintenance of land records, expeditious recording of mutations and fair disposal of land disputes without undue delay, appropriate mechanisms for grievance redressal, public contact and awareness. The new development initiative consists of Backward Regions Grant Fund in 250 districts and effective

implementation of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Apart from the stated strategy of the central government, the states have, at the operational level, extended special laws which empower the police to detain people on suspicion of involvement and abetment of activities and deny bail to the accused persons. They have also imposed restrictions formal and informal on the movement of outsiders particularly human rights activists, media, intellectuals, ngos in the area and contact with the people. Encouragement is given along with arms to groups within the affected areas to resist the naxalites so as to reduce the pressure on the security forces. In Chhatisgarh, the strategy has also involved depopulating the villages and herding together their residents in makeshift camps ostensibly to provide 'protection' from possible naxalite attack known as 'Salwa Judum'. There is also strict secrecy about flow of information from the area beyond what is officially provided.

The above approach to deal with Naxalism is far from holistic. Rather, it is 'security-centric'. It is overwhelmingly fixated on curbing violence and maintenance of law and order. The complex naxal phenomenon has been seen entirely through the prism of violence of the naxalites. The development and governance dimensions are incorporated as a footnote to this approach and lack understanding of the context of violence which is at the heart of naxalism and the vision to combat its influence. The programmes outlined for development and governance fail even to refer to let alone address the whole gamut of structural violence that the people from the socially marginalized sections, which form bulk of the population in the affected areas, face from the landed castes and lately the corporate class and in the case of the tribals also from the non-tribals backed by the police, bureaucracy and the judicial system. In other words, the dimension of social justice is missing from its perspective. In development matters, it basically involves creation of the infrastructure- physical and social and the implementation of the existing development schemes. As we have seen, without eliminating structural violence, multi-faceted exploitation and deprivation and reforming insensitive governance which are at the root of naxalism, access to development programmes and opportunities for advancement and participation would remain blocked. Without breaking the feudal



land owning and caste dominated power structure and its nexus with the governance institutions, changing some of its policies including transfer of productive resources to the corporate which impoverish the people, sensitizing governance and activating political institutions and processes to aggressively articulate their problems and strive for their redressal the suggested measures in the strategy would fail to remove alienation of the people from the government and democratic apparatus and convince them that they can get justice and equality within the existing political order. The Report of the Expert Group on Development Challenges in Extremist Affected Areas (2008) constituted by the Planning Commission (Planning Commission, 2008) has also recommended, by and large, measures on these lines. The sincerity and determination of the government to pursue this course of action is the key to gaining trust and faith of the people in the system. In this effort, the government would have to involve individuals and groups from the civil society who have long experience of working in the area and in whom the people repose confidence. These persons can help the state in designing measures which would restore people's trust in its sincerity and ability to address their concerns and helping it to implement them and monitoring their impact. Given this perspective, rubbishing and maligning human rights activists, intellectuals and those who empathize with the affected people as supporters of the naxalite violence is not only unhelpful but counter productive.

## **Conclusion**

With the strategy outlined by the government and the massive coordinated operations involving security forces launched by it to deal with the Naxalite movement, there is little doubt that it would win the battle of curbing the activities of naxalites and liquidating its cadres though at considerable human cost to the communities perceived to be their support base in the affected areas. But would the government be able to win the war against naxalism rooted in the determined struggle of people yearning for social justice, liberation from the oppression and structural violence of the exiting social, economic, cultural and political order and reversal of development policies detrimental to their interests which brought the people to this stage? Given the trajectory of Naxalite movement and design of the public policy response, it seems unlikely.

As to the rationale and utility of violence used by either side to achieve their respective political goals, a large number of issues are involved (Mohanty, 2006; Bhatia, 2006; Balagopal, 2006<sup>a&b</sup>; Sundar, 2006; Gupta, 2006) which are beyond the scope of this paper to discuss.

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# Terrorism and Human Rights

*P. C. Sharma\**

Terrorism has been stalking the nation like the ghost in Hamlet with violent belligerence and disastrous consequences. Taking birth in local jurisdictions, where it thrives under various banners like religion, political ideology and fundamentalism of various sorts, terrorism has acquired a fanatical force and extended its reach beyond local boundaries. It has different motives in different lands but use of mindless violence, killing innocent people, spreading panic and creating an acute sense of insecurity is the common thread that runs through its sinews.

Definition or meaning of terrorism is not difficult to seek. The culture of violence that it has adopted has created its own definition; it is “the calculated use of violence or threat of violence to attain goals that are political, religious or ideological in nature. This is done through intimidation, coercion or instilling fear.”<sup>1</sup>

Terrorism has also been described variously as clash of civilisations, conflict of ideologies and religious fundamentalism. But in thrust and approach, it retains its character as essentially given to violence, subversion and disorder as opposed to civilised existence. Terrorists often resort to assassinations and mass murder, thus seriously jeopardising the right to life and impeding enjoyment of all forms.

For achieving their goal, terrorists select iconic symbols as targets to destroy them with unmatched ferocity. This is what we witnessed in Mumbai where the targets selected were the heritage buildings of Taj Mahal Palace, Victoria Railway Terminus apart from Oberoi-Trident Hotel.

It is significant to note that in not too distant past there has been a conspicuous shift in the motives of terrorists which has perhaps contributed

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<sup>1</sup>‘Necessary Illusions’ – Noam Chomsky

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*Journal of the National Human Rights Commission, Vol. 8, 2009*

to the changes in the manner some international terrorist groups have been structured. Loose affiliations with like-minded groups transcending geographical boundaries have forged a deadly partnership for a commonly perceived cause. The 9/11 attack on the World Trade Center and the Pentagon is a telling example of such alliances. Al Qaeda is the best-known trans-national terrorist organisation sending its committed foot-soldiers beyond territorial boundaries.

In the Indian context, terrorism has been inspired by political, ideological and ethnic factors. But in its worst form it has aimed at destroying the social fabric, creating a sense of loss of security and generating an intractable conflict situation.

Another form of terrorism in India is the left-wing extremism or Naxalite violence. In its ideology it is oriented towards overthrow or subversion of the lawfully established democratic government which the Naxalites pursue with violence using conventional and modern weaponry. Their techniques show utter disregard for the security or even rights of the people they are avowedly engaged in protecting. The gradual spread of Naxalism to almost 200 districts of India has posed a formidable threat to the security of the Indian nation. The Home Minister of India has declared a firm resolve to fight this menace. And what is heartening, he has – at the same time – allayed all apprehensions by ensuring that while combating this menace the rights of the citizens will not be allowed to be violated.

Each manifestation of this scourge demands a solution based on true grasp of the factors that have given rise to it. What we witnessed in the Punjab a decade ago was a challenge posed by the terrorists to the sovereignty of the State and security of innocent people. Once its true nature was grasped the strategies to fight the menace were suitably structured. The success was enormous as people's confidence in the authority of the State for creating an environment of peace was restored. It is noteworthy that the strategies employed were a combination of both the will of the State and the people to effectively fight terrorism.

What is vital to fighting terrorism is the nature of response that each situation demands based on its geographical locale. The strategies employed in J&K would not yield desired results if applied to the situation prevailing



in the North-East and vice versa. Similarly, the measures that helped to overcome militancy in Punjab cannot be a panacea for other versions of terrorism prevailing in the country.

Another significant factor that also needs to be reckoned is that the weaponry employed by terrorists has vastly enhanced its lethal power. Use of missiles, biological and chemical weapons, latest innovations in technology and access to updated means of communications that the terrorist outfits are equipped with have to be countenanced with superior systems taking full advantage of latest advancements in technology and communications.

Half-hearted measures have never delivered and, therefore, the response has to be adequate and should come from a firm commitment to fight this monster. While addressing the Chief Ministers of the country on January 6, the Union Home Minister most aptly stated that the level of preparedness must be raised and speed and decisiveness must characterise all responses to terrorism.

Additionally, a complete understanding of the profile of modern day terrorism is essential. Its nurseries have to be identified; its lethal power will have to be well understood; its support bases — whether within or outside our jurisdiction — have to be pinpointed. The methodologies employed by the state must outclass strategies and resources of the terrorist organisations. This would also include tracking the routes of their financial support. Recognising that financial support is a factor which promotes terrorism, the Security Council in its Resolution No. SC/7158 has this to say:

*“The Council also decided that States should prohibit their nationals or persons or entities in their territories from making funds, financial assets, economic resources, financial or other related services available to persons who commit or attempt to commit, facilitate or participate in the commission of terrorist acts. States should also refrain from providing any form of support to entities or persons involved in terrorist acts; take the necessary steps to prevent the commission of terrorist acts; deny safe haven to those who finance, plan, support, commit terrorist acts and provide safe havens as well.*

*By other terms, the Council decided that all States should prevent those who finance, plan, facilitate or commit terrorist acts from using their respective*

*territories for those purposes against other countries and their citizens. States should also ensure that anyone who has participated in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice. They should also ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the seriousness of such acts is duly reflected in sentences served.”*

It needs no proof or confirmation that today’s trans-national terrorism is being perpetrated both by state and non-state actors — sometimes separately, often jointly. This is a factor which will have to be countenanced with grit and determined will of the state.

Having said that, we have to address the basic issue that the fight against terrorism cannot be allowed to result in the violation of human rights. To quote the well-known author Paul Hoffman, “History shows that when societies trade human rights for security most often they get neither.”

It is not disputed that when the security of a country is in danger, public peace is threatened, economic order faces disruption and the existence of people is in peril, the Government and its security forces have to combat this threat with effective counter-terrorism strategies. Without protecting the safety and security of the nation, individual rights cannot be protected.

Terrorism in India is remarkable for its diversity, its varying degree of violence, its intensity and its peculiar geographic locales. But the experience gained from terrorist strikes leads to an inescapable conclusion that the true success of fight against terrorism rests on the support of the society. Nothing is more crucial to winning such a support than an assurance of guaranteeing safeguards of the natural or constitutional rights of the citizens. In fact, the State is put on its most difficult test in fighting terrorism as the fight is not only directed against the terrorists but also towards ensuring security of the citizens in the arenas of strife and conflict. State must guard against unwittingly or willingly falling into the mould of creating panic or using coercion which the terrorists so vehemently espouse. I say this because some of the by-products of anti-terrorism measures like fake-encounters, torture and abuse of authority have admittedly resulted in some serious violations of the rights of the citizens.

Nothing can weaken our response worse than the erosion of people's confidence in governance and deterioration of the rule of law. Preservation of the democratic rights of the citizens is a guarantee of winning their willing support. The notable example is the public support for government's fight against militancy in Punjab which proved as vital as other resources that were employed. It has also forcefully demonstrated that the relationship between national security and integrity of the individuals who comprise the State is symbiotic and not antagonistic. The State has no meaning without its people. Besides, the determination of the State to ensure the functioning of the democratic process has kept the people on its side.

Any discourse on terrorism often conjures up violent counter strikes as the only answer that the State is generally expected to give. That it is also possible to confront this issue with combination of humane and democratic measures, economic programmes which are free from discrimination and corruption is not given the consideration it deserves to be an integral component of all strategies. The Supreme Court has already laid down the guidelines for our forces engaged in fighting terrorism. They have been issued a note of caution regarding the extent of use of power. The court has struck a balance between the security needs of the country and contemporary norms of civilised behaviour. Underscoring its firm resolve to equip the state with effective norms to deal with terrorism, it has cautioned against exercise of unbridled authority.

The scheme of governance accords a pivotal position to the police in the executive functions of the State. Their status and the legal authority conferred on them by various laws and statutes always puts them along with paramilitary forces in the vanguard of fight against terrorism and violation of human rights. Often working in trying circumstances, they are the first to step into all arenas of conflict situations and bear the brunt of the lethal power of the terrorist outfits. It falls on the State to equip the police and the paramilitary forces with resources including weaponry which is superior in nature, both in terms of quality and quantity, but more importantly to use it with such circumspection as it causes no collateral damage to the innocent citizens for the preservation of whose rights, in fact, the State fights the terrorist menace. In other words even in emergent

situations like terrorism, extremism, insurgency, etc., the rule of law ensuring protection of the human rights of the populace should be an overriding consideration.

While concluding it can be said that there is, no doubt, a conflict of perception and objectives between the State and the terrorists. But the State cannot afford to have any contradiction or dichotomy in its response to fight terrorism and its commitment to protection of constitutional rights of the people.

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## Law, Terrorism and Human Rights

*Justice Amar Saran\**

*The paradox has been put sharply by Lewis Mayers: “To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft. The pendulum over the years has swung to the right. Even as long ago as the opening of the twentieth century, Justice Holmes declared that ‘at the present time in this country there is more danger that criminals will escape justice than that they will be subject to tyranny.’ As the century has unfolded, the danger has increased.*

*Nandini Satpathy v. P.L. Dani: 1978 Cri.LJ 968 (SC), para 15*

*“Law should not sit limply, while those who defy it go free and those who seek its protection lose hope.”*

*Jenison v. Baker (1972) All ER 997*

Human rights activists take the position that there is no need for a special law on terrorism, as it is bound to result in human rights abuses by the police who may resort to arbitrary arrests or torture. Also neither the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which was allowed to lapse in 1995, or the Prevention of Terrorism Act, 2002 (POTA) which was repealed in 2004 have succeeded in mitigating terrorism, which is basically the result of socio-economic problems and therefore nothing will be achieved by introducing similar measures. Hence it is a mistake even to introduce the Unlawful Activities (Prevention) Act, 1967, which is nothing but a subterfuge for the earlier statutes.

On the other hand, there is the rival viewpoint of some jurists, retired police officers and others, that because of the ever growing terror incidents, which are often sponsored by hostile states, there is need for making the law even more stringent, and that prosecutions in these matters under the normal Penal Code are wholly inadequate for tackling the menace. All

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\*Judge, Allahabad High Court.

laws are capable of abuse, but that is no reason to refrain from enacting appropriate laws.

In my opinion a State which seeks to defend human rights must protect both innocent persons from false implication and arrests and eschew recourse to third degree methods of questioning, but at the same time it must also try to put in place legally uncomplicated methods for identification, swift apprehension and punitive action against terror suspects, by enacting appropriate laws, and ensuring their impartial and efficient administration. Failure to give justice to innocent victims of terror attack and reparation to their families in case they lose their lives or are disabled in terror attacks is no less a denial of human rights than the alleged human rights violation when a terror suspect is tortured for his possible role in a terror crime. Because people are dissatisfied with regard to the *bona fide* or the capacity of the State to punish the perpetrator of the terror attack, they become dispirited, and alienated from the system and are unwilling to come forward to give evidence to help investigations into these crimes.

If people feel that the State cannot give them justice, they vindictively resort to retaliatory violence against innocent victims, perceived to belong to the religion, creed, sect or race of the “the other” who is dubbed the alleged perpetrator of the terror attack, even though the target of the retaliatory attack may be a completely innocent person who is unconcerned with the incident. In fact it is the innocent, common citizen who usually faces the brunt both of the attack by the terrorist, as also the retaliatory violence on the streets. The terror attacks are often aimed at bringing two countries to war, and at least in the Parliament attack case on December 13, 2001 and the Mumbai terror attacks on November 26, 2008, they almost succeeded in this objective.

We find that because of the perception of India being a soft state which does not appear very capable of frontally addressing terror crimes, sponsors of terror are emboldened and repeat terror attacks at will. By contrast in the United States and in other European nations where after the 9/11 incidents of 2001, an efficient anti-terror machinery has been put in place, and some stringent laws have been enacted and are being applied in an uncompromising and evenhanded manner, terror attacks have almost ceased, whereas we insist on interference with investigations and action against anyone whom we consider our political, religious or

ideological ally or persons on whom we have conferred an iconic status. What a fuss we had made when our film icon Shahrukh Khan was routinely questioned by the police at Newark Airport on August 15, 2009.

To the extent that terror attacks continue unabated, mutual suspicions between different communities grow, resulting in complete polarizations in positions in society. Lawyers refuse to represent whom they pre-judge to be guilty even without trial, and in some local Courts in U.P, terror suspects have even been manhandled. The media begins to call for stringent punishments against anyone whom it pre-defines to be the perpetrator of the crime, and the public at large, i.e. usually the public that constitutes the majority religion in a place begins to question the basic loyalty of the religious or racial minority. (Ever increasing chauvinism and intolerance of minorities by majorities is not only confined to India, but is becoming the order of the day the world over, whether it be the Han community in China, the Muslim or the Christian communities in those Islamic or Western nations where these religions and communities constitute the majorities).

This selective presumption that “the other” is always pre-judged as guilty as he is the embodiment of all evil, and the “ours” or “mine” is forever innocent, and incapable of resorting to violence, and in case he ever indulges in it, it must be due to the extreme provocation offered by the “criminalized” “other,” from whom such conduct is only to be expected, hence the violence by “mine” must invariably be condoned. Laws and Courts vanish and people decide in terms of their predetermined political and ideological positions as to who is guilty and who is innocent. It is this labelling and onesided preconceived presumption of the guilty “other”, which often induces many neutral persons especially amongst the minorities to think that they are being discriminated by an antagonistic majority, resulting in some turning to terrorist crime as the only way for redress in an unequal battle with what they consider the numerically superior and hostile majority. In these circumstances they choose to become sleeper supporters of terror sponsors who play on their religious sentiments, and are willing to lend them support for facilitating terror attacks. This leads to escalation in terror incidents. In this surcharged atmosphere even talk of human rights vanishes, and the human rights activist is marginalized, if he is not positively hated or derided as a person disconnected from social problems because of his seeming indifference to mass terror attacks, and misplaced sympathy for the terrorist. In this atmosphere when ordinary

people begin to feel that laws have become toothless to prevent terrorist crimes, they are ready for any kind of action, against the terror suspect, without going through the 'rigmarole' of the law and in that situation it becomes so much easier for the police to engage in torture of the terror suspect or eliminating him in a fake encounter, with the result that instead of increasing respect for human rights in society, the human rights activist has unwittingly helped achieve the opposite. It is for these reasons that we need assertion of effective laws and their impartial and efficient administration, subject to safeguards and controls by the judiciary and other monitoring bodies at different levels, both to check terror crimes and simultaneously to generate a respect for human rights in society at large.

There is no merit in the argument that we must refrain from enacting special laws against terror because terror attacks have not ceased despite the enactment of the TADA, POTA, the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) in Maharashtra, or the Armed Forces Special Powers Act, 1958 (AFPSA) in the North East, or because they are liable for misuse. The Indian Penal Code 1860 has been on the statute book for about 150 years, and as crimes have still not ceased, should we repeal the Penal Code? It is one thing to say that we must create internal safeguards against possible abuse and misuse of an Act and altogether a different thing to say that because the statute is liable to be misused, we should not have such a law at all. The Supreme Court has rightly observed in *Rajasthan v. Union of India* (1978 1 SCR p.1 at page 77), that "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief."

It can also not be denied that the normal Penal Code which is mainly concerned with crimes by individuals with other individuals with whom they have some disputes or for crimes committed against particular persons or their property, or at the highest with control of riotous mobs, is ill suited to deal with a class of organized crimes, which are based on extensive funding support, (very often with foreign links), which use the latest techniques of communication, transportation and concealment, and where the perpetrators have no qualms in killing large numbers of innocent



persons at will, with whom they have no personal animosity in pursuance of their ideologies, and aim at threatening the integrity, sovereignty, and security of our body politic, or striking terror by the uncontrolled use of explosives, firearms, inflammable, poisonous or other chemical, biological, radioactive or nuclear substances of a hazardous nature against the people at large or sections of the people.

As today even in normal murder cases we see a large number of trials ending in acquittals because the witnesses have been terrorized (and sometimes purchased) to turn hostile, it is considerably more difficult to ensure eyewitness testimony in the case of a terror attack which has been planned with complete secrecy, and very often with considerable financial support from abroad, with additional aid of disgruntled local supporting groups, who have been brainwashed by some ideology. Even if the incident has not taken place in an uninhabited locale, or where a person has actually been seen planting the bomb, it is difficult to make the eyewitnesses depose in Court for fear of reprisals by the well funded organized extremist group possessing extensive weaponry, local support and rapid means of communication and transport. It is for these reasons that a completely different set of laws are required for apprehending the perpetrators of such crimes.

In the din of the diametrically opposed and irreconcilable voices spoken by the human rights activists on the one hand, and jurists, retired police personnel and other members of society on the other, Justice J.S. Verma, the then Chairman of the Human Rights Commission's words to the Law Commission when it was called upon to consider the Prevention of Terrorism Bill 2000 appealing for legislation with a human face appear to be a balanced and soothing voice of reason.

I would like to refer to Justice Verma's opinion mentioned in Chapter III in the 173<sup>rd</sup> report of the Law Commission when it was called to comment on the proposed "Prevention of Terrorism Bill 2000" :

*Having regard to the extraordinary situation obtaining in the country and in view of the steadily worsening situation in certain parts of the country, a special law was necessary to fight terrorist activities. At the same time, he suggested that the Act must contain necessary safeguards and it must be a legislation with a human face. He stressed the importance of maintaining a balance between individual rights and the rights of the society and opined that in case of conflict between the two, the interest of society must*

*prevail. Justice Verma referred to several decisions of the Supreme Court rendered under TADA including the decisions in Kartar Singh, Sanjay Dutt and Shaheen Welfare Society and suggested that the several guidelines available in those decisions might be kept in mind while enacting the new legislation. The learned judge also referred to the Armed Forces Special Powers Act and stated that its constitutionality had been upheld by a Constitution Bench of the Supreme Court while reading certain constitutional safeguards into the Act. He pointed out the long pendency of cases under TADA and the adverse image of India it was creating in the international arena. He suggested that the Preamble to the Constitution and the guarantees contained therein should be kept in mind and that in the matter of bail, a classification of cases may be provided for on the lines indicated in the of decision in Shaheen Welfare. The learned judge also stressed the importance of speedy trial. If bail was not granted and the trial was also not proceeded with reasonable promptitude, it becomes oppressive, the learned judge stated. Six months should be the time limit for a trial to conclude. The learned judge also affirmed the correctness of the argument that the mere possibility of abuse could not be a ground for the very enactment of such a legislation. On the other hand, the learned judge pointed out that effort should be made to try to find out how best to prevent the misuse and abuse of the provisions of such a legislation. The learned judge then referred to the experience under TADA and suggested that investing powers under the Act in higher authorities was an effective means of preventing its misuse. He also referred to the experiment of the Review Committees and to the desirability of plurality in the composition of the reviewing authorities. He concluded his inaugural speech by observing that while the legislation was necessary, it was equally important to incorporate provisions to prevent its misuse. He also suggested that the authorities found misusing the provisions of the Act, should be sternly dealt with.*

Some features in the present Unlawful Activities (Prevention) Act, 1967 which is the statute specifically designed to replace POTA may attract the ire of human rights activists. Thus under section 43E, sub-sections (a) and (b), a presumption is drawn against the accused of being involved in the terror crime, when arms, explosives or other substances similar to those believed to have been used are recovered from an accused or where the accused's fingerprints as proved by an expert or other definitive evidence suggesting his involvement are found at the site, or on the arms or vehicle used in the terror attack. Where eyewitness account is hard to come by, or witnesses are extremely reluctant to depose because of fear of retaliations,

(in spite of provisions such as section 44 for witness protection), and there is almost a zero level of conviction, perforce it becomes necessary that facts and circumstances such as those referred to above under section 43E, may be taken into account as they may constitute a reliable basis for conviction, even in the absence of eyewitness accounts, (which in any case are too often perjured). As the old adage runs, that people may lie but circumstances tell the truth. Moreover even under section 43E there is a proviso, “unless the contrary is shown,” i.e. the presumption that the accused has committed a terrorist attack because arms and ammunition recovered from him were used for the crime or his fingerprints or other definitive evidence suggesting his involvement is found at the site of the crime or on the weapons or vehicles identified to have been used, is rebuttable, and an accused can always lead evidence to show that he was not involved in the crime. Reversing the burden of proof is not something unique to an anti-terror statute and in a large number of matters it has been made part of the general criminal law. The burden is cast on the accused for explaining facts within his special knowledge under section 106 of the Evidence Act, as also under sections 105 to section 114 A of the Evidence Act. Under section 114 A where sexual intercourse is proved and the victim states in her evidence that she did not consent, the burden shifts to the accused to prove that she had given her consent. Similar provisions are found in several special statutes, such as sections 5(1)(e) and 5(3) of the Prevention of Corruption Act which casts the onus on the accused to rebut the statutory presumptions. In this regard, the Supreme Court has held in *Sodhi Transport Co. vs. State of Uttar Pradesh*, (1986) 2 SCC 486: “A rebuttable presumption which is clearly a rule of evidence has the effect of shifting the burden of proof and it is hard to see how it is unconstitutional when the person concerned has the opportunity to displace the presumption by leading evidence.”

Call details from mobile phones gathered by interceptions of wire, electronic or oral communications are also being made admissible, subject to safeguards, under section 46 of the Unlawful Activities Act read with the provisions of the Indian Telegraph Act, 1885, the Information Technology Act, 2000 and section 65 B(2) of the Indian Evidence Act (inserted by Act 21 of 2000) because of the difficulty of getting direct evidence in these cases.

Confronted with the problem of erosion of public confidence on

account of excessive acquittals due to witnesses turning hostile or for other causes in all kinds of criminal matters (which would include terror crime), the Malimath Committee in its report on 'Reforms in the Criminal Justice System,' has suggested that we need a standard of proof, which is clear and convincing to the judge, and intermediate between the rigorous standards of proof "beyond reasonable doubt" which has virtually come to mean proof "beyond doubt," and the test of proof by "mere preponderance of probabilities." But this is no more than saying that all that the standard of burden of proof required under section 3 is "*the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.*" - Collector of Customs, Madras vs. D. Bhoomall, AIR 1974 SC 859.

Likewise we need to examine the suggestion of the Committee that the principle of the right of the accused to remain silent needs to be considered more rationally. Article 20(3) of the Constitution does not prohibit the accused from being questioned during investigation or trial. In fact the judge should be given the right and indeed encouraged to ask the accused questions to pro-actively try and discover the truth, because a duty has been cast on the Court not only to do justice but to ensure that justice is being done by playing an active role in finding out the truth and the Judge is not expected to simply sit as an umpire between two contesting parties and declare at the end of the combat who has won and who has lost (Mohanlal Shamji Soni v. Union of India, 1991 Cri.L.J. 1521(SC), para 10). Section 311 of the Code of Criminal Procedure in conjunction with section 165 of the Evidence Act, are two provisions conferring wide powers on the Court for summoning documents, directing examination of witnesses, or asking any question from a witness for furthering the ends of justice. Also under section 114, illustrations (g) and (h) of the Evidence Act, a Court may draw an adverse inference by presuming that where a person could have given evidence which he withholds or if he refuses to answer a question which he is not compelled to answer, the same would have been unfavourable to him.

Section 35 of the United Kingdom Criminal Justice and Public Order Act, 1994 has been enacted with similar objectives and provides that if a Court asks questions of an accused for discovering the truth, and if he

remains silent or refuses to answer the questions put, an adverse inference can be drawn. Under section 5 of that Act a defence statement by the accused has been mandated, where in a fixed time frame the accused is required to (i) set out in general terms the nature of the defence, (ii) indicate the matters on which it takes issue with the prosecution, and (iii) set out in case of each such matter why he takes issue with the prosecution. This would narrow down the scope of enquiry in the trial, and save time by only requiring the prosecution to furnish evidence on contested issues. The requirement that an accused give his defence statement at early stage rather than at the stage of section 313 Code of Criminal Procedure would also give the prosecution a fair opportunity to lead evidence in answer to the defence claims set up by the accused.

Another good suggestion of the Malimath Committee is that evidence of bad character of an accused may also be admitted, as information about the previous conduct and convictions of an accused would give information of the probability of an accused having been involved in the crime and to that extent section 54 of the Evidence Act may need to be re-worded, which at present only permits reception of evidence of the bad character of an accused in reply, when evidence of his good character has been led. To the extent to which the Unlawful Activities Act makes punishable a conspiracy to commit, advise or facilitate the terrorist act or any preparatory act (section 18), or the collection or provision of funds for terrorist acts (section 17) or for simply being a member of a terrorist gang or organization (section 20), it certainly looks at the antecedents of the suspect. The Evidence Act also makes relevant the previous (and subsequent) conduct of a person which shows the motive, or preparation for any fact in issue (section 8), the things said or done by a conspirator in reference to the common design (section 10), the facts showing the existence of any state of mind or body, such as intention, knowledge, good faith, negligence, rashness, ill-will etc. when it is being examined whether the act was done with a particular intention, (section 14), and where the act constitutes a series of occurrences in which the particular person was involved, it could be determinative of the question whether the act was done accidentally or with a particular knowledge and intention (section 15). All these provisions are illustrative of instances where the Evidence Act admits evidence about antecedents and previous conduct, though in a case specific, if not in a general manner.

In conclusion it needs to be reiterated that it is imperative to have effective special laws for prosecuting the terror suspects, and to ensure that these enactments as well as the provisions in the general laws which can facilitate their prosecutions, are impartially and efficiently administered, because failures to punish culprits for such crimes can only generate an atmosphere of resentment and hostility in society towards any person who might have the misfortune of being labelled and pre-judged by the community to be a terror suspect. Such perceptions of denial of justice to the victims can only force the public to take law in their hands for instantaneously punishing anyone whom they suspect to be directly involved or to be supporting a terror crime, where the police also gets a free hand to take oppressive measures against suspects without check. This can only result in the complete negation of the Rule of Law and of Human Rights in society.

It is fitting here to end with these words of Professor Glanville Williams in his book, *The Proof of Guilt* :

*“The evil of acquitting a guilty person goes much beyond the simple fact that one guilty person has gone unpunished. It frustrates the arduous and costly work of the police, who if this tendency goes too far, may either become daunted or resort to improper methods for obtaining convictions. If unmerited acquittals become general, they tend to lead to a disregard for law, and this in turn leads to a public demand for more severe punishment of those who are found guilty. Thus the acquittals of the guilty leads to a more ferocious penal law.”*



# Combating Terrorism, Naxalism and Protecting Human Rights

*Dr. Justice S. R. Nayak\**

The story of human rights and the violation of human rights are as old as the story of human being. Rousseau has set forth in the beginning of the second part of his *Discourse on the Origin of Inequality* a thesis, which in substance, is that “*the first man who having enclosed a piece of ground bethought himself of saying – This is mine – and found people simple enough to believe, are the real founder of civil society.*” This epoch, which Rousseau called an epoch of revolution, was, in fact, the first step towards pollution both of the ego and environment leading to degradation of basic and natural and what we call now human rights. That was also a beginning of conflict of interests among human beings resulting in violation of each other’s human rights. You may call this epoch boon or bane, but, it is the real offspring of all human advances and adventures, whether in the negative sense or positive sense. This epoch in the human history coupled with insatiable greed of man to accumulate and possess more and more wealth not for his use but for storage for his progeny with total disregard and lack of concern to his fellow human beings and other living beings landed the humanity in the present state of threatening deterioration, destruction and emasculation of vital components of the mother Earth and denigration of all civil and spiritual values handed down to us by great social and political thinkers, sages and saints. These destructive activities of the has disturbed the balance and equilibrium in human society and the nature and *inter se* relationships amongst the peoples of the world as well as all other creatures of the Mother Earth. William Wordsworth had sung two centuries ago “*What man has made of man*”, and “*Little do we see in nature, that is ours*”. Violence and misdeeds which are abundance today in human society are directly traceable to the insatiable greed of the man to procreate to immortalize his existence after his

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departure from the Mother Earth in the present form and to accumulate more and more wealth for his progeny at the peril of others.

Today, sovereignty of nations and human rights of the people are violated leading to tension and conflicts between nations and amongst the peoples of the world. Presently the nations as well as individuals are very much concerned with the problems of human rights and consequences arising from their violation. Today peace and security of mankind is in danger, and human rights are violated all over the world incessantly and with impunity. If there is one single ideology widely accepted round the world today, it is the concept and ideology of human rights. Out of the traumatic experience and shock of the dark days of the two world wars in the first half of last century, when human dignity stood compromised as never before in human history, was born the human Rights movement. In the last 62 years human rights have become, at least in the free and democratic world, a live and vibrant issue. Various developments connected therewith are, indeed, gratifying on the path of human development.

Ever since the U.N. General Assembly adopted the Universal Declaration on Human Rights in 1948 and declared "*all human beings are born free and equal in dignity and rights*" and "*everyone is entitled to rights and freedoms without distinction of any kind...*" the concern for human rights has assumed global dimension. Its significance has pervaded every inter-State, intra-state political relations and diplomacy. It has been a subject of discussion in almost all national and international conferences, discourses, deliberations, negotiations and transactions. It has been a subject of interpretation in every religious, political, social and economic ideology. It has been a subject of study in all academic disciplines.

Awareness to protect human rights has grown to such an extent that today it is being used as a yardstick to measure the civilization of Societies, States, regimes and positive laws. It is being used as a criterion for making value judgments, both by individuals and Governments. It is being used as limitations on the governments and authorities. It is being used as a vehicle of development in every international monetary and humanitarian aid. History is now spoken and written in the language of human rights – the rights protected and guaranteed.

The concept of human rights represents an attempt to protect individuals from oppression, exploitation and injustices. They provide



certain standards to achieve human goals for all the people and all the nations. That is why they are called universal rights. The Human Rights movement has been exercising profound influence among the world community. The inherent dignity of the human being is regardless of his nationality or political status. There is universality about human rights which make them a common concern of all the people world over. Such concern on the part of the people and the activist role of the enlightened alone can save and protect human rights, check abuse of power and prevent violation of human rights.

Therefore, the votaries of human rights at the national and international levels must understand and remove the thorns and obstacles on the way to peace and well being of the mankind. When the majorities is poor and inequality prevails, conflict arises leading to violence. When people clash, human rights are often times the first casualties. This situation intensifies the conflict and violence escalates. To enforce the people's right to peace, social pressure is required to bring about social justice and equality, to enlarge democratic space to deepen its roots, to resolve through democratic debate and peaceful avenues. Today, in one world, we witness many worlds, many societies, innumerable contrasts and conflicts brought about by vested and greedy, domineering regimes amongst the nations as well as by such ruling elite within the nations. Artificial fissures are deliberately created and sustained by such vested interests to sub-serve their ends resulting in gross human rights violations. Distrust and hatredness pervade the fabric of international relations, and the warring groups tend to stupidly seek solace beneath the destructive armaments - conventional and nuclear. There is trauma and tension; peace eludes mankind. Hunger, misery, exploitation leading to deprivation, in a massive and intensive scale, have created on explosive situation. Unless mass poverty and macro-hunger are eliminated, self-respect and human dignity is assured to the constituents of the mankind, the disturbing situation we notice today may outburst with a leonine roar. It appears that modern States have no mind in that direction. On the other hand, the escalation of the arms race and the consequent cutbacks on social services and programmes inevitably lead to chronic mass unemployment, aggravation of social inequality and discrimination, the emergence of millions and millions of poor and homeless destitutes every year. Therefore, it is quite clear that only by establishing a dependable system of international security and peace by technique of distributive

justice, the world would be able to eliminate the danger threatening the most essential human right- 'the right to life' without which all other civil and political rights will be meaningless and are of dead-letter. The very right to be human is possible only if essentials of existence, material and moral, are preserved and provided to every human being thereby creating tension-free and violence-free society. In order to do that the world and international organizations should collectively prevent the emergence of domineering greedy robbers and grabbers, exploiters and dictators amongst nations, giant corporate bodies, as well as individuals, and emergence of the weak and meek amongst the peoples of the world, who live and die in neglect, starvation or slavery.

Since the last two decades the world has been witnessing large the scale violence and terrorism both at the national and international level. Many a time the efforts taken by Governments and the international organizations such as UN and other apex bodies and humanitarian organizations have not brought sufficient and the needed results. In the third world countries, violence has become the order of the day. Millions of people have lost their homes, lives, properties due to cross-border terrorism. In many parts of Asia, terrorism has spoiled the very nature of human beings and society. Acts of terrorism are on unprecedented increase in recent times. Global terrorism has become a grave challenge to mankind and civilization. States individually and the international community collectively are devising methods to deal effectively with the menace of terrorism.

Terrorism is not new, and even though it has been used since the beginning of recorded history it can be relatively hard to define. Terrorism has been described variously as both a tactic and strategy; a crime and a holly duty; a justified reaction to oppression and an inexcusable abomination. Obviously, a lot depends on whose point of view is being represented. Terrorism has often been an effective tactic for the weaker side in a conflict. As an asymmetric form of conflict, it confers coercive power with many of the advantages of military force at a fraction of the cost. Due to the secretive nature and small size of terrorist organizations, they often offer opponents to clear organization to defend against or to deter. That is why preemption is being considered to be so important. In some cases, terrorism has been a means to carry on a conflict without the adversary realizing the nature of the threat, mistaking terrorism for criminal

activity. Because of these characteristics, terrorism has become increasingly common among those pursuing extreme goals throughout the world. But despite its popularity, terrorism can be a nebulous concept.

Terrorism is a criminal act that influences an audience beyond the immediate victim. The strategy of terrorists is to commit acts of violence that draws the attention of the local populace, the government, and the world to their cause. The terrorists plan their attack to obtain the greatest publicity, choosing targets that symbolize what they oppose. The effectiveness of the terrorist act lies not in the act itself, but in the public's or government's reaction to the act. For example, in 1972 at the Munich Olympics, the Black September Organization killed 11 Israelis. The Israelis were the immediate victims. But the true target was the estimated 1 billion people watching the televised event. The Black September Organization used the high visibility of the Olympics to publicize its views on the plight of the Palestinian refugees. Similarly, in October 1983, Middle Eastern terrorists bombed the marine Battalion Landing Team Headquarters at Beirut International Airport. Their immediate victims were the 241 US military personnel who were killed and over 100 others who were wounded. Their true target was the American people and the US Congress. Their one act of violence influenced the United States' decision to withdraw the Marines from Beirut and was therefore considered a terrorist success. There are three perspectives of terrorism: the terrorist's, the victim's, and the general public's. The phrase "*one man's terrorist is another man's freedom fighter*" is a view terrorists themselves would accept. Terrorists do not see themselves as evil. They believe they are legitimate combatants, fighting for what they believe in, by whatever means possible. A victim of a terrorist act sees the terrorist as a criminal with no regard for human life. The general public's view is the most unstable. The terrorists take great pains to foster a "Robin Hood" image in the hope of swaying the general public's point of view toward their cause. This sympathetic view of terrorism has become an integral part of their psychological warfare and needs to be countered vigorously.

Terrorist acts or the threat of such action have been in existence for millennia. Despite having a history longer than the modern nation-state, the use of terror by governments and those that contest their power remains poorly understood. While the meaning of the word terror itself is clear, when it is applied to acts and actors in the real world it becomes confused.

Part of this is due to the use of terror tactics by actors at all levels in the social and political environment.

There is no internationally acceptable common definition of 'terrorism'. The international community so far has failed to agree upon an acceptable definition of the word "terrorism". In fact, it might be unworkable to define because terrorism is a vague and subtle concept, and vacillates and alternates, according to historical, cultural, religious and geographical perspectives and circumstances. There is clearly a wide choice of definitions for terrorism. Despite this, there are elements in common among the majority of useful definitions. Common threads of the various definitions identify terrorism as: (1) Political terrorism, (2) Psychological terrorism, (3) Coercive terrorism, (4) Dynamic terrorism, and (5) Deliberate terrorism. A political terrorist act is a political act or is committed with the intention to cause a political effect. Clausewitz's statement that "*war is a continuation of policy by other means*" is taken as a truism by terrorists. They merely eliminate the intermediate step of armies and warfare, and apply violence directly to the political contest. In psychological terrorism, the intended results of terrorist acts cause a psychological effect ("terror"). They are aimed at a target audience other than the actual victims of the act. The intended target audience of the terrorist act may be the population as a whole, some specific portion of a society (an ethnic minority, for example), or decision-making elites in the society's political, social, or military populace. In coercive terrorism, violence and destruction are used in the commission of the act to produce the desired effect. Even if casualties or destruction are not the result of a terrorist operation, the threat or potential of violence is what produces the intended effect. For example, a successful hostage taking operation may result in all hostages being freed unharmed after negotiations and bargaining. Regardless of the outcome, the terrorist bargaining chips were nothing less than the raw threat of applying violence to maim or kill some or all of the hostages. When the threat of violence is not credible, or the terrorists are unable to implement violence effectively terrorism fails. In dynamic terrorism, terrorist groups demand change, revolution, or political movement. The radical worldview that justifies terrorism mandates drastic action to destroy or alter the *status quo*. Even if the goals of a movement are reactionary in nature, they require action to "*turn back the clock*" or restore some cherished value system that is extinct. Nobody commits violent attacks on strangers or innocents to keep things "*just the*

*way they are.*” Deliberate terrorism is an activity planned and intended to achieve particular goals. It is a deliberately employed, specifically selected tactic, and is not a random act. Since the victims of terrorist violence are often of little import, with one being as good for the terrorists’ purposes as another, victim or target selection can appear random or unprovoked. But the target will contain symbolic value or be capable of eliciting emotional response according to the terrorists’ goals. In deliberate terrorism, the actual target of terrorism is not the victim of the violence, but the psychological balance.

Terrorism is undeniably a crime, and terrorists are criminals. However, it needs to be noticed that what is regarded as an act of terrorism in one country is looked upon as an act of patriotism in another country depending upon the ideological commitments of the government of that country. For example, under a dictatorship or monarchy, personal or ideological resistance to the government by resorting to arms is terrorism, but a democratic government condones it as a political offence. Sometimes, independent States encourage terrorists in order to pull down governments in other States. Though terrorism is different thing to different people, most terrorism throughout history has been directed against government. As generally understood, terrorism is premeditated, politically motivated violence perpetrated against non-combating targets by sub-national groups or clandestine agents, usually intended to influence a targeted group. That is how ‘terrorism’ is defined by the State Departments of USA. In other words, terrorism is an unlawful use of force or violence against persons or civilian population, or any segment thereof, in furtherance of political or social objectives held by the terrorist group concerned. United Nations has defined terrorism as “any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do a certain thing or abstain from enforcement of law”.

Terrorism is defined as the product of fanatical violence perpetrated generally in order to realize some political end to which all humanitarian or ethical beliefs are sacrificed. Most experts agree that terrorism is the use of threat of violence, a method of combat or strategy to achieve certain goals, that its aim is to induce a state of fear in the victim, that it is

ruthless and doesn't conform to humanitarian norms and that publicity is an essential factor in terrorist strategy. Terrorism is unequivocally defined as the deliberate and systematic murder, maiming and menacing of the innocent to inspire fear for political ends. The General Assembly's Legal Committee approved a draft resolution strongly condemning all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomsoever committed. Approved without a vote, the text which went to the Assembly for adoption calls such acts "unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them". It recommended that the Assembly urged all States to become parties to the relevant conventions and protocols, including the conventions for the suppression of terrorist bombings and the financing of terrorism.

Terrorism's effects are not necessarily aimed at the victims of terrorist violence. Victims are usually objects to be exploited by the terrorists for their effect on a third party. In order to produce this effect, information of the attack must reach the target audience. So any terrorist organization plans for exploitation of available media to get the message to the right audiences. Victims are simply the first medium that transmits the psychological impact to the larger target audience. The next step in transmission will depend on what media is available, but it will be planned, and it will frequently be the responsibility of a specific organization within the terrorist group to do nothing else but exploit and control the news cycle. Some organizations can rely on friendly or sympathetic news outlets, but this is not necessary. News media can be manipulated by planning around the demands of the "news cycle" and the advantage that control of the initiative gives the terrorist. Pressures to report quickly, to "scoop" competitors, allow terrorists to present claims or make statements that might be refuted or critically commented on if time were available. Terrorists often provide names and details of individual victims to control the news media through its desire to humanize or personalize a story. For the victims of a terrorist attack, it is a certainty that the impact on the survivors (if there are any) is of minimal importance to the terrorists. What is important is the intended psychological impact that the news of their death or suffering will cause in a wider audience.

Terrorists conduct more operations in societies where individual rights and civil legal protections prevail. While terrorists may base themselves in repressive regimes that are sympathetic to them, they usually avoid

repressive governments when conducting operations wherever possible. An exception to this case is a repressive regime that does not have the means to enforce security measures. Governments with effective security forces and few guaranteed civil liberties have typically suffered much less from terrorism than liberal states with excellent security forces. **Al Qaeda** has shown, however, that they will conduct operations anywhere.

It is important to understand that actual terrorist operations are the result of extensive preparation and support operations. Media reporting and academic study have mainly focused on the terrorists' goals and actions, which is precisely what the terrorist intends. This neglects the vital but less exciting topic of preparation and support operations. Significant effort and coordination is required to finance group operations, procure or manufacture weapons, conduct target surveillance and analysis, and deliver trained terrorists to the operational area. While the time and effort expended by the terrorists may be a drop in the bucket compared to the amounts spent to defend against them, terrorist operations can still involve large amounts of money and groups of people. The need for dedicated support activities and resources on simple operations are significant, and get larger the greater the sophistication of the plan and the complexity of the target.

Today, the impact of terrorism in maintaining law and order, in assuring peace and tranquility to law-abiding citizenry and in harnessing growth and development, both at the national and international level, is quite grave, gloomy and alarming. Global terrorism has, in fact, become an unprecedented challenge to the human civilization itself. We are living in a most threatening circumstance.

In India, global and national terrorist groups operate incessantly and menacingly, destroying national properties, killing innocent and non-combating civilians in thousands, arresting developmental activities in the affected areas. The state, both at the central level and State level dispenses its limited physical resources to contain this menace, but, we are not successful in the matter of containing, curbing and eliminating terrorism. On the other hand, the area of operation of the terrorists has been expanding thereby posing a great threat to the internal security of the country. Internal security of the country is threatened by the acts of religious and communal chauvinists, Jehadi terrorists and Naxalites and

instances of moral policing. Jehadi terrorist activities based on religious fatalism are not confined to Jammu and Kashmir; it has spread from the Kashmir valley and the capital of India to south India including our State. Naxalism has already engulfed our neighbouring country, Nepal. In India, the States of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Orissa, Maharashtra, Uttar Pradesh, and West Bengal are badly affected by Naxal violence, though in varying degree. Further, it is quite disturbing to note that Naxalites in considerable number from Nepal have come to various parts of the country, especially bordering States such as Bihar, Jharkhand, and Uttar Pradesh. It is claimed that in order to give a voice to the downtrodden and marginalized, exploited people, Naxalites are threatening the very foundation of the democratic policy of our country. When democracy is in vogue, resort to violence to achieve political, social or economic objectives cannot be the right path. Innocent youths, particularly those hailing from poor financial background are being indoctrinated to join extremist groups. All of you are aware what has been happening in recent times in Malnad and coastal districts of Karnataka. Time has come for all of us to ponder over the problem arising out of terrorists acts and find solution to this menace so as to ensure internal security of our country.

All of us know that it is not possible at all to combat and defeat divisive forces, whether they are external or internal, without creating universal harmony, security and sense of belonging amongst the people of the country. Peace and security are invariably inter-linked with human rights and relationship of harmonious world. Harmony requires peace, security and happy co-existence between different people, community and nation. Denial of human rights has its effect on peace, harmony and tolerance. In order to bring peace and harmony in the society, inequalities prevailing in the society in any form should be removed. Despite our historical wedding to liberalization and globalization in 1990s and discernible growth and development in wealth, there is no change in the disparity that existed before the said wedding amongst the people. So long as the State denies social and economic benefits of any development to the majority of its people, it is impossible to sustain social harmony and peace in the society. Naxalism or extremism shall not be viewed as a mere law and order problem. It needs to be understood that the socio-economic imbalances and prevailing inequalities in many spheres of human life are also the causes for the disturbing situation we notice today. Desired



human rights regime can be established only upon harmony of internal social environment of the country amongst all its people. For achieving stable and harmonious relations amongst all the people of the country and to foster mutual understanding, respect, tolerance and peace human rights education is essential. Education has been called the technique of transmitting civilization. Civilization is nothing but the humanization of man in society, and man is humanized only when he lives a life in harmony with his true aspirations and powers. Learning human rights should become a way of life and that way of life should lead to eradicate poverty, ignorance, prejudice and discrimination based on sex, caste, religion and disability. This onerous duty to impart Human Rights education is on the shoulders of the member States and defenders and activists of Human Rights.

Perhaps, 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 the 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. What I wish to suggest is that caution and wisdom should dictate our national policy to deal with terrorists' menace, and the kind of legislative back-up to sustain the national policy decisions regarding the defence against terrorist forces. It is because, we should be aiming at living in a safer world after this

campaign, not under a permanent State of siege in an endless conflict. In our campaign against terrorism, we are required to define, with absolute clarity, what we really stand for and what we are definitely opposed to, and under any circumstance, we cannot be victims of blind anger and hatredness; we ourselves cannot violate human rights while opposing violators of human rights. We must ensure that intolerance, violence and hatredness, even in pursuit of higher cause, are not part of our agenda. Freedom, social justice and participatory democracy cannot be ensured by intolerant and repressive regimes. Any keen observer of the violent happenings of the 20<sup>th</sup> century would tell us that criminal actions, intolerance and the politics of hatredness are not a solid foundation for the creation of a just and democratic society in which all individuals are able to fully exercise their rights. In the past, the path taken by the oppressed to achieve an egalitarian, fraternal and free society by wrong means and methods has often brought only new nightmares. Kennedy's wise statement, "those who make social change impossible, make revolution inevitable", is apt to be remembered. Fighting with terrorism should not only be the duty of the Government, it is equally the duty of civil society. Firstly, strong movement is required against all fundamentalists, sectarian and divisive forces and ideologies. Secondly, unity in diversity should be encouraged at all possible levels. Thirdly, the State should not give any scope to fundamentalists to preach hate and indulge in moral policing. The State should ensure that no citizen should feel insecure just for belonging to any religion, caste, creed, sect or gender. The spirit of secularism and unity in diversity must be ingrained in every youth of this country by proper education, training and enlightenment. The civil society should reject all types of fundamentalist attitudes and approaches and must tell all the enemies of mankind and hate-mongers that enough is enough and they do not have any place in this nation, which is wedded to the values of fraternity, secularism, equality and democracy. Moderation, tolerance and the Rule of Law should be the core values of our governance as well as the values to be practiced by the citizenry.

# Extremism, Rule of Law and Human Rights

*Prof. B. B. Pande\**

Violent extremist behaviour, diversely described as ‘terrorism’, ‘Naxalism’ and ‘Maoism’ today, is nothing new for the Indian society. In the 18th and 19th century the society faced the wrath of Pandaris, thugs and many forms of religious crusaders, whose determined activities posed live threat even for the colonial rulers. However, in the postindependence period substate extremism of the religious extremism and nationalist-separatist extremism variety, has emerged as a new potent threat to the Indian national state. Since the new forms of extremism constitute a species of political violence that is deployed in order to gain political, ideological or religious goal through fear and intimidation the states response to these forms of extremism assumes special significance. Presently we propose to focus on certain issues critical to formal response like:

- (i) Understanding of extremism and its criminological explanations,
- (ii) Legal framework of regulation of extremist behavior,
- (iii) Statutory and constitutional rights limitations, and
- (iv) The human rights touchstone.

## **i) Understanding of Extremism and its Criminological Explanations**

Extremism of diverse types remains grossly under researched and sparsely understood crime phenomenon<sup>1</sup> that is one important reason for the lack of unanimity about a clear and effective action program against terrorism. As any other form of crime, violent extremism too has been understood in terms of two major thought currents, namely: the classicalist free will conceptualisation and second, the positivist deterministic

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<sup>1</sup> See in particular Marth Genshaw, “The Cause of Terrorism”, *Comparative Politics*, 13(1981) at pp. 379-399; John Horgan, *The Psychology of Terrorism*, Routledge, N. (2005)

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conceptualisation. According to free will conceptualization every extremist behaviour, directed against the human body or property, is a willed human action. Psychologists treat such actions as a product of a 'normal' mind, rather than the manifestation of a mind suffering from psychotic disorder<sup>2</sup>. Furthermore, the free will thinkers opine that the extremist operates under a "collective identity" that is deployed in order to gain a political, ideological or religious goal through fear or intimidation. In the true classicalist tradition the free will thinkers believe that the extremist derives pleasure from his macabre acts of killing and destroying properties, therefore causing him pain and suffering in the process of investigation, trial and sentencing is a part of permissible hedonistic balancing. Also that the state may be justified in imposing even draconian punishment for crimes of extremist nature.

Unlike the classicalist, the positivists would like to perceive terrorism and extremism as a product of external factors, rather than the will of the terrorist. According to such a perception the terrorist or extremist behaviour is determined either biologically, psychologically, sociologically or economically. Accordingly the terrorist or extremist is biologically inferior or a 'throw-back', or he is psychologically maladjusted or he is socially disorganised or located in inferior locations like slum or ghettos. The positivist would be more inclined to treat terrorism and extremism as a kind of morbidity or pathological condition that must be responded through treatment rather than punishment. Here, the infliction of punishment is to be taken as a measure of social defence and not related to hedonic calculus. The impact of determinism has inspired social scientists to explore the relationship between external factors and extremist behavior. It may be useful to discuss few strains of this relationship here.

### **Poverty and Extremism / Terrorism**

In the context of determinism the relationship between poverty and extremist behaviour has received considerable attention in the recent times. There are two major lines of thinking in this regards as follows:

- a. Poverty is unrelated to extremism
- b. Poverty is intimately related to extremism.

Those who focus only on the act of terror and its adverse consequences

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<sup>2</sup> Post M. Jerrold, *The Mind Of The Terrorist*, Palgrave Macmillan (2007)

believe that all acts of terror stem from an evil mind that is unrelated to the material or social conditions and that the perpetrators of terrorism need to be poor or destitute. This line of thinking strongly supported by researcher of a few American and European researchers such as Prof. Alan B. Krueger and Jitka Maleckovai, who on the basis of their impressions of Palestinian and Lebanese terrorism and the case studies of some of the top global terrorist, conclude that those who get involved in terrorism are well-off and relatively better placed. The media projected growing involvement of well-trained doctors, engineers in some of the recent incidents of global terror comes in handy for supporting this line of thinking. Such a viewpoint has been immensely helpful in forging a strategy of a total war on terror and also absolving the state's facing poverty conditions from any responsibility to wage a 'war on poverty' or hunger, first.

The other line of thinking that sees a close link between poverty and terrorism believes in rooting terrorism in material and social conditions. Here again, absolute poverty may directly lead the desperate population to indulge in food riots, water riots or become the paid agents of the terrorist provocateurs. Equally, 'relative poverty' (like 'relative deprivation' of Runcimann) may make the poor population a tacit sympathizer of the actions of the terrorist groups. David Gordon (1971) an American criminologist had related poverty to crime this way: "Driven by the fear of economic insecurity and by a competitive desire to gain source of goods unequally distributed throughout the society, many individuals will eventually become criminals." A similar poverty and crime rationalization appears in a famous ancient Hindu fable Panchatantra that states: 'what crime would a hungry person not commit, because poor are bereft of all feelings of kindness.' Similar are the views of Karl Marx about the criminal proclivities of the poor.

In a recent article Shashi Tharoor has argued about the complex connection between poverty and terrorism in terms of : " First, poverty helps create the conditions that provide succor and sustenance to terrorist, who can scarcely work in isolation, they need support bases, safe havens, supplies, allies and they find these amongst the general population that is broadly alienated from the world order the terrorist are attacking...Second, terrorist need rationale for their actions— a narrative of injustice to inspire their pawns, the suicide bombers and their ilk and to win broad sympathy

for their cause.” Tharoor goes on to conclude “So ending poverty will not end terror. But it will make terrorism that much more difficult to promote.”

Poverty-terrorism relationship research can be considerably enriched by re-visiting some of the earlier classics such as the US Crime Prevention Committee Report (1966) and some other writing such as Seeman’s path breaking article: “On the meaning of Alienation”<sup>3</sup>. In the article author makes a significant contribution in expounding the five different meanings of ‘Alienation’, namely: ‘Powerlessness’, ‘Meaninglessness’, ‘Normlessness’, ‘Isolation’, and ‘Self Estrangement’. Seeman’s such conceptualization can be very usefully deployed in enriching the understanding of extremism as well.

There are other externalities such as form of the government or protection of civil and political rights that crucially determine extremist behavior patterns.

### **Upholding Democratic Externalities and Extremism**

As opined by Crowley: “Democracies tend to be vulnerable to terrorism, but tend not to produce terrorists.” Thus, totalitarian regimes may be less prone to terrorism and democracies more vulnerable to terrorism, but some democracies are more suited than other in not driving people to violence. Therefore, the search is for those democracies that are less prone to terrorism. One of the essential attributes of a ‘terrorism proof’ democracy is a measure of respect for civil and political rights of its citizens. The civil and political rights of the citizens may be denied directly, as in the case of false arrest and accusations, custodial tortures, encounter deaths and non-prevention of ‘mass atrocities’ or may be denied indirectly, as in the case of non-enforcement of rule of law protections etc. The U.N. High Commissioner for Human Rights, Louis Arbor in a conversation with senior fellow for U.S., Foreign Policy, Lee A. Feinstein on the theme ‘Preventing Mass Atrocities’ highlights the state’s responsibility to protect its citizens against genocide, crime against humanity, war crimes and ethnic cleansing (Council on Foreign Relations, 8<sup>th</sup> June 2007). Arbor has expounded her idea of state responsibility thus: “I think, in fact, it’s full and much richer understanding of what state sovereignty is about, moving

<sup>3</sup> Seeman, “On The Meaning Of Alienation”, in Lewis A. Coser at al., Sociological Theory : A Book of Readings (1969) 3rd Ed., pp. 510-523. Seeman’s aforesaid article is based on his presentation at the behavioral Science Congress, 1958, at the University of New Mexico.

from the concept of a shield against accountability and scrutiny into the bundle of responsibility that comes with the privilege of governing...Now, there's also a lot of things it doesn't say, but the fact that these things are not inside the responsibility to protect, doesn't change the reality that there is a responsibility. For instance, as you know, it focuses on responsibility, to protect against genocide, crime against humanity, war crimes and ethnic cleansing."

Instances of indirect denial of civil and political rights may be more subtle and less visible. In a recent example of 1993 Bombay train blast trials, the victim of the blast got justice when over 100 accused involved in the blast were convicted and sentenced diversely for their roles in the crime, but the train blast that was a reaction to post mosque demolition communal riots in which several majority community leaders were indicted by the Shrikrishna Commission Inquiry, which still remains unimplemented. In a scathing article: "1993: two Bombay stories" Farah Baria has pointed civil rights denial implications of non-implementation of the Commission report because of the following reasons:

- 1) Firstly, despite political fear that it may 're-open old wounds', it will actually complete the cauterization begun by the bomb blast verdict. Pain is inevitable but is part of the healing process.
- 2) It will establish once and for all that terrorism in any form will not be tolerated even if it has official sanction
- 3) But, most importantly it will prove that those in power are not above the law— a fundamental precept of any democratic system.

Therefore, a 'terrorist proof' democracy has to take special care that neither there is a direct denial of civil and political rights nor the rights are denied indirectly. But much more than that the immediate need is to develop a scientific knowledge base that will generate research data on relationship between poverty and terrorism, on the one hand and respect for civil and political rights and terrorism, on the other. It is hoped that this will help us to 'deal' with a phenomenon which is still under-researched and least understood by most of us.

### **Deep Ideological Divide**

There are two approaches to understanding and perceiving terrorism. One, that treats all acts of terrorism alike and advocates subjecting terrorism

of every brand to strict, often draconian, legal regime. This approach provides adequate justification for an all out war on terror that leaves little scope for the human rights of the terrorist, who is treated more or less as an 'outlaw'. Second, that appreciates the unlikeness of different forms of terrorism and advocates resort to such appropriate measures that will address to the root cause of terrorism. The second approach obviously suggests treating every terrorist as a human being who can be re-claimed for the societal good.

The post 26/11 first day proceedings in the Indian Parliament not only reflected the true mood and temper of the people's representatives, but also the sharp divide between the extreme ideological positions on the issue of terrorism. The right wing ideological position was epitomized by the observation: "Not an eye for an eye, But for one eye both eyes, for a tooth, the whole jaw." The other position that advocated moderation was epitomized in the ruling party stand, namely: "Fight against terrorism should not result in brutalization of our society... the need was to be resolute and yet be careful."

These extreme ideological positions born out of fresh terrorist attacks of 26/11 may go much beyond polarization of political parties as 'hard' or 'soft' on terrorism. But in the long run such positioning means little unless we learn to distinguish between politics of terror, on the one hand, and the governance of security, on the other. It is always possible to take a strong action to prevent and manage terrorism without diluting the nation's commitment to the constitutional vision and Human Rights Values. That due process values and security are not necessarily irreconcilable.

### **Legal Framework for the Regulation of Extremism**

Perhaps as a legacy of the colonial past, the Indian state, both the Union and States, has never been able to shed its enormous powers over the life and liberties of the accused, more so in case of violent extremists. Such power can be grouped into two broad heads, namely (a) Power of immediate retaliatory action in the interest of protection of life and property of citizens and maintenance of law and order. Under List II Item 1 of the Seventh Schedule of the Constitution of India 'Public Order' is a state subject, however, the item excludes "other armed forces of the Union or of any other force subject to the control of the Union or of any



contingent or unit thereof in aid of civil power.” This makes it clear that both the Union and States forces have power to combat extremism any where within the country. Furthermore, the power to combat extremism extends to taking immediate steps involving acting in the exercise of defence of body (of the self and other) and property (of self and other) and also taking steps with a view to launch a successful prosecution leading to punishment etc. Thus, where the forces are required to resort to armed action, including shooting and killing for the purpose of self-defence the action may be fully justifiable in terms of sections 96 and 100 of the Penal Code. Similarly causing death of an extremist may be justified where it is to effect arrest of a person accused of an offence punishable with death or imprisonment for life (S.46(3) of the Code of Criminal Procedure, 1973). Similarly the procedural law confers wide power of arrest, search and seizure in respect of a case relating to extremism under sections 41, 42, 44, 149, 151, 152 and section 91 to 100 of the Cr.P.C.

In addition to such normal time powers, special powers are conferred on the State and its agencies in abnormal conditions of internal and external disturbances and violent extremism under the general law ( Section 129, 130 and 131 confer special powers to quell unlawful assemblies by civil administration and the deployment of armed forces in support of civil administration) and special laws such as the Unlawful Activities Prevention Act, 1967 (As amended in 2008), The Armed Forces Special Powers Act, 1958, The National Investigation Agency Act, 2008. These special legislations arm the State with wide and extensive powers of retaliatory and repressive action. Exercise of such excessive powers have been challenged before the Supreme Court that has favoured, by and large, compliance with strict legalism and due- process interpretations. In *Izharul Huq Abdul Hamid Shaikh v State of Gujarat*<sup>4</sup> the issue related to bail proceedings in a TADA case. Justice Altamas Kabir (M.K.Sharma J concurring) ruled that in the absence of any evidence to establish that the appellant had knowledge about the contents of the boxes he had loaded, grant of bail was justified. Similarly , in *Jayendra Vishnu Thakur v State of Maharashtra*<sup>5</sup>, Section 14(5) of TADA that required a fact to be “proved” for recording evidence in the absence of the accused, was interpreted by Justice Sinha ( M.K.Sharma J. concurring) strictly in order to invoke the

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4 (2009) 5 SCC 283

5 (2009) 7 SCC 104

extra ordinary exceptional provision. In *Ganesh Gogoi V State of Assam*<sup>6</sup> again the Supreme Court speaking through Justice Ganguly (Dalveer Bhandari J. concurring) had difficulty in upholding conviction for murder in a case where the prosecution had failed to prove intention required by section 3(2)(i) of TADA.

### **Statutory and Constitutional Rights Limitation**

Though State and its agencies enjoy wide powers to combat extremism in the interest of security of the innocent citizens and the ultimate legitimacy of the state itself, but the Constitutional; right guaranteed to the citizens, including those who are accused of extremist behavior, impose substantial and real limitations on such powers. Particularly Articles 14, 19, 20(1), 20(2), 20(3), 21, 22, 39A. etc. of the Constitution have conferred express rights that have an important bearing on powers of the state and Criminal Justice Administration. Furthermore, there have been several significant Apex Court and High Court rulings that go in to build a strong edifice for the liberties of the citizens. But perhaps because a fully- fledged pro-state Criminal Justice System was fully operational in India long before advent of the Constitution, the import of Constitutionalism is still rarely appreciated. That is the main reason why abuse of investigatory powers is becoming the order of the day, the abdication of their role by the prosecutors is tending the witness to turn hostile and disinterested and the dilatory criminal trials are compelling the parties to lose faith in the judiciary.

Derogation from the Constitutional rights in matters of dealing with the diverse forms of extremism is best exemplified in the growing incidents of policing through encounters. Shorabuddin encounter and Isharat Jahan encounter are the latest and most debated examples of the kind of conformity usually extended to the Constitutional rights by the State, particularly by the police agency. This is despite explicit prohibition in article 21: "No person shall be deprived of life or personal liberty except according with procedure established by law."<sup>7</sup> However, it is curious that those who have faith in 'encounter policing' argue that at times police can not risk sparing the extremist/ terrorist who in the course of a trial may claim all the benefit of a 'fair trial' and get released on bail. In this

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6 (2009) 7 SCC 404

7 A recent 2006 Amendment in Code of Criminal Procedure, Section 176(1A) that makes any death or disappearance from custody a matter of mandatory Magisterial Enquiry further strengthens

regard, a recent Five Judge Bench Order of the Andhra Pradesh High Court that remains stayed by the Supreme Court, has evoked fresh interest. In this case, an NGO had petitioned before the High Court, challenging the killing of eight maoists in 2006. The high court bench had passed directions that whenever death is caused by a police officer in discharge of his official duties an F.I.R. must be registered against him as per the relevant law. The Andhra Pradesh Police Officers Association challenged the order before the Supreme Court alleging that such an order would make all the policemen and commandos who kill terrorist, in course of duties an accused before the courts. In this context, it may be useful to remember that killing a terrorist is justified in the exercise of right of self defence, it may be justified in executing arrest under S. 46(3) of Cr.P.C. In disturbed areas killing is fully justified in terms of special powers under the Armed Forces Special Powers Act, 1958(Section3). But how do you arrive at the conclusion as to whether the killing was under any of the exempting conditions or not, unless a detailed and honest investigation of the killing undertaken? The Common law position in this respect was elaborately examined by the House of Lords, in Attorney General for Northern Ireland's Reference<sup>8</sup>, where a murder charge against a British soldier, for having shot and killed an unarmed person on suspicion of being a IRA terrorist, was in question. Lord Diplock had observed: " My Lord, to kill or seriously wound another person by shooting is prima facie unlawful." After stating the initial premise Lord Diplock goes in to examine the range of justifications given for the killing, thus: "The facts to be assumed for the purposes of the reference are not capable in law of giving rise to a possible defence of self-defence."<sup>9</sup> Therefore, unless we take every killing, including the killing of a terrorist, seriously and subject it to strict rules of law, our hopes of building a civilized, orderly and 'killing-less' society are likely to remain only a distant dream.<sup>10</sup>

In this vein it may be instructive to learn from the experiences of many other democracies that continue to succumb to the temptations of extra judicial executions fairly regularly. In a recent article, Victor V.

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8 (1977) AC 105

9 The Reference at p. 136

10 Pande, B.B. "Justifiable Executive Homicide in Obedience to Superior orders: Extent of Criminal Liability Exemption through ' Superior Order' Plea", Supreme Court Cases(Journal Section) (1982) 2 SCC pp.34-43

11 Victor V. Ramraj "Four Models of Due Process", Hein Online- 2 *International Journal of Constitutional Law*, 492, 2004

Ramraj<sup>11</sup> has examined extra judicial killings from a constitutional angle. The author has undertaken a comparative study of Singapore, India, United States and South Africa on the issue of constitutionality of extra judicial killings. The author has examined the constitutional response in diverse jurisdictions in the light of the constitutional norm and prevalent judicial practices in the light of the four basic Due Process models, namely: (a) Formal Model, (b) Procedural Model, (c) Procedural-Privacy Model, and (d) Substantive Model. According to the author the countries under comparative study come in one or the other due process model in matters of judicial control of extra judicial killings. The author puts India in the formal and procedural models, which are not the most suited models for putting an effective check on the arbitrariness of the executive. The author finds the substantive model, that prevails in South Africa, as the best suited model for the following reasons.

“ A Substantive due process doctrine forces courts to think seriously about underlying normative issues in precisely the same way that they do for other constitutional issues; it forces them to articulate fundamental normative principles that will constrain the pursuit of otherwise legitimate policy objectives by the state, and a substantive model of due process provides the court with the necessary tool- the declaration of constitutional invalidity –to shape the principles of criminal liability whether statutory or common law into a coherent normative system.”<sup>12</sup>

### **The Human Rights Touchstone**

Today it may sound paradoxical to speak of human rights in the context of extremism/terrorism. But when it comes to the challenge of making the formal system acceptable to the largest populace, if not all, what was observed by Edmond Leach over three decades ago becomes eminently apt:

“The problem of how to make legal system embrace those who do not accept the values which that legal system presupposes are very real... However, in comprehensible the acts of terrorists may seem to be, our judges, our policemen, and our politicians must never be allowed to forget that terrorism is an activity of fellow human beings and not of dog headed

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12 Ibid. at p. 524

13 Leach, Edmond, *Custom, Law and Terrorist Violence*, Edinburgh University Press (1977)

cannibals.”<sup>13</sup>

Coming to the basic issue: Do the extremists/ terrorists have human rights or freedoms? What freedoms or human rights can be accorded to the extremists/terrorist without jeopardizing the interests of the other citizens? Answer to these questions would require us to be clear about the social context. It is important to keep in mind that there can be disturbed times and there can be normal time, so can the response to extremist/terrorist behavior be instinctual (reaction to an act of extremism) or well thought out institutional reaction. Therefore, when we state our context it is ‘civilized way’ of dealing with extremism that means a way based on the tenets of the rule of law and human rights values.

Every act of extremism involves intentional resort to power by the power-holder or the extremist to influence the will of the sub-ordinate person. Since all such exercise of power is designated as use of force by physical manipulation of the sub-ordinate persons will, the modern legal systems treat all such exercise of power as illegal and subjects them to severe punishment. Therefore, when we talk of human rights of the extremists; are we talking of rights and freedoms to kill others, much less the innocents? Are we talking of right or freedom to destroy properties of others or the state? Are we talking of right or freedoms to coerce or intimidate the people or the society? The answer is an emphatic ‘no’. the extremist has not only no right or freedom to indulge in any of the aforesaid forms of behavior, on the contrary, indulgence in such behaviors should lead to serious adverse consequences under the law.

Are human Rights of the Extremist at the Cost of The Rights of the Victims of Extremism?

Often the zeal for caring for justice to the victim, particularly the victims of extremism, impels us to juxtapose rights of the victims with the rights of the extremists. As a matter of fact in the Criminal Justice administration victim interest protection comes much earlier in the scheme of things and the agencies are armed with adequate power to achieve the objective. In such a scheme the primary responsibility of protecting the victim is that of the state agencies, who owe a responsibility not only towards the primary victim but the secondary victim as well. The law has conferred on the policing agencies power of private defence and action in grounds of necessity. Therefore, whenever the victim suffers from a bodily

or property harm or his interests are violated, it is a case of the state agencies abdicating their responsibilities, rather than the 'right advocacy' of the human rights activists. As a matter of fact the stage of the rights of extremists arise much after the victim's interest or right protection stage and arises precisely because the extremist was permitted to have his way. It is therefore, a myth to think that the rights of the extremists are at the cost of the rights of the victims. The victims rights deserve to be better and more imaginatively protected.

The highly media publicised trial proceedings of the sole surviving terrorist physically involved in the Mumbai carnage of 26/11 has drawn our attention to the human rights that ought to be respected- safe and secure process of arrest, torture free custodial detention, right to representation by a qualified defence counsel, fair trial and adequate evidence to prove the guilt are some of the rights that have been extended to Mohammed Kasab, the dreaded terrorist who killed and destroyed with impunity. The rights of the terrorist that are to follow would be a well reasoned sentencing, execution of the sentence as per law and a dignified burial. May be Kasab's trial becomes a blueprint for the human rights of the extremists for the future.

To conclude it may be useful to advert to Amartya Sen's *The Idea of Justice*<sup>14</sup>, in which while discussing justice issues in human rights context (in chapter 17 devoted to "Human Rights and Global Imperatives") the author says: "For a wouldbe torturer, the demand is obviously quite straightforward: to refrain and desist (this is clearly a 'perfect obligation'). For others, too, there are responsibilities, even though they are less specific and generally consist of trying to do what one reasonably can in the circumstances (this would fall in the broad category of 'imperfect obligation'). The perfectly specified demand not to torture anyone is supplemented by the more general and less exactly specified- requirement to consider the ways and means through which torture can be prevented and then to decide what one should in that particular case, reasonably do."<sup>15</sup> By giving such an example, Sen tries to underscore the importance he attaches to torture-free social processes and the wider implications of human rights conceptualization that takes them much beyond the legally recognized freedoms. Can similar human rights derivatives of other recognized interests of life, equality, liberty and dignity be also drawn and applied to diverse situations of rights denials?

<sup>14</sup> Sen, Amartya, *The Idea of Justice*, Allen Lane, (2009)

<sup>15</sup> Ibid. at p. 376.



# Human Rights in the Age of Terrorism – A Balancing Act

*Arvind Verma\**

India as a nation has faced the scourge of terrorism for decades aplenty. While the Kashmir issue does occupy the mainstream consciousness of the civil society, it is indeed pertinent to remember that the Khalistan movement, the LTTE insurgency as well as the Naxalite threat have imperiled the united fabric of India on many occasions. That India continues to face the challenge of terrorist activities in different regions of the country due to varied historic and social dimensions is by itself a serious cause of concern; however, this paper focuses on a more basic premise i.e. the role played by modern legislative enactments in counter-terrorism efforts and the apprehended violation of human rights by the application of such laws: a natural byproduct of the continuous interface between terrorists and law-enforcement agencies.

## **Terrorism - Its Advent and Evolution**

The only consensual aspect of the definition of terrorism is that it is extreme violence backed by a fundamentalist cause.<sup>1</sup> Often condemned by one and worshipped by another, terrorism is used as a tool for spreading propaganda or a manifesto. Owing to its ideological nature, terrorism often conveys a message and uses fear as a tool for spreading its ideology. Terrorist attacks are organized in order to create maximum fear and exploit the human fear psychosis, often attacking landmarks and national symbols in an endeavour to display strength and shake the foundation of any modern day nation state, repeatedly attacking economic centers and tourist places in order to cause chaos. The term ‘terrorism’ is quite emotionally and politically charged, carrying grave connotations of death and

\*Senior Advocate, Supreme Court.

<sup>1</sup> Alex P. Schmid, Albert J. Jongman, et al., ‘*Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature*’, New Brunswick, NJ: Transaction Books, 1988, pp. 5-6.

destruction. The use of terrorism is, more often than not, in furtherance of a political cause or a goal, whether it be religious, anti-right wing or left wing ideologies or simply chaos and anarchy.

In a research paper by members of the Departments of Biological Sciences at the Stanford and Michigan State Universities, the roots and psychological sources of terrorism were considered.<sup>2</sup> The authors credited the advent of international terrorism to numerous factors which play a considerable role in defining the psyche of the terrorists; *“Geopolitics, especially rich world attempts to control oil, help incite terrorist attacks on the rich by people from developing countries. But demographic and socioeconomic factors, especially poverty, inequality and large numbers of young men facing dim economic prospects, also are likely contributors to such terrorism.”* In analyzing a terrorist’s mindset considerable regard must be had to the atrocities meted out his social group, or at least the perceived atrocities; for it is a culmination of these perceptions that drives terrorists to do something that they consider to be justified and right. It is, therefore, necessary to change the basic conditions that generate such anti-social mentalities in people and drive them to adopt terrorism. The two authors in their article argue that the commonly advocated mode of ‘...*bringing the perpetrators to justice...*’ is hardly the appropriate mechanism for ending terrorism and curtailing its seemingly perpetual advent. The answer according to them lies not in retributive justice but reformative justice. The evolution of criminal law has seen that what started out as man’s need for retribution has today evolved into a more mature and civilized thought of reformation. However, the new blade that has scarred mankind’s soul is terrorism and retribution is probably the need of the hour.

Another specific characteristic of terrorism is that it is often targeted against those who can’t enter into combat. It is against the innocent, the defenseless. Terrorism is often more horrific when women and children have been brutally killed and murdered. War is usually against a specific enemy given the right to enter into combat and fight for one’s self. The case of terrorism is peculiar, it is undeniably a war but one against the helpless and is conducted in such a way that the enemy does not have the capability to retaliate.<sup>3</sup>

<sup>2</sup> Paul R. Ehrlich and Jianguo Liu, ‘*Some Roots of Terrorism*’, *Population and Environment*, Vol. 24, No. 2 (Nov., 2002), pp. 183-192

<sup>3</sup> Mark Juergensmeyer, ‘*Terror in the Mind of God*’, University of California Press 2000, pp. 127-128.



Bruce Hoffman, partly quoting Brian Jenkins in his book *‘Inside Terrorism’*, has sought to define terrorism by highlighting its context”

*“On one point, at least, everyone agrees: terrorism is a pejorative term. It is a word with intrinsically negative connotations that is generally applied to one’s enemies and opponents, or to those with whom one disagrees and would otherwise prefer to ignore. What is called terrorism, thus seems to depend on one’s point of view. Use of the term implies a moral judgment; and if one party can successfully attach the label terrorist to its opponent, then it has indirectly persuaded others to adopt its moral viewpoint. Hence the decision to call someone or label some organization ‘terrorist’ becomes almost unavoidably subjective, depending largely on whether one sympathizes with or opposes the person/group/cause concerned. If one identifies with the victim of the violence, for example, then the act is terrorism. If, however, one identifies with the perpetrator, the violent act is regarded in a more sympathetic, if not positive (or, at the worst, an ambivalent) light; and it is not terrorism.”<sup>4</sup>*

In the context of the above statement the statement of Professor Martin Rudner, director of the Canadian Centre of Intelligence and Security Studies at Ottawa’s Carleton University, seems relevant.<sup>5</sup> He defines “terrorist acts” as attacks against civilians for political or other ideological goals, and goes on to say *“There is the famous statement: ‘One man’s terrorist is another man’s freedom fighter.’ But that is grossly misleading. It assesses the validity of the cause when terrorism is an act. One can have a perfectly beautiful cause and yet if one commits terrorist acts, it is terrorism regardless.”*

It can, therefore, be concluded that is it not in fact the cause that negates the legitimacy of such violent behaviour but the nature of the behaviour being fundamentally violent that denies it any such legitimacy. One, therefore, begs the question, what legal mechanism can a State formulate in order to prevent such terrorist attacks?

### **Legislative Enactments for Preventing and Punishing Terrorist Activities**

What started out as a British mechanism for preventing the Indian freedom struggle in the form of the Maintenance of Internal Security

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<sup>4</sup> Bruce Hoffman, *‘Inside Terrorism’* Columbia University Press 1998, at p. 32.

<sup>5</sup> Adrian Humphreys, *‘One official’s ‘refugee’ is another’s ‘terrorist’*, National Post, January 17, 2006.

Act, was revived by the Central Government under the same name in 1973. This Act made provisions for an indefinite period of preventive detention and was later repealed in 1977.

Latter-day legislations such as the Prevention of Terrorism Act, 2002 (POTA) incorporated many of the provisions found in an earlier law, the Terrorist and Disruptive Activities (Prevention) Act of 1985 (TADA), which remained in effect until 1995. While POTA was prospectively repealed in 2004, cases pending at the time of repeal have been proceeded with, and the Government has preserved some of POTA's key provisions by reenacting them as amendments to the Unlawful Activities (Prevention) Act of 1967.

A striking provision of TADA was that confessions of accused could be recorded even before a Police officer (an exception to Sec. 24 of the Indian Evidence Act, 1872, which makes confessions before such officers inadmissible). However, despite such a provision the conviction rate for offences under TADA was not found to be very high. The same fate was that of POTA which retained several provisions of TADA:

- Section 4 of POTA mimicked Section 5 of TADA in setting out a legal presumption that if a person is found in unauthorized possession of arms in a “notified area,” he or she is automatically linked with terrorist activity. This and other provisions strike at the very heart of the criminal justice system and every individual's right to be presumed innocent until proven guilty.
- Certain provisions of POTA were even more draconian than those operational under TADA, particularly those seeking to curb the right to information and freedom of expression. Section 3 (8) of POTA, for example, punished those in possession of information of material assistance in preventing a “terrorist act.” Failure to provide such information was punishable by up to three years imprisonment.

The Unlawful Activities (Prevention) Act, 1967 pre-exists all the aforementioned legislations; however, its applicability did not extend to terrorist organizations until quite recently. Its amendment in 2009 has incorporated several provisions of POTA into the legislation. Amongst the more important amendments to the Act, the scope of Sec. 15 that defines terrorism has been widened. The scope of the act has also been

widened by providing for extra territorial jurisdiction in several cases. New offences for organizing terrorist training camps or recruiting terrorists attract punishment (Section 18A and 18B). Provisions against raising funds likely to be used for the purpose of terrorism have been incorporated (Section 17). The law enforcement machinery is given powers to freeze such assets (Section 51A). Criminalizing intent to aid terrorists and terrorist organizations is extended to aid to terrorist gangs (Section 23). This is somewhat similar to the already existing provision in the Indian Penal code with regards to criminal conspiracy (Sections 120, 120B) which also criminalizes intent to commit unlawful acts, or lawful acts, unlawfully.

Sections 43A to 43F modify the Code of Criminal Procedure, 1973 where law-enforcement agencies are given powers of pre-trial custody, denial of bail provisions and adverse inference provisions. There are also provisions for arrest and search and seizure on suspicion, authorized under general or special orders by designated officers (Section 43A). Subjective suspicion has been made an adequate ground for arrest search and seizure thus negating the generic presumption of ‘innocent till proven guilty’ (Section 43C). All offences mentioned in the amended legislation permit arrest without warrant (Section 43D). Other provisions include denial of bail in the event that a *prima facie* case is made out (Section 43D). Furthermore, bail shall not be granted to a foreign national who has entered the nation in an unauthorized or illegal manner (Section 43D). What must be noted is that the amended Unlawful Activities (Prevention) Act, 1967, unlike the preceding anti-terror legislations, does not provide for confessions to be admissible when made to police officers.

### **Anti-terror Legislations and Human Rights Concerns**

It is trite that a complex paradox exists between human rights and counter-terrorism efforts. The growing expression of civilian dissent in the form of terrorist activities has given rise to a completely new dimension of legislation which while requiring ‘teeth’ to be an effective law, also has to factor the all-important facet of respect for human rights. The quandary has been explained quite eruditely by the eminent lawyer, Shri T.R. Andhyarujina, in the following words:

*“The revulsion for acts of terrorism like the 11-9-2001 (“the 9/11”) attack in USA and 26-11-2008 attack in Mumbai killing hundreds of persons understandably operates as a powerful force clouding the judgment of all persons. Judges also tend to look over their shoulder to note such events as when Lord*

*Steyn acknowledged in Secy. of State for Home Deptt. v. Rehman that the 9/11 events “reinforced compellingly” his decision upholding the deportation of a suspected terrorist from UK. It is in such moments however that Judges should not succumb to the pressure of the times. For example, it would be wrong to subscribe to the popular clamour that Ajmal Kasab, the lone terrorist caught red-handed in the Mumbai terrorist attacks should not be defended by a lawyer or to the view of one Judge who has said extra-judicially that such terrorists have no human rights but only animal rights.*

*Courts must develop a proper balance and proportionality during these difficult times rather than show excessive deference to the executive as has been done in the past. In the past the sad experience has been that Judges even in countries like UK, USA and India have failed in times of war and emergency and succumbed to the pressures on them during such times and expediently bent the law. Some cases exemplify judicial submissiveness in times of emergency in UK, USA and India in the past.”<sup>6</sup>*

A recent paper by the Committee on International Human Rights of the New York Bar Association analyses the human rights violations under the Prevention of Terrorism Act, 2002.<sup>7</sup> In their opinion the following are the primary human rights concerns which also go against due process of law :

- overly broad and ambiguous definitions of terrorism that fails to satisfy the principle of legality,
- pre-trial investigation and detention procedures which infringe upon due process, personal liberty, and limits on the length of pretrial detention,
- use of special courts and procedural laws that infringe upon judicial independence and the right to a fair trial,
- provisions that require courts to draw adverse inferences against the accused in a manner that infringes upon the presumption of innocence,
- lack of sufficient administrative or judicial oversight of police and prosecutorial decision-making to prevent arbitrary,

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<sup>6</sup> T.R. Andhyarujina, *Judicial Backbone during the times of Emergency and Terrorism*, (2009) 4 SCC 5 (Jour)

<sup>7</sup> Anil Kalhan; Gerald P. Conroy; Mamta Kaushal; Sam Scott Miller; Jed S. Rakoff, ‘*Colonial Continuities: Human Rights, Terrorism, and Security Laws In India*’, 20 Colum. J. Asian L. 93

discriminatory, and disuniform application, and

- broad immunities from prosecution for government officials which fail to ensure the right to effective remedies.

Whilst the provisions have been highlighted (most of which have been retained under the amended Unlawful Activities (Prevention) Act, 1967) seem draconian and violative of human rights, what must be noted is that judicial oversight is present at each and every stage in the process, except investigation. The jurisdiction of the High Court under Article 226 of the Constitution and under Section 482 of the Code of Criminal Procedure, 1973 is not ousted at any stage. Furthermore, all such provisions are in conformity with the reasonable restrictions imposed on fundamental rights in Part III of the Constitution.

A number of questions have been raised about the necessity of such anti-terror legislations. It has been strenuously argued that the provisions of the Code of Criminal Procedure, the Indian Penal Code and the Evidence Act are enough to control, prevent and punish terrorism. Whilst theoretically this is a possible view, one must first comprehend the evils and the lacunae that the prosecution faces in the arduous task of convicting terrorists. The criminal justice system has primarily suffered major set backs on account of lapses in investigation. Whilst police reforms have been sought to be implemented and formulated, they have barely succeeded in increasing conviction rates and improving investigation mechanisms. The legislature, therefore, has attempted to remedy the situation by amending the existing law and providing for adverse presumptions. Whilst such presumptions may be against the commonly accepted rule of innocence, they cannot be said to defeat the cause of human rights.

It is often said that adverse times call for adverse measures. Krishna was born to wipe out evil, Rama was incarnated to destroy Ravana. One may say that such legislations are man's way of helping himself fight the evils that pose before him.

### **Anti-terror Measures in the United States and India: A Comparison**

The quandary between anti-terror efforts and the violation of human rights is typified by an American experience. Subsequent to the 9/11

attacks on mainland America, any non-citizens which the US military perceived to be involved in international terrorism were detained at the detention facility in Guantanamo Bay pursuant to an executive order passed by the then President George W. Bush. Infamous for the veil of secrecy surrounding the methods of interrogation employed, the Guantanamo Bay detention facility has been the subject matter of significant judicial intervention into the policies employed by the U.S. Government and their consequential effect (or violation) of human rights norms.

In *Hamdan vs. Rumsfeld*,<sup>8</sup> the United States Supreme Court held that military commissions set up by the Bush administration to try detainees at Guantanamo Bay lacked “...*the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949...*” Specifically, the ruling stated that Common Article 3 of the Geneva Conventions was violated by such a requirement. The case considered (i) whether the United States Congress could pass legislation preventing the US Supreme Court from hearing the case of an accused combatant before his military commission took place, (ii) whether the special military commissions that had been set up violated US federal law (including the Uniform Code of Military Justice and treaty obligations), and (iii) whether courts could enforce the articles of the 1949 Geneva Convention. Vide order dated June 29, 2006, the Court ruled in favour of its jurisdiction through a 5-3 decision holding that the administration did not have authority to set up these particular military commissions without congressional authorization, because they did not comply with the Uniform Code of Military Justice and the Geneva Convention (which the court found to be incorporated into the Uniform Code of Military Justice).

In *Boumediene vs. Bush*,<sup>9</sup> the US Supreme Court granted the writ of habeas corpus prayed for by a citizen of Bosnia-Herzegovina, holding (by a majority of 5-4) that the constitutionally guaranteed right of habeas corpus review applied even to non-citizens held in Guantanamo and persons designated as enemy combatants on that territory. It was the rationale of the Court that if the legislature had indeed intended to suspend the right, it would have contemplated an adequate substitute to offer the

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<sup>8</sup> 548 US 557 (2006)

<sup>9</sup> 128 S.Ct. 2229

prisoner a meaningful opportunity to demonstrate he is held pursuant to an erroneous application or interpretation of law. Further, the Court held that the authority reviewing the decision-making must have some ability to correct errors, to assess the sufficiency of the government's evidence, and to consider relevant exculpatory evidence. The court concluded that the (US) Detainee Treatment Act of 2005 did not contain an adequate substitute remedy, and therefore, the right to approach the court for a writ of habeas corpus survived the enactment of the 2005 Act.

The USA PATRIOT ACT<sup>10</sup> gave the United States powers of intercepting communications relating to terrorism, computer fraud and other abuse offences.<sup>11</sup> However, an attempt to incorporate similar provisions in the Gujarat Control of Organised Crime Bill was nullified on the suggestion of the President and the Central Government. Later while making a statement in August 2009, the Home Minister, P. Chidambaram ruled out the possibility of sending the GujCoC Bill to the Parliament on the grounds that it was in conflict with Union Legislation: “...*Parliament has spoken and said confession made before a police officer will not be admissible. Parliament has spoken and said the last word on bail is the magistrate or a court and not the prosecutor. Parliament has spoken and said a person should not be detained without producing before a magistrate beyond a certain period of time. That is the last expression of the minds of Parliament...*”

Undoubtedly, several western democracies allow the admissibility of custodial confessions as evidence. However, in order to understand the position adopted by the Central Government, one must appreciate the qualitative lack of accountability of police officers in India, and the wide discretion which they enjoy in matters of arrest and investigation, as well as the possibility of gross misuse of such powers.

## **Conclusion**

Whilst trying to balance the bipolar concepts of terrorism – which advocates extreme violence against innocent civilians – and human rights – which urges nations to respect the innate rights of beings, we are faced with a question. Are human rights being sacrificed by legislatures all over

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<sup>10</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub.L. 107-56)

<sup>11</sup> Sections 201, 202, 203(b), 204

the world in the name of anti-terrorism legislation? Can such a sacrifice be justified?

Hobbes propounded that in order to protect oneself from lawlessness, and the brutal nature of man, men entered into a social contract and gave up all their rights (except the right of self-preservation) to the Leviathan, a ruler in charge of protecting the rights of the individuals. The same can be said of today's scenario when individuals have given their democratically elected representatives the right to make such laws within the confines of the Rule of Law and the Constitutional frame work, and in proportion to the threat being faced by society. It is this democratic framework, which operates on a majoritarian principle, that rationalizes the need for stringent anti-terror legislations which border on impinging certain human rights of the accused.

Another issue that needs answering is whether current laws violate human rights? An answer in the negative is more logical since the law in itself condemns abuse. Abuse of such legislations like all others is possible and probable. However this is a human defect and not a legal one. Safe guards are imposed in order to check such abuse. This seems to be an adequate safeguard of human rights.

Lastly, one must understand that such legislations are definitely not a solution to terrorism. One may call such legislations as an interim relief in the quest for a long term solution. This solution is a long term battle that must be fought on the intellectual and ideological plane, rather than the physical one. Hence, the answer to terrorism lies not only in removing social disparities and addressing the world geo-political discriminants, but also addressing the hearts and minds of individuals who are fundamentalist, whether it be right-wing or left-wing. It is only that evolution of man to a more mature and intellectual being that can cure terrorism.





# Terrorism, Insurgency and International Humanitarian Law (IHL) with Reference to India

*Ngangbam Nongyai\**

It is generally believed and taken that terrorism and insurgency are same. But if we examine the two minutely they are found to have certain different perspectives and goals.

It is declared that terrorism violates humanitarian rights and human rights. Terrorism is against the principles and purposes of the United Nations 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: The worst and most notorious non-State terrorist act is the *2001. Sept. 11* terrorist attack on the World Trade Center in New York and the Pentagon, in Arlington Country Virginia, with a death toll of 3000 people.

However, terrorism till today cannot have a university accepted definition. This may be due to the main fact that the best patriot of a country may be the worst terrorist to another country. The lack of agreement on a definition of terrorism has been a major obstacle to

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\*Member, Manipur Human Rights Commission (MHRC).  
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meaningful international counter-measures. But it has been admitted that terrorism is the systematic use or threatened use of violence to intimidate a population or government and thereby effect political, personal, religious, or ideological change. The term “terrorism” is derived from the French word *terrorisme*, which is based on the Latin verb *terrere* (to cause to tremble). Thus, terrorism denotes the *Reign of Terror* (1793-1794) in post-Revolutionary France and Jacobians are rumoured to have coined the term “terrorists” to denote themselves. In England the word terrorism was popularized by conservative Edmund Burke, an outspoken opponent of the French Revolution is general, as well as the Terror. According to the definitions of terrorism which focus on the killing of innocents and intention of affecting morale, there could be examples of State terrorism such as the bombing *Dresden* by the *Royal Air Force*, or the *Hiroshima and Nagasaki* atomic bombing by the United States Air Force (the main difference being that under the laws of Armed Conflict, a formal declaration of war had been made for each of the World War II incidents).

It is generally taken that *guerilla warfare and insurgencies* are often assumed to be synonymous with terrorism [see The Unlawful Activities (Prevention) Act, 1967 Section 2(1)(m)]. One reason for this is that insurgencies and terrorism often have similar goals. However, if we examine insurgency and guerilla warfare, specific differences emerge. A key difference is that an *insurgency is a movement* - a political effort with a specific aim. This sets it apart from both guerilla warfare and terrorism, as they are both methods available to pursue the goals of the political movement. But there always remains the indisputable fact that the ultimate goal of insurgency is to challenge the existing government for control of all or a portion of its territory, or force political concessions in sharing political power. Insurgencies require the active or tacit support of some portion of the population involved. Besides it, insurgency is different from terrorism in that the insurgents need not require the targeting of non-combatants. It means that the main aim of terrorists is to terrorize both combatants and non-combatants. They do not spare non-combatants. Insurgents also do sometimes resort to terrorist acts to achieve their goals, but it does not mean that all insurgents are terrorists. Thus, ultimately the difference between insurgency and terrorism comes down to the intent of the actor. Insurgency movements and guerilla forces are required to adhere to international norms regarding the law of war in achieving their goals (e.g. *Common Article 3 of the Four Geneva Conventions and Additonal*

*Protocol II*) and, as such, their movements though violative of the respective municipal laws may be later on justified under international law. But terrorism is violation of both international law and municipal law since it cannot be justified in either case.

On 9th November, 1950 India ratified the Four Geneva Conventions of 12th August, 1959 and Indian Parliament enacted the Geneva Convention Act, 1960 to implement certain provisions of those Conventions. But India has neither signed nor ratified the two Additional Protocols (of 8 June, 1977) to the Four Geneva Conventions. Protocol I relates to the protection of the victims of international armed conflict. Protocol II relates to the protection of the victims of non-international armed conflict. Common Article 3 of the Four Geneva Conventions deals with armed conflicts not of an international character. As India has not yet signed / ratified the Protocol II, we have to discuss within the preview of common Article 3 the applicability or inapplicability of international humanitarian law to the victims of non-international armed conflict not of an international character occurs in the territory of one of the High Contracting Parties. To such a conflict a High Contracting Party itself may be a Party. Art. 3 obligates each party to the conflict to abide by the following provisions :

- (1) *Humane treatment of non-combatants (civilians), members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, without discrimination of any kind. Each Party is also bound to abstain from, in respect to these persons.*
  - (a) *murder of all kinds, mutilations, cruel treatment and torture;*
  - (b) *taking of hostages;*
  - (c) *outrages upon personal dignity, particularly humiliating and degrading treatment;*
  - (d) *the passing of any sentence and execution thereof without the previous judgement rendered by a regularly constituted court by following civilized judicial procedure and norm. (Note : provisions (a) to (d) are inviolable at any time in any place).*
- (2) *Collection and care of the wounded and sick.*
- (3) *Obligation of the Parties to the conflict to bring into force by means of special agreements, all or part of the other provisions of the relevant Geneva Convention.*

Under Art. 253 of the Constitution of India, Parliament may make law for implementing the above provisions. Till a legislation is so made in

this respect, the provisions are not justiciable/actionable in the Indian Courts and their breaches shall be judicially remediless although Art. 51 of the Constitution obligates India to honour these provisions.

From the international law point of view any dissident armed group fighting against India from inside or outside has to abide by the provisions of common article 3 of the Four Geneva Conventions. The obligation is laid down in Article 3 itself. Such a dissident armed group may not be a party to the four Geneva Conventions, yet it is bound by the provisions of Article 3, because the *four Geneva Conventions codify and lay down the laws of war or armed conflict in the interest of mankind and for humanizing the savagery of modern war which shall be otherwise more savage and devastating*. The provisions of the four Geneva Conventions, in particular those in common Article 3, lay down the basic and fundamental law of mankind which no state, no association armed or unarmed and even no individual armed or unarmed can violate. Oppenheim has stated: "Moreover, it is an established principle of customary International Law that individual members of armed forces of the belligerents - as well as individuals generally-are directly subject to the law of war and may be punished for violating its rules". (see L. Oppenheim : International Law A Treatise Vol One Eighth Edn. P. 21, also Pp. 341-342). According to J.G. Starke, multilateral treaties creating new rules of international law may bind non-parties in the same way as do all rules of international law, or be applied de facto by them as standard-setting instruments. (*J.G. Starke: Introduction to International Law Tenth Edn. P. 445; see also Art. of the Vienna Convention on the Law of Treaties 1969; Art. 17 of the Covenant of the League of Nations; Art. 2:6 of the UN Charter etc.*) Besides it, the rules of customary international law including the provisions of the Universal Declaration of Human Rights (UDHR) (1948) which are now regarded as rules of customary international law [see *Filartiga v. Pena-Irala* (1980)] shall be binding on both modern states and non-state actors.

Besides it, one of the conditions for the recognition of insurgent or belligerent force by the international community/United Nations is that the insurgent or belligerent force as well as the parent government must act in accordance with the laws of war, and the insurgents in particular must have organized armed forces under a proper command, the other conditions being (a) the armed conflict must be of a general character, as distinct from those of purely local nature, and (b) the insurgents must

control a sufficient portion of the territory of the parent State thereby establishing a rival Power of some magnitude (*see J.G. Starke supra Pp. 151-152*). It is thus indisputable that observance of the four Geneva Conventions by the dissident armed group is a duty imposed by international law and their violation shall render the group criminally liable under the international humanitarian law.

Lastly, we must point out that the provisions of Art. 3 of each of the four Geneva Conventions may be attracted in India under three conditions:

- (1) *When the President of India issues a Proclamation of Emergency under Article 352 (1) of the Constitution on ground of "armed rebellion" or "war" as waged by a group/section of Indian citizens/people;*
- (2) *When there is a criminal case-investigation, inquiry and trial of the offences under Chapter VI (Offences against state) of the I.P.C., 1860 with the Government saction accorded under Section 196 of the Cr. P.C., 1973; and*
- (3) *When there is a criminal case under Section 10 of the unlawful activities (Prevention Amendment) Act, 2004, but not under section 16 of the Act. Section 10 deals with punishment for unlawful association and unlawful activities which are of political nature whereas Section 16 deals with punishment for terrorist act which is not necessarily of political nature. The borderline between Section 10 and Section 16 is found thinnest as well as overlapping. But it a dissident armed group is branded as a "terrorist organisation" (see Schedule to the Act), then the provisions of the four Geneva Conventions, in Particular provisions of the four Geneva Conventions, in Particular provions in article 3, May not apply to such a group. However, under Section 36 of the Act, the Central Government may denotify a terrorist organization from the Schedule to the Act on application by the organization itself or by any person affected by the inclusion of the organisation in the Schedule as a terrorist organisation. A Review Committee constituted under Section 37 (1) of the Act may review such an application if rejected. However, the applicability of common Article 3 of the four Geneva Conventions in the above criminal proceedings shall depend upon a Parliamentary legislation giving effect to Article 3 and the Additional Protocol II.*

In conclusion, it is noticeable that the fundamental rights conferred by *Articles 20 and 21 of the Constitution of India* which are claimable and enjoyable by both Indian citizens and non-citizens even during the war or any armed conflict international or non-international have given most significant contribution to the development of modern international humanitarian law. [see *M. Ibohal Singh's constitutions Constitutional Interpretation and Human Rights (Indian and Foreign) Volume I First Edition 2009 Pp. 553-554, 556; Volume 3 Pp. 3912-3913, 4234-4239 Published by Lexis Nexis Butterworths Vadhwa Nagpur*]. Therefore, in my considered view, the General provisions of *common Article 3 of the four Geneva Conventions and Additional Protocol II* deserve notice and application by the Supreme Court and the State High Court Concerned while enforcing the fundamental rights conferred by Articles 20 and 21 on the application of the victims of non-international armed conflicts taking place in any part of India.

## Terrorism - An Assam and J&K Experience

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Terrorism is an act of extreme and unprincipled violence. Human rights stand for man's right to life and dignity. Whereas terrorism is a manifestation of the cruel streak in man, the concept of human rights springs from man's noble urges. In my own little way, I have been associated with combating terrorism and also interacting with human rights activists for long. I had to do this both during my army career and subsequently in gubernatorial assignments in the two most terrorist affected States in the country. While discussing the menace of terrorism and efforts to uphold human rights, I shall also draw upon my personal experience to substantiate my views.

Never before has the scourge of terrorism been as widespread as it is today. India has been one of the worst victims of terrorism of all varieties. In the last over half a century since Independence, we have lost over one lakh innocent lives as a result of terrorism. Our fatal casualties in the four wars that we have fought during this period have been about ten thousand.

Terrorism per se is not a new phenomenon in history. Acts of terrorism have been taking place through the ages. The massacres by Atilla, Chengiz Khan, Timur or Nadir Shah were carried out to strike terror among the people. The Oxford Dictionary defines terrorism as terror inspiring governance or of coercing government/community through acts of terrorism. Robespierre instigated the reign of terror in France in 1793 following the French Revolution. He justified his methods as being necessary for transforming an absolute monarchy to a liberal democracy. The massacre at Jalianwallabagh was a calculated act of massacre to strike terror among the people that was building up against

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the colonial government. During the court of inquiry into that genocide, Dyer took this line. He was even hailed in Britain as a hero who had saved the Empire. After that most outrageous incident, the Army's doctrine for acting against civil disturbances was changed. Action to be taken in such cases had to be related to the requirements of the situation at a specific place rather than for creating an effect elsewhere. Such action had also to be in conformity with the principle of minimum force. In more recent times the massacre by the Poll Pot regime in Cambodia is an instance of state terrorism.

Terrorism of the weak against the strong is essentially a postsecond World War phenomenon. There was an odd instance of terrorism of the weak against the strong, in the first century, when the Sicarus, a Jewish group would murder officials and collaborators to get rid of Roman rule. There is a certain amount of similarity between insurgency and terrorism. Both are acts of violence by the weak against the strong for attaining political goals but the methods adopted are different. Whereas insurgency is dependent on wide support from the people terrorism is not so dependent on popular support. Insurgents attack the Government forces using guerilla tactics. Terrorists not only attack Government forces but also innocent women, children and other people to create a fear psychosis. Kidnappings, hijacking or suicide bombings are their stock in trade. Insurgents refrain from indulging in such heinous acts. Nowadays the line dividing insurgency and terrorism often gets blurred. The militancy in Assam and in Kashmir has been a mix of both.

The UN Security Council has defined terrorism as an act intended to cause death of civilians or non-combatants with a view to intimidating the Government or the society in pursuit of political, ideological or religious goals. Various factors have impacted on terrorism in modern times. Globalisation, instant communication, the reach of the media, both print and electronic, and easy availability of modern weapons which can cause largescale damage, have in different ways affected the spread of terrorism. There are different types of terrorism like Jehadi terrorism, secessionist terrorism and revolutionary terrorism. Jehadi terrorism can be of two types. It can have the support and sympathy of a large section of the local people or the local people may be hostile to it except for a few sleeper cells. In Kashmir we face Jehadi terrorism of the former variety



and in rest of the country Jehadi terrorism of the latter type. Brigadier SK Malik of Pakistan Army, a protégé of Zia-ul-Haq, has written a book on the Quranic concept of warfare. He maintains that the human race is divided into two categories of believers and non-believers. The believers must be constantly at war with non-believers till they are killed or they are converted. Striking terror against the non-believers must be the constant aim. It is not a means to an end but an end in itself. By striking terror, the non-believer should be made to lose faith in himself, in his religion, in his polity and in his State. Al Qaeda believes in that philosophy. It aims to establish a Caliphate, where Nizam-e-Mustafa will prevail. The world is divided into Dar-ul-Islam and Dar-ul-Harb. In the former, Islam prevails and in the latter, other religions are dominant. Dar-ul-Harb has to be converted into Dar-ul-Islam. The recent shoot out at US Army Camp at Fort Hood in which Major Hassan killed a whole lot of his fellow soldiers, was prompted by religious fanaticism. He gave a lecture on the Quranic world view as it relates to Muslims in the US Army. He argued quoting the Quran to prove that Allah forbids Muslims to kill Muslims in an infidel army. Allah will punish anyone who kills a Muslim. He talked of a defensive Jihad. If others attack and oppose Muslims then it is the duty of all Muslims to fight them.

International terrorism started in late sixties of the last century when the PLF hijacked a flight. In 1972 Palestinian terrorists kidnapped and killed Israeli athletes during the World Olympics in Rome. Later Libyan terrorists blew up a Pan Am flight over Lockerbie in Scotland. The US supported Jehadi terrorism against the Soviets in Afghanistan. Pakistan has been unleashing Jehadi terrorism against India. Both the US and Pakistan have suffered at the hands of the Frankenstein they released. Al Qaeda, Hamas, Hezbollah, Lashkar-e-Toiba, Hizbul Mujahedeen and so on are the various Jehadi terrorist outfits operating today. Jehadi terrorism is now the biggest scourge facing the international community. Pakistan is the epicentre of international terrorism.

India has been facing all the three types of terrorism, secessionist, Jehadi and revolutionary. While combating terrorism which has a degree of popular support, it is imperative that every effort should be made to isolate the terrorist from the people. Mao's theory was that the insurgent

is like the fish and popular support is like the water in which he survives. If the insurgent loses popular support, he becomes like a fish out of water. I tried to isolate the militants from the people while combating militancy in Assam and in Jammu and Kashmir. It will not be out of place to dwell on the strategy we adopted in these two States.

I took over as Governor of Assam in 1997 when militancy was at its peak in the State. In different incidents the Chief Minister had a miraculous escape from a terrorist attack, a Cabinet Minister was killed and another seriously wounded. An IG Police and a Brigadier had been killed at different places in Guwahati city. Two Colonels had been shot inside Kamakhya temple. The militants were hailed as heroes. Large crowds would attend the funeral of militants killed in encounters with the Security Forces and funeral orations would be delivered praising them. Brahmaputra Mail and North East Express were derailed due to explosions on railway tracks killing a few hundred passengers. There would be frequent explosions on road and rail culverts and bridges, snapping land link of the North East with the rest of the country. There had been ethnic clashes between Bodos and Adivasis in which 700 people had been killed. Two lakh Bodos and Adivasis were living in refugee camps. We crafted a three prong strategy to deal with the situation – unified command, economic development and psychological initiatives. We had been fighting insurgency in the North East for over forty years but we did not have a unified command. As a result different elements, the Army, the Para Military and the Police were fighting militancy more as competing than as complementary forces. We set up a unified command in Assam in 1997. This yielded excellent results and broke the back of militancy in Assam. On the economic development front, apart from the usual measures, we hit the jackpot by installing one lakh shallow tube wells in the Brahmaputra Valley in one year. This turned Assam from a rice deficit to a rice surplus State. As for psychological initiatives, our trump card was taking up the case of illegal migration from Bangladesh into Assam. This had been the root cause for the start of insurgency in the State. A detailed report was submitted to the President. This unabated influx constituted both a threat to the demography of the State and to our national security. Various measures were recommended to curb this influx, the most important being to repeal the IMDT Act which was acting as a

facilitator to this influx. The IMDT Act was ultimately struck down by the Supreme Court, quoting extensively from my report. I also introduced a strong emotional content in our psychological initiatives. I declared that my aim was to make the people of Assam proud of their past and the rest of India proud of Assam. I projected the three icons of Assam as national heroes. Little was known about them outside the State. These are the great spiritual leader Mahapurush Shankar Dev of the sixteenth century, Veer Lachit Borpukan, the great military leader of the seventeenth century who decisively defeated the invading Mughal Army of about 75,000 when Mughal imperial power was at its zenith, and Lokpriya Gopinath Bordoloi the great statesman of the twentieth century. All this had the desired effect of winning the hearts and minds of the people. Unfortunately due to various acts of omission and commission ULFA militancy seems to have now got a fresh lease of life.

When I took over as Governor of Jammu & Kashmir in June 2003, the situation in the State was on the mend. Elections had been held successfully in November 2002 and a coalition Government of the Congress and the PDP was in power. Composite dialogue with Pakistan started a few weeks later. By November 2003 a ceasefire on the LOC was agreed upon by both sides. No doubt these were positive developments. However, the level of violence was still quite high.

Religious fundamentalism has been the root cause for the secessionist movement in Kashmir. Militancy in the State has been a mix of insurgency, terrorism and proxy war. Kashmir has been an international hotspot for long. We tried out the three prong strategy which had succeeded in Assam, suitably modified to suit local conditions. We added a new prong to our strategy, namely counter propaganda. The four prongs of our strategy were unified command, economic development, psychological initiatives and counter propaganda.

A unified command already existed in Jammu and Kashmir but it had some organizational infirmities which were set right. Greater emphasis was laid on co-operation at all levels. Cordon and search operations seldom yielded results and caused harassment to the people. We switched over more to surgical operations based on good intelligence. This resulted in the level of violence getting reduced from about 10 a day to about one a

day. Return of near normalcy was reflected in the sharp rise of tourist arrivals in the Valley from 28,000 in 2002 to about 6 lakh by 2009. The LOC covering a distance of 720 kilometers was suitably fenced with modern gadgets and night vision devices. This led to a very substantial reduction in infiltration from across the border.

An economic aid package of 24,000 crore was announced by the Prime Minister in 2004. Per capita aid from the Centre in J&K was eleven times higher in Jammu and Kashmir than in States like Bihar and Orissa. One thousand micro hydel projects based on water mills were installed to provide 5 to 8 kw of electricity in remote villages on the mountains. 30 to 40 light points were made available to these villages which had never seen an electric bulb before. By day the power was utilized for grinding corns or operating looms. This became very popular with the village folk.

Several psychological initiatives were taken to bring about a mind change among the people. We tried to combat religious fundamentalism through promoting and propagating Kashmiriyat, which stands for amity across religious divide. Amarnath Shrine Board started organizing a three days Sufi music festival in Srinagar during the Yatra. For the first time, musicians from Pakistan and other countries like Egypt, Syria and Uzbekistan participated in this festival. The Army established about fifty Goodwill Schools in remote areas and two Army Public Schools, one each at Rajauri and Anantnag. Students in groups of about fifty were sent on Bharat Darshan tours to Delhi, Ajmer, Jaipur, Bangalore, Mumbai and so on. A few thousand students went on this tour organized by the Army to promote national integration. The Army undertook repairs and renovation of Ziarats which was much appreciated by the local people even though the Chief Cleric issued a Fatwa against the Army for interfering in religious matters. On 2 October 2007 an essay competition on Mahatma Gandhi was organized for school children. The separatists called for a boycott but this was ignored and fifty thousand students participated in this contest for which several handsome cash prizes were given. The Chief Cleric issued a Fatwa against Chief Minister Ghulam Nabi Azad. We started a centre for Kashmir Studies in Kashmir University. International seminars on Kashmiriyat and other subjects like Kashmir and Central Asia were held. Scholars from Pakistan and Central Asian

countries attended these seminars. This Centre organized a big function to spread the message of Kashmiriyat in South Asia.. The President of India presided over the function. The delegation from Sri Lanka was led by Chandrika Kumartunga Bandarnaike, from Afghanistan by Dr Ghaznafar, a senior Cabinet Minister and from Pakistan by Begum Taslima Hashmi' daughter of the legendary Urdu poet Faiz Ahmed Faiz. The other South Asian countries, Nepal, Bhutan, Bangladesh and Maldives also sent distinguished representatives. Ignoring the boycott call given by the separatists, there was an enthusiastic response and the large University auditorium with a capacity of 2,000 was jam packed. The following day on 26 May 2008, the famous Junoon Band from Pakistan played Sufi pop music. The separatists also called for a boycott of this function. This again was ignored and a crowd of several thousands attended the concert. The Pakistani leader of the Band announced that he had come to Kashmir to launch a musical Jihad for peace. The leading English daily of Pakistan, *Dawn*, in its editorial on 28 May 2008 wrote. "Music knows no boundaries. The people of Kashmir had an opportunity to express their anger against religious militancy." The success of these functions rattled the separatists and they feared that they were losing their support base. They picked on a total non-issue to arouse communal passion. It so happened that at the same time when the mega Kashmiriyat function was held in Srinagar, the State Cabinet unanimously approved allocation of forest land to five different agencies including the Amarnath Shrine Board. Such allocations were being made in a routine manner over the years. 100 acres of land at Baltal traditionally used as base camp for the Yatra, was diverted to the Shrine Board. The ownership of the land was to remain with the State Government but the Board was permitted to put up temporary prefabricated shelters for the pilgrims replacing tents. This land is covered with heavy snow in winter and is unapproachable and uninhabitable for eight months in the year. PDP Ministers had examined and processed this case for nearly three years before the required sanction was given. The separatists spread the absurd canard that the Shrine Board was establishing Hindu township of Amarnathnagar with a view to changing the demography of Kashmir. Soon a communal tornado was raging in the Valley over this issue with the PDP Ministers who had sanctioned the land allocation, joining the agitation. There was largescale

violence in which about fifty people got killed. To appease the agitators, the allocation of land to Amarnath Shrine Board was cancelled and the Board virtually disbanded. There was sustained counter agitation in Jammu for a month and ultimately status quo ante was restored. The Shrine Board was permitted to put up prefabricated shelters at Baltal. The pointless agitation over the Baltal land was a setback but normalcy was restored soon. Despite boycott calls, the huge voter turn out for the Assembly election followed by the Parliamentary election upheld the people's faith in democracy.

As mentioned earlier, the fourth prong of our strategy was counter propaganda. I am afraid this was our weakest prong. A section of press in the valley was very anti-India and was constantly spewing venom. Facts were being turned on their head to arouse anti-India feelings. Despite all efforts made by us a little attention was paid to countering false anti-India propaganda. The communal outburst over the Amarnath controversy could have been avoided if due emphasis had been given to countering baseless and absurd propaganda.

We have also been facing another type of Jehadi terrorism for which there has been no support from the people except for a few sleeper cells. These are the terror attacks against our cities in the mainland. The 26/11 attack in Mumbai has been the mother of such attacks. Hafeez Mohammad Sayeed, the master mind behind this attack had stated at a public meeting on November 3, 2000, "Jihad is not about Kashmir only. Fifteen years ago people would have found it ridiculous if someone had told them about the disintegration of the Soviet Union. Insha Allah today I announce the break up of India. We will not rest till the whole of India is dissolved into Pakistan." His followers wildly cheered him and announced that they would soon unfurl their green flag over the Red Fort at Delhi. Not long after this speech the Lashkar-e-Toiba launched a terrorist attack at Red Fort and on our symbols of democracy. They targeted first the Jammu and Kashmir State Assembly and then the Indian Parliament. They have been repeatedly targeting India's financial capital with a view to retarding our economic progress discouraging foreign investment in the country. Terrorism is being used as a weapon to unleash a war on India. The strategy to combat this type of terrorism has to be

different. There is no requirement for providing economic aid or for psychological initiatives to win hearts and minds. Such terrorism has to be dealt with by organizing suitable defence and by launching offensive action against the source from which terrorist attacks emanate. 26/11 exposed a lot of chinks in our political and professional armour. Both political will and professional competence were found lamentably wanting. After 26/11 a certain amount of dynamism has come into our Home Ministry. Let us hope that it achieves positive results.

Terrorism of the Left extreme variety called Maoist terrorism poses a very serious challenge to our national security. 20 States, 233 districts and 2,000 police stations are affected by this menace. This revolutionary movement is led by people totally dedicated to the teachings of Marx and Mao. A Red Corridor has been established from the borders with Nepal through Bihar, Jharkhand, Orissa, Chattisgarh and Madhya Pradesh to Andhra Pradesh. The thickly forested area of 7,000 square miles mostly in Chattisgarh comprising 20,000 tribals and 237 villages has become a haven for the Maoists. They call this liberated zone where they run a parallel government administering justice through public courts. They have been able to acquire a formidable array of weapons and explosives. Their total strength is estimated as 20,000 underground and 50,000 over ground workers. They have been carrying out spectacular strikes like looting a district police armoury and taking away 500 rifles, attacking district jail to rescue colleagues and at the same time allow other inmates to escape, hijacking a railway train, attacking railway stations, police stations and so on. The Governments, both at the Centre and in the States, have allowed the grass to grow under their feet for far too long. Of late, the Ministry of Home Affairs is going about earnestly to rectify matters.

Maoist terrorism has been flourishing primarily because of lack of good governance. The affected areas have been neglected from the point of view of development. The record of our intelligence services has been abysmal. Police stations are the cutting edge of police administration and yet they have been sorely neglected. They are ill-equipped and their numbers are inadequate. Para military and armed Police need to develop a higher standard of professionalism. They also need improved facilities

including modern weaponry. Massive effort at development of affected areas is required concurrently with all out effort to curb Maoist violence.

The Human Rights Council of forty-seven States for promotion and protection of human rights around the globe, was set up by the UN General Assembly on 15 March 2006. In India we have established National Human Rights Commission and State Human Rights Commissions. The Chairman for the former is a retired Chief Justice of the Supreme Court and of the latter a retired Chief Justice of High Court. The focus is on violation of human rights by the State and human rights violation by terrorists is ignored. This lacuna needs to be redressed.

India's record of human rights while combating terrorism is much better than of the USA and Pakistan or of China and erstwhile USSR. We have been fighting terrorism in Kashmir for two decades and have never used offensive air power or artillery against the militants. These weapons cause indiscriminate and largescale casualties. We have always in encounters with the militants restricted ourselves to small arms only. Pakistan's violation of all cannons of human rights in East Pakistan during the 1971 war, was staggering. Pakistan Army has been freely using offensive air power and artillery for combating militancy in Baluchistan, Waziristan and Swat Valley. The USA has also been doing the same in Iraq and Afghanistan. And of course the atrocities committed in Abu Gharib jail in Baghdad and in Guantanamo Bay have been most flagrant acts of violation of human rights. The Indian Army has also on occasions been guilty of human rights violations but compared to either Pakistan or the US Army, its record is much better. Instances of violation of human rights coming to light are properly dealt with. In different instances of human rights violations in Kashmir, 71 Army personnel were found guilty and dismissed along with prison sentences varying from 2 to 14 years. Just as it is utopian to think of a totally crime free civil society, it is not practical to expect that there would be no instance of human rights violations when the Army is deployed in counter insurgency operations. The troops taking part in such operations should be made aware of the requirements of human rights and the fact that their violation can be counter productive in achieving the desired goal. Every effort should be made to keep human rights violations down to the minimum and instances



coming to light be dealt with promptly and severely.

In conclusion, I would like to make some recommendations in regard to tackling terrorism and upholding human rights. Terrorism is the biggest menace facing mankind today. There are apologists for terrorism who try to defend this blatantly criminal act as a freedom struggle calling the terrorists freedom fighters. There are also some so called Left intellectuals who try to defend the terrorists as revolutionaries struggling for a just social and economic order. How can the conscience of a man accept criminal acts like blowing up of hundreds of school children in Moscow by Chechan terrorists as a freedom struggle or a revolution for ushering a new world order? There are different types of terrorism and the strategy for dealing with them has to be tailored to meet the requirements of each. The terrorist is an invisible enemy. Sound intelligence is essential for dealing with terrorism. Security Forces without sound intelligence get reduced to fighting the terrorist blindfold or to put in another way, being made to look for a needle in a haystack.

Every act of terrorism is a violation of the human rights of innocent people. Human rights of terrorists cannot be considered more important than the human rights of the victims of terrorism. The primary objective of counter terrorist operations is to safeguard the human rights of the people and uphold the rule of law. Disregard and contempt of human rights result in barbarous acts which outrage the conscience of mankind. Security Forces combating terrorism should be trained and made aware of the imperative of safeguarding human rights. Response to acts of terrorism should be selective and not lead to unleashing of unbridled repression infringing upon the human rights of the people. The latter can only be counter productive in quelling terrorism.

Apart from sound intelligence the other equally important requirement for overcoming terrorism is to win over the people and ensure that the terrorist is isolated from the people. This was tried out in different ways in Assam and in Kashmir. The terrorist should be reduced to the state of a fish out of water. Various psychological initiatives as tried out in Assam and in Kashmir, suitably modified to meet individual cases, should be undertaken to isolate the militants and win over the people. In the case of Maoist terrorism, the prime requirement is to provide good

governance and development for the deprived sections of the society thereby isolating the terrorists.

Human rights organizations and activists should have a realistic and practical approach while dealing with instances of human rights violations. They should not confine their attention to violations by Security Forces only. Violations by the terrorists should also be brought under their scanner. The latter is often more gruesome like public beheadings or slitting throats. The latter has been taking place quite often in Kashmir. Sometimes the throats of even small children have been slit by the terrorists.

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## Terrorists and Human Rights

*Justice Vinod Prasad\**

Some body has said that Laws are meant to be broken. This expression finds it's greatest champions in those people who consider themselves as Laws unto themselves and they are terrorists. Good and evil have existed together as one does not survive without the other but the greatest evil of the contemporary world without corresponding good is terrorism. Our country is no exception. We have witnessed many terrorist attacks in the recent past. On 13<sup>th</sup> December 2001 five armed gunmen infiltrated into Indian Parliament house precinct and in exchange of cross firing between them and security forces, five police personnels, a gardener and a parliament security guard lost their lives. On 13<sup>th</sup> May 2008 pink city of Jaipur, capital of state of Rajasthan was rocked by seven serial bomb blasts within a span of 12 minutes, leaving sixty dead and injuring more than 120 people. 26<sup>th</sup> November 2008 terrorist attacked India's fiscal capital Mumbai at eight places including CST Railway station, Taj Mahal Hotel, Oberoi Trident Hotel, Cama Hospital, Metro Cinema etc. murdering and wounding hundreds of innocent people, as they had planned and targeted areas having huge conglomeration of human population.

The above terrorist attacks and many more examples of such incidents around the world, including World Trade Center attack in the most powerful country of the world –US, is tormenting and outraging many inquisitive minds igniting the most debatable complex question as to whether these wholesalers of human coffins and corpses can be anointed with Human Right protection?

For and against arguments and writings advanced till date can be

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compiled into plethora of volumes and each one of the these champions and authors has got his own style of putting his own point of view. Nonetheless, the question has to be tackled and answered in more practical and pragmatic way considering the enormity of terrorist attack menace around the world.

What are Human Rights and what is the scope of it's applicability vis-à-vis a terrorist who has got scanty regards for such Rights?

### **What are Human Rights**

Human rights are related, interdependent and inalienable inherent rights possessed by all human beings irrespective of their nationalities, places of residence, sex, ethnic origin, colour, religion, language or any other status. These are those rights to which all human beings are entitled without any discrimination. In the Geneva Convention of 1948, Universal Declaration of Human Rights was adopted for the "Recognition of the inherent dignity and inalienable rights of all members of human family". The Convention provided:-

#### **Article 1**

" All human beings are born free and equal in dignity and right. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

#### **Article 5**

" No one shall be subject to torture or to cruel, inhuman, or degrading treatment or punishment".

Those individual, group or groups who indulge in contumacy of these declarations act contrary to such noble ideals and consequently they can not claim protection of Human Rights. These perpetrators of human genocides, mostly by use of bomb blasts and unmindful insane triggering of AK47 rifles, do not possess human qualities. They murder and blast

human bodies of innocent people, women and children, sick and infirm, old and young all alike, and most of the times corpses are smithereened into pieces, making it impossible to collect body parts of the departed innocent souls and perform their last rights. The most glaring example is the cowardice act of ghastly murder of Late Prime Minister Rajiv Gandhi whose body could be identified only with the help of some of his attires. How perpetrators of such mass human killings can be brought within the purview of Human Rights? It is puerile to cogitate that terrorists will have respect for human rights of innocent people. Killings of innocent citizenry had jolted and tormented even the most coolest mind of our Prime Minister Dr. Manmohan Singh when he desperately uttered the following words :

“ In certain circumstances states are both entitled and obliged to take steps that derogates from human right principles, we should not feel discouraged, certain rights and freedom can be derogated from.....”

Human rights are those rights which are bare minimum requisites for existence of a social human order and the negation of it will diminish the distinction between animal and human social existence. They have been adopted universally to protect mankind from tyranny to foster decent human lives for all human beings in this ephemeral world. They are also enshrined in our Constitution under Chapter III, Chapter IV and IVA. Article 21 of our Constitution guarantees “Life and liberty” to all and therefore it is an embodiment of human rights conferment. They are meant for humans and not for those who claim and act like demons such as terrorists, who possess no regards for such human rights, which they violate with impunity, at will, bringing unsurmountable grieves and sorrows to many families, inflicting un-healable wounds to it’s sufferers which can not and do not dissipate so long as life continues in this ephemeral world. Such is the bete-noire outburst against the terrorist activities that Dr. Arijit Pasayat, Judge, Supreme Court of India, (since retired) even dubbed them as “animals”. He expressed his anguish and anger by speaking the following words:

“We should not talk about human rights violation of terrorists because terrorists are the people who kill innocent people with AK 47 and AK-56....those who killed innocent people by no stretch of imagination are human beings. They are worth not more than animals”

Terrorist belong to a much more ruthless class of murderers than ordinary criminals. They orchestrate mass human killings in an organized planned manner. Neither they value any sentiment nor they carry any respect for human lives. It is ludicrous to harangue in their defense that since they possess human anatomy they should be anointed with Human Rights. One who has no regards for Human Rights of others and negates it consciously must not be allowed to seek shelter behind lame veil of possessing Human Rights, once the question of bringing him to books is considered.

Let us critically appreciate, analyze and examine terrorist Human Rights from another angle. In an ordinary crime of human slaughter the minimum punishment prescribed statutorily is life imprisonment or death penalty. In such crimes question of violation of human rights are seldom raised and no eyebrows are raised. These crimes are often committed by those who do not have criminal proclivities. If such malefactors, who do not carry propensity to violate human rights can not be clouded with human rights violation, how those human butchers who are responsible for thousands of killings can be brought under such a cloud? Those who live by the sword must die by the sword. To allow such inhuman people to claim protection of human rights is, in fact, negation of human rights declaration by the international community. One who has respect for human rights of fellow human beings should only be allowed to reap the benefit of such rights. Declaration of human rights has its existence in mutual respect for each other and recognition of possession of such rights by others. It is not a lopsided nor oneway channel. *Census-id-idem* for mutual respect and recognition of other's human rights are *sine qua non* for a claim of human rights protection by one self.

Another noticeable aspect of the issue lies in the fact that

internationally also human rights of terrorists are not recognized. What ever logic, most of the times fanciful and selfdefeating, the pseudo champions of human rights claimants may advance but the ground reality is that international community does not recognize such conferment at all. An embodiment of it is found in the decision by US Supreme Court rendered in 2004 in Rasul versus Bush where US Supreme Court countenanced legal right of US government to detain enemy combatants. Changing times, with ever growing new challenges require newer and modulated treatment of fresh evils. Law must be adaptable to contemporary social needs and it should not ignore hard ground realities, otherwise the very purpose of law of creating a social order with human dignity will loose all it's efficacy. Now the time has come when a fresh look is required to 1949 Third Geneva Convention. More that half a century after the said convention, the world had witnessed more than a century convocations to constrain wrath of war but not much has been achieved to ameliorate the sufferings of victims of terrorist attacks. human rights of a few disgruntled groups, mostly religious fanatics, must yield to the human rights of the masses. Now the time has come when the world has to put it's head together to have a consensus on such an issue that those who kill innocent people must not be allowed to silhouette themselves behind human rights violation veil when the punishment to be inflicted on them is considered. Even in *Ramcharit Manas*, the most sacred Hindu Scripture, it's writer Goswami Tulsi Das has written that when Lord Hanuman got himself captured by Ravan in an attempt to teach him good things, then Lord Hanuman had to inform Ravana as follows:-

*“Sab Ke deh param priya swamy*

*Marih moh kumarag Gami*

*Jin mohi mara to mai mare...”*

Transliteration of the aforesaid means that every body loves his body, and I was assaulted by those who follow wrong illegal path, I had assaulted only those who had assaulted me first.

Non-violence is a bliss for those who have a consideration for it. There can not be any non-violence by one side. If we want to protect humanity then the ailment of terrorism has to be contained and rooted out by all means. Unless the whole world agrees for mutual respect for each other and recognizes human values and human rights of each one of the fellow human beings, that the debate on human rights conferment on terrorists will continue and hopefully, without yielding any results.



## Conference of NHRIs of South Asian Countries on “Human Rights Awareness and National Capacity Building”

*Venue : New Delhi  
(16 – 18 April 2009)*

### Resolution

The first Conference of National Human Rights Institutions of South Asian Countries on “Human Rights Awareness and National Capacity Building”, organized by the National Human Rights Commission of India, was held in New Delhi from 16 – 18 April, 2009. The representatives of the following Commissions participated in the conference :

1. Afghanistan Independent Human Rights Commission
2. Bangladesh National Human Rights Commission
3. Maldives Human Rights Commission
4. Nepal Human Rights Commission
5. Sri Lanka National Human Rights Commission
6. National Human Rights Commission of India

**Reaffirming** the commitment to protect and promote human rights as enshrined in domestic laws and International Human Rights Conventions;

**Noting** the legal framework, institutional arrangements and measures undertaken by the participating countries in the region for promotion and protection of human rights;

**Recognizing** the need for further National Capacity Building of NHRIs to address Human Rights challenges faced by the countries in the region;

**Recognizing** the need for further sustained efforts to build Human Rights awareness;

**Emphasizing** the need for cooperation between NHRIs of South Asian countries on issues of mutual interest;

**Welcoming** the initiative taken by the National Human Rights Commission of India to hold the first Conference of NHRIs of South Asian Countries on “Human Rights Awareness and National Capacity Building” in New Delhi from 16 – 18 April, 2009;

**Reiterating** the need for closer mutual cooperation between NHRIs on capacity building and promotion of human rights awareness;

The participating NHRIs hereby agree :

- a) To work towards national capacity building through sharing of experiences, information and best practices on human rights.
- b) To take steps to promote human rights awareness.
- c) Towards this end, hold conferences at least once in two years, apart from exchange of visits, training programmes and bilateral or regional cooperation between the NHRIs.
- d) To work together to identify and cooperate on capacity building for dealing with human rights issues like human rights awareness; human trafficking and migrant labour.
- e) To work collectively at UN forums, including the Human Rights Council, for an independent status for NHRIs, distinct from NGOs.
- f) Appeal to the respective Governments to support and provide necessary wherewithal to NHRIs to ensure that they become fully compliant with Paris Principles, which includes administrative and financial autonomy. NHRIs have an advocacy role in this regard.

## Review of Prof. Amartya Sen's book

### *The Idea of Justice*

*Prof. (Dr.) Ranbir Singh\**

Justice is a complex idea, but it is very important to understand that justice has much to do with everyone being treated fairly. Even though that connection has been well discussed by the leading political philosopher of our time, John Rawls, Amartya Sen argued that he neglects a couple of important connections. One neglect is the central recognition that a theory of justice has to be deeply concerned with systematic assessment of how to reduce injustice in the world, rather than only with the identification of what a hypothetical “perfectly just society” would look like. There may be no agreement on the shape of perfect justice (and also perfect justice will hardly be achievable even if people did agree about what would be immaculately just), but we can still have reasoned agreement on many removable cases of manifest injustice, for example, slavery, or subjugation of women, or widespread hunger and deprivation, or lack of schooling of children, or absence of available and affordable health care. Second, analysis of justice has to pay attention to the lives that people are actually able to lead, rather than exclusively concentrating only on the nature of “just institutions.” In India, as anywhere else, we have to concentrate on removing injustices that are identifiable and that can be remedied. With this book Amartya Sen's Idea of Justice, Sen is trying to explore what justice means and has come up with an alternative to the existing model. While doing so, he is also creating an urge in the reader to ponder with the current judicial and social system as a critic. It is in many ways the culmination of his heterodox approach to the problems of economics and political philosophy. Sen's approach is to start not from perfect ideals,

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but from comparative analysis to derive capabilities. His belief is that 'perfect' models blind us to what can be achieved in the real world – the life I can lead – by focusing on creating idealistic contexts which must artificially separate themselves from the social and political realities of the individual human agents who enact them.

In this intricate, endlessly thought-provoking book, Sen brings the full force of his formidable mind and his moral sense to show how specific questions – of chronic malnourishment, ill-health, demographic gender imbalance – must be analysed in terms of justice. Doing something about them is not a discretionary matter – it is a requirement of being human. Sen is the most sophisticated intellectual campaigner of our times – his arguments have shaped not just academic disciplines but the policies of governments and of global institutions like the World Bank. Not enough, he would say – but he has done much to bring a measure of justice back into the world.

Emphasizing on the relationship between human rights and justice, Sen adds, "The idea of human rights is much used in practice, and is very powerfully invoked by activists these days, often with admirable effect. However, the critics of the approach of human rights argue that the idea of such non-legal rights is lacking in foundation. A frequently asked question is: where do human rights come from and what gives them force? One of the aims of the book is to show in what sense – and in what way – human rights have a strong foundation through public reasoning, and how that foundation relates also to the basic analysis of social justice, which too is very dependent on the opportunity of public discussion. It is not so much that the concept of justice "has come only to mean human rights," but that the two related ideas have to be considered together."

The book is mainly about a theory of comparative justice as opposed to what he calls transcendental justice. That is, justice should be preoccupied not so much with achieving a precise distinction between the just and the unjust for the creation of an ideally just society (like Rawls' basic structure (in "A Theory of Justice") derived from the principle of equal basic liberties, the principle of fair equality of opportunity and

the difference principle), but on the actual realization of good social outcomes in society.

“...Mr Sen charges John Rawls, an American philosopher who died in 2002, with sending political thinkers up a tortuous blind alley. The Rawlsian project of trying to describe ideally just institutions is a distracting and ultimately fruitless way to think about social injustice, Mr Sen complains. Such a spirited attack against possibly the most influential English-speaking political philosopher of the past 100 years will alone excite attention *The Idea of Justice*.”

Sen's main objection to Rawls' theory is that it is perfectionist. It is concerned with the ideal, not with the possible. What arrangements men would choose if they were ignorant of their own talents is an interesting question, but not a particularly useful one in a world where most people act on an untidy mixture of self-knowledge, personal interest and genuine idealism. These are all instincts that seem worth accommodating in any worthwhile theory of justice, especially one which places a premium on personal liberty, as Rawls' does. As Sen observes, 'a theory of justice must have something to say about the choices that are actually on offer, and not just keep us engrossed in an imagined and implausible world of unbeatable magnificence.'

According to Sen, justice and a perfect social order has to be non-parochial, inclusive and humane. It is based on reasoning and helps to remove inequities. According to him, justice must be free from the domination of the will of majority and one that touches lives that people actually live. In the process, it takes global concerns into account.

He has advocated a model that is compassionate. According to him, “Twenty-five hundred years ago, when young Gautama, later known as the Buddha, left his princely home in the foothills of Himalayas in search of enlightenment, he was moved specifically by the sight of mortality, morbidity and disability around him, and it agitated him greatly.” According to Sen, Gautama Buddha's agony can be understood very easily and “appreciate the centrality of the human lives in reasoned assessments of the world we live in”. This, he says, is a central feature of the traditional

Indian perspective of 'nyaya' (justice) in contrast to 'niti' (rules). The Nobel laureate's model of justice draws from nyaya. He quotes from Thomas Hobbes' *Leviathan* to point out where a person should initiate the search for an alternative idea of justice. Hobbes wrote that the lives of people are "nasty, brutish and short".

Quoting from Charles Dickens' *Great Expectations*, he writes: "In this little world in which children have their existence there is nothing so finely perceived and finely felt as injustice." Sen says, "What moves us, reasonably enough, is not the realization that the world falls short of being completely just, which few of us expect, but that there are clearly remediable injustices around us which we want to eliminate." Sen argues that the mainstream system of justice, despite several achievements, has taken us in the wrong direction.

He says, "First, we have a pretty strong sense of injustice. Whether untouchability here or slave and torture elsewhere in the world, our first immediate sentiment is in the most natural sense one of injustice rather than justice. Second, all our policies relate to injustice because none of our policies, even ones like the employment guarantee scheme, will make the world perfect just. It will only make the world little unjust. The third point is that the mainstream theories of justice deal with perfect justice and start by asking the question "what would a perfectly just world look like?" We may not all agree what it may look like, some would say equal economic opportunity while some one else may emphasise personal liberty more. We could debate these but we don't need to resolve this debate to decide what needs to be done now. If removing injustice is the goal, and then starting with the question "what constitute perfect justice?" like the mainstream theories of justice do, seem to start in the wrong place."

The big difference between Sen and most other theorists of justice is that they use one strand of "enlightenment thinking", while he uses another. Sen's analysis of justice is a theory of "reducing injustice in this world", forwarded by thinkers like Karl Marx, John Stuart Mill and Jeremy Bentham. Sen argues that the "ability of reasoning" play is crucial for making societies less unjust. Sen has also exemplified the divergent views

of justice with the example of three children and a flute. Anna, Bob and Carla fight over a flute. Anna claims that she should get the flute that is lying on the ground because she knows how to play it, Bob says he should get it because he is poor and has no toys of his own, and Carla says she should get the flute because she made it. Theorists of diverging schools of justice would have different views, Sen writes.

In writing about any difficult but important problem, we have to try to catch the complexities involved without making our arguments obtuse, perplexing or inaccessible. I believe it is easy to underestimate the breadth and reach of the interests of the general public, says Sen. “The economic democratic who is committed to reducing social gaps might feel that Bob should get the flute because he is poor; the libertarian would say that Carla should get the flute because she has made it; while the utilitarian hedonist may feel that Anne’s pleasure would be greatest because she can play the flute.”

According to Sen these divergent foundations of thought cannot be avoided as such:

“I want to draw attention to the fairly obvious fact that the differences between the three children’s justificatory arguments do not represent divergences about what constitutes individual advantage, but about the principles that should govern allocation of resources in general. They are about how social arrangements should be made and what social institutions must be chosen, and through that, what social skepticism must come about.”

The book is in four segments – The Demands of Justice, Forms of Reasoning, Materials of Justice and Public Reasoning and Democracy. The breadth of Sen’s vision and intellectual acuity make the book a must-read for every thinking person. Mr. Sen writes with dry wit, a feel for history and a relaxed cosmopolitanism. He presumes that the values in play are of global, not purely Western import. Rawls held that social justice depended on having just institutions, whereas Mr. Sen thinks that good social outcomes are what matter. The practical brunt of Mr. Sen’s criticism, however, is that just institutions do not ensure social justice. You can, in

addition, kepticis social injustices without knowing how a perfectly fair society would arrange or justify itself. Indeed, the book is not so much about an idea of justice as it is about the vast range of legitimate considerations that have to be taken into account in a theory of justice. And finally what institutional arrangements might best embody a move towards greater justice will crucially depend on circumstances; perfect institutional structures are no guide to how we might proceed.

Sen's hypothesis is that once this is recognized, we are freed from the pursuit of ideal institutions and instead see them as tools for the resolution of particular social injustices and problems. By transforming (e)Utopia (the good place) into Eudaimonia (living well) we look for solutions in terms of individual capabilities rather than through the imposition of institutional frameworks or solutions.

A large part of the book is devoted to defending ideas that Sen has so influentially articulated: the place of reason in ethical reasoning, the idea of positional objectivity, the defence of liberty and, most famously, the capabilities approach. The point of departure for the capabilities approach is the idea that "justice cannot be indifferent to the lives people can actually lead". Individual advantage is judged by a person's "capability to do things he or she has reason to value". In a sense, this argument is situated between liberalism and Marxism. On the one hand, the traditional liberal conception focuses on freedom and the means to living such as resources or basic primary goods; the Marxist conception, articulated most recently by G.A. Cohen, focuses on whether we have actually achieved the fullest possibilities of self-realization. The liberal emphasis on liberty is salutary; but its emphasis on resources confuses ends and means. Resources are merely means; it is the actual capabilities of people that matter. But on the other hand, a focus on actual achievement rather than capability would set the bar too high, and ignores the fact that there can be legitimate gaps between capability and achievement."

Smith's emphasis on seeing economics and ethics as one subject, not two is also significant for the argument against separation of social science disciplines in the academia, particularly in light of the status often given



(wrongfully in my opinion) to Economics as a near science and its penetration into every social science discipline including that of law. Sen asks for economics to be seen as Smith saw it, as Political Economy. This recognition is important in a situation where today for instance, out of the hundreds of courses on offer at the Harvard Government and Economics Departments, there are only a few courses on political economy, with only one being offered in the Economics Department.

Sen draws upon ancient Indian philosophy in support of his argument even as he relies upon Western writers like Smith. Given that not just the western world but also political science students from India read almost nothing about ancient Indian political philosophy as part of their general degree course, it is wonderful that a person of the stature and credibility of Amartya Sen has taken upon himself the task of bringing the arguments contained in these works to the attention of a vast audience.

In the second, more worldly half of the book, Sen asks what is it that the pursuit of justice should actually advance? Can we agree on a measure by which to judge when a society, in its quest for justice, is getting closer or drawing further away from it? The possible categories he considers include liberty, "primary goods" and resources, happiness and well-being. Sen's own preferred category is that of "capabilities". By this he means not just the resources to live certain kinds of life that we have reason to value, but the capability of an individual to choose to use – or not use – the resources at hand to achieve what he has reason to value. Sen is interested in outcomes. But unlike utilitarians, who are interested in little else, he is also interested in how those outcomes are brought about – especially the extent to which they are brought about through the free choices of individuals.

The point of such an approach is not to arrive at a singular idea of "perfect justice" – that icy ideal. Justice is a plural and evolving idea – if it must reckon with age-old injustices, it must also be responsive to the astonishing human ingenuity for inventing new ones. Of course questions arise even from such a preliminary understanding of the book, some of which have arisen from his earlier works as well. What are the implications of Sen's argument for policy makers? If everything has to be seen on a

relative scale and so many different things have to be considered, then all decisions will be marked by ad hocism and subject to the ills of decision making without guiding principles.

The last section of the book argues rightly that the authority of any rankings will in part depend upon the practices of democratic justification. While there can be no quarrel with this position, it is a bit of a theoretical let-down in that it leaves a large question hanging: In some theories, such as those of Habermas, to whom Sen is sympathetic, the idea of justice is assimilated into that democracy. Justice is what democracy does; the trick is to specify what democracy means. That does not appear to be Sen's position. What then is the relationship of ideas of justice to democratic deliberation. While there can be no quarrel with this position, it is a bit of a theoretical let-down in that it leaves a large question hanging: In some theories, such as those of Habermas, to whom Sen is sympathetic, the idea of justice is assimilated into that democracy. Justice is what democracy does; the trick is to specify what democracy means. That does not appear to be Sen's position. What then is the relationship of ideas of justice to democratic deliberation?

The concepts used in the book have also been critiqued on various grounds:

“Virtually every claim Mr Sen makes will be objected to by someone. Right-wingers who follow Friedrich Hayek or James Buchanan will treat “social justice” and “social choice” as nonsense. Mr Sen wants to kepticise canons of “kepticism” rationality; behavioural economists, much in fashion, aim to ditch them altogether. Rawlsian liberals will rally to the defence of their hero. Nobody, however, can reasonably complain any longer that they do not see how the parts of Mr Sen's grand enterprise fit together.”

Dr Sen's line is dangerous because it threatens to reduce the importance of individual rights and freedom, and supplant them with the discourse of social justice. It is dangerous because the premise of justice being relative befits an environment where the law of the jungle prevails, where the more powerful can make subjective decisions that the less

powerful have to accept as justice. In a rule-of-law kepticism, the more powerful might still violate the rights of the less powerful, but it can't be passed off as "justice".

However, ideas of democracy and open debate are not new and I hope that Sen's book has more concrete solutions to offer. If the terrain of engagement is the actual state of affairs, then arguably what one needs is a messy engagement with the political economy of power rather than elaborate distinctions in the domain of justice. Here one wishes (Sen) had followed his great hero in the book, the much-caricatured Adam Smith, a bit more. Smith had the extraordinary capacity to combine immense moral sympathy, a belief in the possibility of progress, with a deep kepticism about the sources of progress. He had wariness about concentrations of power, one that Sen fleetingly acknowledges; but he also had a deep sense of the paradoxical and messy ways through which progress takes place.

Stripped of facile but baneful beliefs, Sen encourages us to enter into a global public debate about justice that is concerned not only with actual outcomes, especially when narrowly conceived as wealth, but crucially also with capabilities: the substantive ability or opportunities a person has to do the different things he or she values. In other words, the quest for justice does not end with ascertaining, for example, that someone is legally free to leave his or her home, but needs to enquire whether he or she is physically able to do so, and thanks to what or whom. Sen's objective is not to lead us into adopting a different conception of equality (of capabilities instead of, say, income) or to have us adopt an alternative understanding of freedom. Plurality is what he insists on, so that with respect to freedom, we need to think in terms of capability, lack of dependence as well as lack of interference. The unending global public reasoning that Sen calls for must be open to competing views of liberty as well as ways of measuring equality.

The Idea of Justice is not a manual. It does not tell us what justice is, but prepares us to discuss it in ways Sen believes more likely to produce concrete results rather than theories grounded in narrower conceptions of equality and freedom. Its more arduous philosophical sections will grip

specialists, but can be skipped by other readers. All will be taken by its imaginative examples. Although it will not engender agreement all the way, it is a humane and edifying work.

*The paradox of this book is that while Sen is a severe critic of utopianism in thinking about the ends of justice; he ends up sounding too straight-laced about the means to achieve justice. In the end, his profound humanism obscures the trickier problem for justice: how to straighten the crooked timber of humanity.*

## Review of Basharat Peer's book *Curfewed Nights*

*Prof. J.S. Rajput\**

If one was asked in a school in the 50's of the last century to write an essay on Kashmir, what could have been its most important contents? Everyone would have loved to do that exercise. Even in small towns and places normally referred to as remote, people talked about Kashmir with great fascination; the ultimate in beauty and serenity that nature has created on the earth. We all remembered the Urdu couplet of Firdaus that told one and all in clear terms 'If there is paradise on the earth; it is this, it is this, it is this'. The very mention of Kashmir motivated everyone. Who would not like to visit Kashmir, be in Kashmir and see for himself/herself how beautiful and enchanting could be the realm of nature in a place that that was decidedly more nearer to the creator's heart than any other anywhere else! Unparalleled gifts of nature have also rightfully earned equal amount of love and appreciation from every one outside India. The partition of India did no spare the state of Jammu and Kashmir. It had to suffer and continues to endure sufferings even now with no solution in sight in near future! Pakistan had its own designs to grab the state of Jammu and Kashmir and its bid to annex it began shortly after independence. Though Indian troops could manage to halt the aggression, Pakistan did succeed in occupying a substantial part of the state. It further succeeded in destroying the very environment of beauty and bounty that had attracted people from every nook and corner of the globe. For a young child of today, Kashmir at present is the place where armed encounters are practically a daily occurrence, where people live under the vigil of

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army but feel permanently insecure. And they all want the army and other security forces out! Kashmir means the place where Hindus were externed out of the valley to other parts of India by their Muslim neighbours with whom they had shared life like brothers for ages together. The neighbours had nothing to quarrel about, it were the external elements that, once again, sowed the seeds of distrust and hatred and spoiled the human bond that had developed over centuries amongst the two communities. It's no more the 'frozen turbulence', it a turbulence that continues to grow more fearsome by the day, in spite of so many statements, external interventions and 'peace talks'!

When a young man from the much-admired but suffering Kashmir sits down to narrate his growing up in one of the finest place on earth that is undergoing the curse of violence, bigotry and distrust, the output is certainly spell binding. On occasions, it may sound one-sided but then it is immediately realized that when transparency in relationships gets low priority, such articulations are but natural, and of immense value. Why should there be any doubt about the narrative? Right from the initial Indian move to take up the Kashmir issue to United Nations to Kandhar to Kargil, somewhere Indian policies have remained deficient in achieving practical results. Reading the *Curfewed Nights*, one passes through a series of phases and practically at every point asks a question to one's own self: is this democracy? No matter what are the role, shape and objective of external aggression, why has the Indian state failed in bringing about an attitudinal transformation amongst the Muslims of Kashmir? After all, they all know what is happening in Pakistan to Kashmiri Muslims. They are also aware of how the Mohajirs are being treated in Pakistan! Why the Indian state that consistently claims to follow the Gandhian principles has failed to win back the confidence of the misguided and exploited youth of the Kashmir even after all these decades of suffering unprecedented violence and humiliation. Can the Indian stat leave innocent young boys for open and blatant exploitation by unscrupulous neighbour that believe in taking recourse even to the meanest and inhuman

strategies to fan violence and inflict miseries on hapless masses?

The *Curfewed Nights* of Basharat Peer begin 1990 onwards. The reader may just like to know what happened at the time of partition of India and what followed afterwards. That alone would indicate how the problem was created and how it has been continued for all these years. None can take an objective view of the existing conditions without linking these to the happenings around the partition times. It's relevant to know that the National Conference was founded in 1930 by Sheikh Mohammad Abdullah, who could organize Muslim masses against Maharaja Hari Singh in the name of inadequate representation of Muslims in the state administration. Bhopal, Junagarh and Hyderabad too had the similar problem in the reverse sequence – the Muslim rulers there had given inadequate representation to Hindus. The Sheikh got support from several quarters while no such issue got any visibility or support in the other three places mentioned above. Abdullah got popularity at the cost of Hindu-Muslim unity and the first communal riot broke out in 1931. Subsequently, Jammu and Kashmir Praja Sabha was formed and in 1938, the Muslim Conference envisaged changes in its Constitution and became National conference to accommodate non-Muslims as well. Sheikh Abdullah launched a movement against the Maharaja Hari Singh on May 10, 1946 under the banner 'Quit Kashmir' (Meaning the ouster of Maharaja Hari Singh) and on May 17, 2009 gave a call for Jihad which had nothing to do with "Quit India". What Abdullah said in one of his speeches could be relevant:

"It is time for action. You must fight slavery and enter the field of Jihad as soldiers. Every man women and child shall shout "Quit Kashmir" The Kashmiri nation has expressed its will. I will ask for plebiscite."

Abdullah was arrested after a couple of days. Nehru decided to visit Kashmir against a ban on his entry in the state. Even the Viceroy advised him against this visit. He gave the following reasons for defying the ban:

"I am going to Kashmir firstly, to arrange for the defence of Abdullah; secondly, to see things myself, although my visit to Srinagar will be brief

one; thirdly, to do all I can to put an end to the complication arising from the policy of the state government.”

Subsequent events of Nehru’s visit, his arrest by the state government led to a permanent damage in relationships, particularly between the Maharajah and Nehru. In the context of this entire episode, the most significant aspect emerges in the speech of Nehru when he decided to resist the ban on his entry to Kashmir. This is what Nehru said:

“I do not consider myself an outsider in any state. This whole of India is my home and I claim the right to go to any part. I am not sorry for what has happened if it makes the rulers and others think hard of the new condition of India and her people.”

An overview of the events at that stage clearly indicates government of India’s total dependence on Sheikh Abdullah, and rather an attitude of animosity and neglect towards the Maharajah and also the Kashmiri Pandits. The Maharajah could not decide upon merger with India as he was highly apprehensive of the designs of Sheikh Abdullah and this was further accentuated by his proximity to Pandit Nehru. The uncertainty on the Part of Maharaja encouraged Pakistan which launched a full-fledged attack on October 22, 1947. . Maharajah hardly had any army. It was Brigadier Rajendra Singh, Chief of the State Forces who gathered some 150 men and confronted the Pakistanis near Uri. All of them made the supreme sacrifice and succeeded in their mission to delay the progress of the swarms of invaders. This courageous act of unparalleled bravery and courage allowed two days, delay during which Indian troops landed in Srinagar and what followed is well known history. The situation that was developing could be assessed from the following excerpts from a letter written to Sardar Patel by Meharchand Mahajan, the then Prime Minister of Jammu and Kashmir:

“Over 75% of the Houses of Hindus and Sikhs within 4 miles of the borders have been looted, burnt; men and women and children have been killed....Hindus and Sikhs have been massacred and converted and women being abducted....”



Pakistan was playing its role, Mountbatten opined that the attack was that of tribal hoards from across the border out for some loot and tried to downplay the seriousness of the situation. Apart from the political consequences, the social cohesion and religious amity suffered immense damage during this period. Pakistan has consistently fuelled unrest, unleashed violence and has never hesitated in taking recourse to every possible trick to unsettle the state of Jammu and Kashmir. Sheikh Abdullah had invariably his way and the Nehru-Abdullah pact is a clear evidence of the same. Article 370 was inserted in the Constitution of India as a provisional arrangement. Now, Jammu and Kashmir is the only state in the union of India which has its own Constitution. It impacts the fundamental rights of Indian citizens and divides them into two categories. While the Indians born in Jammu and Kashmir can purchase, own property anywhere in India, those from outside the state just cannot do so in Jammu and Kashmir. The laws made by the Parliament of India do not automatically extend to Jammu and Kashmir. Sadly enough, any mention of the provisionality of the Article 370 is immediately viewed on party politics and communal lines. Why can it not be examined in the long term national interests and apart from political integration, also the effective emotional and social integration of this state in India?

Is this background not relevant to the conditions prevailing in Jammu and Kashmir today? It is indeed that thousands of young persons like Basharat Peer grown up in conditions of uncertainty, fear, violence and humiliation. Basharat, one could safely say, was lucky. He could get education and had the background that provided him motivation and support. Referring to Kashmir's 'great autonomy', Basharat refers to the arrest of Sheikh Abdullah, the Prime Minister of Kashmir (not Jammu and Kashmir) "after he implemented radical land reforms and gave a speech suggesting the possibility of an independent Kashmir". He further goes on to infer: "In the following decades India installed puppet rulers, eroded the legal status of Kashmiri autonomy, ignored the democratic rights of Kashmiris" (p.13). One wishes things were so simple and straightforward.

May be Basharat could have analysed better if he had imbibed a sense of contemporary history. But let me hasten to add that Basharat the Journalist who had grown in the thick of it all must be credited with presenting an absorbing picture of the events and happenings that he observed and even had to endure. All of these were sufficient to give even a violent direction to him and his life. It really happened to his friends. His description of young boys going across the LOC for military (militant) training, being seen off and received ceremonially is ruthlessly realistic. “That winter began my political education. It took the form of acronyms: JKLF (Jammu and Kashmir Liberation Front), JKSLF (Jammu and Kashmir Student’s Liberation Front), BSF (Border SECURITY Force), and CRPF (Central Reserve Force). To get with these, I learnt new phrases: frisking, crackdown, bunker, search, identity card, arrest and torture” (p.19). Which mother, father or grand parent or a teacher would like any of the child grow up in such conditions? The inevitable follows: “That winter, too, busloads of Kashmiri youth went to border towns and crossed over to Pakistan for arms training. They returned as militants carrying Kalashnikovs, hand grenades. Light machine guns and rocket launchers issued by Pakistan (p.19).” The young guerrillas challenging India were seen as heroes –most of them had received training between early 1988 and late 1989 and they had in turn secretly trained many more within Kashmir. In the next two months the Indian government responded ruthlessly. Hundreds were killed and arrested after Indian troops opened fire on pro-independence Kashmiri protesters. It was January 1990. I was thirteen. (p.14)”.

The book excels in its sincerity of description which one feels like accepting without an iota of doubt. Basharat makes a very significant point: “Islam in Kashmir had borrowed elements from Hindus and Buddhist past; Hindus in turn had been influenced by Muslim practices. In my childhood, nobody raised an eyebrow if a Hindu woman walked to a Muslim shrine to seek the blessings of the saint. The religious divide was visible only on the days India and Pakistan Played cricket. Muslims

supported the Pakistan cricket team; Pandits were for India. Yet the tensions, which were partly class- based, never simmered in to sectarian violence. But things fell apart after the eruption of the armed conflict. The separatist militants had no tolerance for dissent" (P.201). Is that the crux of the challenge that is before India?

When soldiers returning from Kashmir assignment have to pay Rs, fifty each to the railway ticket collector, the expression 'this is India says' it all! (p. 64). This all pervasive corruption has taken a heavy toll in Jammu and Kashmir also as it has spread its tentacles in North-Eastern states. The result: unemployment and disenchantment! One finds it as a confirmation of public knowledge when one reads "Kupwara teemed with young men and boys from every part of Kashmir waiting to cross the border" (P.36). When one of them, Tariq, returns after one years training imparted by Pakistan army in POK, the entire thing appears so routine to everyone. In Aligarh hostel Basharat writes "Whenever a cricket match was screened in the Television room of our hostel, my Indian Muslim friends cheered, sang and rooted for the Indian cricket team. The Kashmiris cheered for Sri Lanka or whoever else was on the opposite team' (P.67). No military presence can transform such an attitude. It can be achieved only by the Gandhian methods which should not be difficult to articulate by the political leadership as they still swear by the name of he Mahatma and claim to be the followers of his principles.

As Basharat grew up he had consistently observed similar and more devastating happenings on umpteen occasions, which he has described with great care and precision. Yes, it is a matter of serious concern that young boys and girls are growing up in an atmosphere of distrust, religious acrimony, the domineering presence of security forces that generates fear and derision and a large number of stories of murders, rapes and burning of villages making rounds on daily basis. Every Indian knows that police, army and other paramilitary forces behave in a culture of their own whether posted in Kupwara, Jhabua or Koraput. The external elements are all out to make the situation as complex and bitter as possible. Small time

politicians are busy in serving their own interests or at the most of their parties and groups.

Basharat's book could be an eye opener to policy makers in India. They must assess why they have not only failed in achieving the objectives but have unwittingly contributed in alienating a large chunk of population from their roots? Why, on religious basis, certain section of population has been evicted from their ancestral homes and why they do not foresee any possibility of returning back to their beloved home and hearth? During all these years every one knows how the state of Pakistan has gradually and speedily degenerated in to a rogue state which is finding it difficult to manage its own affairs. How could Kashmiris be keen to link their fate with a nation whose political fragmentation may not be far off? The only logical conclusion could be that the state policies have blundered not only in the initial stages but have continuously and continuously failed to gauge the real sentiments of the population of Jammu and Kashmir. No section of the population would tolerate consistent presence of security forces that become the synonyms of humiliation and unacceptable practices on a regular basis for decades together.

Professor J.S. Rajput was the Chairman of the National Council for Teacher education (NCTE) during 1994-99 and the Director of the NCERT from 1999 to 2004. UNESCO awarded him the Jan Amos Comenius medal for outstanding contributions in Research and Innovations.

# Unravelling the Mind of a Terrorist (Review of Jerrold M. Post's, *The Mind of the Terrorist*<sup>1</sup>)

*Prof. B.B. Pande\**

In the last decade terrorism has acquired the distinction of being rated as the most dreaded and abhorred criminal phenomenon that evokes extreme formal as well as informal response. As a consequence special legislative measures have been enacted and most effective armed action has been deployed to secure protection against the acts of terrorism. Even the language of political discourse has undergone a sea change and states freely resolve to wage a war on terrorism. Despite all such extreme spin offs of terrorism, for the social scientists and criminologists the phenomenon of terrorism still remains to be woefully under explored and unfathomed. Neither the sociologists nor criminologists have undertaken any worthwhile scientific exploration or research of the phenomenon of terrorism.<sup>2</sup> Jerrold M. Post's book titled as *The Mind of the Terrorist* is unique, particularly in respect of its breaking new ground in the direction of understanding of the phenomenon of terrorism.

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<sup>1</sup> Palgrave Macmillan, N.Y. 2007; hereinafter *Terrorist Mind*.

<sup>2</sup> Reacting sharply to the social scientists collective failure on the terrorism, front, I had, while presenting a paper in a International Conference on Terrorism and Human Rights and Development: Challenges to Human Security, held at the City University of Hong Kong in 2007, raised the following propositions:

- (i) Terrorism is universally dreaded, individually hurtful and most talked about, yet least researched and understood, crime phenomenon of the present century.
- (ii) Lack of research and scientific understanding about terrorism is all pervasive and may relates to its nature and patterns, its causes and motivations and the formal as well as informal responses to it.
- (iii) Both the perpetrators of 'war of terror' as well as those who claim to wage a 'war on terror' stand to gain diversely from the aforesaid lack of research and understanding about the phenomenon.
- (iv) One big reason inhibiting scientific research and understanding of the phenomenon is that any initiative in those directions is often taken as a justification or otherwise of the phenomenon.

Though *Terrorist Mind* envisages to present a scientific understanding of the psychology of terrorism and is enriched by research contributions of a large team of psychologists, but the book running into over 300 pages, divided into 17 chapters, arranged into four sections makes a lucid reading, that enables even a lay reader to appreciate the scientific discourse and the conclusions. Chapter 1: “Terrorisms and Terrorist Psychologies: An Introduction” contains the keys to psychologist’s understanding. Section I comprising Chapter 2 to 7, Section II comprising of Chapter 7 to 10 and Section III comprising Chapter 11 to 14 are devoted to a discussion of typologies of terrorism. Section IV comprising & Chapter 15 to 17 are devoted to a discussion of “changing face of terrorism”. Chapter 17 titled as: “Challenges and Implications: The way ahead” is more like a conclusionary. Chapter that could have been independent like Chapter 1, instead of being put under section IV.

In Chapter 1 the author reveals his position in respect of the phenomenon of terrorism by describing “most terrorists are “normal” in the sense of not suffering from psychotic disorders”.<sup>3</sup> Further his scientific perception of the terrorist, the author lays emphasis that there is nothing inherently different to distinguish a terrorist from the whole lot of normal population on the basis of any kind of psychological traits. He further opines that: “group, organizational and social psychology, with a particular emphasis on ‘collective identity’, provides the most constructive framework for understanding terrorist psychology and behaviour.”<sup>4</sup> According to the author a distinction has to be drawn between the targets of violence and the targets of attention. The targets of attention can further be understood in terms of its three integral aspects, namely: the target of terror, the target of demands and the target of influence. The author opines “Terrorism then is a particular species of political violence. It is violence or threat of violence against non-combatants or property in order to gain a political, ideological or religious goal through fear and intimidation. Usually symbolic in nature, the act is designed to have an impact on an audience that differs from the immediate target of the violence.”<sup>5</sup> The author propounds to maintain a clearcut distinction between three diverse types of terrorisms, namely: (i) Political Terrorism, (ii) Criminal terrorism, and (iii) Pathological terrorism, but for the purpose of the book he prefers

<sup>3</sup>. *Terrorist Mind*, p.3.

<sup>4</sup>. *Terrorist Mind*, p. 4.

<sup>5</sup>. *Terrorist Mind*, p. 3.

to focus only on political terrorism.<sup>6</sup> Even in political terrorism the focus is mainly on 'Sub-State Terrorisms' such as 'Right Wing Terrorism', 'Nationalist-Separatist Terrorism', 'Religious Extremist Terrorisms', and 'Single-Issue Terrorism'. The author fully appreciates the diversity in the nature of terrorism which is explicitly brought out in this observation: "Given the diversity of these causes, there is no reason to believe that there is one terrorist mind set, one over-reaching terrorist psychology".<sup>7</sup> Apart from diversity of immediate causes of terrorism the author lays emphasis on diversity of generational provenance, particularly in case of social revolutionary terrorism and nationalist separatist terrorism. Such an understanding of generational dynamics graphically presented in Fig. 1.2 (p. 7) helps in knowing about the historical/cultural/ political/ economic context in which terrorism develops and terrorist identities are shaped. One feels that the utility of the introductory chapter, which locates the keys to psychological understanding of terrorism, would have been greatly enhanced by a better elaboration of the points of the distinction between political terrorism, criminal terrorism and pathological terrorism, on the one hand, and 'sub-state terrorism', 'state-supported terrorism' and 'regime or state terrorism', on the other. Focusing on political terrorism of the sub-state nature only does limit the utility of the useful exercise undertaken in building typologies.

*Terrorist Mind* is overtly conscious about the task on hand, when the author observes: "We cannot deter an adversary that we do to understand. An optimal understanding of the psychology and motivations of the terrorists is crucial to developing optimal strategies to deter these violent actors. Moreover, each terrorism must be understood in its own unique context, and the counter terrorism strategy tailored to that context."<sup>8</sup> After successfully describing the four broad kinds of political terrorism in Chap. 2 to 16 the author strives to spell out an effective strategy by suggesting an elaborate five pointed psychological program for countering terrorism as follows:

1. Inhibiting potential terrorists from joining the terrorist groups in the first place.
2. Producing dissensions within the groups.

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<sup>6</sup>. *Terrorist Mind*, pp. 4-6

<sup>7</sup>. *Terrorist Mind*, p. 6.

<sup>8</sup>. *Terrorist Mind*, p. 9.

3. Facilitating exit from the groups.
4. Reducing support for the group and its leaders.
5. Insulating the target audience, the public, from the intended goals of the terrorists to terrorize.<sup>70</sup>

The aforesaid counter-terrorism program is based on a sound psychological understanding of terrorism. Though some of these measures may be a part of the formal anti-terror strategy already, but that may be without any scientific research base. Therefore, the 'Integrated Strategic Information Operations Program' has great value for building a holistic anti-terror strategy that must be scientifically sound and constitutionally defensible. However, the *Terrorist Mind* has made a useful contribution towards the strengthening the knowledge base for a scientific understanding of the phenomenon of terrorism. Books like this would prove a useful addition to the existing sparse literature on terrorism. The real value of such a work lies in not only augmenting the knowledge stock but demolishing the myths that have, over a period of time, become associated with the 'act of terror' and the 'act against terror'. It tends to make the phenomenon of terrorism 'this worldly' and amenable to scientific, purposive, effective, yet humane, tackling of this most daunting phenomenon of our times.



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