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Stern Infractions & Infringement of Fundamental Rights: In the Name of Terrorism & War on Terrorism

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ABSTRACT

Wars have never been good, whether they are against the humanity or for it. The entire world is at a stage where the need of universal peace is of utmost significance. Harmonizing the status quo becomes essential for safeguarding people's basic human rights at large. The terms 'Human Rights' and 'Terrorism' cannot coexist. The encounter between people's human rights and terrorism is a widespread concern across the globe. The most vulnerable are the once who are unaware about the fact that they are on the stake of losing their lives for whims and wishes of several individuals groups, whether it be sovereign governments in the name of war on terror or the terrorist organizations. Whenever there is an act of terrorism or counter-terrorism activity to eradicate terrorism, the human rights of the people are being violated. The war on terror does not only affect the basic human rights of the terrorists but also at the same time is having a severe impact on the fundamental rights of the civilians residing therein. This calls for an imperative need that a definite legal framework should be devised by the sovereign governments through international cooperation of states and international organization to combat such ongoing worldwide concern.

This paper provides an overall overview on the issue of terrorism, human rights and war on terrorism. It will be also discussing about the measures taken by various organizations at international level and national level to curb this widespread global concern. The paper will be significantly laying emphasis on the human rights violations in the context of war on terrorism and what are its impacts on terrorist and civilian's life.

Keywords: *human rights, terrorism, counter-terrorism, war on terror, international co-operation & peace.*

I. INTRODUCTION

Globally, the concept behind the term 'terrorism' or 'terrorist' have been partially interpreted. There exists no specific definition. It generally means that certain individuals groups having their own 'interests' & 'faiths' towards a particular notion and when their 'motive', 'objective' or 'ideology' is at the stake of losing its definition than they create an

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environment of violence all around. According to Yonah Alexander, the term terrorism is “*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*”.³ Meaning, thereby that by the way of violence certain individuals are able to do things that are of their interest and faith. According to the Black’s Law Dictionary, the term terrorism is defined “*as the use or threat of violence to intimidate or cause panic, especially as a means of affecting political conduct*”⁴ According to Oxford Dictionary, the term terrorism means “*use of terror especially for political purposes*”. It can be interpreted from this that terrorism is a means to create violence with an aim of meeting some political end.⁵

After understanding the conception of terrorism and studying it from my perspective, the term ‘*terrorism*’ means killing of innocent people by the means of severe violence in order to achieve certain objective or motive which are in interest and faith of certain individuals groups known as ‘*terrorist*’. People across the globe have opined and argued that terrorism is an act done by people belonging to a particular religion. As per the literal understanding of the term terrorism, terrorist do not have any religion and they are the once who can go upto any extent to achieve their motives whether it be against sovereigns or against humanity. Terrorism has been a way for such people to achieve their objectives that are in their interest. Looking back into the Indian history, there has been many terrorist activities throughout the nation but one of which put the entire nation in shock was the Mumbai terror attack, popularly known as 26/11.⁶ In 26/11 attack, hundreds of people were killed just for attainment of certain objective of few individual terrorist groups. Such incidents have been rampant across the globe which has been extremely violating the human rights of civilians whose life’s are at stake of nothing. There are certain basic human rights guaranteed by the United Nations to every person through its principle articles. The United Nations tries to establish the rights which are inherited by the people since they are born.⁷ Thus, this becomes necessary for the member countries to follow the norms established by UN and make a safe and secure environment for their citizens.

Talking about the fundamental infringements, the human rights are entitled to each and every person counting terrorist a well. It is true that there has to be certain stringent laws regulating such brutal & inhuman acts, thus such laws are devised by every sovereign governments in there national legal framework. Still these laws have to be diligently implemented by observing

³Alexander, Y. (1976). *International terrorism: National, regional, and global perspectives*. New York: Praeger

⁴ Garner, Bryan A., "Black's law dictionary" 7th Edition

⁵ Sehgal & B.P. Singh, *Global Terrorism-socio Political and Legal Dimensions*, Deep and Deep Publication, 59 (1995).

⁶Dr. Prof. Ranbir Singh, *Critique of recent legislations on Terrorism*, 8 Journal of the National Human Rights Commission, 7-30(2009)

⁷*Universal Declaration of Human Rights*, United Nations, <https://www.un.org/en/universal-declaration-human-rights/>

rule of law and fundamental human rights advocated by United Nations and other conventions in regards to certain human rights guaranteed to civilians as well as criminal or terrorist for their conducts.

The Bush Administration after the 9/11 attack declared “*global war on terrorism*”. This was one of its first efforts made by USA in this concern. George W. Bush started this campaign and asked other leaders around the world to join this mission ‘*war on terror*’.⁸ There is no doubt on the fact that the efforts made by bush administration and other states were effective. Following similar pattern of policy other nations have adopted similar framework in this regard. Recently, during his Presidential Campaign, President of United States of America Donald J. Trump vowed before people to decapitate terrorist community and family members,⁹ prosecute and convict American citizens in Guantánamo Bay,¹⁰ and stop illegal immigration specifically Muslims from entering the borders of United States of America.¹¹ It is a well settled fact that human rights and war on terrorism cannot co-exist. Whenever a certain act of counter terrorism is initiated somewhere, the basic human rights of civilians are being violated. Therefore, there is a need that some effective measures should be taken so that this widespread menace is curbed across the globe. This paper majorly emphasized on impact of adoption of “*war on terror*” as a measure by the sovereign governments, which in turn violates the human rights of innocent civilians as well as those rights which are entitled to every criminal or terrorist.

II. BACKGROUND: HUMAN RIGHTS, TERRORISM AND COUNTER-TERRORISM

Human Rights are universal ethical principles that guarantee protection to individuals and groups against the state’s actions and omissions that are in conflict with the fundamental rights of its citizens. In all human rights include civil, economical, social, cultural and the basic right to development. In other words, human rights are inherent part of every human being since birth and they are interdependent and indivisible.¹²

According to the international law there is no specific definition aiming to give meaning to the term ‘terrorism’, in spite of many attempts made by international organization, inter-

⁸ A Timeline of the U.S.- Lead War on Terror, History, (Sept. 9, 2019) <https://www.history.com/topics/21st-century/war-on-terror-timeline>

⁹ Nick Gass, ‘Trump: We have to take out ISIL members’ families’, Politico (2 December 2015), available at: <http://www.politico.com/story/2015/12/trump-kill-isil-families-216343> accessed 15 March 2017.

¹⁰ Charlie Savage, ‘Donald Trump “fine” with prosecuting U.S. citizens at Guantánamo’, The New York Times (13 August 2016), available at: <https://www.nytimes.com/2016/08/13/us/politics/donald-trump-american-citizens-guantanamo.html> accessed 15 March 2017.

¹¹ Jenna Johnson, ‘Donald Trump is expanding his Muslim ban, not rolling it back’, The Washington Post (24 July 2016), available at: https://www.washingtonpost.com/news/post-politics/wp/2016/07/24/donald-trump-is-expanding-his-muslim-ban-not-rolling-it-back/?utm_term=.21b55d4773f4 accessed 15 March 2017.

¹² The Universal Declaration of Human Rights, Article 2.

governmental organizations, governments and research scholars.¹³ One of the judges from the International Court of Justice observed and opined that “*terrorism is an expression lacking any legal significance. It is just a suitable way of alluding to activities, whether of States or individuals, widely disapproved of and in which either the methods used are unlawful, or the targets protected, or both*”.¹⁴

Harmony and Protection are two sides of the same coin and connected directly or indirectly with the human rights of the people. Thus, it becomes necessary for every State to make sure that basic human rights of people are not being denied. In a diverse country like India, where people following different religion and culture live together the government is having responsibility to ensure of peace and harmony in the society even upon the fact of prevailing inequalities. Since a long period the unity and integrity of the nation is at the stake because of several terrorist attacks. In India, the principles of rule of law are followed where the power is divided into three branches i.e. Legislature, Executive and Judiciary. Each one of them is having its own responsibility in regards to the protection of human rights of the citizens. The Constitution of India guarantees certain fundamental rights to every citizen of the country ranging from right to life and personal liberty, equality, freedom of speech and expression and so on with the view to impart basic fundamental rights which are part and parcel of their lives.¹⁵ The Supreme Court of India in the case of *Romesh Thappar v. The State of Madras*, the Hon’ble court affirmed “*that under the Constitution the Supreme Court constituted as the protector guarantor of fundamental rights*”.¹⁶

It have been observed that the terrorist attacks have not only violating the rule of law but also have an great impact on the basic human rights of the citizens guaranteed under the Indian Constitution. Here, the legislature needs to frame more effective laws which will discontinue the widespread killing of innocent people. In *Madan Singh V. State of Bihar*, the Hon’ble Court made an observation that the term ‘terrorism’ to be “*the peacetime equivalent of war crimes*” as stated by Dr. Alex P Schmid, United Nations official. It further pointed that it would not be wrong to say that the act is not only against country but also against humanity and rule of law.¹⁷

The “rights to life and personal liberty”¹⁸ guaranteed under Article 21 of the Indian Constitution, is one of the most significant rights enshrined in the Constitution. The essential

¹³UN General Assembly, *the Declaration on Measures to Eliminate International Terrorism*, Resolution A/RES/49/60, (9 December 1994).

¹⁴R Higgins & M. Flory, (Eds.), *Terrorism and international law*, 24, London, (1997).

¹⁵ The Constitution of India (1950), *Part III*, <https://www.mea.gov.in/Images/pdf1/Part3.pdf>

¹⁶ *Romesh Thappar v. The State of Madras*, 1950 AIR 124, 1950 SCR 594

¹⁷ Supreme Court of India (Criminal Appeal No. 1285 of 2003)

¹⁸ The Constitution of India (1950), *Part III*, <https://www.mea.gov.in/Images/pdf1/Part3.pdf>

fundamental right of the citizens has been violated every time when there is an act of terrorism. Consequently, in every act of war on terrorism the right to life of the civilians residing in that region is violated. It has an effect on the government's stability, public peace and security and also puts barriers to social and economical development. Thus, it does not only have unfavorable effects on human rights, State's democracy and the principle of rule of law. But at the same times it violated several provisions of international instruments, conventions, treaties and even the norms of United Nations.

Terrorism is one of the most alarming concerns having an international effect. It is a way through which terrorist express their dissenting opinion about the state's policy or something of their interest or faith. It is a violent approach to uphold preferred result through public fear or public intimidation. Here, a particular person is not been targeted but individuals in the society are victims of terror attack as the motive behind this is to disturb public peace so that their demands are fulfilled either by the state or by some alternative source. Therefore, terrorism has become a grave threat against the integrity, democracy and independency of the state. It creates an environment where citizens have insecurities in their minds. For understanding terrorism deeply, it is to be observed that majority of the youth of the country are poverty stricken and sometimes this compels them to do things that are not in public interest and against the humanity. So, this call for an urgent attention by the government so that education and employment issues in the country can be taken care-off and these petty issues which have some serious affects can be resolved.

As earlier emphasized, both terrorism and human rights have no possibilities of co-existence. This global threat is a conflict between civilization and brutality. India has suffered huge loss of life and property due to terrorist attacks. The government is doing what is best for people's security but at the stake of what? The government's strategy against counter terrorism has consistently and adversely affected the rights of individuals. These individuals are sometimes civilians and innocent people captured as prisoners of wars. The actions of the armed forces and operations conducted by special force or local police have frequently led to violation of human rights. In the name of war on terrorism, the security forces have sometimes gone beyond what is specified in laws which resulted in custodial deaths, targeted fake encounters & killings, torture and disappearances of the people who were innocent. This has an adverse effect on the human rights of the citizens and is against the Constitutional values which sometimes make people to protest against the government's actions. Thus, war against terror is nowhere leading to a peaceful environment by disregarding the human rights guaranteed to the civilians by UN. Rather it erodes the global cooperation and turns out as an adverse outcome for fundamental

human rights, civil liberties, instability of government, democracy, the principle of rule of law and the global peace and order. Therefore, it is the responsibility of the government to strategize such policies against terrorism that in interest of the general public and make sure that the innocent civilians are not harassed because of such operations.

III. HUMAN RIGHT VIOLATIONS IN THE NAME OF WAR ON TERROR

Internationally, sovereigns are joining hands to combat against this widespread menace of terrorism which affects the state's liberty, democracy and economy, as well as having adverse affect on human rights of the civilians. It has to be understood that not only terrorism but also counter-terrorism is having a great impact on human rights. Specifically certain human rights are disregarded by the states counter-terrorism policy which needs to be improved understanding the stern fundamental infringements. Challenges to human rights violation in context of war on terrorism are:-

(A) Civil Casualties: Rising Deaths of Innocent's

The civilian's life has always been on the stake in the name of war on terrorism. The basic fundamental rights such as right to life, safety, security of the civilians have to be duly catered by states opting for military operations. It is very significant to understand that the right to life is one of the most vital and basic fundamental human right guaranteed by the international instruments and UN Charter. In circumstances where the defence system of a country has to initiate a war against terrorism, it is significant for that government to frame certain policies measuring on the use of power by armed forces. It has to be made sure that before using any adverse force against any suspect all measures must be taken to arrest the individual.¹⁹

It has been seen that there are countries that have come up with the policies of "shoot to kill" as a measure against terrorism.²⁰ But it is directly against the principle of human rights. It has been emphasized again and again that all authorities at different stage from police officer to armed forces should abide by the law in execution of the war on terrorism. But the States by not enforcing such policies is violating international human rights norms instrumented by the United Nations. It has been made clear that if the authorities are having "concrete information pooled with the implementation of appropriate procedural safeguards, than lethal force can be used".²¹ But at the same time it has to be taken care that under human rights law the "safeguard

¹⁹ Office of the United Nations High Commissioners for Human Rights, *Human Rights, Terrorism and Counter-terrorism*, UN, 30-31 (2008).

²⁰ Office of the United Nations High Commissioners for Human Rights, *Human Rights, Terrorism and Counter-terrorism*, UN, 30-31 (2008).

²¹ Office of the United Nations High Commissioners for Human Rights, *Human Rights, Terrorism and Counter-terrorism*, UN, 30-31 (2008).

against capricious denial of life is non-derogable".²² There have been rampant instances where the authorities in the effort of making counter-terrorism a success overlook basic rights available at the disposal of the suspected person, civilian or a terrorist. Sometimes the suspected individuals are retained in remand off the record even before criminal charges officially framed against them. As per the Hindustan times report, Globally the US armed forces operations have killed approximately 132 civilians in the year 2019.²³ The right to life, security and liberty of the suspected civilians is at the stake of state driven measures to combat against terrorism. It shall be up kept by the authorities that any measure or even detention of the suspected should be on judicial orders passed by Judge competent to take the matter.²⁴ Therefore, it becomes very vital for the law enforcing authorities carrying out such operations should adhere to these basic rights which each and every individual is entitled too.

(B) Against the Legal Parameters: Illicit Detention & Bodily Assaults

The wars for eradicating terrorism from a state's border-line or within the boarder-line, the states have adversely impacted the life of innocent civilians. The fundamental human rights entitled to civilians are brutally beleaguered not only by terrorist but also the armed forces deployed therein by the sovereign government. These state empowered armed troops conduct search operations to know the whereabouts of the terrorist group base and their identities. In this search many civilians are caught by them for interrogation relating to terrorist identities and whereabouts of their operational base. Soon after the 2008 bombing in four major cities in Indian,²⁵ the India security forces and the local police took several people under arbitrary detention in connection with the 2008 bombing which resulted in detainee's mistreatment, torture, bodily assaulted and a justice system where magistrates refused to acknowledge their complaints.²⁶ As per Meenakshi Ganguly (South Asia director at Human Rights Watch), "*The Indian police are under immense strain to find the offenders of heinous assaults, but they must do so without succumbing to unlawful arrests and coercion to coerce confessions*".²⁷ The most

²² United Nations of Human Rights, *Article 6 of International Covenant on Civil and Political*,(1976) <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²³ NIYATI SINGH, HINDUSTAN TIMES, US MILITARY KILLED 132 CIVILIANS GLOBALLY IN 2019: PENTAGON, [HTTPS://WWW.HINDUSTANTIMES.COM/INDIA-NEWS/US-MILITARY-KILLED-132-CIVILIANS-GLOBALLY-IN-2019-PENTAGON/STORY-ER8NFNXHWVSN3UNIMFXSEL.HTML](https://www.hindustantimes.com/india-news/us-military-killed-132-civilians-globally-in-2019-pentagon/story-ER8NFNXHWVSN3UNIMFXSEL.html) (MAY 7,2020 06:58 IST)

²⁴ United Nations of Human Rights, *Article 9 (3)&(4) of International Covenant on Civil and Political*,(1976) <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁵ The Economic Times, Serial Blast rocks Delhi, <https://economictimes.indiatimes.com/news/politics-and-nation/serial-blasts-rock-delhi/articleshow/3481158.cms> (Sept. 14, 2008, 06:20 AM IST)

²⁶Human Rights Watch, India: Overhaul Abusive Counterterrorism Tactics Torture and Forced Confessions Alienate Populations, Bolster Militant Groups, <https://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>(Feb 2, 2011 12:15 AM EST).

²⁷ HUMAN RIGHTS WATCH, INDIA: OVERHAUL ABUSIVE COUNTERTERRORISM TACTICS TORTURE AND FORCED CONFESSIONS ALIENATE POPULATIONS, BOLSTER MILITANT GROUPS, [HTTPS://WWW.HRW.ORG/NEWS/2011/02/02/INDIA-OVERHAUL-ABUSIVE-COUNTERTERRORISM-TACTICS](https://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics)(FEB 2, 2011 12:15 AM EST).

horrific abuses that were acknowledged at that time were “*Where several detainees claimed to have been blindfolded and shackled with arms crossed around their heads from morning to night*”.²⁸ These are some pictures of the most horrible and brutal instances where fundamental rights of people were severely disregarded.

The armed conflicts not of global nature which are imprecisely defined by the Geneva Convention as non international armed conflict (NIACs), it outlines that those who are taken as prisoners of war must be treated with at least minimal human ethics.²⁹ But the problem that arises is not this? The problem is what legal frameworks are determined by sovereign states concerning protection of human rights of those civilians who are illicitly captured by the armed forces? It is truly affirmative that these detentions are carried on in national interest for security purposes, but still there are certain acts that stays behind walls and never are disclosed to the open public. In the race to eradicate terrorism, the states counter-terrorism measures need to be re-rectified in order to stop those inhumane acts which are performed behind the iron bars. Those captured are kept in detention centers without officially producing them before an impartial bench. They are brutally tortured and several severe bodily injuries are performed on them. Usually civilians residing in such areas are illiterate and therefore are unaware of their rights. Thus, sometimes even being innocent they are not able to communicate to armed forces personnel as they are not represented before an impartial bench who can understand and determine their case. Furthermore, it is the state’s responsibility that it must rely on its internal legal frameworks along with the international humanitarian law for promotion and protection of such human rights violations.

(C) Inhuman Conduct: Absolute Prohibition of Torture

The prohibition of torture or any other inhuman activity performed on suspected individual becomes a challenge before the state to make sure that such things are taken care of by the authorities initiating action on war against terrorism. States have taken certain policy measure to ensure that such activities are put up to an absolute prohibition.³⁰

Such practices by the forces on orders are inhuman and regarded illegal. There are circumstances where suspects are undertaken the custody to extract information even though such information is not admissible as evidence which is elicited by the means of inhuman

²⁸ Human Rights Watch, The “Anti Nationals” Arbitrary detention and torture of terrorism suspects in India, <https://www.hrw.org/report/2011/02/01/anti-nationals/arbitrary-detention-and-torture-terrorism-suspects-india>(Feb 1, 2011).

²⁹ International Committee of the Red Cross, Article 3, Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949., <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/375-590006?OpenDocument>

³⁰ Office of the United Nations High Commissioners for Human Rights, *Human Rights, Terrorism and Counter-terrorism*, UN, 32-33 (2008).

torturous actions performed by the authorities authorised by the state. Several human rights violations relating to civilian's torture were reported in Jammu & Kashmir. According to the news reports, approximately 300 to 430 civilians allegedly were tortured counting students, women, youth, and political activists, journalist, and human rights activists in the valley.³¹ The reports added that "*torture and sexual abuse have been common*", where reports further claimed that 24 cases of waterboarding and 238 case of sexual exploitation were allegedly listed.³² The news reports also suggests that torture, exploitation and inhumane mistreatment was performed in the Abu Ghraib and other U.S detention centers globally, where several individuals were civilians who were brutally traumatized and tortured even though having no link with al-Qaeda or any such terrorist groups or acts of terrorism.³³ Several of such inhumane brutal acts are taking place worldwide; "*some are reported some remain undisclosed*". It has to be understood that the rights framed in the International Covenant on Civil and Political Rights apply to every individual who are within the territory of the state which are party to the Covenant. Similarly the International Court have also laid down that the "*rights framed in covenant extends to the every State action in exercise of its jurisdiction beyond its own territory*"³⁴. Thus, it becomes necessary for every State to ensure that appropriate measures are taken in dealing with detainees, war prisoners, terrorist and individuals suspected and also ensuring that their human rights are been protected within their jurisdiction. Hence, there should be an absolute ban of torture or such activities against the suspected individuals and civilians.

(D) Non Discriminatory Practices: On Suspected Individuals & Civilians

The principle of '*Equality*' is enshrined in every national and international instrument regarding it as a fundamental right of the individuals. This principle is one of the foundational rules of every statutory framework and is acknowledged as norm of "*Jus Cogens*".³⁵ The suspected individuals are investigated for the terrorist attacks. During Investigation there are probable chances that an individual is discriminated. This is also known as '*suspect profiling*', where suspects are discriminated on the basis of religion, nationality, race, gender etc. This "*suspect profiling*" practice further stimulates the acts of torture and other barbaric acts

³¹ SAMEER HASHMI, BBC NEWS, "DON'T BEAT US, JUST SHOOT US": KASHMIRIS ALLEGE VIOLENT ARMY CRACKDOWN, [HTTPS://WWW.BBC.COM/NEWS/WORLD-ASIA-INDIA-49481180](https://www.bbc.com/news/world-asia-india-49481180)(AUG 29, 2019).

³² Scroll, J&K: Human rights groups release report on alleged torture of civilians by security forces, <https://scroll.in/latest/924117/j-k-human-rights-groups-release-report-on-alleged-torture-of-civilians-by-security-forces>(May 21, 2019 7:18 AM).

³³ Human Rights Watch, Getting Away With Torture? Command Responsibility for the U.S. Abuse of Detainees, <https://www.hrw.org/report/2005/04/23/getting-away-torture/command-responsibility-us-abuse-detainees> (April 23, 2005).

³⁴ Office of the United Nations High Commissioners for Human Rights, *Human Rights, Terrorism and Counter-terrorism*, UN, 32-33 (2008).

³⁵ United Nations, *Article 1 & 2 of The Universal Declaration of Human Rights*, <https://www.un.org/en/universal-declaration-human-rights/>

performed on innocent civilians and individuals. Such discriminatory acts, not only violates the articles of international instruments but also the basic rights that constitution guarantees to every individual.

Here, it becomes the States responsibility to frame certain policies to impede such violations done by investigating and intelligence force. Moreover, judicial scrutiny shall be done periodically to overcome such activities. Therefore, there is an imperative need that the commanding authorities should personally look into such matter and if any complaints are received by any suspect, it must be strictly made punishable as per ethical code of conduct.

(E) Right to Fair Trail and Due Process of Law

The State has to perform all its function in respect of the rule of law. It is obligatory for the State to follow the procedure prescribed by the law not only restricted to the detainees and arrested once but also including individuals suspected. The humanitarian law is enshrined with human rights safeguarding all persons including a criminal or a terrorist who is having a right to be heard by a competent, autonomous, unprejudiced tribunal.³⁶The International Covenant on Civil and Political Rights through its Article 14 provides for several provisions in this regard. It mandates the member signatories to follow the norms laid down therein.³⁷

It have been observed that in several counter-terrorism activities, there are cases where suspected individual face a lot tribulations which abuses the entire process laid down by the law. These suspects are not tackled by following the due process of law and this is why this causes severe impact not only on their lives but also on their families.

This calls for an urgent need, where the State must take measures to see that every such suspected individual or even a convicted person should be told about his/her rights and accordingly due process of law should be followed.

(F) Right to Privacy and Data Protection

The States are forbidden to intrude with the privacy of those individuals who are within their jurisdiction and to protect those individuals of illegitimate and arbitrary meddling with their privacy.³⁸Privacy includes all the information related to a person's individual identity and private life. This basically means that any search, data collection or surveillance upon an individual must be approved by law. It must be noted that the law sanctioning the intrusion

³⁶ Office of the United Nations High Commissioners for Human Rights, *Human Rights, Terrorism and Counter-terrorism*, UN, 38 (2008).

³⁷ United Nations of Human Rights, *Article 14 of International Covenant on Civil and Political*,(1976)<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³⁸ United Nations of Human Rights, *Article 17 of International Covenant on Civil and Political*,(1976)<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

with privacy shall state in detail the situations in which such intrusion can be acceptable and shall not be enforced in a discriminatory approach.³⁹ Nevertheless, it does not mean that the authorities can use this power arbitrarily and make people suffer. There has to be some limitations for the same. For instance in the case of “*Klass v. Germany*, it was laid down that such surveillance can be undertaken by the State only when it is corroborated by sufficient and valuable guarantees against abuse”⁴⁰. Even if such things are taken care of by the State authorities, there are certain loopholes that need to be looked over. There are cases relating to infringement of the personal information and sensitive personal information of the individual which is very crucial from their security and privacy rights perspective. Such as if the personal or private information collected of any individual must be safeguarded against illegal and unauthorized access, exposure or use. Although, the States have made efforts to look up to these matters and they also are under the obligation of abiding provisions of international instruments and the international humanitarian law.

Hence, it is significant to understand the current temperament of terrorism in global context. Other than these basic rights there are several other rights that are knowingly or unknowingly violated by the State due to the methods adopted in war on terrorism. There is an imperative need that certain role has to be played by the State ensuring that these fundamental human rights shall not be violated by the military forces or intelligence arm of the State.

IV. INTERNATIONAL INSTRUMENTS: WAR ON TERRORISM

The conception of terrorism, counter-terrorism and violation of human rights is not novel. Organizations and sovereigns internationally have made efforts to combat these issues undertaking various conventions and treaties.

After the 11th Sept 2001, UN has been more apprehensive and restless with the issues of terrorism across the globe and has shown an importance of international cooperation in response of these global matters. This enterprising has been primarily undertaken by UN Security Council, but at the same time increased contribution and concern is shown by the General Assembly and the Commission on Human Rights.⁴¹ The United Nations fellow member has countersigned an international counter terrorism strategy in structure of a declaration. The structure plan of deed includes provisions on the significance of ensuring esteem for human rights for every individual and the rule of law as the fundamental foundation

³⁹ Report of Human Rights Committee, *Aumeeruddy-Cziffra v. Mauritius*, Comm. 35/1978, U.N. Doc. A/36/40, at 134 (HRC 1981)

⁴⁰ (1994) 18 EHRR 305

⁴¹ United Nation, UN Commission on Human Rights, Resolution 2004/87, doc. E/CN.4/RES/2004/87, (21 April 2004).

of the war against terrorism.⁴²

The policy approach adopted was one of its own kind and important as all the State member have concur to a premeditated approach towards war on terrorism with a lucid intention that terrorism is deplorable and intolerable in its every aspect. But, at the same time it was significant to settle by taking steps independently and cooperatively to make certain that human rights for all individuals and the rule of law are at the foundation of intercepting and skirmishing terrorism.

Internationally efforts have been made by sovereigns, organizations, governments, inter-governmental pacts but the UN was one among the other players which was setup by effective efforts of the governments after World War II for creating a global harmonized environment. UN was committed and gave birth to the global human rights system. This system initiated the various declarations, conventions and treaties in this concern.

(A) The Universal Declaration of Human Rights

The declaration framework was adopted by the General Assembly in 1948. This declaration was UDHR i.e. Universal Declaration of Human Rights. The declaration established that “*all humans being are born free and equal in dignity and rights*”⁴³. This framework was an instrument covering foundational and fundamental human rights safeguarding the rights of individual globally. The UDHR was a global benchmark established by UN as an articulation of international significance. It was now the vital responsibility of every member to abide by its guidelines and promote and safeguard all human rights and liberty of individuals. This declaration guarantees certain basic foundational fundamental rights to every individual who is having an inherent right over it. This includes “*the right to life, liberty and security of person; the right to freedom from torture and degrading treatment; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; freedom of thought, conscience and religion; the right to education; the right to an adequate standard of living; the right to freedom of opinion and expression*”⁴⁴. These humanitarian laws are respected and accepted globally and many of the countries have enshrines these rights as the fundamental and statutory rights.

It has to be understood that not even civilians but terrorist also need to be catered by the rights available to them. The individuals who are suspected of committing certain terror attacks are

⁴² United Nations, UN General Assembly, Resolution 60/288, doc. A/RES/60/288,(20 September 2006).

⁴³ United Nations, Article 1 of the Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>

⁴⁴ United Nations, The Universal Declaration of Human Rights, 1948, <http://www.un.org/en/universal-declaration-human-rights/>

the most vulnerable one who are in need of such laws which will safeguard them from the illegal and arbitrary brutality of the State. It becomes the duty of the State to abide by such legislations in order to upkeep and maintain peace and harmony in the present legal framework of its territory.

(B) The Covenants on Human Rights

Principally, Universal Declaration of Human Rights derived two instruments for safeguarding individual's human rights globally. The "International Covenant on Economical, Social and Cultural Rights (1966)"⁴⁵ and the "International Covenant on Civil and Political Rights (1966)"⁴⁶ was derived from UDHR and are legally binding on the States that have endorsed these instruments.

The ICESCR guarantees, "*right to social security; right to special protection to the family, mothers and children ;right to a standard of living adequate to the health and well-being of persons and their families including food, clothing and housing; right to education; right to a scientific and cultural life*"⁴⁷. And the ICCPR guarantees certain basic foundational rights , "*the right to life; the right to liberty and freedom of movement; the right to equality before the law; the right to presumption of innocence until proven guilty; the right to be recognized as a person before the law; the right to privacy and protection of that privacy by law; the right to legal recourse when rights are violated; freedom of thought, conscience, and religion or belief; freedom of opinion and expression; freedom of assembly and association*"⁴⁸.

In context of terrorism, counter-terrorism and human rights the ICESCR and ICCPR works for protecting certain rights that are violated during war against terrorism. The Human Right Committee (HRC) established by ICCPR can also accept and act on the message received from individual in regards to violation of human rights mentioned in the framework, if the member country has ratified such protocols. The ICCPR particularly focuses on human rights issues that can be linked with the terror attacks, victims, counter-terrorism attacks and violation of human rights.

⁴⁵Office of the United Nations High Commissioners for Human Rights, *International Covenant on Economical, Social and Cultural Rights (1966)*.<https://www.ohchr.org/EN/professionalinterest/pages/cescr.aspx>

⁴⁶ Office of the United Nations High Commissioners for Human Rights, *International Covenant on Civil and Political Rights (1966)*, <https://www.ohchr.org/EN/professionalinterest/pages/cescr.aspx>

⁴⁷ Office of the United Nations High Commissioners for Human Rights, *International Covenant on Economical, Social and Cultural Rights (1966)*.<https://www.ohchr.org/EN/professionalinterest/pages/cescr.aspx>

⁴⁸ Office of the United Nations High Commissioners for Human Rights, *International Covenant on Civil and Political Rights (1966)*, <https://www.ohchr.org/EN/professionalinterest/pages/cescr.aspx>

(C) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This committee against torture was adopted by the United Nations General Assembly on 10th December, 1984 and came in force from 26th Jun, 1987.⁴⁹The Convention framed rules and regulation concerning illegal torture of individuals inspired by Article 5 of UDHR and Article 7 of ICCPR.

In war against terrorism, the individuals suspected of committing terror attacks are tortured in such a way that is beyond the imagination of civilians. Even though they have done acts which have caused public disorder but following the due process of law becomes essential. Article 2 of the framework provides that Member State should take measures by the way of effective judicial, administrative and legislative actions in this concern if such torture practice activities are taking place within their jurisdiction.⁵⁰ Hence, this means that the State anyhow should not go beyond the limits of law and the suspected/accused once must be tried by court of competent jurisdiction.

The convention tried to put up a strong framework by establishing provisions of education and training to grave punishment in this concern. This framework tries to bring a change with an objective to discontinue such inhuman activities going on against mankind globally.

(D) The European Convention on Human Rights

The European Convention on Human Rights is the foundational stone of the Council of Europe structured for the protection of human rights. The State parties of the Council of Europe must be a signatory to the ECHR. The framework provides for foundational and fundamental rights which must be guaranteed to every individual in the society. The ECHR particularly guarantees, “*right to life (Article 2);prohibition of torture (Article 3);prohibition of slavery and forced labour (Article 4);right to liberty and security (Article 5);right to a fair trial (Article 6);no punishment without law (Article 7);right to respect for private and family life (Article 8);freedom of thought, conscience and religion (Article 9);freedom of expression (Article 10);freedom of assembly and association (Article 11);right to marry (Article 12);prohibition of discrimination (Article 14)*”⁵¹.This was the first instrument in this concern framed. The ECHR lays down some of the very significant fundamental rights that must be respected by

⁴⁹ Office of the United Nations High Commissioners for Human Rights, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

⁵⁰ Office of the United Nations High Commissioners for Human Rights, *Article 2 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*(1984), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

⁵¹ Council of Europe, *European Convention on Human Rights* (1950), <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=>

every state in the case of war against terror. As provided under Article 1 of ECHR, every individual's human rights must be respected and the State is having a responsibility in this regard. Some of the articles quoted above are significantly interlinked with the human values entangles at the times of war against terrorism. These rights must be respected by the State in every possible manner. This framework must be respected and these rights are not only inherent by civilians but also terrorist and the persons suspected of such activities.

V. CONCLUSION

The human rights of people are at stake admits terrorism and counter-terrorism. The entire research work is inclined towards protection and safeguarding of human rights of the people. Terrorism is a predicament that world is facing from last two decades and more. Today, terrorism is not confined to any particular sphere as it poses threats to human lives for political, religious and other reasons. It has become necessary at both national as well as at international level to maintain peace and harmony which is gravely threatened by the acts of terrorism and counter-terrorism going on around the world. It has to be understood that not only terrorism but counter-terrorism is also having severe impact on the rights of human civilization. The counter-terrorism measures sometimes override the right to life, liberty and movement, which are considered as the most significant fundamental right guaranteed to an individual.

The entire paper studies about impact of terrorism and counter-terrorism policies on human rights. It analyzed deeply the measures taken at international level by organization such as United Nation to combat this menace and what is the present legal environment in India in this context. It is suggestive that the government of India should take strong measures to overlook upon the rights of the people. The State shall enhance the human rights education at every level. They must also lay emphasis on the training of forces and must equip them with advance weapons. The state at the same time has a responsibility to see that the no human rights are violated in the name of war on terrorism.
