EMERGENCY PROVISIONS OF THE INDIAN CONSTITUTION AND ITS IMPACT ON FUNDAMENTAL HUMAN RIGHTS

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ABSTRACT

The paper will deal with the constitutional provisions on human rights in India and also attempt to present a comparative analysis of such institutional provisions, internationals norms, protocols and conventions. It also makes an attempt to study the violations of human rights by the Indians state such as fake encounters, preventive detentions, enforced disappearances, etc. The paper will try to analyse the international human rights regime and its implication for the Indian state, in particular UDHR. Mainly Similarities between the Constitutional provision and the International Norms, Emergency Provisions of Indian Constitution and its Impact on Fundamental Human Rights: Some Critical Issues and Anti-Terrorism Law in India with special provisions (POTA) and Minority Rights. It would go into
the different provisions laid down by international human rights bodies, how these rights have evolved over the years. It would also go into the constitutional provisions of human rights in India, how India applies international human rights, norms and values at the domestic level. The adoption of the United Nations Charter and the subsequent enactment of a number of fundamental international instruments such as the UDHR of 1948 and the two covenants of human rights of 1966 had such a profound impact on the international community that no state, whether it a democratic or an authoritarian can possibly challenge, at least openly. The human rights need to be respected and cherished everywhere in this world and India is also no exception.


It must be understood that a formal definition of Human Rights has not been universally made or accepted by different social scientists. For this reason, the term has come to acquire different meaning in different local jurisdictions, resulting in differential application. According to Forsythe, “Human Rights are widely considered to be those fundamental moral rights of the person that are necessary for a life with human dignity. Human Rights are thus means to a greater social end, and it is the legal system that tells us at any given point in time whose rights are consider most fundamental in society. Even if Human Rights are thought to be inalienable, a moral attributes of person that the state cannot contravene, Rights still have to be identified—that is, constructed- by human beings and codified in the legal system. While human rights have a long history in theory and practice, it was the American and French revolutions of the eighteenth century that sought to create national nationally politics based on broadly shared Human Rights. Despite the rhetoric of universality, however, Human Rights remain essentially a national matter, to be accepted or not, until 1945 when they were recognised in global international law” (Forsythe 2000: 3).
Donnelly gave his own idea about Human Rights to assure that “list of Human Rights are based only loosely on abstract philosophical reasoning and a priori moral principles. They emerged instead from the concrete experiences, especially the sufferings, of real human being and their political struggles to defend or realise their dignity. International recognised human rights reflect a politically driven process of social learning” (Donnelly 2003: 57). It is an undisputable fact that Human Rights are founded on core values of freedom, equality, equity and justice. It insists on equality of treatment for all and no discrimination against anyone. Human Rights are basic guarantees of freedoms that every human being must enjoy in order to be able to live a life of dignity and pursue opportunities to realise one’s full potential. At the basis of Human Rights is the core belief of respecting the rights of the others. It is our responsibility that the rights of the other members in a society or any other political or social group are not transgressed when one’s own rights are exercised. For example, it is the right of every individual in a society to be free from discrimination. What we need to understand is that human rights cannot be enjoyed in isolation. On the contrary, the subjective denial of basic rights to an individual in a society is bound to affect the other members of the society as well.

Human Right also includes civil, political and economic rights. Civil rights are designed to protect and promote a vibrant, pluralistic, and autonomous civil society made by the free individuals. Hence, civil rights include freedom of thoughts, belief, communication, speech, as well as judicial rights.

Political rights are designed to protect and promote participation in governance of public affairs. Therefore, they therefore include the right to vote and to be elected by free elections, the right to equality of participation in public affairs, and the right to equal access to public service positions. Economic, social, and cultural rights are designed to protect and promote the basic livelihood and knowledge conditions indispensable to the exercise of civil
and political rights. They are there to ensure that there is a solid foundation on which the equal participation implied by the equal enjoyment of civil and political rights does not remain merely words on paper. This category therefore includes rights, like right to work, right to create and join labour associations, right to social welfare, and right to education.

Human Rights have been broadly classified into three generations of rights. First generation of civil and political rights, include right to life, liberty, and freedom from torture. Mainly we can say that these rights are "liberty-orientated" and include the rights to life, liberty and security of the individual; freedom from torture and slavery; political participation, freedom of opinion, expression, thought, conscience and religion, freedom of association and assembly.

Second generation of economic and social right require active provision, such as by imposing an obligation on government. Some analyst calls them ideals, often constrained in practice by inadequate resources. These are also "security-orientated" rights, for example the rights to work, education, a reasonable standard of living, food, shelter and health care.

Third, generation of Human Rights consists of environmental, cultural and developmental rights. These include the rights to live in an environment that is clean and protected from destruction, and rights to cultural, political and economic development. And concern such rights as peace, development, and humanitarian assistance. While many of the claims are attached to individuals, some belong to collectivises, such as the right to national self-determination (UNHR: 2006).

According to Dauglass Hussak, many people mistakenly inflate the concept of rights by assorting benefits they believe to be rights. This confusion according to Hussak has become evident in the assertion of what are known as second generation human such as the right
to economic development, prosperity, and third generation human rights, which cover the rights to world peace and a clean environment. Hussak argue that prosperity and peace are rights but not substantive rights and that even the substantive human rights are given several different meanings.

The adoption of the United Nations Charter and the subsequent enactment of a number of fundamental international instruments such as the UDHR of 1948 and the two covenants of human rights of 1966 had such a profound impact on the international community that no state, whether it a democratic or an authoritarian can possibly challenge, at least openly. The human rights need to be respected and cherished everywhere in this world and India is no exception.

Even in normal times restrictions are always in place with respect to the practice of the fundamental rights inherited in part III of the Constitution of India for example; article 19 guarantees the rights to freedom of speech and expression; to assemble peacefully and without arms; to form associations and unions and so on. However, the states is allowed to impose ‘reasonable restrictions’ in the “ interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relations to contempt of covet, defamations or incitement to or offence” Article 19(2).

So far as the question of “reasonableness” of the restrictions is concerned, it should be determined from both the substantive and procedural standpoints. In order to be reasonable, the restrictions imposed must have a reasonable relations to the collective object which the legislations seek to achieve, it should not go beyond that objective. In
other word, the restrictions imposed must not be greater than the offence sought to be prevented. This is called as substantive reasonableness.

On the other hand, procedural reasonableness relates to the manner in which the restrictions have been imposed. “that is to say, in order to be reasonable, not only the restriction must not be excessive, but the procedure or manner of imposition of the restriction must also be fair and just” (Basu 2002:103).

During on emergency, the Indian Constitution work under an altogether different set of regulations. A ‘Proclamations of emergency’ may be made by the President under article 352 at any time if he is satisfied that the security of India or any part there of has been threatened by war, external aggression or internal arm rebellion. Such a proclamation may be made even before the actual occurrence of any disturbance e.g., when external aggression is apprehended.

Though the actual occurrence of war or any armed rebellion is not necessary to justify a proclamation of emergency, but no such proclamations can be made by the President unless the union’s minister of cabinet rank, headed by the Prime minister, recommends to the president, in writing, that such a proclamations should be issued (Article 352(3).

It is to be noted that after 1978, it is not possible to issue a proclamation of emergency on the ground of “internal disturbance” short of an armed rebellion, for the word “internal disturbance” have been substituted by the word “armed rebellions” by the constitutions (44th Amendment 1978 (Basu 2002:351).
Articles 358-359 lays down the effects of a proclamation of emergency under article 352 upon the fundamental rights. Article 358 provides that the state would be free from the limitation upon its legislative and executive power imposed by article 19. The rights guaranteed by article 19 would be non-existent against the state during the operation of a proclamation of emergency. Article 349 provides that the right to move the judiciary for the enforcements of the rights under Article 19 or any of them, may be suspended by an order of the President of India (Basu 2002:350).

“While Article 358 comes in to operation automatically to suspend Article 19 as soon as proclamation of emergency on the ground of the war or the external aggression is issued, to apply article 359 a further order is to be made by the president, specifying those fundamental rights against which the suspension of enforcements shall be operative” (Basu 2002:350).

In other words, as soon as a proclamation of emergency is made under Article 352, state shall be freed from the limitations imposed by article 19; it means that the parliament shall be competent to make any law and the executive shall be at liberty to take any action, even though it may violate or restrict the right to freedom of speech and expression, assembly, association, movement, residence, profession or occupation as guaranteed by the different provision under articles 19.

So far as the above mentioned rights are concerned, the ordinary citizen shall have no protection against the legislative or executive authorities during the operation of the proclamation of emergency.
“The enlargement of the power of the state under article 358 will continue only so long as the proclamation itself remains in operation Article 19 will revive as soon as the proclamation expires. But the citizen shall have no remedy for acts done against him during the period of the proclamation, in violation of the above rights [article 358]” (Basu 2002:135)

The very first proclamation of emergency under Article 352 was made by the president on October 26, 1962 in the view of Chinese aggression in Arunachal Pradesh. This proclamation of emergency was revoked by an order made by the President on January 10, 1968.

On December 3, 1971, the second proclamation was made under Article 352 when Pakistan launched air strikes against India. It precipitated into a war resulting in the liberation of Bangladesh.

Though there was a ceasefire on the capitulation of Pakistan in Bangladesh in December, 1971, followed by the Shimla Agreement between Indian and Pakistan, the proclamation of 1971 was continued, owing to the persistence of the hostile attitude of Pakistan. It was in operation when the third Proclamation of June 25, 1975 was made.

While the two preceding proclamations under Article 352 were made on the ground of “internal aggression”, the third proclamation of emergency under Article 352 was made on
June 25, 1975 on the ground of aggression “internal disturbance .......” Both the award and third proclamations were revoked in March 1977.

**ANTI-TERRORISM LAW IN INDIA**

In the report to the 58th session of the United Nations Commission on Human Rights, then United Nation High Commissioner for Human Rights noted that “an effective international strategy to counter - terrorism should use human rights as its unifying framework. The suggestions that human rights violation is permissible in certain circumstance are wrong. The essence of human rights is that human life and dignity not be compromised and that certain acts, whether carried out by state or non- state actors, are never justified no matter what ends. International human rights and humanitarian law define the boundaries of permissible political and military conducts. A reckless approach towards human life undermines counter terrorism measures” (PUCL Bulletin, March 2005).

Despite elaborate individual rights enshrined in the judiciary and a free and fair judicial system, systematic violation of human rights occur at regular intervals, more so in insurgency infected areas. The security forces operate with little regard for the law, secure in the knowledge that there acts would be condoned by the state. A few of the provisions of certain draconian laws and the acts perpetuated in the name of upholding law and order would serve to validate the argument made above.

On the right of 11 July, 2004, Mr. Jhangjam Manorama Devi was allegedly raped and murdered by Assam Rifle personal. The Armed Forces Special Power Act (AFSPA), 1958 empowers even the non-commissioned officers to arrest “suspects” without warrant, to
destroy any structure that way be hiding “suspected insurgents” and to conduct search and seizure at will. But what was of even greater alarm in that, this act empowers the security personnel to kill even when there may be no apparent threat. On the other hand, no legal measures can be initiated without the prior permissions of the union government. The guilty Assam rifles personal took shelter under this specific provision and with active cooperation of the senior army officers, refused to cooperate with the civil injuries.

The AFSPA was first introduced in 1958; it was supposed to remain in force for a year only. Subsequently, the ACT has been kept on extending indefinitely. In the Northeast region of India, the AFSPA has been the chief symbol of suppression. Incidentally, some of the provisions of the AFSPA have a close resemblance with the pre-independence security measures, such as the armed forces (special powers) Ordinance promulgated by the British government in August, 1942 with the aim of suppressing the freedom movement.

That the (AFSPA) violates the criminal justice system is without doubt. For instance the Act provides special powers which amount to awarding heaver penalty to the “suspects “ than convicted persons would get from the judiciary. Which is a clear violation of the criminal justice system? Moreover non application of the “due focus of law” makes the armed forces to be their own judge and jury. This provides an ideal environment for the armed forces to indulge in act of human rights violations with little fear of punishment. Most importantly, section 6 of the AFSPA requires provision sanction of the union Government to prosecuted erring persons which leaves the judicial system inconsequential and also gives the impression that the executive does not trust the judiciary. The only way out of this mess created by the Indian state and its security agencies is for the Supreme Court to take charge and declare it as unconstitutional.
Another example of how the political executive, with active collaboration of the bureaucracy, can undermine human rights is the now-repealed Prevention of Terrorist Activities Act (POTA). POTA was supposed to be anti-terrorism legislation which was enacted in 2002. It was to replace the Prevention of Terrorism Ordinance (POTO) 2001. It was meant to provide a legal framework to strengthen administrative authority to fight terrorism.

Controversy surrounded the act since its inception and even before. For example, it was passed on March 26, 2002 after ten-hour debate in the Indian parliament. The ruling national democratic Alliance (NDA) had to call for a joint-session of the parliament. Incidentally, it was the third time in Indian history that a joint-session had to be called. Section 3(3) of the act provided that whosoever “abet a terrorist act shall be punishable. These provisions ran contrary to observations of the supreme court’s constitution Bench is Kartar Singh that the world “abet” as used in TADA is vague....” Again, under Section 4 of POTA, any person who is found to be in “possession of unlicensed arms is presumed to be guilty of terrorist act, where as ordinary the person could be prosecuted only under the Arms Act for such an offence. Similarly under section 7 of POTA, a police officer investigating an offence under POTA can seize or attach any property if “he has the reason to believe that such property constitutes the proceeds of terrorism”. Such draconian provisions provide a breeding ground for human rights violations.

On September 7, 2004 the union cabinet in keeping with the UPA government Common Minimum Programme, approved ordinance to repeal the controversial POTA, The Bhartiya
Janta party slammed the government’s decision to repeal POTA as politically motivated and compromising the country’s security.

FAKE ENCOUNTERS

Fake encounters or “extra-judicial killings” are a blot on civil society. Security forces resort to such measures on the assumption that the judiciary works at a slow pace, and at times, not at all. Advocates of such measures argue that at present, most of the security personnel work ‘extraordinary circumstances’, and that the normal law of the land cannot be applied in such conditions.

We can say that the Constitution, under Article 21 guarantees right to life for all citizens. As a civilized member of the international community, Indian cannot remain oblivious of such glaring abuses of human rights. Any condoning of such activities or the part of the security forces could will lead to an erosion of the civil liberties of the common people.

Fake encounters are mostly witnessed in insurgency affected regions of the country, such as the state of Jammu & Kashmir, and the North east region. In recent years such “encounters” are also seen to have been taken place in the Maoist affected districts of Orissa, Chhattisgarh and others. Since anti-state activities are spread all over the country, it is highly probable that there could be a steep increase in the number of ‘fake encounters’.
While most security experts concede that the security forces act under extreme pressure, and at times emotions may run high, but it is very important to keep a sight vigil on their activities.

It is also argued that the security forces resort to extra-judicial killings because of political pressure and vested interests. These vested interests include “the allowances the security forces receive, secret service funds police officers get which they do not have to account for, cash rewards and accelerated promotions based on the crudest measures of success such as body counts, sales of petrol and vehicle spare parts by the Para-military forces, collusion with timber smugglers, the lavish lifestyle of officials, etc” (Ghate, 2002:318).

What is tragic in such circumstances is that not only the accused does not get the right, as provided under the law, to be defended by a lawyer of his choice, but in most instances, it is also found that the victim’s turns out to be innocents.

In certain uses, it is seen that such violation of human rights are defended under the name of ‘self-defense’. Of course, the law is India recognizes the right of a citizen to self defense, and in the course of such self-defense, even causing death in the encounter in a particular case can be justified depending upon the facts established after a purposed investigation.

That the menace of ‘fake encounters’ have reached alarming proportions is evident from the attention that the National Human Rights Commission has paid to this phenomenon. It has also been noticed that such fake killings have also been happening not only in insurgency infested regions, but also in the metros, and other big towns. The Mumbai police have earned notorious reputation for eliminating suspected gang-members,
including innocents, in the name of enforcing law and order. In certain instances, evidence has been obtained that the police eliminates rival gang members for pecuniary gains.

In response to a complaint [ Ni. 234 (1 to 6) / 93 - 94] brought before the civil liberties group - the Andhra Pradesh Civil Liberties Committee, National Human Rights Commission (NHRC) land down the procedure to be followed in all cases of encounters. This procedure spelt out in a letter dated March 29, 1997 from the then chairperson of the NHRC to the Chief Ministers of all the states and the administrators of the Union Territories. It recommended the adherence of the following steps:

(a) When the police officer in charge of a police station receives information about the deaths in an encounter between the police party and others, he shall enter that information in the appropriate register.

(b) The information as received shall be regarded as sufficient to suspect the commission of a cognizable officers and immediate steps should be taken to investigate the facts and circumstances leading to death to ascertain what if any, offence was committed and by whom.

(c) As the police officers belong the same police station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as the state CID.

(d) Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction if police officers are prosecuted on the basis of the results of the investigation.
Thus, it is evident from the observations of the NHRC that the investigation need to be carried out impartially by a separate investigation agency, and secondly, besides punishing the guilty, compensation should also be doled out to the servicing family members.

It is observed that in most cases, the administration seeks to protect the guilty personnel, especially in emergency affected regions. The armed forces fully refuse to co-operate with the investigating agencies and the lower judiciary. Protected by draconian laws such as the AFSPA, NSA and others, accused personnel either refuse to appear before the civil inquiries and at times, ever threaten the witnesses with direct circumstances. The security forces ‘enjoy considerable immunity’. Recollecting his experiences in Kashmir and elsewhere, Prabhu Ghate (2002:318-19) says that “the AFSPA 1958 allows the security forces the right to arrest without warrant, and to shoot to kill in order to do so, even persons about to commit a prospective offence. Section 7 indemnifies personnel from prosecution for any acts done under the act. A similar provision exists under the equivalent state government act, the J&K Public Safety Act, the main preventive act in use, disallows legal proceedings against officials for “acts done in good faith” (Prabhu Ghate 2002:318-19).

Saksena, at al (2003) writes that law enforcement agencies routinely resort to torture, euphemistically called ‘third degree’. The fact that law specifically prohibits torture does not alter the situation on the ground. It is open secret even police officers with outstanding professional records see nothing wrong in the use of third degree methods. This practice enjoys sanction at influential levels of the administration and society at large. As long as the end result is socially acceptable, few questions are asked. The general belief if that it is impossible to control crime and criminals without resorting to ‘third degree’ methods. Thus, if the use of torture were only an aberration, the problem could have been solved easily
through stricter disciplinary procedures against the police officers involved. As is evident, the malaise runs much deeper.

PREVENTIVE DETENTION AND HUMAN RIGHTS VIOLATIONS

Entry 9 in List I (Union List) and entry 3 in List III (Concurrent List) of the Seventh Schedule of our constitution deals with preventive detention.

Preventive detention means detention of a person without trial. It is so called in order to distinguish it from punitive detention. The objective of punitive detention is to punish a person ‘for what he has done’ after it is proven in the courts. The objective of preventive detention, on the other hand, is to prevent her from doing something and the detention in this case takes place on the apprehension that he is going to do something wrong which comes within any of the grounds specified by the constitution, viz., acts prejudicial to the security of the state; public order, maintenance of supplies and services essential to the community; defense; foreign affairs or security of India. In fact, preventive detention is resorted to in such circumstances that the evidence in possession of the authority is not sufficient to make a charge or to secure the conviction of the detention by legal proofs but may still be sufficient to justify his detention on the suspicion that he would commit a wrongful act unless he is detained (Basu D.D. 2002: 111).

The provision of preventive detention had existed in India even before the adoption of the constitution in 1950. Bengal Regulation 111 of 1818 - the Bengal State prisoners Regulation
- provided that there can be no limitation upon the powers of the government to detain our Indian native on grounds of more suspicion. Another such draconian provision was Rule 26 of the Rules framed under the Defense of India Act, 1939, which authorized the British government in India to detain a person whenever it was satisfied with respect to that particular person that such detention was necessary to prevent him from action in any manner prejudicial to the defense and safety of the country and the like (Emp. V. Sibnath, A. 1945 P.C. 156). After independence in 1947, preventive detention was continued in India as an instrument to suppress apprehended breach of public order, public safety and the like (Basu D.D. 2002: 112)

Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in police custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice.

One of the first detention laws to be passed was the Preventive Detention Act in 1950. Initially, it was meant to be a temporary Act, but it came to be extended several times until 1969 when it lapsed. In 1971, the Maintenance of Internal Security Act (MISA) was enacted which had a number of provisions similar to the Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA). It was intended as an economic adjunct of the MISA. MISA was repealed in 1978. The National Security Act (NSA) was passed in 1978. It was meant to strengthen the Central and State governments to maintain public order and to uphold the unity and integrity of the country.
With the rise of terrorist-related activities in Punjab and elsewhere, the Union Government passed the Terrorist and Disruptive Activities (Prevention) Act (TADA) in 1985.

One of the preventive detention laws which were misused the most was the TADA. The evidence was corroborated not only by independent and voluntary agencies such as Amnesty International, but also by former Union Minister for Home Affairs, M.M. Jacob who said on record that between 1981-1991, altogether 26,915 persons had been detained under the Act. But what was more surprising was that the state of Gujarat recorded the highest number of incarcerated under TADA, which stood at 9569. Gujarat never experienced terrorism like in Assam, Jammu and Kashmir or Punjab. Another disturbing trend was that a majority of the people held under TADA in Kashmir were minority Muslims.

POLICE TORTURE

In spite of the constitutional provisions aimed at safeguarding the personal life and liberty of a citizen, growing incidents of torture and deaths in police custody have been a disturbing factor. Prohibitions against torture and custodial misconduct remain, by and large, only on paper. It is widely accepted; even by the state authorities that torture is rampant, and it is the major reason for custodial deaths in India. Because it takes place in a confined environment, details and information about such violations of human right is and hard to access. In most instances, torture is resorted to in order to ‘exact confessions’.

The poor and the weak, with little or no access to lawyers, are the worst sufferers. Things have reached such proportions that relatives of the accused do not hesitate to pay bribes in order to ensure that their wards are not subjected to torture in police custody. Thus, it serves the police as a double-edged weapon, and it is evident that the police will not
relinquish it so easily; Things are also helped by the fact that India has not ratified the Convention against Torture.

In most cases involving human rights violations, the junior level officers are generally suspended and subjected to departmental inquiry. It is observed that fellow officers display a tendency to protect each other. In many instances, the punishment was usually in the form of a transfer, which not only emboldens the serial offenders but also encourages greater corruption in the police department.

Cases involving police excesses are difficult to substantiate because of the lack of support from other government departments. It is observed that falsifying records by deliberately omitting medical data in rising health certificates and in autopsy reports is common under compulsion or threat (Nirmal, Chiranjivi V, 2000). In the prison set up, doctors do not operate autonomously. Doctors seldom maintain independent records, neither do they have any authority to keep original documents; the police keeps such documents in their charge.

THE ISSUE OF ENFORCED DISAPPEARANCES

Enforced disappearances were a trademark feature of totalitarian regimes, such as Nazi Germany in the 1930s and 1940s, the Soviet Union, and Maoist China. But what is astonishing is that such enforced disappearances are not new to our country. In fact, in places like Kashmir and other insurgency infected regions, such acts continue unabated.
In Kashmir, in certain instances innocent civilians are buried as foreign militants, killed in “encounters” by the security forces. According to the Association of Parents of Disappeared Persons (APDP), more than 8,000 civilians - man and woman - have gone missing in the state Jammu and Kashmir since the insurgency began in 1989. The government response is predictable: it branded those who went ‘missing’ as anti-nationals who had crossed over to Pakistan in order to receive ideological and military training.

Such enforced disappearances “established one thing – that in recent decades, in the course of our fight against terrorism, the security agencies, sometimes with the complicity of our governments, have carried out enforced disappearances of terror suspects,” (Mukul Sharma: 2008). Instead of responding to terror with justice, the security forces have tended to fight terror with counter-terror. What is surprising, and equally unfortunate, is that these security agencies have carried out such crimes with impunity. This is in contravention to accepted international norms and human values.

Mukul Sharma further writes “to disappear is to vanish, to cease to be, to be best. But the “disappeared” have not simply vanished. Someone, somewhere, knows what had happened to them. Someone is responsible. Each enforced disappearance violates a swathe of human rights: the right to security and dignity of a person; the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the right to human conditions of detention; the right to a legal personality; as well as rights related to fair that and family life. Ultimately it violates the right to life, as victims of enforced disappearances are killed” (2008).
Contrary to popular perceptions, human rights violations in the form of disappearances and extra-judicial killings are not limited only to specific regions. Reports by human rights groups have shown that such violations are happening with increasing regularity in states such as Gujarat, Maharashtra, Andhra Pradesh, Uttar Pradesh, Bihar, Rajasthan and Orissa.

India has signed the international Convention for the Protection of All Persons from Enforced Disappearances in February 2007, which under Article 1 states that, “No person shall be subjected to enforced disappearance”. India, however, is averse to the idea of independent observers from the United Nations and Amnesty International (AI) to either visit the country or conduct independent inquiries. It is unfortunate that India has still not ratified the Convention against Torture, and requests by the UN special rapporteur on torture and extra-judicial executions to visit the country have been pending for long.

This places an obligation on the States to adopt and enforce safeguards against disappearance, and requires them to provide judicial remedy and redress to the victims and their families (Mukul Sharma, 2008).

To restore the faith in the Indian political system, one needs to ensure that all allegations of enforced disappearances and extra-judicial killings are independently and impartially investigated; anyone suspected of such crimes should be prosecuted in a fair manner. It is equally important that the victims are adequately compensated and rehabilitated in order to provide a healing touch and instill faith in Indian democracy.

MINORITY RIGHTS
In order to strengthen the cause of the minorities, the United Nations promulgated the Declaration of the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities on December 18, 1992. It proclaimed that:

States shall protect the existence of the National or Ethnic, Religious and Linguistic identity of minorities within their respective territories and encourage conditions for the promotion of their identity. Incidentally, December 18 is observed as Minorities Rights Day all over the world.

The Indian Constitution does not define the term ‘minority’ but it means a non-dominant group. It is a relative term and is referred to represent the smaller of two numbers, sections or group called ‘majority’ in that sense (Bakshi, P.M., 2006: 69). Five communities are recognized as minorities by the Indian government. These include the Muslims, Christians, Sikhs, Buddhists and Parsis. These five notified communities constitute 18.42 percent of the total population or accounted for 189.5 million of India’s population according to the 2001 census.

The Indian constitution provides adequate safeguards for religious, linguistic and cultural minorities. Articles 25-28 provide freedom of conscience and free profession, practice and propagation of religion. It means that there shall be no ‘state religion’ in India. The State shall neither establish a religion of its own nor confer any special patronage upon any particular religion (Basu, 2002: 115).
Article 25 provides for right to freedom of religion. However, this right is subject to public order, morality and health. Article 26 lays down the freedom to manage religious affairs. Article 27 states that no person shall be compelled to pay taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any religion or religious denomination. Article 28 provides for “freedom as to attendance at religious instruction or religious worship in certain educational institutions”.

Educational, Linguistic and cultural rights are guaranteed under Articles 29-30. It says that any section of India having a distinct language, script or culture of its own shall have the fundamental right to conserve the same. It is important to note that this provision accords protection not only to religious minorities but also to linguistic and cultural minorities.

The Constitution provides that there shall be no discrimination in state funded educational institutions. Article 29(2) provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving State aid, on grounds only of religion, race, caste language or any of them. It is a very wide provision intended for the protection not only of the religious minorities but also of ‘local’ or linguistic minorities. It could be argued that certain Constitutional provisions are multi-faceted i.e. they cater to more than one section of minorities. There are also provisions under the Constitution that all minorities, whether based on religion or language, shall have the fundamental right to establish and administer educational institutions of their choice.

The Indian constitution, under article 350A, instructs every state to provide for adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. It also speaks for the appointment of a special
officer for linguistic minorities to investigate and report to the President all matters relating to the safeguards provided for linguistic minorities under the Constitution\(^1\). Apart from these provisions, parliament has enacted the National Commission for Minorities in 1992. Its primary objective is to monitor the working of the safeguards provided in the Constitution and the various state and Union laws.

THE SACHAR COMMITTEE REPORT AND MUSLIMS

The Sachar Commission was constituted by the Congress-led UPA (United Progress Alliance) Government to inquire into the conditions of the largest minority community in India—the Muslims. It was the first systematic study of the Muslim community in independent India. \(^2\) The highlights of the Sachar Committee report\(^3\), submitted toward the end of 2006, recommended the setting up of an Equal Opportunity Commission to address concerns of deprived minority groups; creation of a national data bank on various socio-religious categories; designate Arzal Muslims as SCs or Most Backward Castes and evolve affirmative action measures; promote religious tolerance by initiating a process to evaluate textbooks for appropriate social values; evolve criteria to facilitate admissions to the most backward socio-religious categories in universities; provide financial and other support to initiatives built around occupations where Muslims are concentrated and that have growth potential; work out mechanisms to link madrasas to higher secondary schools and recognize madarsa degrees for eligibility in defense, civil and banking examinations; devise teacher training components that highlight diversity and sensitize teachers to the aspirations of Muslims;

\(^1\) This particular provision is provided in Article 350B.
\(^2\) All the other commissions, including the Dr. Gopal Singh Committee, looked into issues relating to the Muslim community along with those relating to other segments of society, such as the S.Cs, S.Ts and other weaker sections.
\(^3\) The processes of the committee were essentially based on three types of issues relating to identity, security and equity, with special emphasis on issues of equity. Within this broad perspective, a wide range of specifics were covered by the committee such as perceptions about Muslims; the size and distribution of the community’s population; indices of the community’s income, employment, health, education, poverty, consumption and standards of living; and the community’s access to social and physical infrastructure. The committee also made a meticulous study of the perpetuation of the caste system in the Muslim community (Ramakrishna, 2006:5).
setting up of a national Wakf Development Corporation with a revolving corpus fund of Rs.500 crores (Ramakrishna, Venkitesh, 2006: 6).

The Sachar committee recommendations, if carried out in letter and spirit, can serve as example of amelioration of minority grievances. Most of the recommendations listed above have a lot in common with the spirit, if not the content, of international covenants and declarations of human rights. The Sachar committee could serve as an example for other nations and international organizations to strive to emulate.

In sum, we can say that there is a great degree of synergy between international norms on human rights and the Constitution of India’s provision on fundamental rights. In practice, however, the realization of these rights is not without problems and hence violation of human right is not uncommon in India. As such, we can say after Sachar Committee Report, minority communities neither flourish nor having a dignity life.

Although, not all countries of the world operationally the principles and goals enshrined in the UHDR in totality. Hence, in practice, achieving human rights for every human being is very difficult and depends on different values and cultural contexts. The term has come to acquire different meaning in different local jurisdictions resulting in differential application. It cannot be denied that Asian societies put more emphasis on a group-political or social, rather than the individual rights. However, at the same time, it cannot be argued that human values and rights are not important in Asian societies and political system. As Amartya Sen has pointed out the concerns for the rights of the individual are not entirely a gift of western societies.
Many scholars have discussed the impact of regime on state behaviour and outcomes. “However, there is no general agreement on this point and three basic orientations can be distinguished. The conventional structural views the regime concept as useless if not, misleading. Modified structural suggests that regime may matter, but only under fairly restrictive conditions, and Grotian see regimes as much more pervasive, as inherent attributes of any complex persistence pattern of human behaviour” (Krasner 1982:190)

In the case of India, as discussed at length, a great degree of synergy exists between the constitutional provisions on fundamental rights, directive principles of state policy and the UDHR and many other human rights treaties. India is also a party to a number of UN treaties and declarations on human rights, including ICCPR, ICESCR (accession), and CRC, CERD and CEDAW (Ratified) and on CAT (signature).

The constitutional provisions on Fundamental Rights (under Part III) and the Directive Principles of State Policy (part IV; though not enforceable) provide a formidable set of rights to its citizens. Many of them reflect the principles enshrined in the Universal Declaration of Human Rights, such as right to life, liberty, equality before law, freedom of speech, equality of opportunities, religious rights and remedies for enforcement of rights, etc.

However, in practice, violations of human rights are not much uncommon. Constitutionally, the fundamental rights of people remained suspended in the case of proclamation of emergency. In addition, a number of draconian laws (mostly extraordinary laws for ‘tackling’ counter insurgency and terrorist activities) including the AFSPA, NSA, POTA, TADA, COFEPOMSA are invoked and/or in operation, which violate the rights of people. Hence, in practice several cases of violations of human rights are reported, especially fake encounter,
preventive detention, police torture, enforced disappearances, etc. In addition, instances of discrimination on ground of caste and religion are not too infrequent, not to mention the denial of social and economic rights because of high incidences of poverty, illiteracy and malnutrition. According to P N Bhagvati (1980) it is only through achievement of social and economic rights that civil and political rights can become a practical reality for the entire people of country. Otherwise, civil and political rights will remain a mere illusion.

The Supreme Court has always taken a serious view of the prevalence of torture and other forms of degrading methods in police practices and other spheres of our social and political life. An important device which could help check such menaces is the ‘public interest litigation’. By this way, it could entertain press reports, letters and petitions from persons lacking a formal locus standi, as writs in public interest.

To restore the faith in the Indian political system, one needs to ensure that all allegations of enforced disappearances and extra-judicial killings are independently and impartially investigated; anyone suspected of such crimes should be prosecuted in a fair manner. It is equally important that the victims are adequately compensated and rehabilitated in order to provide a healing touch and instil faith in Indian democracy.

In this context, a constructive and positive role of NGOS is very important. It is important for NGOs to portray such problems and campaign for realizing the human rights of everyone and everywhere. Human rights NGOs such as Amnesty International play an important role in shaping human rights norms and standards. They also play an important role in upholding human rights as envisaged under the United Nations Declaration of Human Rights and other human rights instruments by pressurising governments to sign and
ratify the treaties that embody human rights norms and have worked to increase the use of the complaint mechanisms under these treaties. They also perform the task of creating awareness about human rights. Investigation and documentation by NGOs has been vitally important in bringing human rights abuses to the attention of the United Nations, the international community and the public at large. They are often useful owing to the fact that they can resort to the use of informal channels to disseminate information about human rights even in countries where the government regime is repressive.

The role of media as a watchdog is equally important in the protection and promotion of human rights. It is however, witnessed that the media fails either to highlight the instances of human rights violations, or willfully collaborates with the state agencies to cover-up the incidents. At times, the media also plays a negative role by sensationalizing an incident (sometimes referred to as trial by media), which can have grave repercussions for both the society and the individual. Hence media must be sensitized to play an important role in securing rights of the people.

Another effective tool to fight police excesses, torture and custodial deaths is the Right to Information (RTI) Act, if it is applied diligently. It is seen in most cases, the security forces and the police tend to hide the evidence under different pretends. The official secrets Act of 1923 is an instrument in their hands. It could be countered by the RTI Act. If the information about a particular instance of extra-judicial killing becomes known, it could be pursued by civil society and the judiciary can provide justice to the aggrieved parties.

It would not wrong to say that the violation of human rights can be controlled only when there is a firm determination for the human dignity and values. It is crucially important that
the Indian society at large, including the political elite, both civil and police administration, the media, civil society and intellectuals who yield influence in molding the opinion in the society, reject and renounce their ambivalent and opportunistic attitude towards the violation of human rights.

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