

“Rethinking Security: Human Rights in the Fight against Terrorism”

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*“Terrorism has become a festering wound. It is an enemy of humanity.”
-Atal Bihari Vajpayee¹*

Abstract

Human Rights and Terror, these words are ideally suited to be distant from each other. But is that really possible? In India, the unity in diversity theme is often the contributory principle towards human rights violations. During the British empire, violations were rampant. Some of these have been discussed like the Jallianwala Bagh Massacre, the atrocities against indigo farmers, etc. Globally, World War I and World War II had brought about grave violations of human rights. The Universal Declaration of Human Rights was our answer to curb these violations. But to what extent are these implemented today across the globe? Moving ahead to the 2000s, Extremists groups like ISIS have acted as a major deterrent to rights and freedoms. Countries like Syria, Libya, etc. have been heavily affected. ISIS has also taken responsibility for the Sri Lanka Easter bombings which has also been looked into. 462 deaths have occurred due to mass shootings in 2019, this has been discussed with reference to Christchurch mosque shootings. Terror groups and their increasing interference with individual's rights have even affected the conduct of nations which has been seen in the case of Kulbushan Jadhav, he was forced to “confess” in a hostile environment of the crime of espionage, sabotage and terrorism which he might not have committed and was granted death sentence based on that while no consular access being provided by the Islamic Republic of Pakistan. This is in clear violation of Article 36 of the Vienna Convention which talks about the right of a foreign person in a foreign land to defend himself legally. Rising terror has not only infringed the rights of individuals but also created an environment of hostility across the globe. Will human rights succumb to terrorism or can these rights be efficiently safeguarded? An effort has been made to understand and help provide rights to individuals in a world where terror is inevitable.

Introduction

Human right can be defined as the right which belongs to every individual across the planet irrespective of caste, creed, religion, sex, etc. These rights are regarded as the basic privileges which should be available to every individual and no one should be deprived of the same. Human rights are moral rights that an individual is entitled to however without protection by the law of the state, these rights are of no or little value as violations do not lead to any action against the person guilty of such violation. Further, it does not ensure that the aggrieved person would be provided with some just remedy. However, the position of these rights in the

¹ Atal Bihari Vajpayee, BrainyQuote, (May. 12, 2020, 17:31), https://www.brainyquote.com/quotes/atal_bihari_vajpayee_742755?src=t_terrorism

eyes of law depends upon the part of the globe we're situated in as well as the time frame is taken into consideration. For example, the Right to be free from slavery is an important human right. However, It was widely prevalent and allowed in the 18th century. Even during those times, it was practiced mostly in The USA and some European countries. Though these rights have been recognized for a long period of time, despite that laws and enactments for the safeguarding of these rights have taken a long period to come into existent. Apart from the laws made by the legislative machinery of the countries, there exists another important aspect regarding these human rights. This aspect of human rights is the law of the nations or international law governing matters related to not only member nations but also individuals globally and their rights. The Universal Declaration of Human Rights is the most important document which talks about human rights globally. "It was adopted on 10th December 1948 (General Assembly Resolution 217A). It sets out for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages."² The Universal Declaration of Human Rights talks about the various rights of the human family across the world, however, this declaration being a treaty entered into by member nations of the UN. This treaty has no legal obligations of the member nations and any violations of the same by the member nations are not subject to trial under any court of law. This declaration serves mostly as a moral guideline to be followed by the member states but any default by member states does not make them liable to penalty or punishment. Human rights encompass civil, political rights of the individuals as well as the right of individuals with member nations like in the case of Kulbushan Jadhav which we will be discussing in this research work.

Violations of human rights were prevalent in India during the British Raj. This was the time when native citizens were subjected to cruelties and unfair treatment by the British government which was in power. The most significant event during this period which is also considered as one of the biggest tragedies in the early 1900s was the Jallianwala Bagh Massacre. The right of the peaceful gathering was violated in this tragic event when several people were shot dead by the orders of General Dyer who had banned all public gatherings in Punjab and justified this event based on those orders. Apart from this, there have been several other instances of gross human rights violations like unjust trials by the then existing courts or forceful cultivation of indigo etc. However, these violations were not limited to the period of British rule in India and not existing just within the geographical territory of India. They were widespread like slavery in the west, exploitative feudalism in Europe, prisoners in Vietnam, etc. In this research work, we will throw light on a large scale of events each entirely different from another yet united by violations of human rights. More importance would be given to the growth of anti-social elements, the rise of terrorism and its adverse effects on the rights of individuals.

1. Human Rights during the British Rule in India & World War:

² United Nations, Universal Declaration Of Human Rights, UNITED NATIONS (May,11, 2020,10:54) <https://www.un.org/en/universal-declaration-human-rights/>

Human Rights have existed for a long period, gone through various phases of development and the sphere of what comes under human rights has been expanded by large over the years. Before the UDHR, several other important documents relating to human rights like the Magna Carta, 1215 amongst many others have come and gone by. It is important to understand the scenario which caused the need for a treaty document to safeguard these rights which should be available to all. Here the reference to India posts the Mughal Empire and under British rule has been made and globally rights have been explained at the time of the most unforgettable incidents in the history of mankind: the two World Wars which were synonymous with death, destruction and demolition.

The British ruled over India for 190 years, this lust for power and colonization had resulted in a series of wars against the other European forces like the Dutch, Portuguese as well as the native Indians. The British by winning all wars was able to colonize India and exploit its resources. The violations, in this case, were not limited to the lives lost during wars but extended to a greater extent. In 1857, the first major violation which we come across is based on religious and cultural grounds. The Indian soldiers were provided with Enfield rifles whose cartridges were greased with cow fat and pig lard, these animals were offensive to the Hindus and the Muslims respectively. Though often seen only as a cause of the revolt of 1857, we often ignore this incident in the frame of human rights violations. The basic right to live according to one's will was violated with the introduction of them to something which was against their belief. Apart from this one of the biggest and the worst case of human rights violation in India can be found as we move further ahead to the year 1919, the Jallianwala Bagh Massacre was one of the biggest violations of human rights the country had ever seen. "Dyer, who had arrived in Amritsar from Jullundur on the evening of April 11, had ordered his troops to fire on the gathering inside Jallianwala Bagh on the evening of April 13, 1919. The official death figure was put at 379 while nearly 1,200 were injured. The death toll is often disputed, with claims (Indian National Congress Report) that over 1,000 innocent people were killed."³ This incident relates to terrorism because the emerging freedom struggle in Punjab was answered to by the British in the form of natives being whipped on the streets, bombings at public places, innocent people beaten up, inhuman treatment with those in the jails and lockups. All this culminated in this horrific incident which involved a huge loss of life as well as deprived people of their right to free movement and peaceful gathering without any fear in their mind. The rule of oppression was a rule where a breach of rights was commonplace and no machinery to prevent such breach existed.

Moving to the global scene at the same period, the First World War or WWI which involved Europe, the Middle East as well as the USA resulted in the loss of life, destruction of property as well violations of human rights on a very large scale. The Second World War or WWII

³ Jaideep Sarin, Jallianwala Bagh massacre was preceded by reign of terror by the British, BUSINESS STANDARD (May, 13, 2020,13:56) https://www.business-standard.com/article/news-ians/jallianwala-bagh-massacre-was-preceded-by-reign-of-terror-by-the-british-118121100388_1.html

was second in these series of wars and it affected almost every part of the globe, it ended in 1945 which was followed soon after with the Universal Declaration of Human Rights. Some of the major violations which were witnessed during these wars can be mentioned as follows:

- In WWI, the execution of civilians at a large scale in Belgium by the German Army was a major human right violation where civilians who were not actively participating in the war suffered at the hands of German Soldiers.
- At the end of WWI, the Canadian Government showed the display of another major Human Rights violation in which Chinese people were not allowed to come to Canada and Canadian Chinese people living in Canada were subject to certain conditions as well.⁴
- In the second WWI, the major violations observed were due to terror by these nations engaged in the War. Fascism and Nazism were dictatorships that deprived people of their rights. Apart from that killing of Jews in gas chambers was another inhuman and unethical practice followed back then.

The Universal Declaration of Human Rights had come up intending to curb these violations and together with the UN intended on attaining world peace at a later stage. However, we can say that the treaty did not succeed in entirety as terrorism became a brutal force almost twenty years after the treaty came into existence. With the advent of terrorism, rights were compromised and world peace was in danger. Terrorist groups like ISIS amongst others came into limelight and became extremely powerful and a big threat to the rights of individuals and freedom of individuals.

2. Terrorism, ISIS & Sri Lanka Bombings

Terrorism has no one single precise definition like that of inertia or force. It is often defined as “The unlawful use of violence and intimidation, especially against civilians, in the pursuit of political aims.”⁵ However, this is not often the most correct definition of terrorism and there can be difference of opinion regarding the same. This is because terrorism isn’t always concerned with a political motive. Sometimes it has been seen that terrorism has been commonplace in the case of revenge as hinted in the recent Sri Lankan terror attacks, sometimes it’s a case of religious extremism as seen from the increase in Islamic terror groups and some cases there is no reason at all behind these attacks. Thus political aims are not the sole aim behind these activities. Terrorism isn’t a product of the 21st century, it has existed in history however it has affected more people globally in the 21st century than it did maybe a hundred years ago. Post-WWII, it has acquired a new name called “Modern Terrorism”, the conflict between the Israeli Jews and Palestinian Arabs over Palestine led to the growth of such terrorism in the 1980s which was a result of several wars between the two groups over the land. The concept of suicide bombers gained popularity as well with increased incidents like bombings in the Palestine conflict or even the killing of Indian PM

⁴ The Chinese Immigration Act, 1923

⁵ Oxford Dictionaries, *Terrorism*, OXFORD LIVING DICTIONARIES, (May, 14, 2020,9:35) <https://en.oxforddictionaries.com/definition/terrorism>

Rajiv Gandhi by the LTTE. However, the most popular thing about modern terrorism was the formation of terrorist organizations that trained people to spread fear, violence and deprive people of their rights. These groups could either be localized or global depending on their financial resources as well as strength in numbers. One major group which gained worldwide attention was “The Islamic State of Iraq and the Levant” also known as ISIS or ISIL, it was founded in the name of Al Qaeda Iraq in 2004. “But it burst into the international scene in 2014 when it seized large swathes of territory in Syria and Iraq. It became notorious for its brutality, including mass killings, abductions and beheadings.”⁶ The ISIS believes in a state which is controlled according to Islamic law. In pursuance of the same, it has established control over territory in Syria, Iraq, Libya and asked followers of Islam to show allegiance to the group. The ISIS has grown considerably as a terrorist organization, it introduced registration forms for those willing to join the organization. It has received support from various parts of the globe which can be inferred from the following instances:

- In the 2015 Paris Terror Attacks, which caused the death of a large number of people in attacks at six locations. It was found that three people among the accused were inhabitants of France who had voluntarily joined the ISIS to carry out the attacks, thus indicative of the fact that how Muslims across the globe were attracted to the cause of the ISIS.
- In India, the ISIS found recruits as well. Recently a student aged 26 from Kerala had joined ISIS. Various others from Karnataka, Uttar Pradesh, etc. had joined the terrorist unit earlier.

ISIS has in 2019 has claimed responsibility for the bomb blasts on in Sri Lanka. On Easter, Sunday in Sri Lanka bombings was carried out across Sri Lanka in about eight locations which caused the death of more than three hundred people and wounded at least five hundred according to reports. Though ISIS has claimed responsibility it cannot be said without evidence if their claim is true. However, the attacks in Sri Lanka targeted Christians and are considered as revenge against the Christchurch shootings in a mosque which left many wounded and numerous dead most of which were Muslims. Thus religion again being somehow related to terror and in result contravening with the most important right of individuals which is the Right to live. It has gone on to create a sense of fear even amongst the Muslim population in the country, they wear to go out in public spaces expecting another attack targeting them because of these bombings. Thus it has affected their rights in such a way that they find themselves in a helpless state where they can't speak their mind nor can they gather at public spaces without fear. It has acted as evil for both the communities in some way or the other. Further, we will study about the ISIS's effect on the territory under its control. The same has been dealt with in the next chapter and the grave violations of human rights brought into the light.

⁶ B B C, *What is 'Islamic State'?*, B B C, (May, 14 , 2020 , 11:20) <https://www.bbc.com/news/world-middle-east-29052144>

3. Syria, Iraq, and Libya under ISIS

ISIS has created inroads in global peace and affected the rights of humans worldwide. However, the most affected are those which are directly under the rule of this extremist group. In the present day world, it is possible that someone might not be aware of what ISIS is? Or how one can define terrorism. But one cannot simply be unaware of the violations of Human Rights in Iraq or Syria. Such are the incidents it has shaken the entire of humanity and the globe has been seen sympathizing for Syria, Iraq and even Libya. The reasons attributed to the rise of ISIS in these regions have often been attributed to failed constitutional machinery in the form of incapable existing government, judicial systems, etc. The rise in atrocities in these regions has been simultaneous to the rise of the extremist group, “ISIS executed at least 250 women recently for refusing sex slavery, the women has been ordered to accept “temporary marriages” to militants and were put to death after their refusal.⁷ In Iraq, there had been years of armed struggle between the ISIS and the government to reclaim areas controlled by ISIS this affected the rights to civilians many of whom became homeless, the citizens suffered severe human right violations as kidnappings, killing and torture was the norm of the land. Another popular form of killing practiced by ISIS was the beheadings started by ISIS executioners which were also sometimes uploaded on the internet, these incidents sparked worldwide outrage, but with increasing outrage there were only more and more uploads on the internet. The citizens back in Syria were often summoned to the site of these executions and forced to be witness to such inhuman acts. Due to this increased terror and tension, the government during the initial stages of ISIS's takeover of territories violated the human rights of citizens by restricting their free movement due to the threat posed by ISIS. ISIS targeted the Shia community and other non-muslim communities as well as foreign journalists, ambassadors or representatives. However, that didn't stop them from going against a Sunni who was against their ideology. It has been said that ISIS had even started the practice of burying people alive but the same has not been verified with proper evidence. Syria and Iraq have been the most affected countries from ISIS, the ISIS had asked the civilians for forceful conversion to Islam failing which would mean the death of the people, it forced people to pay exorbitant taxes, killed people for petty offenses like smoking a cigarette. There were no rights for homosexuals in the region, anyone who was doubted to be guilty of homosexuality was killed, tortured or even raped by the ISIS militants. The extremist groups transformed playgrounds in Syria into mass graves. The feeling of ever-existent fear was normal for the natives, the indigenous population from minority communities tried to seek refuge in some other country to escape from the life they were living. The natives were even forced to leave behind their property and belongings in the city and flee to some harsh terrain to avoid getting killed at the hands of the militants. Children were brutally killed by ISIS; the women were oppressed. Women in the region both Muslim

⁷ Vishakha Sonawane, *ISIS Executes At Least 250 Women For Refusing “Temporary Marriage” In Iraq’s Mosul*, International Business Times,(May, 15, 2020 10:34) <https://www.ibtimes.com/isis-executes-least-250-women-refusing-temporary-marriage-iraqs-mosul-2357113>

and non-muslim were subject to abuse and torture, women were considered as sex slaves who needed to satisfy the wants of the militants. Rape was common and ISIS thought “men need not obtain consent before engaging with wives and slaves, ISIS used a Quranic quote (Al-Mu'minūn: 5-6) to justify its the policy of rape.”⁸ Other human rights violations which were frequent concerning women were female slaves; ISIS allowed the buying/selling of females as they were considered to be an object which had no rights of its own and the owner was free to act in any manner he wanted with them. Apart from this, there were restrictions on the free movement of women, forced marriages from as young as the age of nine was practiced in Syria and the females were forced to adhere to a strict dress code as well.

Apart from the calamitous effects of ISIS in Syria and Iraq, it had also gained a stronghold in Libya which saw similar violations like that of the other territories under the extremist group's control. Very Recently, reports of increased terror activity have indicated the rise of ISIS in Libya despite its a gradual decline in Syria and Iraq. The instability in the state has paved the way for a second life for ISIS. However, if proper measures are taken then the same can be stopped. In the final chapter, we discuss how increased terror has disturbed the global peace setting and has been a cause of suffering for the innocent.

4. Kulbushan Jadhav Case: The ill effects of Terrorism

Increasing terrorism has created an environment of hostility between a nation and an outsider. In the present case, Kulbushan Jadhav, an Indian national was arrested by authorities in the Islamic Republic of Pakistan. Pakistan further detained Jadhav, he was made to appear in a military court where he was adjudged to be an Indian spy and was thus sentenced to death by the military court in Pakistan. However, India moved to the International Court of Justice with this case. The ICJ after receiving India’s plea restrained Pakistan from abiding by the military court’s order until the case is decided in this court in Hague. There is a lot of grey area when it comes to studying the Kulbushan Jadhav case, the first and most basic region which is indicative of breach of human rights.

What did Pakistan do after arresting Jadhav? India in its submission to the International Court of Justice highlighted the fact that though Jadhav was arrested and detained by Pakistani officials in the Baluchistan region around 3rd March 2016 but India was informed on 25th March 2016. “This is in clear violation of Article 36(1)(b) of the Vienna Convention which asks for information about arrest without delay.”⁹ Further he was not provided with consular access which again needs to be granted to Jadhav according to the Vienna Convention. The military court trial is again a questionable move by Pakistan as it is “per se violative of principles of international law”¹⁰ Further, it was argued in the International Court of Justice that Jadhav was kidnapped from Iran and reason for the presence in Pakistan is not clear.

⁸ Counter-extremism , *ISIS Persecution Of Women*, COUNTER EXTREMISM, (May,15, 2020,14:25) <https://www.counterextremism.com/content/isiss-persecution-women>

⁹ Article 36(1) (b), Vienna Convention on the law of Treaties,1155 U.N.T.S 331,8 I.L.M. 679

¹⁰ The International Covenant On Civil and Political Rights, UN Doc. A/6316 (1966)

Thus, the case demanded an inquiry into how and why Jadhav reached Pakistan.

The procedure Pakistan followed – Was it just and fair? Pakistan detained and conducted a trial with Jadhav without providing him the right to defend himself which violated Article 36 of the Vienna Convention which creates obligations to help a foreigner who has been detained in a foreign country to defend himself. However, Jadhav was deprived of such access despite numerous reminders from India. The humanitarian aspect was ignored by Pakistan in moving forward with this case. Kulbushan Jadhav was forced to “confess” in a hostile environment of the crime of espionage, sabotage and terrorism which he might not have committed and was granted death sentence based on that. Apart from the statutes above, Pakistan also violated article 9 and 10 of the Universal Declaration of Human Rights which provides for protection from arbitrary arrest and right to a free and fair hearing.

The International Court of Justice heard the case of Kulbushan Jadhav in Feb 2019. India was the first to submit its arguments and was represented by Harish Salve. Pakistan was represented by Khawar Qureshi and went second. The court has kept Jadhav's death sentence on hold and is yet to pronounce its judgment. The judgment for this case is set to be announced by the end of this summer.

5. “This case argues why India’s position is not only immediately important for its former naval officer but also the civilized world, its populace and human rights.”¹¹ An integral part of human rights is the right to protection against the denial of justice. In the case of Kulbushan Jadhav, looking from a neutral perspective like an audience we’re unaware if he is a spy from Indian intelligence agency RAW or he was a businessman in Iran who was wrongfully caught by Pakistan and carried to Pakistan and framed with charges of espionage and terrorism. However, the intention is not to get Jadhav back because he is an Indian. This paper tries to analyze the mistakes committed while he was being detained, during the period of detainment and his wrongful trial in a military court. This case highlights the gross negligence for principles of international law and human rights while handling a foreign national in another foreign country. This is visible for the above-mentioned facts. This case also acts as an eye opener about the hostilities existing in today’s world, it stresses on the need for a world build on trust. Safeguarding of human rights is only possible when there is trust, concern and a feeling to honor treaties and abide by principles of international laws among all the nations across the globe. Conclusion

Human Rights are the rights that all human beings are born should be not be infringed. In the absence of international laws, conventions, treaties etc. there existed gross violations of human rights in the form of slavery, prostitution, bonded labor, etc. The biggest wars on our planet i.e. WWI and WWII caused large scale death, destruction as well as the transgression

¹¹ Yashvardhan Singh, India vs Pakistan: The Jadhav Case, OBSERVER RESEARCH FOUNDATION,(May,16, 2020, 16:18) <https://www.orfonline.org/expert-speak/india-v-pakistan-jhadav-case-48663/>

of human rights. With the abolition of dictatorships, the Universal Declaration of Human Rights in 1948 and the Vienna Convention in 1961. The world was aiming for establishing global peace which can sustain the rights of all across the globe. The goal was highly idealistic and very soon difficulties in the form of civil wars, terrorism came into being. Terrorism acted totally against the principles of international law and humanitarian law. The intention of people associated with terrorist or terrorist groups was the intention to create fear amongst the masses for the furtherance of the motives of the group. It often came to be understood that people were divided into lines of religion and then influenced to join these groups. Globally terrorism and terrorist attacks increased infringing upon human rights, creating violence as well as increased fear amongst the people. Terrorism was like a tool that was made by the people to infringe on the rights of other people. The reasons for this phenomenon were considered to purely political when it started however with the years gone by one can say that there is no fixed motive and sometimes there is no motive at all but to cause violence and large scale destruction. Terrorism emerged as the biggest threat to human rights and also created adverse conditions on the planet where every outsider in a foreign land was looked at with suspicion.

It becomes extremely important to understand the importance of these rights which we possess and to develop a suitable mechanism to prevent anyone from interfering and infringing our rights. Though we've successfully negated a Third World War which could have possibly meant the end of the planet with the advanced nuclear weapons and modern warfare available to a lot of countries globally. We need to fight terrorism and reduce the threats it poses to human rights globally. The question which arises is how can we do this. There are several steps we can take in this regard firstly, we can set up human rights centers in every country which can take control in case of violation made by the country in treating a foreign national. Secondly, to combat terrorism, several anti-terror units can be set up which aim to extinguish terrorism either by peaceful settlement or armed struggle. Thirdly, the time has come when principles of international laws, international treaties, and conventions need to be made binding on the countries across the globe, the laws and principles should have legal enforceability, in the absence of binding laws there arise no legal obligations and terrorist groups across the world often do not adhere to moral codes. If the laws are binding on all the countries and have legal enforceability worldwide, it would act as a deterrent to terrorist groups from doing these unlawful and immoral acts as they could be severely punished for the same. Fourthly, the source of funding to terrorist organizations should be traced and total boycott of terrorist organizations should be practiced thus creating problems for them to purchase weapons and other essentials. Fifthly, everyone should be educated through awareness campaigns and made aware of their human rights especially in a country like ours so that any infringement upon the same calls for people seeking a remedy in the courts.

In today's world, we have successfully abolished various threats to human rights like slavery, bonded labor, etc. Today the women enjoy a much better position in society and are not

merely objects for satisfying the sexual urge of men. Human rights often speak of the development of the nation, if a nation is powerful enough to safeguard the rights of citizens it is seen to be developed in most cases. Over the years terrorism has grown as dreadful force, however, with proper efforts with the cooperation of countries across the world, we can lessen the effect of terrorism if not eradicate it immediately and thus we can ensure that people enjoy their rights in the absence of any fear. The other threat of war has seemingly declined over the years through efforts made by the UN and countries understanding the evils which war brings along with itself. Thus, we need to build the globe based on binding principles promoting peace and human rights, every encroachment on the same should be treated with seriousness and steps should be taken to make sure such acts are not repeated by an individual, group or country which interfere with the rights of others. Thus, with efficient efforts and planning the world can be made a better, safer and friendlier place.