

# **CIVIL SOCIETY ON PROTECTION OF HUMAN RIGHTS AND ITS DEDICATION IN CURBING TERRORISM**

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“We must establish the independent power of the people-this is to say, we must demonstrate a power opposed to the power of violence and other than the power of punish.”

**Acharya Vinoba Bhave**

## **Abstract**

The efforts and role of the society in vital for the protection of Human rights and combating other problems. Non Governmental Organisations (NGOs) are doing a commendable job for ensuring the justice to individuals. In this modern time, it is necessary that society should itself be encouraged to tackle the challenging problems in prevailing in world like terrorism and communal disharmony. It has been observed that administrative machinery, so far, has not prove so effective in dealing with such problems because of lack of public awareness, with which no human values can be secured. Therefore, social participation, in the form of NGOs and international NGOs are a welcome step for dealing with various aspects of human rights.

## **Introduction**

Social organizations are totally dedicated to the welfare and protection of the human rights of human beings. Whenever, any activities of the law enforcement agencies are against the human rights, the real feelings and thoughts of the social organizations convert into the real activities for the protection of human rights. Non Governmental organizations (hereinafter NGO) are performing wonderful job for the protection and promotion of the human rights, whether it may be the rights of the general public, criminals and terrorists, because, NGO's are totally dedicated to protect the rights of the mankind. Whenever, there is a problem of any violation of human rights, Social

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organizations are playing very active, vital and pivotal role in protection of these rights. They are dedicated to create favourable social environment for protection of human rights in the human society. The NGO's main function is to protect the dignity, liberty, life and identification as natural rights of human beings.

The state has not provided any rights to human race, but simply recognized these rights because nature has automatically granted these rights. Nature created different organs of human beings for eating, speaking, and thinking, sleeping, walking and working. At the time of creation of these organs nature has also provided the means of the enjoyment to all the organs by providing natural rights in the proper manner as per the requirement of all the organs of the body. In this way, all the human rights are the boons of the nature and as per the social contact theory the responsibility has given to the NGO to protect these natural rights in the form of human rights. This method of protection is called the common social efforts of the masses to protect the human rights of the entire human race. It will not be any hyperbole to say that NGOs have the practical experience according to the order of the nature. The order of the nature cannot be disobeyed by any human creature. In violation of any natural rights the duty of the impartial social organization is to protect all these rights.

**Historical Back Ground of Social Organization in Protection of Human Rights-** The history of the social organization to protect the human rights is not new. In India, in the ancient period, there were number of social organizations, which had performed noble job for the betterment of the society, because, India was divided into small states and law was based on the religious and moral principles of social recognitions. The social organizations were only the social institutions where law was enforced on the basis of right and wrong in the interest of the public.

**International Civil Society in Curbing of Terrorist Activities and Protection of Human Rights-** At International level numbers of NGOs are working and dedicated in the protection of the human rights of human being in the matters of preventing of terrorist activities, the Amnesty International is one of them, this organization is playing vital and pivotal role for prevention of global terrorism

problem, in another way, organizations also criticized the terrorists activities prevention legislations which are against the human rights, e.g. Amnesty International criticized India's new anti-terror legislation (ULAPA 2008) and urged President of India in this regard in December 20, 2008, that some of its provisions were "too sweeping" and in breach of international human rights treaties. The Amnesty said that "while we utterly condemn the Mumbai attacks and recognize that the Indian authorities have the right and duty to take effective measures to insure the security of the population, security concern should never be used to jeopardize people's human rights," Amnesty said in a statement.<sup>1</sup>

Madhu Malhotra, Deputy Director Asia Pacific Programme at Amnesty said the experience of other countries which had "rushed" to pass sweeping anti-terror increase the minimum legislation in response to terrorists' attacks had shown that such measures undermined the rule of law and reject for human rights internationally without necessarily enhancing security. India's own experience with previous anti-terrorism laws had shown they could lead to "abusive practices" she said. Listing amnesty concerns over the proposed amendments, which was in 2008, the President of India said the definition of "acts of terrorism" were too sweeping; and there was, "no clear" definition of what constituted "membership" of a terrorist organization. President of India also criticized the move to increase the minimum period of detention of those suspected in acts of terrorism.<sup>2</sup>

Amnesty International is totally committed to protect the human rights of the mankind, it had recommended repealing the anti human rights protection act, e.g. Amnesty international urge members of the U.K. parliament and peers to repeal the Prevention of Terrorism Act 2005 on the ground that it is in violation of human rights of human beings. Apart above recommendations organization also rejected the new administrative or "civil preventive" measures proposed by the Terrorism Prevention and Investigation Measures Bill. Amnesty

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<sup>1</sup> The Hindu, December, 21, 2008.

<sup>2</sup> Ibid.

recommended that terrorist matters should be fully investigated, the people who are suspected of involvement in terrorism-related activities, and where sufficient evidence exists to prosecute them in the ordinary criminal courts, in conformity with international fair trial standards.<sup>3</sup>

The above International organization also recommended that it is necessary to refrain from bypassing the ordinary criminal justice system, including by seeking the enactment of secretive administrative procedures for imposing restrictions on individual rights of liberty, freedom of movement, association and privacy. Ensure access to effective remedy for anyone who alleges to have been subjected to human rights violations as a result of control order, and ensure that any one established as having been subject to such violations receives full reparation.<sup>4</sup>

**Principles of Barcelona Meeting for Curbing Terrorism Vis a Vis Protection of Human Rights-** The role of the social organizations and the civil societies may be relevant on the basis of the following reasonable points, which were discussed in Barcelona meeting<sup>5</sup>

1. The importance of involving civil society in a comprehensive and multidimensional

Response to the threat of terrorism has been stressed by various international documents at the international regional and United Nations (UN) levels. General Assembly, for instance, in its resolution adopting the UN Global Counter-Terrorism Strategy on 8 September 2006, affirmed the determination of Member States to “further encourage non-governmental organizations and civil society to engage, as appropriate, on how to enhance efforts to implement the Strategy.”

2. The approach taken in the Barcelona meeting was to enquire, as a first step; Whether NGO representatives themselves envisaged a role for civil society in the prevention of terrorism. As a second step, it was then explored how

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<sup>3</sup> <http://www.osce.org/odihr/25142>: EVR45007, 2011 STPM Bill 2011 as available on 25<sup>th</sup> February 2011.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

and to what extent civil society and NGOs might practically work in the prevention of terrorism.

3. Participants agreed that civil society and NGOs had an important and meaningful role to play in the prevention of terrorism. They have valuable expertise and experience in addressing conditions conducive to the spread of terrorism. Specific reference was made to civil society institutions and NGOs working on strengthening respect for human rights and the rule of law and on promoting democratic accountability. Participants also referred to civil society and NGO activities aimed at fostering social inclusion as well as efforts in addressing socio-economic factors.
4. Notwithstanding that day one of the meeting largely focused on the role that civil society can play in preventing terrorism with day two mainly examining obstacles that civil society and NGOs faced while working on issues related to terrorism, participants stressed that the two issues were closely interrelated. The discussions made clear that the question of civil society and NGO involvement was primarily a question of genuine partnership between civil society and government. It was stressed that it was vital to avoid instrumentalising civil society for political or intelligence gathering purposes.
5. Participants pointed out that the possibilities for genuine partnerships between civil society and government were dependent on the different circumstances and political realities in the respective OSCE participating States. The role of civil society in preventing terrorism and the possibilities for partnering with government in this regard were very limited in countries.<sup>6</sup>

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<sup>6</sup> 1 UN General Assembly, The United Nations Global Counter-Terrorism Strategy, Doc. A/RES/60/288, 8 September 2006, operative paragraph 3 (d). 2 OSCE Charter on Preventing and Combating Terrorism, MC(10).JOUR/2, 7 December 2002, Annex 1, Para. 20, [http://www.osce.org/documents/odihr/2002/12/1488\\_en.pdf](http://www.osce.org/documents/odihr/2002/12/1488_en.pdf) The 2001 Bishkek Programme of Action on Strengthening Comprehensive Efforts to Counter Terrorism also stressed the importance of promoting active civil society engagement in the fight against terrorism. In addition, the 2001 OSCE Bucharest Plan of Action for Combating Terrorism directly mandated the ODIHR to continue developing projects to solidify democratic institutions, civil society and good governance.

Where, civil society structures were weak or non-existent. Reference was also made to legislation in some OSCE participating States that places limits on civil society and NGOs activity in the form of laws and practices that restrict registration and operation of NGOs. It was stressed that such legislation and

Practices were counter-productive because, they prevented civil society and NGO's from contributing to prevention efforts.

6. Participants suggested more generally that a lack of political pluralism, a lack of channels to convey messages and a lack of independent media were among factors that needed to be taken into account when discussing and exploring the role of civil society and NGOs in preventing terrorism in the OSCE region. In this context, participants also pointed to the difficulties for civil society and NGOs to play a positive and meaningful role in preventing terrorism when circumstances require them to put major resources into defending and protecting their own rights and existence, including at times their own physical integrity.
  7. The discussions proceeded to addressing the question of how civil society and NGOs might work practically in the prevention of terrorism. Participants were encouraged to share good practices and to explore human rights-based approaches to preventing terrorism. Participants were also asked to present and discuss grass-roots and other national initiatives, projects and experiences. The discussions identified several possible roles for civil society and NGOs in the prevention of terrorism. a. Advisory, educative and community roles.
  8. Participants discussed the possibilities for civil society and NGOs to provide policy advice and expertise on aspects of preventing terrorism which, in many cases, is not available within government. It was stressed that in order for civil society and NGOs to play a meaningful advisory and partnership role in the prevention of terrorism they needed to be given a sense of
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ownership of the problems and processes. In many cases, however, partnership with government was unbalanced and one-sided as civil society organizations were not regarded and treated as equal partners competent of addressing security issues of common concern. It was argued further that political pressure by governments to provide “quick fix” solutions to security threats and issues contributed to the difficulties faced by civil society and NGOs in providing valuable advice and assistance.

9. Participants argued that it was vital responsibility of civil society and NGOs to explain human rights as a useful framework for developing effective counter-terrorism strategies rather than as an impediment. Specific activities identified in this regard included providing information to students as well as to youth workers and police and law enforcement. With regard to the latter, it was pointed out that civil society and NGOs may partner with law enforcement to develop targeted programs of cooperation focusing, for instance, on increasing Awareness and understanding, of the diversity, of communities. Reference was made to a project where civil society and government linked up to develop a training DVD to enhance the understanding of different cultures and communities among law enforcement officers, outlining aspects of the culture, religious customs and traditions of certain communities, in addition to their historical and geographical origins.
10. Participants further mentioned the importance of providing alternative appropriate language and terminology to public officials in addressing issues related to terrorism and security. In order to strengthen cooperation with government, it was suggested that civil society and NGOs may also find it appropriate to acknowledge positive steps or measures taken by law enforcement officials and government where they occur. In addition, it was pointed out that civil society and NGOs may have a positive advisory role in providing concrete alternatives to counter-terrorism policies and measures considered to be ill-conceived. It was nevertheless imperative that civil society and NGOs were given relevant information in order to understand the reality of threats and provide adequate suggestions for response.

11. Participants agreed that civil society institutions and NGOs are catalysts for opinions and ideas which were vital for building strong and vibrant communities. By creating safe spaces for dissent and by providing a forum where experiences can be shared on a personal level, civil society institutions and NGOs may contribute to healing community rifts and tensions. It was also suggested that civil society and NGOs may engage in outreach activities and take proactive steps to address root-causes of terrorism. Participants advocated activities that strengthened human rights and the rule of law in

particular. It was argued that the promotion and protection of human rights and the rule of law contributed to building strong democratic societies in which citizens were free to participate in the political process and exercise their rights. Reference was made to the essential need to provide practical and effective support to human rights defenders.

12. The discussions touched further on the question of whether civil society and NGOs should attempt to engage in dialogue with individuals and groups involved in and perpetrating acts of violence and “terrorism.” An argument was made that for various reasons it was easier for civil society and NGOs to engage in such dialogue than for governments. Stressing that dialogue did not imply affording any form of legitimacy to the perpetrators of violence and affirming that a human rights-based approach was essential, participants made reference to positive experiences of the peace process in Northern Ireland.

13. It was emphasized that civil society and NGOs should condemn all acts of violence against civilians regardless of the motivation for those acts. Positive measures identified in the discussions in the area of advocacy also included writing open letters and statements to armed groups condemning terrorist tactics and maintaining a principled approach to the applicability of human rights standards, i.e. that these standards apply to both perpetrators and victims of violence. Participants further pointed out that there may be a role for civil society and NGOs in reducing the emotional and psychological impact of terrorism. In particular, it was stressed that civil society and NGOs

may engage in activities amplifying the voices of the victims of terrorism as well as of persons affected by unlawful counter-terrorism operations.

14. Other aspects of an effective advocacy role discussed by participants included the issue of engaging with the media to shape the public discourse around “terrorism”. It was argued that it was essential to establish a constructive relationship with the media in order to provide reliable information, challenge negative or unbalanced portrayals of parts of the community and initiate public debate on issues of public security and human rights. Participants also pointed out that it was important to encourage debate within the media profession on the image that is conveyed of minority groups in connection with the fight against terrorism and the responsibility to avoid perpetuating prejudices, stereotypes or inaccurate and/or incomplete information.
15. Participants pointed out that high quality research in the area of terrorism, political violence and the respective root-causes was vital for effective and credible advocacy as well as for prevention efforts. It was suggested that civil society and NGOs conduct research in a variety of areas. This included conducting studies and surveys on the impact of counter-terrorism measures and legislation, on conditions conducive to the spread of terrorism, and in other areas where little or no research was available to date. Stressing the importance of a practical and not only theoretical approach, special emphasis was placed on the value of statistical and empirical research. Participants reported on experiences in documenting terrorism incidents as well as on fact finding missions and field work. Participants also recalled the dangers associated with engaging in such activity, especially threats and dangers to physical integrity.
16. Participants further suggested that an increase in statistical and monitoring work would also enable civil society to engage with government in an open and facts-based dialogue about the effectiveness of counter-terrorism measures. This included a frank and open debate on funds spent on counter-

terrorism measures. It was pointed out further that in order for civil society and NGOs to play a meaningful role in preventing terrorism it was imperative to de-mystify public security issues. In particular, it was essential to recognize that public security issues were of concern to a variety of actors and should not be left to be discussed and addressed by security experts alone. In this context, participants recalled the importance of governments accepting and treating civil society representatives and NGOs as partners rather than as suspects or obstacles in the fight against terrorism.

17. The work of civil society and NGOs on legal issues related to terrorism and counter-terrorism contributes to the strengthening of international and national legal frameworks in counter-terrorism, especially as they relate to the promotion and protection of human rights and the rule of law. Particular reference was made during the discussions to the need for expanding the work of civil society institutions and NGOs on technical questions of definition of terrorism in and scope of application of, domestic laws, international treaties and other instruments dealing with terrorism; accountability of perpetrators and redress for victims of terrorist acts and of unlawful counter-terrorism practices, in both the domestic and international law dimensions; educating decision-makers about the nature and extent of complementarity among different legal frameworks, including international humanitarian law, international human rights law and domestic criminal and civil law; and translating complicated legal arguments for wider public mobilization. Participants pointed out that the lack of an agreed definition of “terrorism” or of “terrorist acts” was itself one of the key challenges for civil society and NGOs working on those issues.
18. As concerns the call for effective prosecutions of perpetrators of acts of terrorism and violence, it was expressed that trials be conducted in accordance with fair trial and due process standards. Participants stressed that it was vital for proceedings in criminal matters related to terrorism to fully adhere to international human rights and rule of law standards. It was

suggested that human rights compliant prosecutions also contributed to preventing radicalization and terrorism. Participants further agreed that regular criminal justice systems made ample provision for addressing the criminal responsibility of terrorists and that it was counter-productive to create parallel systems dealing specifically with terrorism and “terrorism-related” matters. Refraining, from awarding terrorist acts special status as and categorizing such acts as simply a crime de-legitimized the very use of that tactic.

19. As concerns individuals deprived of their liberty in connection with suspected terrorism-related activity but not criminally charged, it was expressed that protections against arbitrary detention, including the right to challenge the legality of detention in an independent court, be respected.
20. The second day of the meeting allowed for identifying challenges for civil society and NGOs working on issues related to terrorism and counter terrorism, both at a national and international level. In addition, participants discussed some implications of governmental counter-terrorism law and policy on freedom of expression, association, assembly and on civil society in general. This included issues related to the vulnerability of human rights defenders. Participants re-emphasized that the obstacles and challenges civil society and NGOs face in working on issues related to terrorism had direct implications on the role they could play in the area of prevention.
21. It was stressed that it was very difficult for civil society and NGOs to play any meaningful role in those countries where there was little political pluralism and where civil society structures were weak. A lack of political pluralism in itself contributed to creating conditions conducive to terrorist recruitment. In this context, participants also noted with concern that in some OSCE participating States fundamental changes to the political system were made under the pretext of security and counter-terrorism.
22. Participants further expressed concern that the discourse on terrorism had called into question principles and standards that were previously thought

inviolable. Particular reference was made to the absolute prohibition on torture. This presented enormous challenges for the NGO community in that the value and relevance of previous advocacy and research was effectively questioned. It was also pointed out that counter-terrorism policies affected democratic means of dissent – in particular as they impacted on NGOs and the mass media – and that this made it very difficult for civil society institutions and NGOs to engage meaningfully with both government and the community.

23. Another closely related major challenge identified by the discussions was the problem that civil society institutions and NGOs were seen as obstacles to governments in the fight against terrorism. Participants were concerned that efforts to promote respect for human rights and the rule of law as key elements of an effective strategy to prevent terrorism were in fact being portrayed as “pro-terrorist”. Participants also reported on accusations against NGOs in some OSCE participating States that they represented “foreign interests” rather than local communities. Participants further reported on civil society organizations being targeted by governments with their funding cut for perceived connection to “terrorists”.
24. Participants expressed concern that in a number of OSCE participating States human rights defenders were harassed or persecuted in the name of counterterrorism. In some cases this harassment included threats to their physical integrity. Preoccupied with physical danger, human rights defenders had difficulties to devote efforts to articulating ways in which the international community could offer assistance and support. Another major challenge was finding ways and means to build support for human rights defenders in volatile regions.
25. The discussions also touched on the problem that attempts by civil society organizations to investigate and discuss the causes of terrorism were mistaken for justification of terrorism. It was agreed that this undermined the possibility for serious debate on prevention and root causes. In many cases it was difficult to engage in research due to criminalization of contact with

“terrorist groups”; research into root causes was restricted as NGOs were expected to address acts of terrorism only. Participants also noted that the secrecy around security issues made it very difficult to engage effectively and practically in the debate.

26. Participants pointed out that newly enacted legislation in a number of OSCE participating States adopted very broad definitions of “terrorism” and “extremism” which was held to have a chilling effect on civil society and NGO activity, in particular in relation to activities aimed at the prevention of terrorism. The inclusion of overly broad definitions in anti-terrorism legislation made it very difficult for civil society and NGO actors to engage in legitimate activity. It was reported that so-called ‘terrorism-related’ offences targeted freedom of expression as well as freedom of association and put civil society organizations and NGOs in danger of persecution.
27. In addition, participants were concerned that a number of OSCE participating States had adopted restrictive NGO legislation. Such legislation, it was argued, was not only unhelpful as it limited the role of civil society and NGO in the prevention of terrorism, but was also a potential catalyst of conflict, including terrorism, by potentially outlawing legitimate forms of political expression and association.
28. Participants discussed challenges in relation to engaging and mobilizing public opinion. These included a massive information gap in the area of terrorism and counter-terrorism: large parts of the community lacked an understanding of, and access to, relevant information. Civil society organizations needed to underline the quality of their information as well as improve ways and means of disseminating it. It was essential to build broad common political fronts and to strengthen coalitions in support of democratic values and human rights. This was particularly vital in order to address disillusionment of youth.<sup>7</sup>

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<sup>7</sup> Supra Note 3.

The above discussion and discourse at international level in the different conferences is fruitful and relevant for the protection of human rights in the matters of terrorists activities, it is also germane to point out here that purpose of law is “minimum of fraction with the maximum of satisfaction” hence, it is suggested that protection of the human rights of the terrorists should be considered in the law but at the same time, it is also relevant that safety of the people is also the paramount in civilized and democratic society. Considering the above facts it is apt to think the reality of the societies and act accordingly.

**Efforts of the Government for the Protection of Human Rights in Relation to Combating Terrorism-** The Indian democratic government is totally dedicated to the welfare of the people of India and to maintain the security and peace in Indian society. It is the supreme and paramount function of the government to provide all round development to the people. It is also the duty of the government to follow the civilized norms of the society. These norms are related to the protection of human rights. This function is being carried out by the government by constituting the Human Rights Protection Commission at National and State level under “Protection of Human Rights Act 1993 (PHRA).” Commissions are performing noble functions in the interest of the general people for protection of human rights.

**(i) Training Programme for Police Administration-** There are some problems of fake encounter by the police, therefore, there is a need of human rights training to the police personnel, and such type of program is being organized by the National Human Rights Commission under Section 12 (h) of PHRA. In this connection, it is relevant to point out the activities of NHRC for protection of human rights. The National Human Rights Commission, (NHRC) on the 8<sup>th</sup> June, 2011 organized, in the first time, an interactive session with a group of the Delhi Police Officers and its present and former group of interns of Human Rights Training Program. A paper on “The Human Rights and Police” was presented by Mrs. Arya Priya, a former NHRC intern, which triggered the session. Several direct questions were raised on the methods of policing and violation of human rights, including its alleged unconstitutional and forceful eviction of the people in

the people in the middle of night on the 4-5 June, 2011 from the Ramlila Ground in New Delhi, who were gathered there as part of a peaceful protest. In reply to a question, a police officer was of the irrespective of the orders from the senior officers, keeping in the law, human rights and the situation on the ground. Addressing the gathering, Mr. P.C. Sharma, Member, NHRC said that it is a wrong perception in the minds of some of the police officials that the Commission by raising issues of violations of human rights, at times, tends to obstruct them in their duty. He said that the police are the first custodian of the human rights and the Commission is there to rather guide and help them in this endeavor. He emphasized that investigation should never be done by the police officials under any kind of pressure or bias as it may amount to irreparable loss to the victims of such an action. Mr. Sharma also added that the Commission recognizes that the police personnel are also entitled to the human rights like any other citizen and has raised its voice time and again in this regard.<sup>8</sup>

Mr. Sunil Krishna, Director General (Investigation), NHRC said that the police officers need to be more sensitive towards the people approaching them for registering their complaints. He hoped that this interaction will help them in passing out the message to their colleague about the importance of human rights and expectations of the people from them. Some of the police officials also shared their practical difficulties and experience, including the process of investigation and handling of the witnesses.<sup>9</sup>

**(ii) Control on Fake Encounters-** The another legal duty of the government is to protect the human rights of the alleged criminals in the matters of fake encounter, number of times NHRC order the enquiry in the fake encounter and sent the team in the incidental places. In this context, The Hindu, a reputed News Paper has written editorial on February 25, 2012 that “fake encounters,” said Justice Markandey Katju and C.K. Prasad in ringing Supreme Court Judgment last August “are nothing but cold-blooded, brutal murders by

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<sup>8</sup> The Human Rights Newsletter, vol.18 No. 7 July-2011 p. 1-2.

<sup>9</sup> Ibid.

persons who are supposed to uphold the law.” They went to prescribed death penalty for those involved- a punishment which policeman ought to keep in mind whenever their superiors seek to involve to them in an act of extra-judicial killing. Such instances, as the cases piling up in the Supreme Court demonstrate, are Far from infrequent. As a way of dealing with the perceived pressure of public opinion, following terror strikes or violent crimes, police forces across India sometimes resorts to the custodian murder of prime suspects, often with a nudge and a wink from the top. Thanks to the judiciary’s intervention, policemen who take the law into their own hands can no longer to assured of impunity. This is not to say genuine encounters never happen. They do, and the police, like ordinary citizens, enjoy the right of self defence. What must be demonstrated each time deadly force in used, however, is the necessity of the police response in the face of violence in their victims?<sup>10</sup>

**(iii) Award and Prize to the Active Police Personnel-** The police in Chennai deserve praise for quickly identifying the suspects thought to be behind two recent Bank robberies in the city. But the manner, in which the five men died in an encounter on 23 February 2012, raises a host of questions about the nature of the operation. Little about the official account, from the time of the operation details of the killing, neatly adds up. While the police Commissioner claimed the force got a tip-off around midnight and that his men knocked at the door of the suspects at about 1.00 a.m., area residents said they were asked to remain indoors by the police as early as 10.00 p.m. in Wednesday. Other contradictions include the absence of aural and visual effects normally associated with several minutes of “indiscriminate” firing: neighbours heard a few individual shots and just two bullet holes were visible to reporters who got a peek at the crime scene. None of this necessarily means the encounter was fake. Only an independent judicial probe can help establish what really happened. Such a probe must be conducted in a speedy, transparent and professional manner so that public apprehensions can be allayed. If the official story checks out, the city will heave a sigh of relief. But if there is any evidence that the five suspects were in custody at the time they

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<sup>10</sup> The Hindu, February 25, 2012, p. 10.

were killed, all those involved must be charged with murder. If the law does not deter criminal acts by those in authority, we are in deep trouble as a society.<sup>11</sup>

**(iv) Duty of the Government to Strengthened Federal Character-** It has also come into the notice the efforts of the union government and the state government for combating terrorism and protection of the human rights. There is conflict between the governments on the basis of the federalism. Normally, there is an issue that if centre government directly interferes in the affairs of states for maintaining the law and order, the issue of the interference of the union government comes in the light that union has disturbed the federal character of the democratic republic of India.

It is a general parlance that the preservation of the federal character of India, is essential, because, according to the item 1 of the state list of the seventh schedule of the Constitution, to maintain public order (but not including the use of any naval, military or air force or any other armed force of the union or any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power) is the duty of the state government.<sup>12</sup>

Latest controversy about the federal character of India arose, when centre government through the home minister said that “Centre intends to work with States to tackle terrorism” in this connection, union home minister wrote to 10 chief on the proposed National Centre for Counter Terrorism (NCTC). The news which has published in this regard is as follows<sup>13</sup>:-

“Even as non congress Chief Ministers are up in arms against the centre’s move to set up the National Centre for Counter Terrorism (NCTC) on the grounds that it infringes upon the powers of the states, Home Minister P. Chidambaram on 10 February 2012, wrote to 10 Chief Ministers assuring to them

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<sup>11</sup> Ibid.

<sup>12</sup> The Constitution of India, item, 1 of second list of the Seventh Schedule.

<sup>13</sup> The Hindu, February 25, 2012, P.12.

that “the intention of the Centre government is to continue to work with the State governments in order to meet the challenges of terrorism.”<sup>14</sup>

“All of us are agreed that terrorism is a great threat to our country and our way of life. Countering terrorism is, therefore, a shared responsibility,” Mr. Chidambaram said in his letter. He wrote identical letters to the Chief Ministers of Bihar, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Tamil Nadu, Tripura and West Bengal. Incidentally West Bengal Chief Minister and Trinamool Congress supremo Mamata Benerjee was the first to oppose the plan to set up the NCTC. A key ally of the UPA government, she met Prime Minister Manmohan Singh earlier and demanded that the NCTC be put on hold. Other Chief Ministers have also written to the Prime Minister, opposing the counter terror hub on the ground that it violated the principle of federalism and encroached upon their turf. Seeking to allay their fears, the Prime Minister wrote to seven of them on 7<sup>th</sup> February 2012, assuring to them that the centre was committed to protecting the principles of federalism. Mr. Chidambaram said he had been asked by the Prime Minister to “address the concern expressed by you and to consult with you on this matter which, I am sure, you will agree in a matter of national importance and should be kept above parties and politics.” He told the Chief Ministers that “we had, working together, decided to amend the Unlawful Activities (Prevention) Act in 2004 and in 2008.” He said the Home Secretary would call a meeting of the state police chiefs and the heads of the anti-terrorist organization and forces of the state government and discuss in detail the scope and the functions of the NCTC. Noting that he would be happy to respond on any further issues that the Chief Ministers might wish to raise, Mr. Chidambaram enclosed a three-page note on the “genesis, objectives, structure and powers of the NCTC.” One of his pet project, he has been pursuing the NCTC since the November 26, 2008 terror attack in Mumbai. Most of the Chief Ministers, including those from the BJP and Tamil Nadu Chief Minister

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<sup>14</sup> Ibid

Jayalalita, raised objections on the power of the NCTC to arrest and to search under Section 43A of UA (P) Act.<sup>15</sup>

**Bare Minimum Powers-** The Home Minister's enclosed note to the Chief Ministers describes these powers to search and arrest as 'the bare minimum powers' that would be necessary for a body mandated to deal with counter-terrorism, which was true of all counter-terrorism bodies in the world. "It may be noted that the powers under Section 2 (e) and section 143A are available to both Central Government and State Government."<sup>16</sup>

The note said that a law to deal with terrorism such as the UA (P) A was within the legislative competence of Parliament, and similar laws (TADA and POTA) have been upheld by the Supreme Court. Both Act 29 of 2004 and Act 35 of 2008 that amended the UA (P) A were passed by Parliament and there was no objection to either Section 2(e) or Section 43A. It said all that the Central Government had done in the February 3 office memorandum, notifying the setting up of the NCTC, was to "specify its duties and functions; to outline its structure; and to confer minimum powers that are required for a counter-terrorism body."<sup>17</sup>

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<sup>15</sup> Ibid. Section 43A of the Unlawful Activities (Prevention) Act 1967 provides that any officer of the designated authority empowered in this behalf, by general or special order of the Centre Government or the State Government, as the case may be, knowing of design to commit any offence under this Act and has to believe from the personal knowledge or information given by any person and taken in writing that any person has committed any offence punishable under this Act or from any document, article or any things which may furnish evidence of Commission of such offence or from any illegal acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorize any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place. [this provision inserted by 35 of 2008, section 12]

<sup>16</sup> Section 2 (e) of UA(P) Act states the definition of "Designated Authority," which means such officer of the Central Government and below the rank of Joint Secretary to that rank of Secretary to that Government, as the case may be, as may be specified by the Central Government or the State Government, by notification published in the Official Gazette;

<sup>17</sup> Ibid, In the issues related to the different legal controversy of the Terrorist and Disruptive Activities (Prevention) Act 1987; Supreme Court decided the matter in *Kartar Singh v State of*

In the above reference it is also to high light the latest development on the basis of the Central Government that the meeting of Chief and of the Police will be held on 8<sup>th</sup> March 2012 to solve the issue of interference of the Central Government on the affairs of the State Government, the country is in full confidence that this issue will be solved by the democratic government as earliest as possible, it is also relevant to point out that the provision of section 43A Unlawful Activities (Prevention) Act 1967 is not challenged so far on the ground of violation of Constitutional provisions, thus, it can be said that Section 43 A is Constitutional, it is also apt to think that terrorism problem should be solved on the co-operation of the both government, take the example of co-operation of law and order enforcement agencies at Delhi on 29<sup>th</sup> February 2012 three states police in joint efforts success to arrest two members of Lashkar-E-Taiba and destroyed their plan of the explosion in the public places.<sup>18</sup>

The above efforts of the Central and State Governments are in the way of the protection of human rights of the general public. It is the paramount duty of the Government to maintain law and order for the safety of the people and property of India, thus, in the matters of the safety and security of the country, compromise should be done by all the sates and central government on the basis of the co-operative federal system of the Constitution and this is laid down by the Supreme Court in number of the cases.

**Conclusion and Observations-** The efforts and the role of the social society is vital for the protection of human rights and combating terrorism. In this context, latest observation of August 2012 is relevant for the said purpose that in the Kokrajhar district of the Assam, it has been seen that there was ethnic clash between the social groups. In this matter, civil society played pivotal role in

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Punjab (1994) 3SCC 569: 1994 SCC (Cri) 899, Usmanbhai Dawoodbhai Memon v State of Gujarat (1988) 2SCC 271: 1988 SCC (Cri) 318, Niranjan Singh Karam Singh Punjabi v Jitendra Bhimraj Bijjaya (1990) 4 SCC 76: 1991 SCC (Cri) 47, Mohd. Rashid Khan v State of West Bengal 1994 Cri L J 2699 (Cal), Sanjeev Hagde v State of Maharashtra 1992 Supp (2) SCC 230, State of Maharashtra v Abdul Hamid Haji Mohammed (1994) 2SCC 664: 1994 SCC (Cri) 595, and Union of India v Mohd. Sadiq Rather, (1993) 1 SCC (Cri) 8 etc.

<sup>18</sup> The Radio News of 29<sup>th</sup> February 2012 at 8.45 p.m.

mitigation of the co-operation between the groups for strengthening fraternity in the society.

About the ethnic conflict and communal violence of August 2012, of Assam, National Commission for Minorities sounded the warning that there is a possibility that Muslim in the Bodo districts of Assam might turn “militant” influenced by jihadi outfits from across India, in case their security is not ensured by the state government. The National Commission for Minorities (NCM) in its report communicated to Assam Chief Minister Trun Gogoi. The report was prepared after it visited the conflict-torn districts in the Bodoland Territorial Autonomous Districts (BTAD) and Dhubri districts in Assam.<sup>19</sup>

The NCM delegation, which included Planning Commission member Dr. Syeda Hameed and NCM member K.N. Daruwalla, visited Kokrajhar, Gossaigaon, Dhubri and Bilasipara in July. Its report said the cause of the riot originated from the conflict between the Bodos and the resident Muslims of BTAD, and not between Bangladeshi migrants and the Bodos, even though it said infiltration from Bangladesh does take place throughout the year. “The conflict this time as far as we could see was not between some exodus of Bangladeshi immigrants and the Bodos but between the Bodos and the resident Muslims of the BTAD.” “The conflict was unequal because the BODOS had leftover arms from the BODO Liberation Tigers [AK 47 etc]. The Muslims are very poorly armed in comparison,” said the minority panel report, with a warning about the potential jihadi influence on the Muslim population in Bodo land. “There can be grave danger in future in case militant jihadi outfits from the rest of the country start supplying lethal weapons in this area,” added by NCM. The panel has also recommended the formation of a Special investigative Team (SIT) to investigate the major incidents of violence during the riots in the State as, “this will restore confidence in the justice delivery system.” It has also called for a “serious and detailed dialogue” between the Union Ministry of Home Affairs, Assam Government and the Bodoland Territorial Council. Such an interaction, it

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<sup>19</sup> The Hindu, August 17, 2012 P.2.

said, was “absolutely essential.” The report also observed that the Bodos think “driving out other ethnic people” was in their interest and that is why the NCM delegation told the Chief Minister that “Bodos need to be told firmly that they cannot under any circumstances engineer a mass exodus of the Non-Bodos and that they would never get statehood this way.”<sup>20</sup>

Accusing the Administration of failing to stop the first round of violent clashes between Muslims and Bodos in the BTDA areas, the delegation told the Chief Minister to instruct the police to be “more forceful with both Bodos and Muslim criminals.” “We were also left with the distinct impression that the lower rungs of the police were afraid of taking action against the Bodos, possibly because of the armaments they possessed and the fact that they ruled the area,” observed the delegation.<sup>21</sup>

Though Civil society has played very active role for strengthening human rights, however, to fulfill the excess demand of human rights by the civil society is not possible. The Indian judiciary has interpreted the fundamental rights in the expansion of human rights and laid down the bundle of rights for protection of civil liberty of person. But expansion of the fundamental rights should be within the limit of its expansion.

The following suggestions may be considered by the government for strengthening the human rights and balancing for maintaining law and order and protection of human rights.

1. There is a continuous need of human right education training to the police personnel.
2. Human rights education should be in the curriculum of training programme and after the training refresher course of at least one week after one year of gap should be imparted to all police personal including officers.

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

3. Human rights education training should be given to Para Military forces before deploying for maintaining law and order work.
4. Police personnel and officers need to be more sensitive towards the people approaching them for registering their complaints of violation of human rights.
5. Award should be given to active, honest, and worthy police personnel for protection of human rights and curbing of terrorism.
6. The education of human rights should be included in the syllabus of every class as a compulsory paper from the stage of inception of the education.
7. Indian social values and ethics should also be incorporated in the educational teaching and learning process.
8. Reformative theory of administration of criminal justice should be adopted for the youth criminals.
9. Criminal Procedure Code and Jail Manual should be amended and human rights input also be incorporated in these laws.