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# Human Rights and Terrorism

Executive Editors  
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## Human Rights and Scimitar of Terrorism: Insight South Asia

MOHAMMAD RUBAIYAT RAHMAN\*

### 1. Introduction

Human rights built its edifice upon the cornerstone of 'natural law theory'.<sup>1</sup> While the term 'human' refers in some versions of natural law theory as autonomous individual; in the positivist theories 'human' is often referred as citizen of state; again, in Marxist analysis, 'human' connotes a species indivisible from social whole. In parallel to the same effort, the term 'rights' reverberates motley of legal relationships and judicial reasoning which cover the arrayed range from the right holder's entitlement to immunity to privilege and even power.<sup>2</sup> In the orb of jurisprudence, natural law refers to those principle and theories which are believed to be written by the nature and have unchangeable feature. In the preceding century, natural law theories and principles were used as indefeasible mechanism to justify the supremacy of human rights laws.<sup>3</sup> However, the concept 'human rights' also finds its pantheon in the arena of 'legal positivism'.<sup>4</sup> Every person is entitled to dignity. Human dignity is the sum of total various human rights and freedoms. When individual is beset by fear and uncertainty in situation of violence and intimidation, the human dignity is infringed. If this dignity is fleeting, question of human rights violation arises.

The human right to life is meaningless in absence of the protection of human dignity. Good governance in this sense functions as a mechanism to ensure the respect and protection of human rights. Good governance is an art of steering societies and organizations for the purpose of respecting and protecting human dignity, welfare and development. Bracketing democracy and human rights together identifies a feature of genuine democracy. It is hard to imagine a real democracy not generating effective human rights protection arrangements almost as a natural byproduct.<sup>5</sup> The concept good

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<sup>1</sup> Professor M. Shah Alam, 'Broadening the Jurisprudential Basis of Human Rights to Fight Corruption: Domestic and International Perspectives' in Professor Dr. Mizanur Rahman (ed.) *Human Rights and Corruption* (ELCOP, Dhaka 2007).

<sup>2</sup> Professor M. Rafiqul Islam, 'The Universal Declaration of Human Rights: A Searching Reappraisal of Its Continuing Validity After Sixty Years of Proclamation' in Professor Dr. Mizanur Rahman (ed.) *Human Rights: 60 Years after UDHR* (ELCOP & Palal Prokashoni, Dhaka 2008) 3.

<sup>3</sup> Dr. Yubaraj Sangroula, *Jurisprudence: The Philosophy of Law* (Kathmandu School of Law, Bhaktapur 2010) 46

<sup>4</sup> Professor M. Shah Alam, 'Broadening the Jurisprudential Basis of Human Rights to Fight Corruption: Domestic and International Perspectives' in Professor Dr. Mizanur Rahman (ed.) *Human Rights and Corruption* (ELCOP, Dhaka 2007).

<sup>5</sup> Professor Dr. Mizanur Rahman, 'Democracy, Human Rights and the Need for Rebellious Lawyering' in Professor Dr. Mizanur Rahman (ed.) *Human Rights: 60 Years after UDHR* (ELCOP & Palal Prokashoni, Dhaka 2008) 14.

governance and human rights are thus essentially connected with the concept of democracy, rule of law and pluralism.<sup>6</sup>

Human rights cannot flourish if perpetrators of human rights are not dealt with severely.<sup>7</sup> In the new millennium, new threats are spuming; and amid the squeals and rasps of threats, human rights violation may come in motley of forms. Terrorism impacts the entire orb of human rights. The victims of terrorism represent a larger human audience whose reaction and fear are desired by terrorists.<sup>8</sup> Repercussion of terrorism impacts the trade and development issue which ultimately tilt the economy of a country; even region. Consequently, economic and social rights such as health care, education and development issues receive the ultimate setback. Threading all these facts together, it is feasible that terrorism has real impact on the enjoyment of human rights and dignity.

In preceding decades, South Asia was wracked by incidents of transnational terrorism. In South Asia, violent extremism has long been seen exclusively as national security issue and action oriented regional cooperation in this regard has been very limited.<sup>9</sup> South Asian terrorism is mostly a by-product of poverty, inequality and underdevelopment.<sup>10</sup> From human rights perspective, absence of second and third generation of human rights paved the emergence of terrorism in South Asia region.

Protection of human rights constitutes moral and legal imperatives upon states. Countering terrorism falls within the ambit of state responsibility. However, what looks like the path of caution is in fact strewn with thrones. If human rights are violated in the process of combating terrorism, it will be self-defeating. If law enforcement authority breaks law, it entails a chain of anarchic consequence. Violation of law by law enforcement authority breeds contempt for law; it invites the populace to become law unto themselves which ultimately invites anarchy.<sup>11</sup> The situation has been abseiling since the '9/11' incident has been triggering a freehand war on terrorism. A culture of impunity emerged where human rights abuses are overlooked. Thus, there has been a brewing tendency to subordinate human rights to political agenda and military strategies.<sup>12</sup> However, concern about the issue has been mounting among state

<sup>6</sup> Dr. Yubaraj Sangroula, 'Concept of Rule of Law, Human Rights and Good Governance: Mutually Reinforcing Concepts' in Professor Dr. Mizanur Rahman (ed.) *Human Rights and Good Governance* (ELCOP, Dhaka 2004).

<sup>7</sup> Professor Dr. Mizanur Rahman, 'Let's Change Lives through Human Rights' *The Daily Star* (Dhaka 9 December 2014) <<http://www.thedailystar.net/lets-change-lives-through-human-rights-54234>> accessed 18 July 2015.

<sup>8</sup> Martha Crenshaw, 'The Causes of Terrorism' (1981) 13 *Comparative Politics* 379.

<sup>9</sup> Iftekharul Bashar, 'Countering Transnational Terrorism in South Asia: An Assessment on Regional Approach' (2009) 13 *Journal of International Affairs* 141, 145.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Kartar Singh v. State of Punjab* (1994) 2 SCR 375.

<sup>12</sup> Professor M. Rafiqul Islam, 'Protecting Human Rights in an Era of Globalization' in Professor Dr. Mizanur Rahman (ed.) *Human Rights and Globalization* (ELCOP, Dhaka 2003) 29.

mechanism but the sound and fury do not always match up.

### Human Rights, Security and Terrorism: A Complex Theatre

The concept 'security' is related to situations of threats and perception of insecurity.<sup>13</sup> Traditional security concerns had been state centric, but these concerns have now changed in terms of dimensions and levels.<sup>14</sup> The concept 'security' provides an implicit suggestion that state has obligation to protect and promote human rights.

The legal entrenchment of modern concepts of human rights had begun in the late 18<sup>th</sup> century with American Declaration of Independence which was later followed by the French Declaration of Rights of the Citizens and Man and the Bill of Rights in the US Constitution. In the present day, the concept 'human rights' has its imprint and gist in state constitution and statutes; in international declaration and treaties; and in international and domestic customs.<sup>15</sup> From 1990s onwards, human rights norms had veered into universal feature. After the Vienna Congress of Human Rights<sup>16</sup>, the gilt edged feature of universality has been entrenched as unchangeable norm. The human rights institutions at national level have begun to appear as pivotal criteria to evaluate the democratic attribution of state mechanism.<sup>17</sup> Weaving all these facts together, impression as to the growth and expansion of the concept 'human rights' is truly remarkable.

Essence of international human rights law is reflected in significant international human rights treaties in tandem with customary international law. International human rights law beset all countries to comply and thus, treaties of human rights law are indeed part of customary international law.<sup>18</sup> To fulfill the human rights requirements, countries need to adopt legislative, judicial and administrative measures. Moreover, many norms of human rights (e.g. prohibition of torture, genocide, racial discrimination etc.) are recognized as peremptory norms of customary international law.<sup>19</sup>

The concept 'terrorism' comes from the *regime de la terreur* (i.e. the regime of terror) that had been prevailing in France<sup>20</sup> during 1793-94. Terrorists tend to systematically

<sup>13</sup> Abul Kalam, 'Environment and Development: Widening Security Frontier and the Quest For a New Security Framework in South Asia' [1998] BISS Journal 109.

<sup>14</sup> Ibid at 116.

<sup>15</sup> Professor M. Shah Alam, 'Broadening the Jurisprudential Basis of Human Rights to Fight Corruption: Domestic and International Perspectives' in Professor Dr. Mizanur Rahman (ed.) *Human Rights and Corruption* (ELCOP, Dhaka 2007).

<sup>16</sup> UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, available at: <http://www.refworld.org/docid/3ae6b39ec.html> [accessed 17 July 2015].

<sup>17</sup> Dr. Yubaraj Sangroula, *Jurisprudence: The Philosophy of Law* (Kathmandu School of Law, Bhaktapur 2010) 358.

<sup>18</sup> Office of the UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism' (Fact Sheet No. 32) (July 2008) 4.

<sup>19</sup> Ibid.

<sup>20</sup> Andrea Bianchi and Yasmin Naqvi, *International Humanitarian Law and Terrorism* (Hart Publishing, Oregon 2011) 1.



terrorize the common populace with kidnappings, executions and other crimes.<sup>21</sup> The terrorists target academic institutions, medical facilities and humanitarian aid centers. Terrorism also undermines the national and regional economy.<sup>22</sup> Terrorism upsets human dignity and human rights; it does such havoc deliberately. Terrorism is not simply a military problem; it is primarily a socio political and socio economic problem.<sup>23</sup> To challenge terrorism, there is requisite to promote values of democracy multiculturalism freedom of expression freedom from fear and religious tolerance- all of which have conduit with norms of human rights.

Impact of terrorism can be stratified into three categories. One is violation of right to life, liberty and dignity the other is terrorism infringes right of a democratic society and lastly, terrorism impacts right to social peace and public order.<sup>24</sup> Repercussion of terrorism impacts the trade and development issue. As fitting consequence, economic and social rights such as health care, education and development issues receive the throe of ultimate setback. On the other hand, due to the terrorist incidents and counter terrorist measures, civil and political rights may be abridged.

Considering the impact of terrorism, therefore, counter terrorism is essential.<sup>25</sup> The intersection among terrorism, counter terrorism and human rights has been one of the most debating areas of legal jurisprudence. The question which is roaming around is how to face the challenge without infringing human rights and human dignity.<sup>26</sup> The 1993 Vienna Declaration constructed a conduit between international counter terrorist law and human rights law.<sup>27</sup> Paragraph 17 of the Declaration explicitly linked the issue of terrorism with human rights.<sup>28</sup> For that reason, countering terrorism should be based on human rights approach using human rights techniques and jurisprudence.<sup>29</sup> Any counter-terrorism policy devoid of human rights jurisprudence will only pave gross violation of human rights and dignity. If human rights are violated in the process of combating

<sup>21</sup> Afghanistan Independent Human Rights Commission, *Insurgent Abuses against Afghan Civilians* (Report) (December 2008) 4

<sup>22</sup> Kartar Singh v. State of Punjab (1994) SCC (3) 569, JT 1994 (2) 423.

<sup>23</sup> VP Malik, 'Developing a Viable Counter-terrorism Strategy for South Asia' in Anand Kumar (ed.) *The Terror Challenge in South Asia and Prospect of Regional Cooperation* (IDSA, New Delhi 2012) 15.

<sup>24</sup> Mark D Kielsingard, 'A Human Right Approach to Counter Terrorism' (2006) 36 California Western International Law Journal 249, 259.

<sup>25</sup> Professor Emanuel Gross, 'The Struggle of a Democracy against Terrorism-Protection of Human Rights: The Right to Privacy versus the National Interest- the Proper Balance' (2004) 37 Cornell International Law Journal 29.

<sup>26</sup> Editorial, 'Counter-terrorism: Britain's Legitimacy Gap' *The Guardian* (London 9 May 2014) <<http://www.theguardian.com/commentisfree/2014/may/09/counter-terrorism-britain-legitimacy-gap>> accessed 18 July 2015.

<sup>27</sup> Mark D Kielsingard, 'A Human Right Approach to Counter Terrorism' (2006) 36 California Western International Law Journal 249, 279.

<sup>28</sup> Vienna Declaration and Program of Action 1993. UN Doc. A/CONF. 157/23 (July 12, 2003)

<sup>29</sup> Mark D Kielsingard, 'A Human Right Approach to Counter Terrorism' (2006) 36 California Western International Law Journal 249, 297.

terrorism, it will be self-defeating. Lack of hope for justice provides breeding grounds for terrorism.<sup>30</sup>

### 3. Response to Terrorism through International Legal Framework

The crime of terrorism represents the culmination of human rights violations.<sup>31</sup> Terrorism is responsible for violation of various human rights treaties such as: Convention on the Prevention and Punishment of the Crime of Genocide<sup>32</sup>; UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>33</sup> (Convention against Torture); Convention on the Elimination of All Forms of Discrimination against Women<sup>34</sup>; and Convention on the Rights of the Child.<sup>35</sup> A uniform and 'easy to understand' definition of terrorism is not available in the legal arena. This backlash has provided considerable bulwark in tackling the challenge of terrorism, regionally and internationally. Deficit of a uniform definition of terrorism have been thwarting the endeavor of adopting a comprehensive international legally binding instrument as to international terrorism.<sup>36</sup> This also prevents international institutions like UN from developing comprehensive strategy.<sup>37</sup> Hence, international law is a difficult medium to address the subject of terrorism. Four reasons can be contended in favor of such view: difficulty in defining uniform perception of terrorism; complexity of defining the issue of 'political offence'; difficulty of identifying the perpetrators of terrorism (i.e., focus of international concern); and remedies issues for terrorism victims.<sup>38</sup>

The dilemma and endeavor of the definitional issue of terrorism can be traced back to the pre-World War Two period. During the post-World War One time span, the devising of international legal norms to combat terrorism had been failing due to deficit of effective judicial, executive and enforcement powers.<sup>39</sup> The 1937 Convention for the Prevention and Punishment of Terrorism<sup>40</sup> is pertinent to mention. Despite the 1937 Convention failed to be adopted, it paved ways to make renewed attempts in mid-Twentieth century for formulating a consensus definition of international terrorism.<sup>41</sup>

<sup>30</sup> *BR Jain v. State and Another*, 2004 CriLJ 2204, 110 (2004) DLT 233, 2004 (73) DRJ 399.

<sup>31</sup> Javaid Rehman, *International Human Rights Law* (Pearson Education, London 2003) 437.

<sup>32</sup> Adopted on 9 December 1948, 78 UNTS 277.

<sup>33</sup> Adopted on 10 December 1984, UNGA Res. 39/46. UN Doc A/39/51 at 197 (1984). 1465 UNTS 85.

<sup>34</sup> Adopted on 18 December 1979, UN GA Res. 34/180 (XXXIV). UN Doc. A/ 34/46 at 193 (1979).

<sup>35</sup> Adopted on 20 November, 1989 UNGA Res. 44/25 Annex(XLIV). UN Doc A/44/ 49 (1989) at 166. 1577 UNTS 3

<sup>36</sup> Dr. Joseph Isanga, 'Counter Terrorism and Human Rights: The Emergence of a Rule of Customary International Law from UN Resolutions' (2009) 37 *Denv. J. Int'l L. & Policy* 233.

<sup>37</sup> 'A More Secure World: Our Shared Responsibility' (Report of the Secretary General's High Level Panel on Threats, Challenges and Change) (2004) 51

<sup>38</sup> Javaid Rehman, *International Human Rights Law* (Pearson Education, London 2003) 439.

<sup>39</sup> *Ibid* at 446.

<sup>40</sup> 19 League of Nations Official Journal (1938) 23.

<sup>41</sup> Javaid Rehman, *International Human Rights Law* (Pearson Education, London 2003) 441



After the end of the Second World War, the issue terrorism resurfaced endangering civil aviation sector.<sup>42</sup> The severity of the situation led to adoption of three conventions which are: the 1963 Tokyo Convention of Offenses and Certain Other Acts Committed on Board Aircraft<sup>43</sup>, the 1970 Hague Convention for Suppression of Unlawful Seizure of Aircraft<sup>44</sup> and 1971 Montreal Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation.<sup>45</sup>

International law response to terrorism from the perspective of the United Nations (UN) deserves vital significance. The resolutions of the UN against terrorism have contributed to international law's response towards terrorism. The UN itself is the victim of terrorism and suffered tragic human loss due to violent terrorist acts. In recent millennium, there had been terror attack in Baghdad office of UN on August 2003. The incident claimed life of the Special Representative of the UN Secretary General.<sup>46</sup> Terrorism attacks the value of UN Charter and other international human rights instruments.<sup>47</sup> Respect for Human Dignity and rule of law; tolerance among people and nations; and peaceful settlement of dispute- all these are core value of the UN Charter. Terrorism tears apart these values.<sup>48</sup> On December, 1989, the General Assembly of the United Nations adopted a resolution which condemned all acts of terrorism as criminal.<sup>49</sup> Nevertheless, this unanimously adopted resolution failed to provide specifically what constitutes 'terrorism'.<sup>50</sup> The menacing impact of terrorism upon human rights, security and dignity has been recognized at the United Nations. The UN General Assembly's declaration on Measures to Eliminate International Terrorism evaluates terrorism as unjustifiable criminal acts intended or calculated to provoke a state of terror either in the general public, group of persons or particular persons.<sup>51</sup>

The Security Council Resolution 1373 (2001) was adopted in compliance with Chapter VII of the UN Charter. The wordings of Resolution 1373 (2001) envision terrorism as threat to international peace and security. The salient features of the resolutions are: obligate states to criminalize terrorist acts; penalize for the involving with terrorist

<sup>42</sup> Ilias Bantekas, 'The International Law of Terrorists Financing' (2003) 97 AJIL 315

<sup>43</sup> Convention of Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 UST 2941, 704 UNTS 219.

<sup>44</sup> Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking), Dec. 16, 1970, 22 UST 1641, 860 UNTS 105.

<sup>45</sup> 974 UNTS 177.

<sup>46</sup> Office of the UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism' (Fact Sheet No. 32) (July 2008) 1.

<sup>47</sup> Office of the UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism' (Fact Sheet No. 32) (July 2008) 7.

<sup>48</sup> 'A More Secure World: Our Shared Responsibility' (Report of the Secretary General's High Level Panel on Threats, Challenges and Change) (2004) 47

<sup>49</sup> UNGA Res. 40/61, 40 UN GAOR Supp. (No.53) at 301, UN Doc. A/40/53 (1985).

<sup>50</sup> Louis Rene Beres, 'Terrorism and International Law' (1988) 3 Fla. Int'l L.J. 291.

<sup>51</sup> UNGA Res. 49/60 (1994).

offences; criminalize the financing of terrorism; and to strengthen the international cooperation.<sup>52</sup> UN Security Council resolution 1373 lays out a three tiered program to combat terrorism. These are inducting counter terrorism program in national legislation; state's executive commitment to counter the threat of terrorism and state's obligation to provide report to Counter Terrorism Committee on respective state's counter terrorism regime.<sup>53</sup>

Moreover, the resolution also deals with the immigration part of terrorism. As per para 2 (g) of the Resolution 1373 (2001), states should control effective and secured border control and immigration process so that terrorist's unhindered movement can be checked.

The Security Council Resolution 1566 provides the definition of terrorism as criminal acts committed with intent to cause death, serious bodily injury or taking of hostage to provoke a state of terror in general public.<sup>54</sup> UN security council resolution 2178 is much similar to Resolution 1373. Both resolutions leave the definition of terrorism to domestic states. Resolution 2178 encourages the states to counter violent extremism that promotes recruiting of terrorists.<sup>55</sup>

In Security Council Resolution 1456 (2003), the issue has been brought into focus and it is stated that states should ensure that human rights obligations during combating terrorism.<sup>56</sup> The same position has been reiterated in the Security Council Resolution 1624 (2005).

Shortly after the adoption of the Security Council Resolution 1373 (2001), the world witnessed a proliferation of counter terrorism strategy and policy in all regions. However, most of the policies have lack of commitment to ensure measures which comply human rights obligations during combating terrorism. To conceive the essence of the resolution, these policies have had impact on the enjoyment of human rights.<sup>57</sup>

The Security Council Resolution 1566 (2004) convenes for cooperation along with the prevention and punishment of criminal acts reflecting three features: (1) act committed with intention to cause death or serious physical injury; (2) act that provokes a state of terror among the common populace; and (3) act that has resemblance with the definition of terrorism provided in the international conventions and protocols.

Effective counter terrorism measures and protection of human rights both are

<sup>52</sup>Office of the UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism' (Fact Sheet No. 32) (July 2008) 14.

<sup>53</sup>Isaac Kfir, 'A Regime in Need of Balance: the UN Counter Terrorism Regimes of Security and Human Rights' (2013) 4 Nat'l Sec. and Armed Conflict L. Rev. 32.

<sup>54</sup>UNSC Res. 1566. UN Doc S/RES/1566 (Oct, 2004)

<sup>55</sup>Kent Roach, 'Thematic Conclusions and Future Challenges' in Kent Roach (ed.) *Comparative Counter Terrorism Law* (CUP, London 2015)

<sup>56</sup>UNSC Res. 145, UN SCOR, 58 Session. UN Doc S/RES/1456 (2003).

<sup>57</sup>Office of the UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism' (Fact Sheet No. 32) (July 2008) 20.

complimentary and infeasible to each other. Thence, both fall within the ambit of states' obligation and jurisdiction. The UN Secretary General in a report titled as 'Uniting against Terrorism: Recommendations for a Global Counter Terrorism Strategy'<sup>58</sup> mentions that effective counter terrorism measures and protection of human rights are not conflicting goals, rather they are complimentary and mutually reinforcing to one another.

Prosecution of suspected terrorist can be difficult for various difficulties.<sup>59</sup> The grounds upon which any suspected terrorist is brought into prosecution, are generally inadmissible intelligence information. There may have little evidentiary tracings of a suspect which may only raise an acute level of suspicion; however, that evidentiary trail is not sufficient enough to prove the suspect guilt beyond reasonable doubt.<sup>60</sup> Furthermore, the prosecutors have very short time span, after arresting a suspect, to collate sufficient admissible evidence against a pre-trial suspect. Provision of article 9 (4) of ICCPR provides that pre-trial detainees must be brought without any delay before a judge to determine the lawfulness of their detentions.<sup>61</sup>

The Human Rights Committee in general comment number 8 explains that the preventive detention must be based on the ground and procedures established by law along with availability of court control of detentions.<sup>62</sup> Regarding preventive detention of the suspected extremist, ICCPR<sup>63</sup> and Universal Declaration of Human Rights<sup>64</sup> (UDHR) provide specific governing norm. UDHR is non-binding in nature.<sup>65</sup> However, the strongest sets of human rights awarded on individual as subject of international law emanate from the UDHR which is deemed as principal articulation and authoritative enumeration of human rights. These instruments of international human rights law prohibit arbitrary pre-trial detention and incorporates principle of proportionality. The right to life, which is mentioned in the ICCPR, has been considered as supreme right. The reason is without any protection and promotion of right to life, human rights will be meaningless.<sup>66</sup> Article 9 of both ICCPR and UDHR reiterates similar reasoning.

<sup>58</sup> A/60/825

<sup>59</sup> Douglass Cassel, 'Pretrial and Preventive Detention of Suspected Terrorists: Options and Constraint under International Law' (2008) 98 *Journal of Criminal Law and Criminology* 811, 823.

<sup>60</sup> *Ibid* at 824.

<sup>61</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171.

<sup>62</sup> UN Human Rights Committee, General Comment No. 8. UN GAOR 37<sup>th</sup> Sess., Supp. No.40, Annex V, June 30, 1982.

<sup>63</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171.

<sup>64</sup> Universal Declaration of Human Rights, GA Res. 217A. UN Doc. A/810 (Dec.10, 1948)

<sup>65</sup> Professor M. Rafiqul Islam, 'The Universal Declaration of Human Rights: A Searching Reappraisal of Its Continuing Validity After Sixty Years of Proclamation' in Professor Dr. Mizanur Rahman (ed.) *Human Rights: 60 Years after UDHR* (ELCOP & Palal Prokashoni, Dhaka 2008) 5.

<sup>66</sup> Office of the UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism' (Fact Sheet No. 32) (July 2008) 8.

#### 4. Countering Terrorism and Human Rights Issues: South Asian Context

##### 4.1 Overview of Terrorism Challenges in South Asia

##### 4.1.1 Terrorism Threat to South Asia

Terrorism is common enemy to all South Asian states.<sup>67</sup> Terrorism imposed heavy economic costs on most of the South Asian nations. The direct costs of terrorism are the destruction of infrastructure, factories and standing crops and stoppage of economic activities.<sup>68</sup> In South Asia region, violent extremism has long been seen exclusively as national security issue and action oriented regional cooperation in this regard has been very limited.<sup>69</sup> Hence, in South Asia, security remains state centric and the approach to security remains militarist. Linkages among poverty, education and employment issue do not attract attention that is required to highlight them as factors of security instability.<sup>70</sup>

The reasons behind terrorism in South Asia can be stratified in three categories: (1) terrorism arising out of religious fundamentalism; (2) left wing extremism and (3) terrorism resulting from desire for secessionism.<sup>71</sup> From human rights perspective, it is apparent that absence of second and third generation of human rights paved the emergence of terrorism in South Asian region.

##### 4.1.2 Maritime Terrorism Threat to South Asia

Maritime terrorism and seaborne threat to South Asia region is not any new kind of threat. However, terrorism is gaining new dimensions as the terrorist operatives are increasing using maritime routes.<sup>72</sup> Failed terrorist attack on the Maldives in 1988; Mumbai attack in 2008 and hijack attempt of Pakistan Navy Frigate *PNS Zulfiqar* reiterate a concern that South Asia is still vulnerable to maritime terrorism.

On November 1988, mercenaries took control of capital of the Maldives and made hostages of ship *MV Progress Light*. In response to the appeal of the president of the Maldives, Indian law enforcement agencies conducted 'Operation Cactus' and successfully neutralized the tension.<sup>73</sup> On November of 2008, en route to Mumbai,

<sup>67</sup> Iftekharul Bashar, 'Countering Transnational Terrorism in South Asia: An Assessment on Regional Approach' (2009) 13 *Journal of International Affairs* 141, 153.

<sup>68</sup> Anand Kumar, 'Introduction' in Anand Kumar (ed.) *The Terror Challenge in South Asia and Prospect of Regional Cooperation* (IDSA, New Delhi 2012) 2

<sup>69</sup> Iftekharul Bashar, 'Countering Transnational Terrorism in South Asia: An Assessment on Regional Approach' (2009) 13 *Journal of International Affairs* 141, 145.

<sup>70</sup> Smruti S Pattanaik and Nihar Nayak, 'Does South Asia Need a Regional Security Architecture' in Nihar Nayak (ed.) *Cooperative Security Framework for South Asia* (IDSA, New Delhi 2015) 55.

<sup>71</sup> Anand Kumar, 'Introduction' in Anand Kumar (ed.) *The Terror Challenge in South Asia and Prospect of Regional Cooperation* (IDSA, New Delhi 2012) 2

<sup>72</sup> Iftekharul Bashar, 'Countering Transnational Terrorism in South Asia: An Assessment on Regional Approach' (2009) 13 *Journal of International Affairs* 141, 147.

<sup>73</sup> Group Captain AG Bewoor, 'Indian Armed Forces Defeat Coup in Maldives' (2014) *Scholar Warrior* 150.

terrorists hijacked an Indian fishing vessel *Kuber* and executed all its crews. After reaching near Mumbai, terrorists shifted to inflatable craft and landed unsecured coast of Mumbai. On September 2014, terrorists infiltrated secured dockyard in Karachi in dinghy and engaged into intense fighting on and around the Pakistani frigate warship *PNS Zulfiqar*. Terrorists' plan was to use the frigate to attack a US naval vessel *USS Supply*.<sup>74</sup> These aforementioned terrorist incidents reveal that terrorists are capable of using maritime medium to conduct terror attack in coastal areas of South Asia.<sup>75</sup>

## 4.2 Countering Terrorism: South Asian Experience

### 4.2.1 Afghanistan

Regarding terrorism issue, Afghanistan, the eighth member state of SAARC, is the most critical.<sup>76</sup> When SAARC was established as regional institution in mid 1980s, Afghanistan was not included; but now Afghanistan is a part of this regional institution.<sup>77</sup> Afghanistan is vulnerable to transnational security threat.<sup>78</sup> From 1973 to 1978, the country experienced the fall of monarchy, flash of socialism and the throes of political maelstrom.<sup>79</sup> The Soviet Invasion of 1979 and its withdrawal within a decade can be marked as the decade of beginning of terrorism in Afghanistan.<sup>80</sup> The 1996 takeover of Taliban deprived Afghanistan from democracy and abseiled the country to the brink of human rights violations. In the present post-Taliban phase, terrorism poses as bulwark to create paths for democratic tradition and rule of law. Terrorists are targeting schools, medical facilities and humanitarian aid centers and systematically terrorizing common populace with kidnappings, executions and other crimes.<sup>81</sup>

In Afghanistan, most terror incidents are used to prosecute and investigate either under 'Crimes Against the Internal and External Security of the State, 1987' or 'Law on Combat Against Terrorist Offences of 2008' or under the 'Law of Firearms, Ammunition and Explosives (2008).<sup>82</sup> The national legislation of Afghanistan also imposes legal

<sup>74</sup> 'Naval Dockyard Attack: How Significant is the Infiltration Threat?' *The Dawn* (Karachi, 1 October 2014) <<http://www.dawn.com/news/1135509/naval-dockyard-attack-how-significant-is-the-infiltration-threat>> accessed 26 July 2015.

<sup>75</sup> Vijay Sakhuja, 'Combating Terrorism in Asian Waters' (2009) 7 *Terrorism Monitor*, Issue 35.

<sup>76</sup> Nabiha Gul, 'Extra-regional Influences and Security Challenges in South Asia' (2012) 3 *BISS Journal* 258, 267.

<sup>77</sup> S.D. Muni, 'Strategic Architecture in South Asia: Some Conceptual Parameters' in Nihar Nayak (ed.) *Cooperative Security Framework for South Asia* (IDSA, New Delhi 2015) 4.

<sup>78</sup> M Ashraf Haidari, 'The vicious cycle of insecurity in Afghanistan' *The Afghanistan Times* (Kabul 9 December 2014) Opinion.

<sup>79</sup> Nabiha Gul, 'Extra-regional Influences and Security Challenges in South Asia' (2012) 3 *BISS Journal* 258, 267.

<sup>80</sup> *Ibid.*

<sup>81</sup> Afghanistan Independent Human Rights Commission, *Insurgent Abuses against Afghan Civilians* (Report) (December 2008) 4

<sup>82</sup> US Department of State, *Country Reports on Terrorism 2014* (Report) (June 2015) 227.



obligation on law enforcement agencies.<sup>83</sup> Nevertheless, the prosecution and investigation of terror incidents are being continued to hampered by fragile regulatory regime in tandem with weak inter-ministerial co-ordination; deficit of rule of law; and state institution's feeble control over territory. There has been heavy emphasis on building and strengthening the Afghan security forces but not enough focus is imposed on the establishment of justice and rule of law. This leaves a vacuum.<sup>84</sup>

#### 4.2.2 Bangladesh

Bangladesh witnessed sharp rise in terror activities from the mid-nineties.<sup>85</sup> The main targets for terrorists are secular institutions, political leaders and members of the general public.<sup>86</sup> Terrorist groups in Bangladesh use violence in the name of religious ideologies and these extremist groups organize themselves around the radical religious misinterpretation.<sup>87</sup> On the third week of May 2004, grenade attack took place on the British High Commissioner at a shrine in the north-eastern district Sylhet.<sup>88</sup> On Mid-August of 2005, nearly 500 coordinated bombs went off in almost 63 of 64 districts of the country. A year prior to that incident, on August 2004, the present Prime Minister of Bangladesh, Her Excellency Sheikh Hasina was targeted in grenade attack incident.<sup>89</sup> The gruesome grenade attack targeted the think-tank leadership of Awami League.<sup>90</sup>

From 2009 onward, Bangladesh has taken various measures to neutralize extremist activities. On first three months of 2009, Bangladesh enacted 'Anti-Terrorism Act' and 'Money Laundering Prevention Act'; formed 'National Committee on Militancy Resistance and Prevention' which is consisted of seventeen members belonging to relevant ministries and security agencies.<sup>91</sup> On July 2009, 'National Committee for Intelligence Coordination' was formed under the Chairmanship of the Prime Minister to coordinate the intelligence exchange activities against extremism.<sup>92</sup>

The Anti-Terrorism Act, 2009 provides several mechanisms to implement the UNSC resolution 2178 which requires UN member states to address the foreign terrorist fighter

<sup>83</sup> Afghanistan Independent Human Rights Commission, *Insurgent Abuses against Afghan Civilians* (Report) (December 2008) 10.

<sup>84</sup> Ajay Chhibber, 'Afghanistan's future security lies in securing development' *The Afghanistan Times* (Kabul 9 December 2014) Opinion.

<sup>85</sup> Bangladesh Enterprise Institute, 'The State of Terrorism in Bangladesh, 2009-2010' (Report) (2011) 9.

<sup>86</sup> *Ibid* at 44.

<sup>87</sup> *Ibid* at 11.

<sup>88</sup> Bangladesh Enterprise Institute, 'The State of Terrorism in Bangladesh, 2009-2010' (Report) (2011).

<sup>89</sup> Faiz Sobhan, 'Bangladesh's Recent Efforts at Countering Terrorism' *Dhaka Courier* (Dhaka 22 April 2011)

<sup>90</sup> Bangladesh Enterprise Institute, 'The State of Terrorism in Bangladesh, 2009-2010' (Report) (2011).

<sup>91</sup> Faiz Sobhan, 'Bangladesh's Recent Efforts at Countering Terrorism' *Dhaka Courier* (Dhaka 22 April 2011)

<sup>92</sup> Faiz Sobhan, 'Bangladesh's Recent Efforts at Countering Terrorism' *Dhaka Courier* (Dhaka 22 April 2011)



threat.<sup>93</sup> The Anti-Terrorism Act 2009 was amended in 2012 and 2013. The Anti-Terrorism Act, 2009 provides arbitrary sweeping powers to law enforcement agencies. For state security and to curb global terrorism, the law enforcement agencies are provided powers to arrest, detention and punishment. Bangladesh government also introduced National Education Policy in 2010. This policy highlights the need for reforming curriculum of religious academic institutions (*Madrassa*).<sup>94</sup> Prior to that these institutions were unregulated and this paved opportunity to religious extremists to spread their ideologies. There is no doubt that Bangladesh government has made its best effort to vie the menace of terrorism and has established cooperative links regionally and internationally to address the terrorism issue. The US department of State in a report on terrorism remarks that Bangladesh has made counter-terrorism progress in 2014.<sup>95</sup>

#### 4.2.3 India

On November 26 to 29, 2008 terrorists assaulted on the financial capital of India, Mumbai. The suspected terrorists slipped past the port security and hit targets across Mumbai which included two hotels, a railway terminal, a cafe and a Jewish outreach center. The multi-prong attack left more than 170 dead and 300 wounded. The incident is compared as the 'September 11' incident for South Asian region. However, after the incident, Indian responded uniquely; rather than resorting to military response with neighbour country, India concentrated inward, focusing on its institutions' lack of preparedness and poor intelligence coordination towards such terror attack.<sup>96</sup> Prior to Mumbai 26/11 terror attack, India had to go through the throe of 1993 Mumbai Stock Exchange bombing, the hijack of the Indian Airlines plane in 1999 and terror attack on Parliament of India in 2001.

On April 2002 the Prevention of Terrorism Act (POTA) was passed in a joint sitting of the two house of parliament. The salient features of the act: special court to deal terrorists cases; capital punishment for terrorist killings; authority of police to intercept communication and produce it in court as evidence and detention of suspect for six months without filing of charge in court. POTA incorporated similar provisions of preceding security and emergency laws. Among those, the Terrorist and Disruptive Activities (Prevention) Act of 1985 is prominent, which is not in effect since 1995.<sup>97</sup> Besides that the act permits to treat confession to police as an admission of guilt. The

<sup>93</sup> Act No. 16 of 2009.

<sup>94</sup> Faiz Sobhan, 'Countering violent extremism in Bangladesh' *The Dhaka Tribune* (Dhaka 28 May 2013) Op-Ed.

<sup>95</sup> Tribune Report, 'Washington Lauds Dhaka's Stance on Terrorism' *The Dhaka Tribune* (Dhaka 21 June 2015) <<http://www.dhakatribune.com/bangladesh/2015/jun/21/washington-lauds-dhakas-stance-terrorism>> accessed 21 July 2015.

<sup>96</sup> Iftexharul Bashir, 'Countering Transnational Terrorism in South Asia: An Assessment on Regional Approach' (2009) 13 *Journal of International Affairs* 141, 143.

<sup>97</sup> Anil Kalhan and others, 'Colonial Continuities: Human Rights, Terrorism and Security Laws in India' (2006) 20 *Columbia Journal of Asian Law* 93, 100.

national human rights commission of India criticised and opined not to pass the POTA 2002, when it was still a bill.<sup>98</sup> After the infamous *Godhra incident* erstwhile UPA government of India repealed the act on September 2004.<sup>99</sup>

There are other laws in India which can be categorized as counterterrorism laws. The National Investigation Agency Act, 2008 and Terrorist and Disruptive Activities Act of 1985 – both are to curb terrorist activities. Aspects of India's antiterrorism laws have raised significant human rights concerns.<sup>100</sup> These acts may be used to target political opponents, human rights defenders and religious minorities. Sifting through the provisions of both acts, it is very clear that if the measures are not implemented with precaution, both acts can be bane for human rights. The laws have potential to lead the arbitrary detention, torture, enforced disappearance and extra judicial killing. Another legislation titled Unlawful Activities (Prevention) Act, 1967 also deals with counter terrorism. The act empowers the Parliament to impose, by law, reasonable restrictions in the interests of sovereignty and integrity of India. The restriction also extends to freedom of speech and expression, right to assemble peaceably and right to form association or union. It appears that India's anti-terrorism laws have not always proven effective in preventive serious acts of terrorism.<sup>101</sup> The country policy makers are mulling for National Counter Terrorism Centre (NCTC) which is supposed to be a single agency and the function of which is to counter terror operation. Other than that, the NCTC is also supposed to collect, analyze and disseminate data related to terror operation. However, the creation of NCTC is in-stalemate since the sceptics doubt that the agency may dilute the federal structure of India.<sup>102</sup>

In India, NCTC initiative and other anti-terrorism laws have raised a host of human rights issues.<sup>103</sup> The broad and ambiguous definitions of terrorism have failed to conform the principles of legality. While India has been tussling serious threats from terrorism and other forms of politicized violence for decades, these special anti-terrorism laws have not proven particularly effective in combating terrorism. Notwithstanding these laws,

<sup>98</sup> C. Raj Kumar, 'Human Rights Implications of National Security Laws in India: Combating Terrorism While Preserving Civil Liberties' (2005) 33 *Denv. J. Int'l L. & Policy* 195, 196.

<sup>99</sup> South Asia Society of Criminology and Victimology, 'First International Conference of the South Asian Society of Criminology and Victimology' (Jaipur, 2011) 12

<sup>100</sup> Anil Kalhan and others, 'Colonial Continuities: Human Rights, Terrorism and Security Laws in India' (2006) 20 *Columbia Journal of Asian Law* 93, 96.

<sup>101</sup> Anil Kalhan and others, 'Colonial Continuities: Human Rights, Terrorism and Security Laws in India' (2006) 20 *Columbia Journal of Asian Law* 93, 102.

<sup>102</sup> Sankalp Gurjar, 'Need to Re-visit NCTC- Op-Ed' (*Eurasia Review*, 2015)

<<http://www.eurasiareview.com/31072015-need-to-revisit-nctc-oped/>> accessed 31 July 2015.

<sup>103</sup> Anil Kalhan and others, 'Colonial Continuities: Human Rights, Terrorism and Security Laws in India' (2006) 20 *Columbia Journal of Asian Law* 93, 97.

terrorism has persisted as problem.<sup>104</sup>

#### 4.2.4 Pakistan

From 2007 onwards, terror attacks in Pakistan displayed a kind of coordinated and sophisticated nature. The terrorist attack on a school in Peshawar in December, 2014, veered the counter-terrorism policy map of Pakistan. Prior to that, the counter terrorism legal regime of Pakistan is regulated by the Anti-Terrorism Act of 1997. In Pakistan, counter-terrorism is primarily the responsibility of the police. Civil armed forces, intelligence agencies and the military play a supporting role.<sup>105</sup> However, till 2011, there was no clear and coherent counter terrorism policy in Pakistan.<sup>106</sup>

On the first week of January, 2015, Pakistan's national assembly approved the 21<sup>st</sup> Constitutional Amendment; the same assembly also passed the Pakistan Army Bill, 2015. Through this approval, the national assembly of Pakistan approved the constitutional validity to trial of crimes of terrorism in the military court.<sup>107</sup> Such approval of bill and amendment allowed military court to preside terror related cases under a military officer. The impact is that in Pakistan the cases of terrorism whisked from the jurisdiction of the honorable court. The cases of terrorism have now been vested under the jurisdiction of Pakistan army's Field General Court's Martial. It is becoming evident that the security apparatus is taking law into its own shoulder. The measure reiterates lack of trust and reverence towards Pakistan's judiciary. These approvals are criticized due to indifferent attitude towards norms of the human rights and democracy.<sup>108</sup> The comprehension that 'denying human rights and dignity is not an effective tool' – is completely absent in the counter-terrorism strategy of Pakistan.

#### 4.3 Appraisal of Counter-terrorism Mechanism in South Asia

It will be a misconception to deem that counter-terrorism is simply a kind of military activity. Counter terrorism is consisted of eight measures: political measures, social measures, educational measures, economic measures, military measures, intelligence measures, judicial measures and media measures.<sup>109</sup> For the purpose of comprehension, counter terrorism can be referred as forceful response to the act of terror which is consisted of the combination of hard and soft power.<sup>110</sup> Comprehensive application of

<sup>104</sup> Anil Kalhan and others, 'Colonial Continuities: Human Rights, Terrorism and Security Laws in India' (2006) 20 Columbia Journal of Asian Law 93, 96.

<sup>105</sup> Tariq Khosa, 'Counterterrorism Strategy' *The Dawn* (Karachi, 22 March 2013)

<sup>106</sup> Moonis Ahmar, 'The Challenges of Counter-terrorism in Pakistan' (2011) 32 BISS 75.

<sup>107</sup> Zohaib Kazmi, 'PM says anti-terror bill vital to bring peace' *ARY News* (6 January 2015) <<http://arynews.tv/en/senate-passes-21st-amendment-army-act-amendment>> accessed on 5 August 2015.

<sup>108</sup> Farooq Yousuf, 'Pakistan's 21<sup>st</sup> Amendment: national consensus or soft coup?' *Open Democracy* (6 January 2015) <<https://www.opendemocracy.net/open-security/farooq-yousuf/pakistan%E2%80%99s-21st-amendment-national-consensus-or-soft-coup>> accessed on 7 August 2015.

<sup>109</sup> Moonis Ahmar, 'The Challenges of Counter-terrorism in Pakistan' (2011) 32 BISS 75, 77.

<sup>110</sup> Moonis Ahmar, 'The Challenges of Counter-terrorism in Pakistan' (2011) 32 BISS 75, 76.

both soft and hard power refers both defensive measures and offensive measures. The former measure is implemented to reduce the vulnerability to terrorist act while the latter measure is to prevent, deter and respond to terrorism.<sup>111</sup> In South Asia, law enforcement agencies need to change their criteria of evaluating success in countering terrorism. Rates and percentage report of yearly convicting and apprehending suspect can be a misleading impression. To get rid of such misleading spiral of impression, National Human Rights Commissions (NHRC) can extend its assistance. Existing international and regional human rights conventions should be incorporated into national counter-terrorism trainings. South Asian countries have tendency to rely mostly on hard power solutions for counterterrorism.<sup>112</sup> In South Asia, counter-terrorism strategies are designed with the understanding that introducing rigid laws that grant the executive branch of state mechanism with greater discretionary power will curb terrorism and other non-traditional threats. There is vital disadvantage to formulate counterterrorism strategy solely upon hard power strategy. Hard power strategy may neutralize terrorism for a very limited time span; because such strategy cannot weed out the root cause of terrorism. As a consequence, the breeding arena of terrorism remain intact and fertile which will have possibility to reappear with more menacing and ruffling impacts.

Protection of human rights constitutes moral and legal imperatives upon states. States can restrict the enjoyment of human rights considering exceptional national circumstances. However, to legitimately limit the exercise of certain human rights should be authorized by prescription of law. If law enforcement authority breaks law, it entails a chain of anarchic consequence. Violation of law by law enforcement authority breeds contempt for law; it invites the populace to become law unto themselves which ultimately invites anarchy.<sup>113</sup> Respect for human rights and rule of law should be the cornerstone of the counter-terrorism strategy. To meet this requisite national counter terrorism strategy should promote and protect human rights and rule of law.<sup>114</sup> Three Security Council Resolutions 1456<sup>115</sup>, 1566<sup>116</sup> and 1624<sup>117</sup> have clarified that attention to human rights must indeed play pivotal role in counter terrorism measures which are required by Resolution 1373.<sup>118</sup>

<sup>111</sup> Moonis Ahmar, 'The Challenges of Counter-terrorism in Pakistan' (2011) 32 *BISS* 75, 77.

<sup>112</sup> Iftikharul Bashir, 'Countering Transnational Terrorism in South Asia: An Assessment on Regional Approach' (2009) 13 *Journal of International Affairs* 141, 144.

<sup>113</sup> *Kartar Singh v. State of Punjab* (1994) 2 SCR 375.

<sup>114</sup> Office of the UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-Terrorism' (Fact Sheet No. 32) (July 2008) 2.

<sup>115</sup> UNSC Res. 1456 (2003). UN Doc. S/Res/1456.

<sup>116</sup> UNSC Res. 1566 (2004). UN Doc. S/Res/1566.

<sup>117</sup> UNSC Res. 1624 (2005) UN Doc. S/RES/1624.

<sup>118</sup> Anil Kalhan and others, 'Colonial Continuities: Human Rights, Terrorism and Security Laws in India' (2006) 20 *Columbia Journal of Asian Law* 93, 223

### 5. Championing Human Rights in Twilight of Terrorism: Challenges of NHRC

Terrorism is common enemy to all South Asian states. The Region needs joint effort to vie terrorism. South Asian states should go for common counter-terrorism policy respectful to human right and establish institution of regional standard. For this purpose, National Human Rights Commissions (NHRCs) are unique institutions as vital link among South Asian state mechanisms.<sup>119</sup> NHRC can be defined as independent entity, established by government under constitution or by law and is entrusted specific responsibilities in terms of the protection and promotion of human rights.<sup>120</sup> Article 3 of the Paris Principle enumerates that NHRC has responsibility to promote and ensure the harmonization of national legislation and regulation with the international human rights instruments.<sup>121</sup> The UN General Assembly recognizes the significance of NHRCs both at national level and in the UN Human Rights systems.<sup>122</sup> NHRCs enjoy the status of formal participation in the Human Rights Council.<sup>123</sup> NHRCs have close proximity to state institution, civil societies and regional institutions.<sup>124</sup> Hence, NHRCs have vista to play a leading role both in national and regional level. In the preceding decades, national human rights commissions have become increasingly prominent in Asia.<sup>125</sup> However, in South Asia, a common standard of human rights jurisprudence and regional implementation mechanism is still in the queue.<sup>126</sup> From 2010 onwards, the initiatives of support for South Asian regional institution have been spearheaded by RISAHM (Regional Initiative for a South Asia Human Rights Mechanism) and the Asian Forum for Human Rights and Development.<sup>127</sup> On June 10, 2014, the 'Lahore Declaration' had called upon the SAARC member states to include agenda on inter-state human rights mechanism.<sup>128</sup> On November, 2014 a regional seminar was organized in Dhaka under the auspices of

<sup>119</sup> Kieren Fitzpatrick and Michael O' Flaherty, 'National and Regional Human Rights Mechanism' (Background Paper at 11<sup>th</sup> Informal ASEM Seminar on Human Rights, November, 2011).

<sup>120</sup> Anne Gallagher, 'Making Human Rights Obligations a Reality: Working with New Actors and Partners' in Philip Alston and James Crawford (eds.) *The Future of UN Human Rights Treaty Monitoring* (CUP, London 2000) 202.

<sup>121</sup> Principle relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, adopted 20 December 1993, GA Res. 48/134, UN GAOR, 48 Session. UN Doc A/RES/48/141 (1993)

<sup>122</sup> UNGA Res. 64/161 (March 2010).

<sup>123</sup> Rule 7 (b), UNGA Res. 60/251, UN Doc.A/RES/60/251 (2006).

<sup>124</sup> Andrew Wolman, 'National Human Rights Commissions and Asian Human Rights Norms' (2013) 3 *Asian Journal of International Law* 78.

<sup>125</sup> Andrew Wolman, 'National Human Rights Commissions and Asian Human Rights Norms' (2013) 3 *Asian Journal of International Law* 77.

<sup>126</sup> Professor Dr. Mizanur Rahman, 'Towards a SAARC Human Rights Mechanism' in Dr. Mizanur Rahman (ed.), *Human Rights and Environment* (ELCOP & Palal Prokashoni, Dhaka 2011).

<sup>127</sup> Garimella Subramaniam, 'Writing SAARC's Incomplete Chapter' *The Hindu* (New Delhi 15 September 2014)

<sup>128</sup> Calling for a Regional Human Rights Mechanism in South Asia' (Forum-Asia 2014) <<http://www.forum-asia.org/?p=17335>> accessed 2 July 2015



Bangladesh National Human Rights Commission. The two day regional seminar was concluded with the announcement of 'Dhaka Declaration' reverberating the commitment of SAARC member states to form human rights protection mechanism in South Asia.<sup>129</sup> The declaration also provides an impetus to amplify civil societies' initiative for regional human rights mechanism; convenes systematic and seamless effort among respective SAARC members' national human rights institutions to sort out common challenges.<sup>130</sup>

## 6. Conclusion

International human rights framework does not impair the fight against terrorism. Nothing in the international human rights law prevents governments from passing laws that impose criminal penalties on extremists. Indeed, government may not enact laws that are so vague to infringe on freedom of expression, or other human rights norms.<sup>131</sup> In South Asia, when a state propounds its argument as to national security, its contentions are primarily based upon the edifice of civil and economic liberty and protection of human rights. However, a few enacted laws in this region protecting national security and liberty of common people will pass the test of human rights compliance. Most South Asian states' response to terrorism have been reactive rather than preventive and proactive. In those reactive responses, the use of force is a salient feature which has been accompanied by law enforcement agencies' unplanned, excessive and indiscriminate force.<sup>132</sup> Any rigid counter-terrorism strategy devoid of human rights norms will only abseil the situation. South Asian countries need to enhance the level of cooperation, build confidence building networks and provide effective governance with the regional and international community and for that end, significance of National Human Rights Commissions of South Asian states should mull over.

There is brewing realization among states of South Asia that the challenge of terrorism cannot be met by the use of force alone. South Asian states are becoming more conscious of the value of cooperation, whether bilateral or multilateral, in dealing with the challenge of terrorism.<sup>133</sup> Despite, in view of the mounting of human rights concerns, the challenge is still formidable.

<sup>129</sup> Tribune Report, 'South Asian regional seminar on human rights ends with Dhaka Declaration' *The Dhaka Tribune* (Dhaka 19 November 2014) <<http://www.dhakatribune.com/bangladesh/2014/nov/19/south-asian-regional-seminar-human-rights-ends-dhaka-declaration>> accessed 23 July 2015.

<sup>130</sup> Ibid.

<sup>131</sup> Paul Hoffman, 'Human Rights and Terrorism' (2004) 26 *Human Rights Quarterly* 932, 951.

<sup>132</sup> S.D. Muni, 'Beyond Terrorism: Dimensions of Political Violence in South Asia' in Anand Kumar (ed.) *The Terror Challenge in South Asia and Prospect of Regional Cooperation* (IDSA, New Delhi 2012) 27.

<sup>133</sup> Ibid at 28.