



# Combating Terrorism for Protecting Human Rights

*Terrorism is the premeditated use or threat to use violence by individuals or sub national groups to obtain a political or social objective through the intimidation of a large audience beyond that of the immediate victims. The terrorist act is seen as an attack on society as a whole and also on democratic institutions. A terrorist attack is an act of war against society. By now, government is realizing that terrorism is a serious threat to be dealt with. The growing terrorist population is becoming more and more dangerous, with new organizations forming out of nothing. But not only has this population merely grown; it has diffused into the cracks of our society. Though India has in place a number of laws to deal with terrorism that have been used to prescribe the enjoyment of human rights, terrorism is rising continuously. Judiciary is also playing an active role to curb the terrorism. Still we need stricter measures to deal with the rising threat of terrorism and also strict Implementation of those laws.*

**DR. SANYOGITA THAKUR**

## **I**ntroduction :

Fifteen years on, rather than feeling safer, there is a palatable feeling that terrorism is out of control. Terrorism is the phenomenon, which produces terrorists. Therefore, combating terrorism has a wider connotation. It includes identification and eradication of the causes which give rise to, and promote the phenomenon of terrorism. Terrorism has no precise definition. In a Supreme Court ruling Dr. A.S.Anand defined terrorism as an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof. It is a totally abnormal phenomenon. What distinguishes terrorism from other forms of violence therefore appears to be a delicate and systematic use of coercive intimidation. The Concern for justice has been the paramount objective of this paper while dealing with vexed issue of terrorism.

## **Meaning and Definition of Terrorism :**

The term terrorism has derived from Latin word 'terrere' which means great fear.<sup>(1)</sup> The term terrorism is very difficult to define; one man's terrorism can be another man's freedom struggle. It is estimated that between 1936 and 1985 at least 115 different definitions have been given to the word "Terrorism".<sup>(2)</sup> According to Webster's dictionary 1990 defines terrorism as " the act or practice or terrorizing especially by violence for political purpose by a Government seeking to intimidate a population or by revolutionary seeking to overthrow government , compel the release of prisoners etc"<sup>(3)</sup>

A common definition of terrorism is "the systematic use or threatened use of violence to intimidate a population or government for political, religious, or ideological goals". Terrorism in India, according to the Home Ministry, poses a significant threat to the people of India. Terrorism found in India includes ethno-nationalist terrorism, religious terrorism, left wing terrorism and narco terrorism.<sup>(4)</sup>

Terrorism is also defined as the systematic use of murder, injury, destruction or the threat of such acts aimed at achieving political ends- has the power to alter course of history. 9/11 attacks in New York and the Washington bombings in Madrid are the prime examples of it.<sup>(5)</sup>

The 8th report on terrorism in India published in 2008 defined terrorism as the peacetime equivalent of war crime.<sup>(6)</sup> An act of terror in India includes any intentional act of violence that causes death, injury or property damage, induces fear, and is targeted against any group of people identified by their political, philosophical, ideological, racial, ethnic, and religious or any other nature. This description is similar to one provided by the United Nations in 2000.<sup>(7)</sup>

High-profile attacks by extremists on major cities across Belgium, France, Lebanon, Turkey and the US have set the world on edge. While some of the attackers are home-grown and their grievances partially local, their stated motivations are almost always traced back to interlocking crises in the greater Middle East. Commentators talk ominously of a new kind of world war spanning the entire globe.

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It is undeniable that terrorist violence is on the rise. More than 32,700 people were killed as a result of terrorism in 2014, 80% more than the previous year. The latest reports suggest that more than 28,000 people died during terrorist events in 2015. A review of terrorism in over 2,100 cities revealed that violent death rates (per 100,000) were well above those one might expect in a war zone.

#### **Human rights and Terrorism :**

'Terrorism strikes at the very heart of everything the United Nations stands for. It is a global threat to democracy, the rule of law, human rights and stability, and therefore requires a global response.'<sup>(8)</sup>

#### **Efforts of Legislature and Judiciary in India in Combating Terrorism :**

India that claims to be the largest democracy in the world has in place a number of laws to deal with terrorism that have been used to prescribe the enjoyment of human rights. Some of these laws flow from India's colonial past. Others have been devised, including the general and traditional law, Indian Penal Code, The Unlawful Activities Prevention Act, 1967; The Criminal Law (Amendment) Act; The National Securities Act, 1980; State enacted laws, like The Maharashtra Control of Organized Crime Act, 1999 etc. The only need is to implement these provisions effectively, humanly and scientifically to combat terrorism.

The Constitution of India in its preamble laid pragmatic panorama of constitutional philosophy to usher in the egalitarian social order under Rule of Law. The State, drawn from the will of the people, has been vested with the power and duty to bring about united and integrated nation through human rights as instrumentality to achieve the cherished goal of social, economic, and political justice, equality of opportunity, status and dignity to all people. In order to make them meaningful and to translate them into reality, the certainty of human rights is woven around the right to education, health, shelter, congenial environment, without discrimination as basics to unity and fraternity among the people, civil and political rights, social, economic and cultural rights have been elaborated to feed and give content to the human rights.

Some of the important legislations that have been used for regulating terrorism and concern led activities such as Terrorist and Disruptive Activities (Prevention) Act, 1985 (commonly known as TADA 1985 - repealed), Terrorist and Disruptive Activities (Prevention) Act, 1987 (commonly known as TADA 1987 - repealed); Prevention of Terrorist Act, 2002 (commonly known as POTA - repealed), the Maharashtra Control of Organised Crime Act, 1999 (State Law); apart from the present existing law, Unlawful Activities (Prevention) Act, 1967 and National Security Act, 1980. The Human Rights Violations committed under Anti Terrorism Law have been brought to the forefront both by the Judiciary and National Human Rights Commission. The constitutionality of TADA 1987 in *Kartar Singh v State of Punjab*<sup>(9)</sup> where the Apex Court proceeded to tamper certain

provisions of TADA 1987 so as to bring them within reasonable bounds and to introduce requisite safeguards against abuse. The Supreme Court also observed that the Parliament is competent to enact the said Act under Article 248 r/w List I Entry 97 and not by List II Entry 1 of Schedule 7 to the Constitution of India. After *Kartar Singh*, validity of TADA was again challenged in *R.M. Tiwari v State*<sup>(10)</sup> and in spite of close monitoring of the use of TADA, 1987 by the Court, the Review Committee complained of its gross abuse continued to be raised by various quarters, where under the circumstances of the case, the Court upheld the constitutionality of TADA, 1987.

Dr. A.S. Anand in *Hitendra Vishnu Thakur*<sup>(11)</sup> once said that "every terrorist may be criminal, but, every criminal cannot be given the level of a terrorist only to set in motion the more stringent provisions of TADA.

In *Kartar Singh v State of Punjab* the Supreme Court expressed serious concern about the sheer misuse and abuse of the act by the police and made an attempt to infuse human rights by devising certain guidelines to ensure that confessions obtained during pre-indictment interrogations is in conformity with human rights principles, which the Court went on to elucidate the same in the case of *Shaheen Welfare Association v Union of India*<sup>(12)</sup>, where the Supreme Court opined that a more independent and objective scrutiny of TADA cases by a Committee headed by a retired Judge is obviously necessary. Such observation shows that the Apex Court has been always eager to preserve the human rights in combating terrorism.

Over a period of time, India continues to face the score-age of terrorism. Accordingly, the Prevention of Terrorism Act, 2002 (commonly called as POTA) was enacted to make the provisions for the Prevention of and for dealing with terrorist activities in the face of multifarious challenges in the management of internal security of the country and cross border terrorist activities and insurgent groups. In *Devendra Pal Singh v N.C. T. of Delhi*,<sup>(13)</sup> where 9 persons had died and several others injured on account of terrorist act and the Apex Court under the circumstances of the case said that such terrorist have no respect for human life and they should be given death sentence.

Again the validity of some of the provisions of POTA were challenged in *People's Union for Civil Liberties and Another v Union of India*<sup>(14)</sup> and under circumstances of the case, the Apex Court discussed the validity of POTA 2002 and observed that the Court has to maintain the delicate balance between the State Acts and Human Rights upholding the constitutional validity of the Act.

Further in the case of *Vaiko v Union of India*<sup>(15)</sup> [Madras High Court], Vaiko was arrested under Section 21 of POTA (offence relating to support to a terrorist organization) on the basis of certain remarks. Later on the trial proceedings at Chennai were challenged on the ground that the Central POTA Review Committee had found that no case was made out against them. The Madras High Court upheld that it was for

the public prosecutor to independently apply his mind to the matter and take a decision to withdraw the case on the basis of the report of the Central POTA Review Committee and, accordingly, dismissed the writ petition seeking a direction to Tamil Nadu Government to withdraw the case. At present a Criminal Appeal against the order of the Madras High Court is pending before the Apex Court.

In a much talked about case of Sanjay Dutt v State of Maharashtra through C.B.1.<sup>(16)</sup>, The Supreme Court recently upheld the conviction for possessing the arms and ammunitions under the Arms Act, 1959 and not under Section 5 of the TADA.

When we go through the provisions of the Anti Terrorism Law of other countries, we find that British Law has an exclusive chapter on banning terrorist organizations and after banning a terrorist organization, membership of a terrorist organization, ipso facto, becomes a punishable act.

Ultimately, on September 17, 2004 controversial Anti Terrorism Act - POTA, 2002 was repealed and consequently, the Unlawful Activities Prevention Act, 1967 was amended where, inter alia, definition of unlawful association has been expanded to also to include any association, which has for its object any activity which is punishable under Section 153A of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity. Section 153A of the Indian Penal Code is about promoting enmity between different groups on grounds of religion, race, place of work, residence, language.

### Conclusion :

Terrorism is the premeditated use or threat to use violence by individuals or sub national groups to obtain a political or social objective through the intimidation of a large audience beyond that of the immediate victims. The terrorist act is seen as an attack on society as a whole and also on democratic institutions. A terrorist attack is an act of war against society. By now, government is realizing that terrorism is a serious threat to be dealt with. The growing terrorist population is becoming more and more dangerous, with new organizations forming out of nothing. But not only has this population merely grown; it has diffused into the cracks of our society. Though India has in place a number of laws to deal with terrorism that have been used to prescribe the enjoyment of human rights, terrorism is rising continuously. Judiciary is also playing an active role to curb the terrorism. Still we need stricter measures to deal with the rising threat of terrorism and also strict Implementation of those laws.

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(9) *(1994) 3 SCC 569.*

(10) *( 1996) 2 SCC 610J.*

(11) *(1994) 4 SCC 602.*

(12) *{(1996) 2 SCC 616}.*

(13) *(2002)5 SCC 234}.*

(14) *{(2004) 9 SCC 580}.*

(15) *2004 indiankanoon.org/doc/643469/*

(16) *JT 2013 (5) SC 1.*



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<b>Country of Publication :</b>	India
<b>Broad Subject Category :</b>	Arts & Humanities,Multidisciplinary,Social Science

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## Federalism : Laboratory of Democracy

*'Federalism' is one of those good echo words that evoke a positive response toward many concepts as democracy, progress, constitution, etc. Federalism tries to facilitate the sociopolitical cooperation between two sets of identities through various structural mechanisms of 'shared rule'. The union government appointed Sarkaria Commission in 1983 to examine and review the working of the Indian Federalism, but this Commission doesn't make any useful recommendations for structuring the Indian federalism in a proper manner. Hence, it is appropriate to restructure Indian Federalism to make it more effective and promote center state relation by creating linkage institutions ie forums where state-level and Central-level officials can talk to each other and work together by sharing information and by encouraging the states to introduce innovations like e-governance systems and incentivizing such knowledge about new initiatives to diffuse across states so that centre and states can work well together to achieve India's developmental goals.*

**KESHAV JHA**

### **I**ntroduction :

Federalism is the theory or advocacy of federal political orders, where final authority is divided between sub-units and a center.

Unlike a unitary state, sovereignty is constitutionally split between at least two territorial levels so that units at each level have final authority and can act independently of the others in some area.

It defines state-society relationships in such a manner as to allow autonomy of identity of social groups to flourish in the constitutionally secured and mandated institutional and political space.

It tries to facilitate the sociopolitical cooperation between two sets of identities through various structural mechanisms of 'shared rule'.

Justice Louis D. Brandeis wrote in 1932, "that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

In a decentralized system ideas can be tried at the local level, there learning occurs, ideas are improved and then begin to diffuse throughout the rest of the country.

This idea is more than theoretical.

This view implicitly assumes that there is one best way to do something and that a decentralized trial and error process which is a good way to discover what that best way is. If it were not for change, then from this viewpoint all jurisdictions would converge over time on a similar set of

policies as they learned from one another what the best policies were.

### **S**ubsidiarity :

"Subsidiarity" is a European term that means "higher level governments should not do anything that lower levels government can do as well or better." More generally, impact jurisdictions should be matched to political jurisdictions.

Subsidiarity principle implies that decentralization can go too far. If we split the central district into two, then there could be wasteful duplication of services; two firehouses when one would do.

Similarly when dealing with public goods the subsidiarity principle implies that the public goods with the largest extensive range should be supplied by the political jurisdiction with the largest extensive range.

### **O**ppression and Mobility :

Oppression at the federal level is difficult to escape. Oppression by the states can be countered by mobility. The more powers that are devolved to lower levels, the easier it becomes pick and choose policies by moving.

The mobility argument, however, is about more than preferences.

It's about checking and limiting government power. The idea is not simply that exit allows for islands of liberty but that the threat of exit means that you don't have to leave to achieve liberty eg. knowing that taxpayers will leave if local taxes become too high means that taxes won't become too high.

As Nobel Laureate in economics James Buchanan (1995/1996) put it, in an ideal federalism the “federal government is constitutionally restricted to the exercise of the minimal or protective state functions, while all other functions are carried out by separated state or provincial units. The availability of the exit option, guaranteed by the central government, would effectively place limits on the ability of the state provincial governments to exploit citizens.

Federalism serves the dual purpose of allowing the range or scope for central government activity to be curtailed and, at the same time, limiting the potential for citizen exploitation by state-provincial units.” Nor is it just mobility of people that is important but also mobility of capital. Mobility of labor and capital, together, ensure that governments cannot easily expropriate wealth thereby destroying the prospect of economic growth.

#### **Indian Context :**

Indian federation was not a product of coming together of states to form the federal union of India. It was rather a conversion of a unitary system into a federal system.

It is a compromise between two conflicting considerations such as autonomy enjoyed by states within the constitutionally prescribed limit (State List) and the need for a strong centre in view of the unity and integrity of the country (Union List).

#### **Unitary Features of the Constitution :**

A strong centre The Union Government becomes all powerful in certain times like emergencies. Other features include :

- (i) Single Constitution
- (ii) Single citizenship
- (iii) Flexibility of Constitution
- (iv) Integrated judiciary
- (v) Appointment of the Centre
- (vi) All India Services
- (vii) Emergency provisions

#### **Federal Features of the India Union :**

(i) Two governments i.e. Union Government and State governments

(ii) Division of powers between the union and its constituents (Seventh Schedule of the Constitution contains three lists such as the Union List, State List, and Concurrent List)

(iii) Supremacy of the Constitution (Basic structure of the Constitution is made indestructible by the Judiciary)

- (iv) Partial rigidity of the Constitution
- (v) Independent Judiciary
- (vi) Bicameralism

#### **Challenges :**

(i) **Regionalism** : Emergence of Regionalism as a limiting factor of Indian politics is a post-independence phenomenon.

The demand for separate states in India, demands for full statehood for different areas, demands for state autonomy and emphasis on regional interests over national interests

are some of the examples which show how regionalism is quite strong in India.

Regionalism is a great hindrance to federal system in India. It takes the different forms like demands for secession, demands for separate statehood demand for full state hood etc.

(ii) **Effecting the division of powers** : Two sets of governments operate simultaneously in a federation. The Central and State governments enjoy powers under the constitution. The main problem is to effect a satisfactory division of powers between them. It is, to adopt Bryce's metaphor, "to keep the centrifugal and centripetal forces in equilibrium, so that neither the planet States shall fly off into space, nor the sun of the Central Government draw them into its consuming fires".

The governmental powers must not only be satisfactorily distributed between the Centre and the Units, but provision must be made to prevent either from encroaching upon a sphere allotted to the other. The most important safeguard is the setting up of an independent Supreme Court to interpret the constitution and decide conflicts of jurisdiction between the Centre and the Units.

(iii) **Protection of the Smaller Units against dominance by the larger** : In most federations the Units are unequal in size and the larger units may have a predominant influence in the Central Government on account of their larger representation in the lower House of the Central legislature.

(iv) **Organization of the relation between the Centre and the Units** : Normally in a federation the Centre and the Units are independent of each other in the spheres allotted to each by the Constitution in legislation, in administration, and in finance. In actual practice various points of contact are established between the two. Under the American Constitution the federal government shall guarantee to every State a republican form of government and to protect them against invasion and domestic violence. In Canada the Governor General is empowered to veto provincial laws and appoint Governors of the provinces. The Indian Constitution provides for detailed legislative, administrative and financial relationships between the Union and States.

(v) **Issue of Religion** : Religion may also be a challenge for federalism. India is a fine example of religious heterogeneity creating occasional turmoil to weaken the federation. But the religious process need not be always divisive. So long as there is a reasonable tolerance on the part of the people and a genuine secular policy on the part of the government, religion may not cause imbalances in a federation.

In a federation, if there is ethnic variety, the solution is to make the boundaries of the constituent federal units coincide with the boundaries of each ethnic group. This has been the case in Yugoslavia, Czechoslovakia, the Soviet Union, India, Switzerland etc. However, in such cases also problems occur. Even when ethnic groups occupy compact geographical areas their boundaries are not so sharp and distinct that minorities of one will not be left in a political unit

designed for another group. Moreover, great difficulties may be created as migration and urbanization mix up the groups.

(vi) **Physical Environment** : Physical environment may also create problems for a federation by affecting communication.

A federation where the lines of communication are long and difficult has to face the difficulty of keeping in touch with all the units which can breed dissatisfaction in the units and develop a feeling of neglect in them.

In India, the North- Eastern states are having similar feelings and creating problems for the federation.

#### Conclusion :

'Federalism' is one of those good echo words that evoke a positive response toward many concepts as democracy, progress, constitution, etc. Federalism tries to facilitate the sociopolitical cooperation between two sets of identities through various structural mechanisms of 'shared rule'.

The union government appointed Sarkaria Commission in 1983 to examine and review the working of the Indian Federalism, but this Commission doesn't make any useful recommendations for structuring the Indian federalism in a proper manner. Hence, it is appropriate to restructure Indian Federalism to make it more effective and promote center state relation by creating linkage institutions ie forums where state-level and Central-level officials can talk to each other and work together by sharing information and by encouraging the states to introduce innovations like e-governance systems and incentivizing such knowledge about new initiatives to diffuse across states so that centre and states can work well together to achieve India's developmental goals.

Though some institutions like the Inter-State Council and the National Development Council have become quite active of late, they lack enforcement power. But their recommendations must be respected.

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### शोध-पत्र भेजने संबंधी नियम

( 1 ) शोध-पत्र 1500-1700 शब्दों से अधिक नहीं होना चाहिए।

( 2 ) हिन्दी एवं मराठी माध्यम के शोधपत्रों को कृतिदेव 10

(Kruti Dev 010) में टाईप करवाकर 'पेजमेकर 6.5' में भेजें।

( 3 ) पंजाबी माध्यम के शोधपत्रों को अनमोल लिपि (AnmolLipi)

या अमृत बोली (Amritboli) या जॉय (Joy) में टाईप करवाकर 'पेजमेकर 6.5' में भेजें।

( 4 ) अंग्रेजी माध्यम के शोधपत्र टाइम्स न्यू रोमन (Times New Roman), एरियल फॉन्ट (Arial) में टाईप करवाकर 'पेजमेकर 6.5' या 'माइक्रोसाफ्ट वर्ड' में भेजे जा सकते हैं।

(4) शोधपत्र की विधि - ( 1 ) शीर्षक ( 2 ) एबस्ट्रेक्ट ( 3 ) की-वर्ड्स

( 5 ) प्रस्तावना/प्रवेश ( 5 ) उद्देश्य ( 6 ) शोध परिकल्पना ( 7 ) शोध प्रविधि एवं क्षेत्र ( 8 ) सांख्यिकीय तकनीक ( 9 ) विवेचन या विश्लेषण

( 10 ) सुझाव ( 11 ) निष्कर्ष एवं ( 12 ) संदर्भ ग्रंथ सूची।

( 6 ) संदर्भ ग्रंथ सूची इस प्रकार दें -

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( 8 ) शोधपत्र की साफ्टकॉपी रिसर्च लिंक के ई-मेल आईडी researchlink@yahoo.co.in पर भेजने के बाद हॉर्डकॉपी, शोधपत्र के मौलिक होने के घोषणा पत्र के साथ हस्ताक्षर कर 'रिसर्च लिंक' के कार्यालय को प्रेषित करें।





## Cyber Crime : Scenario in India

*As we know, a long time ago it was really hard to communicate with each other or even people from outsiders. With the development of technology, at last telephone was made and it is used till now. Those genius people made many useful stuff such as telephone, mobile-phone, airplane, computer and so on. However, those kind of items were really rare in the past, but now it is really common to everyone and almost everyone has it. Presently, there is one useful thing that is used by everyone to communicate with each other quickly and simplify, which is Internet.*

**DR. SUMAN VIMAL**

### **A**n Introduction :

The genesis of internet was initiated by Vinton Cerf who first developed what later became known as the 'internet' i.e. the interconnectivity between computers worldwide in the year 1973. Few years later, on 25th of December 1990, Tim Berners-Lee with the help of Robert Cailliau and a young student at CERN (Conseil Européen pour la Recherche Nucléaire) invented the World Wide Web (www) and implemented the first successful communication between a Hypertext Transfer Protocol (HTTP) client and server via the internet.<sup>(1)</sup>

Cyber crime encompasses any criminal act dealing with computers and networks (called hacking). Additionally, cyber crime also includes traditional crimes conducted through the Internet. For example; hate crimes, telemarketing and Internet fraud, identity theft, and credit card account thefts are considered to be cyber crimes when the illegal activities are committed through the use of a computer and the Internet.

### **What is Cybercrime? :**

Cybercrime is defined as a crime in which a computer is the object of the crime (hacking, phishing, spamming) or is used as a tool to commit an offence (child pornography, hate crimes). Cybercriminals may use computer technology to access personal information, business trade secrets, or use the Internet for exploitive or malicious purposes. Criminals can also use computers for communication and document or data storage. Criminals who perform these illegal activities are often referred to as hackers.<sup>(2)</sup>

You often hear the term 'cybercrime' bandied about these days, as it's a bigger risk now than ever before due to the sheer number of connected people and devices.

### **Cybercrime - The facts :**

- (i) Cybercrime has now surpassed illegal drug trafficking as a criminal moneymaker
- (ii) Somebody's identity is stolen every 3 seconds as a result of cybercrime
- (iii) Without a sophisticated security package, your unprotected PC can become infected within four minutes of connecting to the Internet.

Criminals committing cybercrime use a number of methods, depending on their skill-set and their goal. Here are some of the different ways cybercrime can take shape<sup>(3)</sup>:

- (i) Theft of personal data
- (ii) Copyright infringement
- (iii) Fraud
- (iv) Child pornography
- (v) Cyberstalking
- (vi) Bullying

As you can see, cybercrime covers a wide range of different attacks, that all deserve their own unique approach when it comes to improving our computer's safety and protecting ourselves.

The computer or device may be the agent of the crime, the facilitator of the crime, or the target of the crime. The crime may take place on the computer alone or in addition to other locations.

### **India has Laws against Cybercrimes :**

The founding fathers hardly had this notion that internet could transform itself into an all pervading revolution capable of being misused for criminal activities, if fallen in capable wrong hands of the evil elements in the civilization and which required regulation. Today, where the know-how

of internet has become immensely popular and easily available, added as a subject for studies in educational institution in every society all over the globe, being used by corporations and governments, hospitals, military, and by almost all individuals and organizations in the world. It's because of its efficiency and usage in all matters providing flawless results and products, that has led to internet's extraordinary growth and dependence since the day of its invention till today, which is a shockingly short time for such a success. Internet has induced a rapid growth in all the sectors and has changed and affected the human civilization massively making their life easier leaving its mark. In the present time, which is also called the digital age, many disturbing things are happening in the cyberspace. Due to the anonymous nature of the internet, it is possible to engage into a variety of criminal activities with impunity and people with intelligence, have been grossly misusing the aspect of the internet to perpetuate criminal activities in cyberspace. Hence the need of cyber laws in India. <sup>(4)</sup>

The government of India is aware of a new generation of crime brought on by the digital revolution. In 2000, it enacted the Information Technology Act and revised it in 2008 to bring it in line with current issues in cyberspace. Cybercrimes such as child pornography, identity theft, Internet fraud and destruction of property or data are illegal in India; perpetrators face both civil and criminal penalties when they are caught.

#### **Cyber Crime Must Be Voluntary and Willful :**

To be guilty of cybercrime in India, a person must act voluntarily and willfully. For example, a person who deliberately sends viruses online is guilty of cybercrime; a person who forwards an email without realizing it contains a virus or spreads a virus when her account is hacked is not guilty.

#### **Laws Enforced Under Indian Penal Code :**

India has separate laws regarding cybercrime, but violators are generally prosecuted under the Indian Penal Code, or IPC, instead of the Internet Technology Act of 2000. For example, a person who commits Internet fraud is often prosecuted under the IPC for real-time fraud. Indian law enforcement personnel reason that most cybercrimes have real-time counterparts that are already illegal, and it is easier to prosecute for these crimes than for cybercrimes. Fraud, theft, destruction of property and child pornography are all covered by the IPC.

#### **Penalties :**

Cybercrimes are generally punishable by fines under the Internet Technology Act, although perpetrators are also subject to imprisonment under the IPC. Indian courts have the right to levy fines of up to 25,000 rupees in connection with cybercrimes.<sup>(5)</sup>

#### **Limitation of Investigations to Solve Cyber Crime Cases in India :**

There are so many case still pending in various courts of India only because lacking of proper proofs and forensic

investigations. If you have been a victim of cyber crime and plan to approach the cyber crime police station here in the hope of justice, you may well be disappointed.

#### **Suggestions :**

The importance of cyber law is that it deals with almost all aspects of transaction and activities concerning Internet, World Wide Web and Cyberspace in India, the fact that almost everybody these days are using computers and internet whether for personal or business purpose not completely realizing of the extent of Cyber laws. Many people, all over the sub-continent illegally download latest movies, songs, softwares etc. from free download providing sites filled with pirated contents infringing copyrights, trademarks etc, of the owners of the content, almost freely committing Cybercrimes. This causes huge losses to the original owners of the intellectual property. Only serious Cybercrimes and thefts are taken seriously by the authorities in India. But much has changed at present. Sooner or later, people have to tighten their belts and take notice of Cyber law for their own benefit.

To counter the menace of Cybercrime, Cyber laws are created by the legislative department to curb and fight it. The IT Act 2000 attempts to change outdated laws and provides ways to deal with Cybercrimes so that people can perform purchase transactions over the Net through credit cards without fear of misuse. In view of the growth in transactions and communications carried out through electronic records, the Act seeks to empower government departments to accept filing, creating and retention of official documents in the digital format, and recognizes digital signature as well. It contains provisions positive for e-commerce in India. Keeping in view, the rapid growth and development and the changing nature of Cyberspace, government introduced I.T. (Amendment) Bill 2006. Subsequently in February 2009, I.T. (Amendment) Bill 2008 was passed as well by the government for meeting changing needs. Police in India are trying to become cyber crime savvy and are hiring people who are trained in the respective field. A recent survey indicates that for every 500 cybercrime incidents that takes place, only 50 are reported to the police and out of that only one is actually registered. These figures indicate that how difficult it is to convince the police to register a cybercrime. Establishment of cybercrime cells in different parts of the country was expected to boost cybercrime reporting and prosecution. However, these cells have not lived up to the expectations. Through the I.T. Act (Amendment) 2008, almost all the cyber crimes have been made bailable and this removed all sorts of deterrence for the cyber criminals in India worldwide. This was a disastrous step taken by the Indian governments which instead of creating fear of law in the minds of these white collar cyber criminals, provided relief to such organized criminals. Indian cyber law is already a piecemeal attempt and this amendment further made it a bane for India. Concerns regarding India becoming a safe heaven for cyber criminals were incessantly

by techno legal experts of India but Indian government did not pay heed to the same. Naturally, the present situation was bound to arise and only the government is to be blamed solely.

What is needed to be done is that the Home Minister of India Mr. P. Chidambaram must seriously consider projects and initiatives that can help in developing cyber skills of police force in India. Issues like cyber law and cyber forensics have not yet been considered important enough by him so far. With ever increasing use of technology, police work in India is going to be more challenging. Hence they must be prepared.

**Conclusion :**

The awareness of cybercrime is constantly on the rise among the citizens of India directly affecting the expanding limits of cyber laws to fight and curb it. This expansion is inspiring the young and aspiring lawyers attracting them towards cyber law with a promising career. The rise in cybercrime has resulted in the growth of cyber laws creating new opportunities for lawyers to practice. In the modern age where computers and internet are found in every field and profession, the future of cyber laws appears rich in growth and development and has found an important place in the legal system and the society. In the fight between cyber crime and cyber law, the latter is still weaker than the former and lacks resources to fight back. Presently, the poison of cyber crime is stronger than its anti-dote, cyber law in the Sub-Continent.

“To act on the belief that we possess the knowledge and the power which enable us to shape the processes of society entirely to our liking, knowledge which in fact we do not possess, is likely to make us do much harm.” Friedrich August von Hayek.<sup>(6)</sup>

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The screenshot shows the UGC Approved List of Journals website. A search for 'Research Link' has been performed, resulting in one entry. The entry details are as follows:

View	Sl.No.	Journal No	Title	Publisher	ISSN	E-ISSN
<a href="#">View</a>	1	4985	Research Link	Research Link	09731628	

The screenshot shows the detailed information for the journal 'Research Link'. The details are as follows:

- Name of the Journal :** Research Link
- ISSN Number :** 09731628
- e-ISSN Number :**
- Source:** UNIV
- Subject:** Accounting;Anthropology;Business and International Management;Economics, Econometrics and Finance(all);Education,Environmental Science(all);Finance;Geography, Planning and Development;Law;Political Science a;Social Sciences(all)
- Publisher:** Research Link
- Country of Publication:** India
- Broad Subject Category:** Arts & Humanities;Multidisciplinary;Social Science

‘रिसर्च लिंक’ की सदस्यता का शुल्क भुगतान राष्ट्रीयकृत बैंकों द्वारा सीधे ट्रांसफर या जमा किया जा सकता है। बैंक का विवरण निम्नानुसार है-

**बैंक :** स्टेट बैंक ऑफ इण्डिया  
**ब्रांच :** ओल्ड पलासिया, इन्दौर,  
**कोड - SBIN 000 3432**  
**खाते का नाम :** रिसर्च लिंक,  
**खाता नंबर - 63025612815**  
 भुगतान की मूल रसीद, शोध-पत्र एवं सीडी के साथ कार्यालयीन पते पर भेजना अनिवार्य है।



# Law : An Instrument of Environmental Governance

*The air we breathe, the water we drink and the earth we stand upon are connected to all other people on all other parts of the globe. Protecting our environment is not a luxury we can choose to enjoy, but a simple matter of survival for without the earth, where can humankind live? So the need of the hour is to understand and appreciate the good efforts that went into creation and how beautiful, good and awesome the creations were at the beginning, and not undermining the Creators effort and integrity by destroying the beauty of nature.*

**KESHAV JHA**

## **I**ntrouction :

“Environment” can be defined as that space in which some kind of natural exchange that makes possible the life takes place.

The environment is not only the space because if we were speaking of space, we would be referring to a spatial location only.

On the other hand, the concept of environment expands this idea to include everything that has to do with life.

Today, “Environment” is a topic very much in vogue because of all the debate that is generated around to their care and how human activity contributes increasingly more to damage it.

It includes virtually everything.

“Environmental pollution” refers to the introduction of harmful pollutants into the environment. It has a hazardous effect on the natural world and on the activities of living beings.

The major types of environmental pollution are air pollution, water pollution, noise pollution, thermal pollution, soil pollution and light pollution.

## **Historical Perspective :**

Environmental awareness can be said to have existed even in the pre vedic Indus valley Civilization which flourished in northern India about 5,000 years ago.

This is evident from the archaeological evidence gathered from Harappa and Mohenjo-Daro which were the prominent cities of the civilization. Their awareness about hygiene and sanitation as evident from their constructions of ventilated houses, orderly streets, numerous wells, bath rooms, public baths and covered underground drains.

The idea of environmental protection and conservation of natural resources can be traced to vedic civilization where worship of nature appears to have originated and the vedic views revolve around the concept of nature and life. The ancient vedic literature encompasses a holistic attitude of the cosmic vision in a poetic way.

“Vedas” appears to impose obligations on the society and individuals to worship nature.

Atharva Veda examines the importance of forest conservation and preservation and protecting of three particular trees namely, “Parijath, banyan and pepal”. Ancient Indian seers and scholars advocated wise use of water even though India is blessed with perennial rivers and heavy rainfall. It was found in western part of Rajasthan during ancient period houses were constructed in such a way that each had a roof top rainwater harvesting system. Several Vedic hymns are prayers maintaining balance in the functioning of all aspects of nature and it is argued that some of those ideas expressed in them resemble modern principles relating to conservation of resources. For instance the twenty-fifth Rio principle talks about how “peace, development and environmental protection are interdependent and indivisible.” Ancient Indians believed that ecological balance is dependent on actions, good or bad, of individuals and society.

## **From Independence to Stockholm Conference (1947-1972):**

The Indian Constitution is amongst the few in the world that contains specific provisions on environmental protection. The directive principles of state policy and the fundamental duties chapter explicitly enunciate the national commitment to protect and improve the environment. This

was achieved only during 1976 and until then there was no specific provision under the Constitution relating to environment protection.

However, it was argued that there were sufficient provisions in the constitution empowering both Union and state Government to make laws for the protection of environment and conservation of natural resources.

On the basis of those provisions in the Constitution some of the important legislations were enacted between 1947 and 1972. They are the Factories Act, 1948; The Prevention of Food Adulteration Act, 1954; The River Boards Act; The Mines and Minerals (Regulation and Development) Act, 1956; The Ancient Monuments and Archeological Sites and Remains Act, 1958; The Atomic Energy Act, 1962 and The Insecticides Act, 1968. The Factories Act 1948 provides that the liquid effluents, gases and fumes generated during a manufacturing process should be treated before their disposal to minimize the adverse effects. During this period the focus of economic policy was on planned economic development in a mixed economy framework. The dominant policy objectives were economic growth, employment generation, balanced regional development and equity. Environmental considerations did not play major role in policy making.

#### **Post 1972 Developments :**

It is "Stockholm Conference (1972) "where in India introduced the concept of economic development and protection of environment through Mrs. Indira Gandhi's address and one can see a shift in our understanding of environmental protection.

She declared that the poverty is the greatest polluter and said: "The environmental problems of developing countries are not the side effects of industrialization but reflect the inadequacy of development. The rich countries may look upon development as the cause of environmental destruction, but to us it is one of the primary means of improving the environment for living, of providing food, water, sanitation and shelter, of making the desert green and the mountains habitable."

The year 1972 marks a watershed in the history of environmental management in India. Prior to 1972 environmental concerns such as sewage disposal, sanitation, and public health were dealt with by different federal ministries, and each perused these objectives in the absence of proper coordination system at the federal or the intergovernmental level. When the 24th UN General Assembly decided to convene a Conference on the Human Environment in 1972, and requested a report from each member country on the state of the environment, a Committee on the Human Environment under the Chairmanship of Pitambar Pant, member of the Planning Commission, was set up to prepare India's report. By May 1971 three reports had been prepared: 'Some Aspects of Environmental Degradation and its Control in India', 'Some Aspects of Problems of Human Settlement in India', and 'Some Aspects of Rational

Management of Natural Resources'. With the help of these reports, the impact of the population explosion on the natural environment and the existing state of environmental problems were examined. By early 1972 it had been realized that unless a national body was established to bring about greater coherence and coordination in environmental policies and programmes and to integrate environmental concerns in the plans for economic development, an important lacuna would remain in India's planning process. Consequently on 12 April 1972 a National Committee on Environmental Planning and Coordination (NCEPC) was established.

#### **The Forty Second Amendment :**

Environmental Protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty Second Amendment) Act of 1976. Article 48A was added to the directive principles of state policy. It declares: 'The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.' Article 51A (g) in a new chapter entitled 'Fundamental duties', imposes a similar responsibility on every citizen on every citizen 'to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures...' Although the language in the two articles differs, the difference appears to relate to form rather than to substance. Together, the provisions highlight the national consensus on the importance of environmental protection and improvement and lay the foundation for jurisprudence of environmental protection.

The amendments also introduced certain changes in the Seventh Schedule of the Constitution. 'Forest' and 'Wildlife' were transferred from the State list to the Concurrent List. This shows the concern of Indian parliamentarian to give priority to environment protection by bringing it out the national agenda. Although unenforceable by a court, the Directive Principles are increasingly being cited by judges was a complementary to the fundamental rights. In several environmental cases, the courts have guided by the language of Art. 48A. and interpret it as imposing "an obligation" on the government, including courts, to protect the environment.

In *L.K Kollwal V State of Rajasthan*, a simple writ petition by citizens of Jaipur compelled the municipal authorities to provide adequate sanitation. The court observes that when every citizen owes a constitutional duty to protect the environment (Art.51A), the citizen must be also entitled to enlist the court's aid in enforcing that duty against recalcitrant State agencies. The Court gave the administration six month to clean up the entire city, and dismissed the plea of lack of funds and staff.

The Public Trust Doctrine, evolved in *M.C. Mehta v. Kamal Nath*, states that certain common properties such as rivers, forests, seashores and the air were held by Government in Trusteeship for the free and unimpeded use of the general public. Granting lease to a motel located at the bank of the River Beas would interfere with the natural flow

of the water and that the State Government had breached the public trust doctrine. A matter regarding the vehicular pollution in Delhi city, in the context of Art 47 and 48 of the Constitution came up for consideration in M.C. Mehta vs. Union of India (Vehicular Pollution Case). It was held to be the duty of the Government to see that the air did not become contaminated due to vehicular pollution. The Apex court again confirming the right to healthy environment as a basic human right stated that the right to clean air also stemmed from Art 21 which referred to right to life. This case has served to be a major landmark because of which lead-free petrol supply was introduced in Delhi. There was a complete phasing out of old commercial vehicles more than 5 years old as directed by the courts. Delhi owes its present climatic conditions to the attempt made to maintain clean air. In the very recent case of T.N. Godavarman Thirumulpad v. Union of India, a case concerning conservation of forests, Justice Y.K. Sabharwal, held: Considering the compulsions of the States and the depletion of forest, legislative measures have shifted the responsibility from States to the Centre. Moreover any threat to the ecology can lead to violation of the right of enjoyment of healthy life guaranteed under Art 21, which is required to be protected. The Constitution enjoins upon the state a duty to protect the environment.

#### Conclusion :

The air we breathe, the water we drink and the earth we stand upon are connected to all other people on all other parts of the globe.

Protecting our environment is not a luxury we can choose to enjoy, but a simple matter of survival for without the earth, where can humankind live?

So the need of the hour is to understand and appreciate the good efforts that went into creation and how beautiful, good and awesome the creations were at the beginning, and not undermining the Creator's effort and integrity by destroying the beauty of nature.

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### शोध-पत्र भेजने संबंधी नियम

- (1) शोध-पत्र 1500-1700 शब्दों से अधिक नहीं होना चाहिए।
- (2) हिन्दी एवं मराठी माध्यम के शोधपत्रों को कृतिदेव 10 (Kruti Dev 010) में टाईप करवाकर 'पेजमेकर 6.5' में भेजें।
- (3) पंजाबी माध्यम के शोधपत्रों को अनमोल लिपि (AnmolLipi) या अमृत बोली (Amritboli) या जाँय (Joy) में टाईप करवाकर 'पेजमेकर 6.5' में भेजें।
- (4) अंग्रेजी माध्यम के शोधपत्र टाइम्स न्यू रोमन (Times New Roman), एरियल फॉन्ट (Arial) में टाईप करवाकर 'पेजमेकर 6.5' या 'माइक्रोसाफ्ट वर्ड' में भेजे जा सकते हैं।
- (4) शोधपत्र की विधि - (1) शीर्षक (2) एबस्ट्रेक्ट (3) की-वर्ड्स (5) प्रस्तावना/प्रवेश (5) उद्देश्य (6) शोध परिकल्पना (7) शोध प्रविधि एवं क्षेत्र (8) सांख्यिकीय तकनीक (9) विवेचन या विश्लेषण (10) सुझाव (11) निष्कर्ष एवं (12) संदर्भ ग्रंथ सूची।
- (6) संदर्भ ग्रंथ सूची इस प्रकार दें -

#### For Books :

- (1) Name of Writer, "Name of Book", Publication, Place of Publication, Year of Publication, Page Number/numbers.

#### For Journals :

- (2) Name of Writer, "Title of Article", Name of Journal, Volume ....., Issue ....., Page Numbers.

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- (8) शोधपत्र की साफ्टकॉपी रिसर्च लिंक के ई-मेल आईडी researchlink@yahoo.co.in पर भेजने के बाद हॉर्डकॉपी, शोधपत्र के मौलिक होने के घोषणा पत्र के साथ हस्ताक्षर कर 'रिसर्च लिंक' के कार्यालय को प्रेषित करें।

