

INDIVIDUAL HUMAN RIGHTS AND NATIONAL INTERESTS – FINDING THE BALANCE: THE CASE OF INDIA AND RUSSIA

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Summary: This paper advances the individual human rights perspective to the understanding of national security by viewing it from a comparative lens concerning India and Russia. The question that is explored is how to safeguard individual human rights and human security at the larger level from the unwarranted restrictions imposed under the garb of national security. Although in countries like India, the judiciary is supposed to hold governments to the high constitutional principles that might be violated in the name of unwarranted security threats. On the other hand, in countries like Russia, a tyrannical leader, that keeps firm hands-on power for decades, can ignore the courts and other institutions, dismiss the check-and-balances, and produce massive human rights violations. In this light, this article attempts to provide solutions to these comparative situations by securing the right of defense, redefining extraordinary powers with the state, and restricting the power of law enforcement agencies.

Keywords: India, Russia, Comparative, Human Rights and Human Security

1 Introduction

Historically, the relationship of states with their nationals and other inhabitants within their borders has been a matter where the international community has not interfered, following the principle of non-interference in a domestic jurisdiction, Article 2(7) of the UN Charter¹.

However, in the aftermath of the Second World War, the way every state treated its citizens has gradually become an issue of international concern, and

1 UNITED NATIONS. 1945. Charter of the United Nations, 1 UNTS XVI.

the international human rights regime developed through the adoption of the 1945 UN Charter and the 1948 Universal Declaration of Human Rights². This was followed by the adoption of the 1966 International Covenant on Economic, Social, and Cultural Rights³ and the International Covenant on Civil and Political Rights⁴. For achieving the protection of individual human rights, the UDHR under Articles 1 and 2 affirm that ‘all persons are born free and equal in dignity and rights’ and are entitled to the enjoyment of human rights ‘without distinction of any kind’.

In democracies, like India, courts hold constitutional review powers, and the judiciary is supposed to hold governments to the high constitutional principles that might be violated in the name of unwarranted security threats leading to coercion and secrecy by the governments through what is termed as ‘security laws’⁵. These laws significantly enhance the state’s ordinary powers to investigate, detain, prosecute, punish, and use force against individuals and to search and seize property that violates the fundamental rights guaranteed to individuals under the Constitution⁶. In non-democracies, like Russia, a tyrannical leader, keeping firm hands-on power for decades, can ignore the courts and other institutions, dismiss the check-and-balances, and produce massive human rights violations, attempting to ‘justify’ these with the interests of state security as seen in the ongoing Russia Ukraine crisis.

2 Human rights and human security

As a matter of practice, the state should not interfere with the liberty of individuals and fundamental human rights and freedoms and serve to protect that liberty guaranteed through individual human rights that imply a negative obligation on the part of the state. Every human right presupposes such a negative obligation, and the respect and promotion of human rights must offer security against the power of the state⁷. Given that the power of the state, including coercion and violence, is legitimate and unlimited, it is important to control that power. Human rights make a fundamental contribution to human security, but they certainly do not cover it fully⁸. Human rights imply a legal-normative approach and relate to the judicial relationship between the individual and the state, while human

2 UN General Assembly, 1948. Universal Declaration of Human Rights ,217 A (III).

3 UN General Assembly, 1966 International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series.

4 UN General Assembly, 1966. International Covenant on Civil and Political Rights, United Nations Treaty Series.

5 SCHEPPLE, Kim Lane. The International Standardization of National Security Law. *J NAT’J Sec.L.&POL’*, 2010, vol. 4, pp. 437.

6 ZAMIR, Itzhak. Human Rights and National Security. *Israel Law Review*, 1989, vol. 23 no. (2–3), pp. 375–406.

7 RHODA, E. Howard-Hassmann. Human Security: Understanding Human Rights. *Hum. Rts. Q.*, 2012, vol. 34, pp. 88.

8 SEN Amartya, Human Rights and the Limits of Law. *CARDOZO L. REV.*, 2006, vol. 27, pp. 2913.

security is a much more open concept, it encompasses policy, planning, and strategy, and relates to all kinds of issues that human rights law has only limited capacity to resolve⁹. Human security law also entails positive obligations and is much broader. The only point of similarity between human rights and human security is the central tenet that the individual is regarded as the principal referent for security¹⁰. However, human security rejects the traditional prioritization of state security and instead offers a way of broadening perspectives and recognizing that the most pressing threats to individuals do not come from interstate war, but from the emergencies that affect people every day. Both human security and human rights deal with individual human beings, whereas human rights are seen as primarily constitutional obligations on the part of the state to individuals, human security is a concept where all including non-state actors and individual human beings have a significant role to play¹¹. In this light, the authors analyse how this relationship between human rights and human security is missing in countries like India and Russia and what needs to be done to ensure the rule of law.

2.1 Negative security

In simple terms, human rights entail negative security in a narrow and explicit sense, Article 9 of the ICCPR says that everyone ‘has the right to liberty and security’. The jurisprudence of the Human Rights Commission suggests that the right to negative security under Article 9 of the ICCPR implies that the authorities should refrain from actions that might lead others to endanger the physical security of individuals¹². To illustrate, in the case of *Jayawardene v Sri Lanka*¹³, the right to security was violated because allegations made by the president against the applicant led to death threats by others and put the applicant’s life at risk. The negative security against the power of the state is of fundamental importance. For example, the criminal procedure must meet the standards of freedom from torture and ill-treatment (limits to interrogation), the right to liberty (limits to arrest and detention), the right to respect for privacy (limits to the use of police and investigative powers) and the right to a fair trial (limits to investigation, prosecution, and trial)¹⁴.

9 MCDONALD, Matthew. Human Security and the Construction of Security. *Global Society*, 2002, vol. 16, no. 3, pp. 277–295.

10 EFSTATHIOS T., Fakiolas. Human and national security: a relation of contradiction or commonality? *Southeast European and Black Sea Studies*, 2011, vol. 11, no. 4, pp. 369–384.

11 DUNNE, Tim; NICHOLAS, Wheeler. We the Peoples: Contending Discourses of Security in Human Rights Theory and Practice. *International Relations*, 2004, vol. 18, no. 1, pp. 9–23.

12 MACKEN Claire. Preventive detention and the right of personal liberty and security under the International Covenant on Civil and Political Rights. *The Adelaide Law Review*, 2005, vol. 26, no. 1, pp. 1–28.

13 *Jayalath Jayawardena v. Sri Lanka*, CCPR/C/75/D/916/2000, UN Human Rights Committee (HRC), 26 July 2002.

14 O'BRIEN, John Lord. National Security, and Individual Freedom. In: *the series The Godkin Lectures on the Essentials of Free Government and the Duties of the Citizen*, 2016.

This signifies the importance of human rights even for those who only adopt a national security perspective. The recognition of negative human rights protection against the state as an aspect of security shifts the balance to a more neutral position: the state is not primarily recognised as an impartial guardian of individuals' security, but as a subjective part of the problem. This shows that the state can be a national security problem in itself¹⁵. The drawback to this approach is that it may be abused to neutralise the importance of human rights constraints if everything is national security then security always triumphs whatever the state does or does not do. While recognising that human rights protection contributes to national security, this does not mean to suggest that trading one form of security for another is a zero-sum game because negative human rights security would be only as important as any other security goal. Such an approach would ignore that both human rights and security are not goals in themselves but only a means to protect the liberty of the individual¹⁶. If human rights obligations as such never infringe on liberty, other forms of national security usually do, the consequence of which is caution when applying them when securing negative human rights. When it is recognised that liberty is the ultimate goal of security, the question arises as to the maximisation and distribution of liberty. It is important to acknowledge that in large measure the security of the individual depends on the security of others, as a result of which effective security must be secured for all.

The maximisation of national security at a given moment by offering it to most and withholding it from some might eventually undermine security for everyone and lead, ironically, to security threats as will be discussed in the context of India and Russia. The human rights and national security dilemma here is limited to negative security and, seen directly, concerns only the relationship between individuals and the state, it is clear that this concept is unfit to serve as a total security model within a state. Negative human rights security is nevertheless an essential condition for achieving an enduring maximisation of security¹⁷. It sets the boundaries within which maximisation of security for all must be applied and prevents security from being economically maximised by an unfair, unequal, or immoral distribution of costs. Negative human rights thus restrain the possibility of shifting the burdens of security to specific individuals or groups within the whole population, it offers an important safeguard against undermining security for all and thus also against obstructing the maximisation of security. Nonetheless, negative human rights security against the state indirectly, therefore, also results in negative security against all others. An additional advantage of forcing authorities to provide a balanced and faithful account of the national security problem they claim to face is that this might also result in less politicised

15 FJÄDER, Christian. The nation-state, national security and resilience in the age of globalisation. *Resilience*, 2014, vol. 2, no. 2, pp. 114–129.

16 MOSS, Kate. *Balancing Liberty and Security: Human Rights, Human Wrongs*. Palgrave Macmillan, 2011.

17 KEMPEN, Piet Hein van. Four Concepts of Security—A Human Rights Perspective. *Human Rights Law Review*, 2013, vol. 13, no. 1, pp. 1–23.

information¹⁸, for example, ‘the war on terror’ and ‘risk society’ within national security discourse. This is necessary precisely because the authorities have a tremendous informational advantage on the real scope and nature of security threats over all others and has been misused and will be explained by the authors in a comparative perspective in this article¹⁹.

3 India: individual rights and national security laws

Writing specifically, the Indian values regarding individual human rights trace their origin from Rigveda, which is regarded as the oldest document of all the world scriptures and declares that ‘all human beings are equal and brothers’. Similarly, the Atharvaveda acknowledges that all human beings have ‘equal rights over water and food’²⁰. Such values have even been referred to in the modern-day judgments by the Supreme Court of India, in one such case of *Maneka Gandhi v. Union of India*, this aspect was quoted as follows: “*These fundamental rights represent the basic values cherished by the people of this country since the Vedic times, and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent*”²¹

In practice, this may not always be the case, as at the time of independence in 1947 there existed several internal and external issues like partition within the South Asian sub-continent that left it with persistent conflict with Pakistan and division along religious lines within the country itself²². Since then, there have been several instances where the security of the country has come under threat whether in the form of separatist movements both peaceful and violent spread across different regions²³. At the same time, India has also faced terrorist violence by both foreign and domestic nonstate actors that have targeted public places, sites of worship, political leaders, and even the Indian Parliament in 2001. Thus, to ensure the security, sovereignty, and integrity of the country, the Indian government from time to time has exercised its security powers both at the national as well as provincial level, some of which reflect the colonial character in its form and structure²⁴.

18 LOPACH, James J.; LUCKOWSKI, Jean A. National Security and Civil Liberty: Striking the Balance. *The Social Studies*, 2006, vol. 97, no. 6, pp. 245–248.

19 SORENSEN, Georg. Individual Security and National Security: The State Remains the Principal Problem. *Security Dialogue*, 1996, vol. 27, no. 4, pp. 371–386.

20 KUMAR, Shailendra and CHOUDHURY, Sanghamitra. Ancient Vedic Literature and Human Rights: Resonances and Dissonances. *Cogent Social Sciences*, 2021, vol. 7, no. 1.

21 *Maneka Gandhi vs Union Of India* 1978 AIR 597.

22 CHHABRA, Meenakshi. A human rights and history education model for teaching about historical events of mass violence: The 1947 British India Partition. *Prospects*, 2017, vol. 47, pp. 149–162.

23 BEER, Caroline; MITCHELL, Neil J. Comparing Nations and States: Human Rights and Democracy in India. *Comparative Political Studies*. 2006, vol. 39, no. 8, pp. 996–1018.

24 KUMAR, C. Raj. Human Rights Implications of National Security Laws in India: Combating Terrorism While Preserving Civil liberties. *DENV. J. INT'L L. & POLY.*, 2005, vol. 33, pp 195.

It was in 1979 that India acceded to the ICCPR and ICESCR²⁵. However, it took more than a decade for it to come up with a municipal law dealing with Human Rights i.e., the Protection of Human Rights Act, 1993 that formed the basis of the constitution of National and State Human Rights Commissions for better protection of human rights and matters connected therewith or incidental thereto. The term human rights has been defined under Section 2(d) of the Protection of Human Rights Act, 1993 as the 'rights relating to life, liberty, equality, and human dignity' of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India under Part III of the Constitution of India, which guarantee the fundamental rights. Similarly, under Article 38 of the Constitution, which forms part of the Directive Principles under Part IV of the Constitution, the state must secure a social order for the promotion of the welfare of the people. Though these Directive Principles are not enforceable but form an integral part of the functioning of the state. Thus, the protection and enforcement of human rights in India concerning Civil and Political rights have been adopted in the form of fundamental rights (Part III) and Economic, Social, and Cultural rights in the form of directive principles (Part IV) in the Constitution of India²⁶.

In contrast, to the above-enshrined rights and principles, there exist security laws that operate alongside India's ordinary substantive and procedural criminal codes. Such laws are justified by the argument that ordinary criminal law cannot address certain national security threats, and such threats demand a separate mechanism²⁷. It cannot be overemphasised that such laws tend to divide the population among racial and ethnic lines especially those who inhabit the disturbed areas of the country and mistakenly perceive the peaceful majority as being part of the minority percentage of those who violate the rule of law. In this context, there exist certain legislations that will be reflected upon in the context of national security such as the Unlawful Activities (Prevention) Act (hereinafter UAPA)²⁸, the Jammu and Kashmir Public Safety Act of 1978,²⁹ and the National Security Act³⁰. These legislations aim to preserve, inter alia, national security, public order, public peace, and religious harmony to establish the rule of law. To illustrate, the National Security Act, for example, allows the central and state governments to detain an individual where it is considered necessary to prevent that person from acting in any manner prejudicial to the security of the State

25 VIJAPUR, Abdulrahim P.; SAVITRI, K. The International Covenants on Human Rights: An Overview. *India Quarterly*, 2006, vol. 62, no. 2, pp. 1–37.

26 AIKMAN, CC. Fundamental Rights and Directive Principles of State Policy in India. *VICTORIA U. WELLINGTON L. REV.*, 1987, vol. 17, pp. 373.

27 KALHAN, Anil; CONROY, Gerald P.; MAMTA, Kaushal; MILLER, Sam Scott; RAKOFF, Jed S. Colonial Continuities: Human Rights, Terrorism, and Security Laws in India. *COLUM. J. Asian L.*, 2006, vol. 20, pp.93.

28 THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967.

29 THE JAMMU AND KASHMIR PUBLIC SAFETY ACT, 1978.

30 THE NATIONAL SECURITY ACT, 1980.

or from acting in any manner prejudicial to the maintenance of public order³¹. Interestingly, the terms like State security and public order, nor which actions may be prejudicial to either have been defined under the Act. Importantly, the scope of offenses under anti-terrorism laws is very broad³². Under the UAPA, the offense of committing a terrorist act includes within its ambit of terrorist acts a plethora of possible scenarios like using force against a public official, using force against any individual to pressurise the government, using violent means to kill, damage to property, or to disrupt any supplies or services essential to the life of the community in India or in any foreign country. Such wide powers of search, seizure, and arrest allow any officer of a Designated Authority under section 43 A of the UAPA to search any person or property and seize any property or arrest any person³³.

Another example of a wide ambit of powers is the Jammu and Kashmir Public Safety Act of 1978 which allows the government of the now Union territories of Jammu and Kashmir to designate areas where the police have enhanced powers to stop, search, use force, and preventively detain individuals³⁴. Such individuals in preventive detention are not accorded the due process rights that the Indian Constitution recognizes for individuals arrested and tried under ordinary laws. On the contrary, these detained individuals possess a limited, modified set of procedural rights such as being told the grounds of detention as soon as possible and being given the earliest opportunity to make a representation, i.e., to submit reasons as to why he/she should not be detained. However, there is no set of concrete deadlines within which a detainee must be told the grounds on which he is being detained or be allowed to challenge his detention.

3.1 Individual and supreme court: case law jurisprudence on violation of individual rights

At this point, there is a need to investigate the role of the judiciary through the various cases brought before it under the Court's constitutional power and duty to hear citizens' petitions seeking to enforce fundamental rights under Articles 226 and 32 of the Constitution. To petition the courts, the applicant must demonstrate a prima facie violation of a constitutional right³⁵. Starting with the case of *Kartar Singh v State of Punjab*³⁶ that was decided in 1994, where the

31 RAWAT, Shreya. National Security Laws in India against Freedom of Speech and Expression. *Supremo Amicus*, 2022, vol. 30, pp. 341.

32 SUBRAMANIAM, Arjun. Challenges of Protecting India From Terrorism". *Terrorism and Political Violence*, 2012, vol. 24, no. 3, pp. 396–414.

33 MATE, Manoj; NASEEMULLAH, Adnan. State Security and Elite Capture: The Implementation of Antiterrorist Legislation in India. *Journal of Human Rights*, 2010, vol. 9, no. 3, pp. 262–278.

34 BHAT, Sabzar Ahmad. The Kashmir conflict and human rights. *Race & Class*, 2019, vol. 61, no.1, pp. 77–86.

35 PEIRIS, G.L. Public Interest Litigation in the Indian Subcontinent: Current Dimensions. *International and Comparative Quarterly*, 1991, vol. 40, no. 1, pp. 66–90.

36 *Kartar Singh vs State Of Punjab* 1994 SCC (3) 569.

court addressed the constitutionality of the Terrorist and Disruptive Activities (Prevention) Act (hereinafter the TADA Act) that has now been repealed. The petitioners in the Kartar Singh case challenged multiple provisions under TADA and based their arguments on being denied the rights to life, due process, and freedom of expression. The provision that was challenged was upheld by the Supreme Court except for one provision that was struck down completely, it related to the power to identify suspects based on photographs as it gave a high possibility of abuse by the authorities. It needs to be understood that the TADA Act criminalised committing or supporting terrorist acts of varying degrees of seriousness³⁷. Such acts were wide and ambiguous in scope and resulted in granting wide discretion to the police and prosecution and even the procedural standards that were laid down curtailed the rights of the accused as compared to the Criminal Procedure Code in India which is now called Bharatiya Nagarik Suraksha Sanhita (BNSS). The Act even granted the power to create special courts to try terrorist offenses, which, could hold proceedings at any place that was expedient or desirable, without public interference. The judges acting over such cases were allowed to presume guilt based on certain types of circumstantial evidence, that laid down a low threshold and shifted the burden of proof onto the accused relating to serious offenses that carry severe punishment. For example, evidence of the accused person's fingerprints found on anything connected to a terrorist offense, or evidence of the accused person having arms or explosives that might have been used in a terrorist offense was sufficient to presume the accused guilty.

In 1998, the case of *Naga People's Movement of Human Rights v Union of India*³⁸ where the constitutionality of military policing in regions designated as disturbed under the Armed Forces (Special Powers) Act (hereinafter AFSPA) was considered. Under section 3 AFSPA, if the deciding authority is of the opinion that the area in question is in such a disturbed or dangerous condition that the use of armed forces in aid of civil power is necessary then military policing is implemented in such an area³⁹. These expansive powers under AFSPA are accompanied by generous protection from legal action. The AFSPA bars criminal as well as civil proceedings against the armed forces in a disturbed area unless expressly permitted by the national government. The armed forces under AFSPA have powers to search and seize people and property and to use force against individuals. In this case, the court held that such deployment of armed forces can be permitted for a temporary period and until a situation of normalcy was restored. The court opined that while declaring a region as a disturbed area, the opinion of the state government must be taken and there must a periodic review of the situation. Further, any complaint containing an allegation about misuse or

37 SINGH, Ujjal Kumar. *The State, Terror and Anti-Terror Laws in India*. SAGE, 2007.

38 *Naga People's Movement, Of Human vs Union Of India* AIR 1998 SC 431.

39 BHATTACHARYYA, Rituparna. Living with Armed Forces Special Powers Act (AFSPA) as everyday life. *GeoJournal*, 2018, vol. 83, pp. 31–48.

abuse of the powers conferred under the AFSPA shall be inquired into and, if it is found that the allegations hold, the victim/s of such abuse should be compensated and the necessary action must be taken by prosecuting the individuals guilty under Section 6 of the AFSPA.

Going further, another case on similar lines was *People's Union of Civil Liberties v Union of India*⁴⁰, which was brought before the Supreme Court in 2004, wherein the constitutionality of the Prevention of Terrorism Act (hereinafter POTA) was challenged. Under the PUCL case, the Supreme Court added that a mens rea requirement is added to the offense of abetting terrorism, which otherwise was ambiguous and carried strict liability. The Court also went on to rule that the offense of unauthorised possession of arms required knowledge of possession. However, despite these positive steps, the judgment did not highlight the violations of rules ensuring a fair trial for the accused under the POTA. For example, 180-day pre-charge detention for terrorism offenses was upheld, and so was the requirement that bail was subject to a prima-facie assessment of innocence⁴¹. Generally, a suspect can be held in pre-charge detention for a maximum of 24 hours before being produced before a judge, and granting of the bail depends upon various factors like the seriousness of the offense and quality of evidence, as well as the risk of whether the accused might abscond, threaten public safety, intimidate witnesses, or obstruct justice. The Supreme Court also upheld the government's broad powers to ban organisations, as well as provisions overturning a longstanding ban on using custodial confessions as evidence during the trial.

3.2 Change in stand: case law jurisprudence on safeguarding individual rights

In the above section, some of the cases where the violation of individual rights in the name of national interest was subjugated were referred. With time, there has been a change in the outlook of the Supreme Court, this change is reflected through various cases where the security policies pursued by central and state governments were reviewed comprehensively giving due weightage to individual rights. The first of these cases is *Nandini Sundar versus State of Chhattisgarh*⁴² which involved grave, indiscriminate violence by police in response to the radical-left insurgency in the state of Chhattisgarh. The second case is the *Extra Judicial Execution Victim Families Association versus Union of India*⁴³, in which extrajudicial killings by the armed forces and police took place in the north-eastern state of Manipur. Coincidentally, both these cases were brought forth through Public interest litigation where an alleged grave, systematic, and

40 People's Union Of Civil Liberties ... vs Union Of India (Uoi) And Anr. AIR 1997 SC 568.

41 KRISHNAN, Jayanth K. India's Patriot Act: POTA and the Impact on Civil Liberties in the World's Largest Democracy. *Law & Ineq.*, 2004, vol. 22, pp. 265.

42 Nandini Sundar & Ors vs State Of Chhattisgarh, WRIT PETITION (CIVIL) NO. 250 OF 2007.

43 Extra Judicial Execution Victim .vs Union of India And Ors. WRIT PETITION (C) NO. 445 OF 2012.

widespread failure of government was put on trial on the initiation of citizens as a group instead of the victims themselves.

Starting with the first case of Nandini Sundar, in the state of Chandigarh, the Maoist groups have been waging a guerrilla also called people's war, under which they have been attacking government personnel and property and extorting levies from individuals as well as corporations. In response, the police and paramilitary troops resorted to beatings, torture, and extrajudicial killing in Dantewada, Bastar, and Bijapur districts. The Chhattisgarh government also supported the grassroots resistance against the Maoists, called Salwa Judum⁴⁴. In addition, they also recruited people into an auxiliary police cadre called the special police officers (SPOs) to fight the Maoists. The SPOs were formed to strengthen counter-insurgency efforts through their knowledge of local communities and heavily-forested local terrain. In the context of these facts, the Supreme Court held that the SPO program violated the constitutional provisions and was struck down. The reason given was that maintaining an auxiliary police force of such kind violated the fundamental rights to life and equality under Articles 21 and 14 of the Constitution of the people recruited in such forces. Although, the Court allowed the individuals deployed as SPOs to assist the police to provide disaster relief and traffic management.

The next case in this line of thought is the Extrajudicial Execution Victims' Families Association (EEVFAM) where two civil society groups petitioned the Supreme Court about extrajudicial killing in Manipur. These civil society groups were support groups for relatives of people killed by the armed forces and police. The petition sought to challenge the impunity surrounding such killings. Under the petition, laid before a list of 1,528 people were included who were alleged to have been tortured and killed unlawfully by security forces in Manipur. The armed forces were Deployed under the Armed Forces (Special Powers) Act as described in the last section. It was contended by the petitioners that the police had not recorded or investigated these killings and termed the victims of such deaths as militants. In this light, the petitioners prayed before the Court to appoint a special investigation team outside Manipur to examine these extra-judicial killings. In defense, the government argued that the violent occurrence was supported by foreign elements and could only be tackled by deploying the armed forces in addition to the police. The reason given by them was that separatist violence tantamount to war, and the victims were threatening the security of India. All these counterarguments were dismissed by the Supreme Court that recognised that a person could break the law in an AFSPA-regulated disturbed area say for example by carrying arms without being labeled as a militant that would require participation in insurgency or an enemy that would require some attempt or semblance of overt violence. Furthermore, it imposed a six-month limit on the government's power to declare an area disturbed and implement AFSPA's

44 MIKLIAN, Jason. The purification hunt: the Salwa Judum counterinsurgency in Chhattisgarh. *India Dialect Anthropol*, 2009, vol. 33, pp. 441.

in the state, which in any case could not transgress the constitutional right to be produced before a court within 24 hours of arrest under Article 22 of the Constitution.

What needs to be analysed is the fact that whether compensation has been granted in any of the cases where the violation of individual rights like the right to life has been granted by the state. From an international perspective, the responsibility to provide the right to compensation has been recognised under Article 9(5) of the 1966 International Covenant on Civil and Political Rights to which India is a party. Under Article 9(5), anyone who has been a victim of unlawful arrest or detention shall have an enforceable right to compensation. However, the Government of India at the time of its ratification (of ICCPR) in 1979 had made a specific reservation to the effect that in the Indian legal system, there is no provision relating to the right to compensation for victims of unlawful arrests or detentions. With time, this reservation lost its relevance as the Supreme Court has in several cases awarded compensation through constitutional measures. One such case is *Hussainara Khatoon v. Home Secretary, State of Bihar*⁴⁵, it was held that the offenses with which some of the individuals are charged are trivial, which, even if proven, would not warrant punishment for more than a few months, perhaps for a year or two. Further, it was held that such individuals must be granted bail pending their trial to restore their liberty and freedom.

4 Individual human rights and state security in Russian Federation

In 1996 the Russian Federation joined the Council of Europe, and on 30 March 1998, it ratified the ECHR, recognizing the jurisdiction of the ECtHR as binding in matters of interpretation and application in case of breach of the ECHR provisions that have now been done away with as it has been expelled from both these bodies. In 2002, Duma, the Russian Parliament, adopted a new Criminal Procedure Code, bringing domestic criminal law, due process, rights of the accused, the presumption of innocence, and other norms and laws into compliance with the ECHR. However, this implementation was marred with difficulties in implementation and the Russian Federation has continued over the last 22 years to be continuously found in numerous violations of individual human rights by the ECtHR.

The respect for human rights in Russia is closely connected with the character of the Russian national security system. The official state policy impedes the protection of human rights and bans independent civil society organizations, perceiving them as threats to state security. On the opposite, the state accepts and even stimulates the development of state-sponsored civil society organizations as partners in maintaining national security, which is understood as the security of the state and society, and less security for individual human beings.

45 *Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar*, 1979 AIR 1369

If in democracies individual human security comes first and based on that national security is built, in non-democracies, national security is first and the individuals need to accept and feel safe within it. Dominant approaches toward national security impede the development of human rights in Russia. The very existence of social structures and organisations that were not under the control of the totalitarian state and the ruling party contradict their interests and are perceived as potential threats to security. The state has a monopoly in the sphere of security, not only politically, but also theoretically. The concept of national security is narrow; the main object is the security of the state, which in practice is the security of the ruling party.

Not surprisingly, in the first years of democratic reforms following the breakup of the USSR, public opinion viewed national security highly negatively. It was perceived as something that should be eliminated if society had to become democratic. That conviction emerged vividly during Gorbachev's perestroika when the organs of national security came under criticism and were discredited. A search for new approaches and strategies started under democratisation and political pluralism, and a rethinking of the very nature of national security occurred not only in the state agencies but also outside them. Several independent research centers emerged specialising in security, formed, and staffed by experts in military affairs, criminology, law enforcement agencies, and former military officers. They began to research and elaborate national security strategies independently of the state. These activities led to a breakup of the state monopoly on research and analysis in the realm of security, which resulted in a diversity of views and approaches to the problem and a public debate on national security policy in which political parties and movements played a considerable role. During the debate, at least three different approaches emerged: the liberal-romantic, the statist-patriotic, and the realistic-pragmatic. They differ in how they conceive of Russia's national interests and how they assess threats to Russia's security. The representatives of the three approaches also have different views on the role of the state and society in national security, as well as on the relationship between national security and human rights. The ultraliberals are inclined to give priority to the security of individuals and society. For the statist-patriots, the security of the state is paramount. The pragmatists try to reach and maintain a balance among the interests of the individual, state, and society and to ensure an equilibrium between human rights and national security⁴⁶.

4.1 The official security concept on democratisation and civil society

The first official documents on Russian post-cold war national security were published in the mid-1990s. A military doctrine that focused on military aspects of national security was approved by President Yeltsin in November 1993 and

46 KROPATCHEVA, Elena. *Power And National Security, Routledge Handbook of Russian Foreign Policy*, 2018.

the official approach to national security was presented in three documents: the July 1996 Presidential Message to the Federal Assembly of the Russian Federation entitled “On National Security”; the National Security Concept of the Russian Federation, which was approved by President Yeltsin in December 1997; and the new version of the National Security Concept signed by then acting President Putin in January 2000⁴⁷. These documents marked an important stage in the development of the theory and policy of national security in Russia, they express the official security strategy; assess it from the standpoint of conditions for the development of democracy, civil society, and human rights; and treat the individual, society, and state as equal parts of a national security triad.

In the Presidential Message, national security policy is treated as an active and constructive process that is not restricted or reduced to defense. Rather, national security is linked to sustainable democratic development. It stresses that ensuring security must be aimed not only at preventing threats but also at implementing a set of measures directed at developing and strengthening the rights and liberties of the individual and society’s material and spiritual values. The appendix to the draft of the Presidential Message pointed out that the main condition for development is the creation in Russia of an open society; this requires a combination of civil society, the rule of law, and a market economy. The interests of the individual and society are also considered in the security policy’s final goal i.e. “The main objective of ensuring the Russian Federation is the creation and maintenance of such an economic, political and military-strategic state in the country as would create favorable conditions for the development of the individual, state, and society”. In addition, ensuring the security and development of citizens and society were declared the main task of the national security policy for 1996—2000, along with the strengthening of the Russian state, its current geopolitical boundaries, and territories, and guaranteeing Russia a worthy role and place in world politics.

As for the interrelationships between the individual, state, and society, the Presidential Message stated that maintaining the country’s national security is impossible without the active participation of public organisations and citizens in this process, which requires creating special mechanisms of democratic participation. The official National Security Concept of the Russian Federation also welcomes the participation of the political parties in the formulation of national security strategy, declaring that the wide participation of political parties and social organisations in the elaboration of a strategy for ensuring national security is one of the factors that are conducive to maintaining the national security of the Russian Federation and its progressive development in the 21st century.

The collaboration of the state, society, and citizens in the sphere of national security points out that the maintenance of the national security of the Russian Federation by means of the joint activities of the state and its social institutions as well as of citizens taking part in revealing and preventing different threats

47 KUBYSHKIN, Aleksandr; SERGUNIN, Alexander. The Problem of the ‘Special Path’ in Russian Foreign Policy. *Russian Politics & Law*, 2012, vol. 50, no. 6, pp. 7–18.

to the security of the individual, state, and society and countering them is an essential and indispensable condition of the efficient defense of Russia's national interests. Among the areas where the security interests of the individual, state, and society coincide, the concept mentions fighting crime and maintaining social order and environmental security, and openly calls for society's support of the former. According to the concept, under certain conditions, the development of civil society may create threats to state security. This may occur when the activities of social organizations acquire the qualities of ethno-egoism, ethnocentrism, and chauvinism, which lead to the aggravation of separatism, and the breakup of the singular legislative space.

The elaboration of the conceptual basis of the Russian Federation's national security took place in an atmosphere of democratic euphoria that was present from the end of the 1980s to the beginning of the 1990s, when the previous security policies were reassessed and violations of liberties and rights under the Soviet regime were condemned. As a result, society's attention to human rights issues grew dramatically; all of which affected the security thinking of the new Russian elites as well as the process of elaborating the new security doctrine. National Security and Human Rights have become one of the main issues of the new security concept as was revealed in the conceptual understanding of national security, as well as in new legislation dealing with relationships in the sphere of security.

During academic and political debates on the security issues of the Russian Federation, a new, broader, and more complex understanding of security was adopted. The National Security Concept states that the Russian Federation's system of national interests is determined by the totality of the basic interests of the individual, society, and state. At the same time, the concept departs from the idea that in the current stage, the interests of the individual consist of the actual guarantees of constitutional rights and liberties, personal security, and spiritual and intellectual development. Likewise, the interests of society include strengthening democracy. Thus, human rights and liberties are treated as two of the most important objects of national security policy. The issue of guaranteeing human rights and civil liberties in implementing national security policy is tackled by the National Security Concept in a narrow and more specific sense. It stated that while ensuring national security, citizens' rights and liberties should be unconditionally guaranteed. This principle of obedience to the rule of law is the primary means by which respect and observation of human rights can be ensured.

However, after the aggression against Ukraine in February 2022, the Russian Federation was excluded from the Council of Europe and accordingly, the ECtHR can no longer exercise its jurisdiction regarding cases of violations of the human rights of individuals. It is difficult to foresee, at the time of writing, what turn may happen in Moscow and to assess whether human rights can be protected and respected in the Russian Federation.

5 Conclusion

Going forward, based on the analysis carried out by the authors on the existing state of affairs regarding the issue of individual rights and national security in India and Russia, there is a need to argue for pressing reforms involving the right of defense by international legal standards, the redefining of extraordinary powers with the state to designate any area or situation as disturbed alongside the powers to prosecute the concerned individuals and restricting the power with the law enforcement agencies like the police. What this implies is that the laws should be amended so that offenses such as committing a terrorist act or disturbing public order are well defined and police and prosecutorial power are correspondingly more confined. To achieve the aim, the status of the disturbed areas should be required by law to report to each session of the state legislature, at the same time active involvement of the citizens along with the state is required as has been envisaged in the respective constitutions of the two countries but have not been implemented in matters concerning national security.

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