

## **BACKGROUND**

Terrorism was first addressed at international level in 1937, when the League of Nations prepared the Convention for the punishment of terrorism. Since then the international community has engaged in resolute and swift action in taking measures to contain terrorism. The United Nations family has itself suffered tragic loss as a result of violent terrorist acts. The attack on its offices in Baghdad on 19 Aug 2003 claimed the lives of the Special Representative of the Secretary General and 21 other persons and injured over 150 others. During the last decade or so, terrorism has emerged as one of the biggest challenges globally posing a serious threat to mankind and also for global peace. Genesis of all types of terrorism is erratic, irresponsible and fanatic behaviour of humans. It needs to strictly enforce the existing anti-terrorism laws to prevent the situations in which terrorism breeds. By now the States across the world is realising that terrorism is a serious threat to be dealt with. Terrorist attack on the World Trade Centre in USA on 11 Sep 2001 killing about 6000 innocent people shook the World community.

Republic of Indus has also been affected by this menace since many years and thousands of innocent lives of civilians and defence personnel have been lost as terrorism has challenged humanity and is trying to weaken and destroy the social fabric. It also poses a challenge to the security forces as on one hand, they need to strongly deal with the terrorism and on the other hand, they have to also ensure upholding of Human Rights under all circumstances. The situation in the State of Pammu and Pashmir of Republic of Indus is grave in the sense that terrorism is being sponsored by the neighbouring country, that is, Panjiksistan. The security forces of the Republican of Indus is rendering Yeomen's service in combating terrorism but these forces also are facing immense difficulties in fighting the terrorism. The anti terrorism operations are foiled by the locals who resort to stone pelting on the security forces when these forces are engaged in combating terrorism. The terrorists don army fatigues and enter the security forces establishments and kill the security forces personnel as initiative to fire first is always with the terrorists.

The situation becomes sombre as the terrorists do not obey or follow any rules relating to civilised behaviour, whereas, the security forces are obliged to follow the rule of law and protect the Human Rights of innocent persons while carrying out anti-terrorism operations. This is so because promotion and protection of Human Rights while countering terrorism is an obligation of the State and an integral part of the fight against terrorism.

The Republic of Indus, being a diverse country with its varied ethnicities, culture and religions, the protection of Human Rights is the sine qua non for peaceful co-existence. The conception of Human Rights is of central importance in the development of modern democracy under the rule of law. Terrorism and violence free society could be a reality only when Human Rights, rich in its content, are ensured justly and fairly this, indeed, is inevitable for social integration in an inclusive democracy so that the full potential of all individuals benefits the Nation.

### **MOOT PROPOSITION.**

**Indus**, officially known as the **Republic of Indus**, is located in South Central Asia, and is located in both the eastern and northern hemispheres. It shares land borders with Panjkistan to the West, Chino, Nelap, Bhatunand to the Northeast; and Surma and Angladesh to the East It is bounded by the Indus Ocean on the South, the Arabic Sea on the Southwest, and the Bay of Bengal on the Southeast. Statutory Rules and Regulations of Republic of Indus are Pari Materia to that of Indian Republic. All International Treaties and Covenants of Indus Republic are same and similar to that of Indian Republic.

Panjiksistan got separated from Indus in 1947 and since then relations between these two countries have been strained. In 1948, Panjiksistan attacked Indus and occupied some part of the State of Pannu and Pashmir, which was integral part of India. In 1965 and 1971, Panjiksistan attacked Indus and faced humiliating defeat. In 1999, again Panjiksistan, resorted to another misadventure and got its troops sneaked into Indus territories. Indus carried out military operation and threw them out of Indus territories. After tasting continuous defeat in conventional war, Panjiksistan realised that it could not succeed in conventional war with Indus. It, therefore, started low intensity conflict with Indus and established launch pads to strike terror attacks in Indus. It started harbouring and training terrorists in occupied territory of State of Pannu and Pashmir . Terrorists have been killing innocent persons and destroying Government properties. The terrorists enter Indus and carry out terrorist attacks in Indus and return to Panjiksistan in case they survive.

On 23 Nov 2015, twelve Lashkar –E- Khaiba terrorists, trained by Panjiksistan military and spy agency ISO (Inter –Services Operations) left Panjiksistan for Trombay via sea, which is a financial capital of Indus. These terrorist entered three days later i.e. on 26 Nov 2015, by hijacking a boat owned by fisherman and killing them enroute. These terrorists targeted high

profile places including railway station terminals, premier hotels and hospitals killing innocent persons. In this attack, more than 180 people including 20 police officers and 4 commandos were killed. Around 410 others were severely injured. In the counter attack five out of seven terrorist were killed, and two terrorist were successful in escaping to Panjiksistan from the sea route by which they entered. The terrorist attack was a professional commando operation of Panjiksistan military.

On 25 Sep 2016, the terrorists trained in Panjiksistan entered military units by donning army uniforms and killed soldiers. The genocide caused by terrorists have been highly criticised at international level. Not only this, State sponsored terrorists trained in Panjiksistan started attacking Military installations and Units killing soldiers. Considering the increasing number of terrorist activities, the Indus Government could not take these anymore and in right of private defence as enshrined in Article 51 of the UN Charter decided to destroy the launch pads and terrorist hide outs and training areas in Panjiksistan and Panjiksistan occupied Pammu and Pashmir. The surgical strike was carried out on 7 October 2016 in the Panjiksistan occupied Pammu and Pashmir and destroyed launch pads and hideouts of terrorists. At international level, Indus gathered support from all corners of the world. One Colonel, five Majors, two Captains, one Subedar, two Naib Subedars, three Havildars, one Lance Naik and four Paratroppers of the 4<sup>th</sup> and 9<sup>th</sup> Battalions of the Para Regiment took part in surgical strike. In surgical strike, army was successful in destroying terrorist hide outs and launch pads and caught one terrorist alive namely Masab Khan from Panjiksistan occupied Pammu and Pashmir for getting operational intelligence and also to prove to the world that Panjiksistan was sponsoring terrorism from the soil under its control. These terrorists were under the custody of the Army for 30 days, during which Army gathered vital informations like who provided financial aid to these terrorists etc. Investigation also revealed that the apprehended terrorist was the one who had masterminded the terrorist attack in India on 26 November 2015. He also made confessional statement to that effect before the Magistrate of competent jurisdiction.

After 30 days, Army handed over the said terrorist to Anti-Terrorism Squad (ATS) for further proceedings; Anti-Terrorism Squad (ATS) is specifically constituted to counter terrorism. The said terrorist was into custody of ATS for 70 days. As the part and parcel of proceedings, the terrorist was produced before the Court and he applied for bail.

Aggrieved by the surgical strike, Panjiksistan approached the International Court of Justice alleging aggression by Indus on its soil and prayed that the apprehended Panjiksistan national be handed over to the Panjiksistan. Alleging that confession was forcibly extracted from Masab Khan and that he was not involved in terrorist attack in Trombay on 26 November 2015. International Court of Justice has not passed any order on the petition.

Investigation of full case was carried out in Indus. After First Information Report, the matter was handed to crime branch for investigation.

In the meantime, since the charge sheet, within statutory period of 90 days of the arrest, was not filed before the court of competent jurisdiction, the accused moved the Court of competent jurisdiction for grant of bail under Sub-Section 2 of Sec 167 of Criminal Procedure Code. The same was rejected. After rejection of bail application, the magistrate committed the case to Court of Session of Competent Jurisdiction. The accused was charged for various offences under Indus Penal Code, 1860, Arms Act, 1959, Unlawful Activities (Prevention) Act, 1967, Passport (Entry into Indus) Act, 1920, Prevention of Damage to Public Property Act, 1984 and Railways Act, 1989. The accused raised following issues when he was committed to Court of Sessions.

- (a) That Court in Indus did not have jurisdiction to try Panjiksistan national apprehended from its territory.
- (b) That he was not given consular access, which was in contravention of Vienna Convention on Consular Relations.
- (c) That the arrest and detention by Indus Army was illegal, which will vitiate subsequent proceedings.
- (d) That since the charge sheet was not filed within the statutory period of 90 days; the accused had a right to be enlarged on bail. Since he was not enlarged on bail, he could not engage counsel of his choice
- (e) That the accused requested to be defended by counsel of his choice that is Counsel from Panjiksistan but the same was not provided to him and a counsel from Indus was provided to him, which will seriously prejudice him in preparation of his defence.
- (f) That the accused did not expect fair trial in Indus specially considering adverse publicity in the media.

The Public Prosecutor vehemently refuted the contentions of the accused and argued that these are misconceived and farfetched contentions which are bereft of any merit.

All these issues were rejected by the Court below. Appeal was filed before the High Court of Trombay challenging the dismissal of the contentions of the accused, which was dismissed.

The accused filed Special Leave Petition before the Apex Court which is pending

You are required to argue the matter before the Apex Court. Prepare your arguments for and against admission of the matter.