FINAL REPORT OF
MINOR RESEARCH PROJECT

"REVAMPING THE NATIONAL SECURITY LAWS OF INDIA: NEED OF THE HOUR"

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"REVAMPING THE NATIONAL SECURITY LAWS OF INDIA: NEED OF THE HOUR" is a non-doctrinal project, conducted to find out the actual implementation of the laws made for the national security.

This Minor research project undertaken was indeed a difficult task but it was an endeavour to find out different dimensions in which the national security laws are implemented by the executive branch of the government. At such a juncture, it was necessary to rethink on this much litigated right. Our interest in this area has promoted us to undertake this venture.

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CHAPTER- I

INTRODUCTION

REVAMPING THE NATIONAL SECURITY LAWS OF INDIA: NEED OF THE HOUR

1. INTRODUCTION

"*Law is made not to be broken but to be obeyed and the respect for law is not retained by demonstration of strength but by better appreciation of the reasons, better understanding of its reality and implicit obedience. It goes without saying that the achievements of law in the past are considerable, its protection in the present is imperative and its potential for the future is immense. It is very unfortunate that on account of lack of respect, lack of understanding, lack of effectiveness, lack of vision and lack of proper application in the present day affairs, law sometimes falls in crisis."*[1]

-S. RATNAVEL PANDIAN, J. *in Kartar Singh* v. *State of Punjab*

-Terrorism takes birth in the infamous galleries of injustice, grows in the unfortunate corridors of violence, and flourishes in the apologetic lap of State brutality. It proposes to undermine the security of the nation, challenge will of the Government and shake the faith of the people in the establishment. It poses serious threats to the empire of security and security of empire[2]. Terrorism in fact is a war in fantasy[3] which is real only for the terrorists unless it is endorsed by the opponent party. The operational conditions of fantasy war remain similar to the real war.

Terrorism's most enduring feature remains its capacity to provoke anger, frustration, and fear. Terrorist incidents are sudden, violent, and highly publicized[4].

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[1] *Kartar Singh* v. *State of Punjab* [1994] 3 SCC 569 at Para-36, p-11.

[2] See. KIM LANE SCHEPPELE, '*THE EMPIRE OF SECURITY AND SECURITY OF EMPIRE'*, 27 Temp. Int'L. & Comp.L.J, 241.

[3] See. FRANCO FERRACUTI, *'A SOCIOPSYCHIATRIC INTERPRETATION OF TERRORISM'*, Annals of the American Academy of Political and Social Science, Vol. 643, International Terrorism, (Sep. 1982). p-129-140; As Franco Ferracuti rightly puts:

"Terrorism, however, is a fantasy war, real only in the mind of the terrorist. Fantasy war, of course, is only partial war, real for only one of the contestants who then adopts war values, norms, and behaviours against another, generally larger group, trying to solve through strength a conflict based on legitimate or illegitimate grievances. A fantasy war is neither accepted nor acknowledged by the other group who, in effect, tends to deny it. Fantasy war is therefore an ongoing phenomenon, in a continuously unstable balance between two possible stabilizing processes: real war or diffuse terror. Fantasy war becomes real only if acknowledged by the 'enemy' and becomes terrorism when, unable to compel the enemy to accept a state of war, it must limit itself to harassing and destabilizing the enemy through the utilization and diffusion of fear."Ibid. at p- 137-138.

[4] See. JEFFREY D. SIMON, *'MISUNDERSTANDING TERRORISM'*, Foreign Policy, No.67 (Summer, 1987), p-104-120.

Franco Ferracuti also cites ***Salert*** who in his work has summarised several theories of terrorism[5]. The first theory Salert refers to is the Olson[6] Theory. This theory is also called revolution as the Rational Choice. It states that the revolution is the best alternative, given the prevailing social circumstances. Game theory and cost-benefit analysis should permit verification, given its inherent rationality. No role is envisaged for the individual motives. The second theory is known as the Psychological theory. It is based mostly on frustration-aggression, and on the Davis formulation[7]. This moves the problem from the social universe to the idioverse, and motives and counter-motives are superficially handed. Also the theory is at least partially tautological and does not account for those who abstain from terrorism, although frustrated or for 'repented' terrorists. The third theory summarized by Salert is the theory of the Unbalance of the Social System. This theory is proposed by Chalmer Johnson[8] and which remains homeostatic in nature. The approach in this theory is based on the validity of the selection of variables- increase of ideological activity, armed forces, general and political criminality, and suicide- as an index of anomie.

The fourth and the final theory is the Marxist theory. This is the most difficult to synthesize because of its long history and its various interpretations. Its elaborations have followed different paths, although no necessarily incompatible, such as scientific-positivist on one side, based on the social and economic aspects, contrasted with the Hegelian, individualistic, praxis-oriented aspect, as documented in Marcuse[9].

Terrorism indeed has evolved through the passage of time and many more theories have appeared to rationalize the use of terrorism and also to identify different causes which lead the perpetrators to commit such inhumane acts. It has changed in ideologies, its approach and its modus operandi from acts of assassinations to the explosion through Improvised Explosive Devices (IEDs). Similarly, it has also changed in terms of its targets. While assassinations attempted to target the few selected individuals, the new terrorism does not distinguish now between men, women and children. Also, the new dimension which has been added is that terrorists often use women and children as their weapon to commit terrorists acts the area which shall be seen in the later part.

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[5] See. B. SALERT, *'RVOLUTIONS AND REVOLUTIONARIES: FOUR THEORIES'*, New York: Elsevier, (1976).
[6] *Also See.* J. M. OLSON, *'THE LOGIC OF COLLECTIVE ACTION'*, New York: Schocken Books, (1971).
[7] See. J.C. DAVIES, *'TOWARDS A THEORY OF REVOLUTION'*, American Sociological Review, Vol.27, No.1 (Feb, 1962). P-5-9,
[8] See. CHALMER JOHNSON, *'REVOLUTIONARY CHANGE'*, Stanford University Press, (1982).
[9] Please See. H. MARCUSE, *'RAGIONE E RIVOLUZIONE: HEGEL E IL SORGERE DELLA 'TEORIA SOCIALE'*, Bologna: II Mulino (1965).

1.1. THE HOUSE OF CARDS: EFFECTIVE LEGISLATIONS- DEFECTIVE IMPEMENTATIONS

Law is an edifice of justice cemented by faith and will of the people and thus, it becomes the cardinal duty of the legislators to put every brick while building this edifice so warily that it stands firm solid even at gruesome phase of time. However, it is often observed that laws are made in such a fashion that when the common man pelt a stone to challenge that law in the court of law, the legislations shatters within fraction of moments in the same way as the house made of card collapses when a trivial wind appears.

True that law is regarded as a jealous mistress, but it is the only aid that turns resourceful in distress. Thus, the significance of law cannot be undermine or under-estimated. This is illustrated below-[10]

"*Where all traditional law enforcement institutions are under suspicious scrutiny, only rational application of the functions of law and a thorough understanding of its complexities and limitations can protect the integrity and survival of legal order.... Needless to stress that the life of man in a society would be a continuing disaster if not regulated. The principal means for such regulation is the law which serves as the measure of a society's balance of order and compassion and instrument of social welfare rooted in human rights, liberty and dignity*."

Also, the Lord Chancellor Sankey observed-[11]

"Amidst the cross currents and shifting sands of public life the law is like a great ark upon which a man may set his foot and be safe, while the inevitable inequalities of private life are not so dangerous in a country where every citizen knows that in the law courts, at any rate, he can get justice"[12]

Thus, law is a rule of conduct, recognized by custom or by formal enactment, which is a community considers as binding upon its members. The Stanford Encyclopaedia of Philosophy calls law a 'complex social phenomenon' and is 'one of the most intricate aspects of human culture'. Law is normative in that it guides human conduct. But it is not the only source of normative conduct for there is also 'religion', 'morality', 'custom' and 'convention'. Law is certainly connected with the other sources of normative behaviour but at the same time it is distinct

[10] *Kartar Singh* v. *State of Punjab* [1994] 3 SCC 569 at Para 37, 39 at P-11.

[11] See. GIL MARVEL P. TABUCANON, '*LEGAL PHILOSOPHY FOR FILIPINOS: A CASE STUDY APPROACH*', Rex Book Store, (2011).

[12] Speech Delivered by the LORD CHANCELLOR VISCOUNT SANKEY in the Mansion House [05-07-1929]; *Also See*. The LORD THOMAS OF CWMGIEDD, *'BUILDING THE BEST COURT FORUM FOR COMMERCIAL DISPUTE RESOLUTION'*, Speech delivered at Wales Commercial Law Association, Cardiff [21-10-2016]

from them. In fact, religion, morality, equity, custom, and societal conventions are among the sources of law[13].

Likewise, Plutarch in his treatise stated-[14] *"Law is the king of mortal and immortal beings."*[15] Plutarch in his treatise on *'A Discourse to an Unlearned Prince'* explained in detail the very concept of law and its significance. He emphasized that law is omnipresent and is applicable to all without exception.

Quoting from the Vedas, Holland writes:[16] "*Law is the King of Kings, far more powerful and rigid than they; nothing can be mightier than law, by whose aid, even the weak may prevail over the strong*[17]"

This explains the supreme authority which the law bears and emphasizes that no one is above law or superior to law.

Immanuel Kant was indeed surprised with the supremacy of law and has stated: "Two things awe me most, the starry sky above and the moral law within".[18]

Also, C.G. Weeramantry in has observed-[19]

"*The protections the citizens enjoy under the Rule of Law are the quintessence of twenty centuries of human struggle. It is not commonly realised how easily these may be lost. There is no known method of retaining them but eternal vigilance. There is no known authority to which this duty can be delegated but the community itself. There is no known means of stimulating this vigilance but*

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[13] *Ibid.*

[14] See. PLUTARCH, '*A DISCOURSE TO AN UNLEARNED PRINCE: A TREATISE*' Wilber Cross Library, the University of Connecticut (Rev. WILLIAM W. GOODWIN) available at- <http://archive.org/stream/plutarchsmorals04plut/plutarchsmorals_divu.txt.qgrid=tSZNjjS2&hl=en-IN> last accessed on 18-09-2017 at 6.33 p.m.

[15] *Also See*. CHARLES DE SECONDAT AND BARON DE MONTESQUIEU, '*THE SPIRIT OF LAWS (1748)*', (Trans. Thomas Nugent), Lonang Institute, (2005).

[16] See. JUSTICE V.R. KRISHNA IYER, '*ART AND SCIENCE OF LAW*', The Hindu [24-09-2002]

[17] *Also See*. JUSTICE DR. M. RAMA JOIS, '*UNIFORM LAW REGULATING THE CONSTITUTION AND ORGANIZATION OF HIGH COURTS NECESSARY*', Tenth Durga Das Basu Memorial Lecture, [11th February 2017]

[18] See. '*IMMANUEL KANT- 1724-1804'* The Epoch Times, (January 23- February 5, 2015) at P-19; As Immanuel Kant wrote in 1785 grounding for the metaphysics of morals, man can occupy a special place in creation as they are rationally self-conscious with moral autonomy. To realize such moral autonomy, Kant devised a set of moral maxims that apply universally to all rational persons. The concept of moral universality within the Kantian moral system had an instrumental role in developing the concept of human rights and equality. He propounded widely mainly his three principles i.e. live your life as though your every act were to become a universal law; never treat humanity merely as a means to an end; and every rational being must so act as if he is a legislating member in the universal kingdom of ends; *Ibid*.

[19] C.G. WEERAMANTRY, '*LAW IN CRISIS: BRIDGES OF UNDERSTANDING'*, Littlehampton Book Services Ltd, (1975).

education of the community towards an enlightened interest in its legal system, its achievements and its problems."

The rule of law thus, remains quintessential for every democracy to sustain and survive. However, when the Government, by rule of law, create new and special laws in the form of enactment, many a time it undermines and seem to avoid the normal routes which a law should take or resort to. Specially laws manufactures and packed in the times of emergency are more problematic as they remain for a very short time in the Legislature house and hence short live in the expectation of both the law-makers and the judicial interpreters.

Such laws are no different than the house of cards the life of which is totally dependent on the trivial wind. Such laws when challenged in the court of law they suffer from the very vires and often are declared as un-constitutional or bad thereby losing all scope of application in future.

Many a time, law may be just for the situation, however their implementation at the ground level makes its horrible and impossible to survive. The result is the repeal of that law and the replacement by yet another new law by the Parliament. This compels us to think that the root of the problem lies in the implementation and not in the enactment.

R.M. SAHAI, J. Cautions the similar concern by expressing himself in the following way-[20]

"I am adding few words, more, by way of concurring opinion than, 'as an appeal to the brooding spirit of law to the intelligence of a future day', as the law which was enacted to tackle extraordinary problem in one or two States now stands extended to many States of the country and the alarming news which appears in press and the shocking instances which have come to notice of this Court require highlighting certain aspects for whatever worth they may be."

Thus, a balance of approach needs to be maintained while making such laws because terrorists shall always remain so unless proved contrary.

Paul Wilkinson thus explains the irony-[21]

"*They are fond of using romantic euphemism for their murderous crime. They claim to be revolutionary heroes yet they commit cowardly acts and lack the heroic qualities of humanity and magnanimity. They profess to be revolutionaries yet they attack only by stealth, murder and maim the innocent. They claim to bring liberation whereas in reality they seek power for themselves*."

[20] *Kartar Singh* v. *State of Punjab* [1994] 3 SCC 569 at Para-436 at P-136;

[21] See. PAUL WILKINSON, '*TERRORISM AND THE LIBERAL STATE*', New York University Press, (1986).

1.2 TERRORISM IN INDIA

To make a thorough analysis and to have a detailed idea of the Global Terrorist Attacks, an attempt has been made to comprehensively summarize facts and figures in terrorism with a specific focus on 2014-2015, 2015-2016 and 2016-2017 as this year was considered as one, which saw the major attacks over the globe.

The Internal security situation in the country is broadly categorized as under:-[22]

(i) *Terrorism in the hinterland of the country.*

(ii) *Left-Wing Extremism in certain areas.*

(iii) *Cross-Border terrorism in Jammu & Kashmir.*

(iv) *Insurgency in the North Eastern States.*

1.2.1 TERRORISM IN THE HINTERLAND OF THE COUNTRY

In the hinterland of the country, an incident of terror attack was perpetrated at Pathankot in Punjab on 02.01.2016 by the terrorists coming from Pakistan in which 7 Security Forces personnel sacrificed their lives and 37 were injured. All the terrorists were neutralized by the Security Forces. The event was able to seek the attention of Media from all over the World. The leaders of the World did condemn the attacks which were to de-mean the basic notions of democracy.

1.2.2 THE LEFT WING EXTREMISM (LWE)

(Table-1) STATE WISE EXTENT OF LWE VIOLENCE DURING 2011-16[23]

State	2011		2012		2013		2014		2015		2016	
	Incidents	Deaths	Incidents	Deaths	Incidents	Deaths	Incidents	Deaths	Incidents	Deaths	Incidents	Deaths
Andhra Pradesh	54	9	67	13	28	7	18	4	35	8	17	6
Bihar	316	63	166	44	177	69	163	32	110	17	129	28
Chhattisgarh	465	204	370	109	355	111	328	112	466	101	395	107
Jharkhand	517	182	480	163	387	152	384	103	310	56	323	85
M.P.	8	0	11	0	1	0	3	0	0	0	12	2
Maharashtra	109	54	134	41	71	19	70	28	55	18	73	23
Odisha	192	53	171	45	101	35	103	26	92	28	86	27
Telangana	NA	NA	NA	NA	8	4	14	5	11	2	7	0
Uttar Pradesh	1	0	2	0	0	0	0	0	0	0	0	0
West Bengal	92	45	6	0	1	0	0	0	0	0	0	0
Others	6	1	8	0	7	0	8	0	10	0	6	0
TOTAL	1760	611	1415	415	1136	397	1091	310	1089	230	1048	278

[22]See. 'ANNUAL REPORT, Ministry of Home Affairs, Government of India, (2016-17)
[23]*Ibid*. at P. 9

The declining trend which started in 2011 continued in 2016 as well. The last two and a half years has seen an unprecedented improvement in the LWE scenario across the country. There has been an overall 07% reduction in violent incidents (1136 to 1048) and 30% reduction (397 to 278) in LWE related deaths since end-2013. Over the same period there has been an increase of 50% in encounters (218 to 328) and an unprecedented 122% increase (100 to 222) in elimination of armed Maoists cadres. On the other hand, there has been a 43% reduction (115 to 65) in casualties to Security Forces personnel. The figures are a reflection of the efficacy of operations being conducted by the SF and the capacity building measures undertaken by the MHA. At the same time, the developmental outreach by the Government of India has seen an increasingly large number of LWE cadres shunning the path of violence and returning to the mainstream. Compared to 2013, there has been an increase of 411% (282 to 1442) in surrenders by LWE cadres in 2016. In comparison to 2015, the year 2016[24] saw a decline of 3% (1089 to 1048) in incidents of Violence, while the number of deaths increased by 21% (230 to 278), which is mainly contributed by increase in death of civilians. 123 out of the 278 deaths are attributable to killing of alleged 'police informers' by the Maoists. On the operational front, 222 LWE cadres were eliminated in 2016 as compared to just 89 in 2015. 1840 LWE cadres were arrested and 1442 surrendered in 2016 as against 1668 and 570 respectively in 2015.

1.2.3 SECURITY SITUATION AT JAMMU AND KASHMIR

(Table-2) THE TABLE SHOWING THE TERRORIST VIOLENCE IN JAMMU AND KASHMIR[25]

Year	Incidents	SFs killed	Civilians killed	Terrorists killed
2013	170	53	15	67
2014	222	47	28	110
2015	208	39	17	108
2016	322	82	15	150

[24] Chhattisgarh (395 incidents and 107 deaths) remains the worst affected State followed by Jharkhand (323 incidents and 85 deaths), Bihar (129 incidents and 28 deaths), Odisha (86 incidents and 27 deaths) and Maharashtra (73 incidents and 23 deaths). Chhattisgarh and Jharkhand together accounted for 68.5% of the violent incidents and 69% of deaths. Bihar followed by Odisha and Maharashtra accounted for 12.3%, 8.2% and 6.9% of the incidents respectively in the current year. Andhra Pradesh, Madhya Pradesh and Telangana together reported less than 4% incidents. Chhattisgarh, despite being the core area for Maoist activity, recorded a decrease of 15% in incidents of violence.

[25] *Ibid*. at P- 11.

Causalities of civilians have decreased in comparison to last year. The year 2016 witnessed a 54.81% increase and 110.25% increase in the number of terrorist incidents and fatalities of security forces in comparison to the corresponding period of 2015. However, there is 11.76% decrease in casualties of civilians in comparison to the corresponding period of 2015. During the year 2016, 38.89% more terrorists have been neutralized in comparison to the corresponding period of 2015. The year 2016 has seen a change in Pak tactics following a strategy of the superimposition of militancy over "civil resistance" through radicalization by vested interest groups and social media. In spite of this, the security situation continued to show improvement which has frustrated the evil designs of terrorist organizations and led them to target the security forces deployed in J&K.

(Table-3)INFILTRATION ATTEMPTS AND NET INFILTRATION IN J&K[26]

Year	2013	2014	2015	2016
Infiltration attempts	277	222	121	364
Net infiltration (Estimated)	97	65	33	112

There has been a spurt in infiltration attempts during the year from the Pakistan side. The State Government & Security Forces have also responded and as a result of which infiltrating terrorists are increasingly being neutralized. During calendar year 2016**,** both infiltration attempts and net estimated infiltrations have been increased, in comparison to the corresponding period in 2015. The security situation in J&K is monitored and reviewed by the Chief Minister of J&K with senior representatives of the State Government, Army, Central Armed Police Forces (CAPFs) and other security agencies. The Ministry of Home Affairs also monitors the security situation closely and continuously in tandem with the State Government and the Ministry of Defence.[27]

[26]See. 'ANNUAL REPORT', Ministry of Home Affairs, Government of India, (2016-17).

[27] The Union Government in tandem with the State Government, has adopted a multi-pronged approach to contain cross border infiltration, which inter-alia, includes strengthening of the border infrastructure, multitier and multi modal deployment along the International Border / Line of Control and near the ever changing infiltration routes, construction of border fencing, improved technological surveillance, weapons and equipments for Security Forces (SFs), improved intelligence and operational coordination, synergized intelligence flow and pro-active action against terrorists within the State. The Government has adopted various counter terrorism strategies to neutralize the efforts and capabilities of militants to disturb peace in the State. It has also encouraged policies to mainstream the youth and discourage the local youth from joining militancy. The endeavour of the Government has been to:-

(i) *Proactively take suitable measures by all the SFs to safeguard the borders from cross border terrorism and to contain militancy;*

1.2.4 SECURITY SITUATION IN NORTH EASTERN STATES[28]

The security situation in the North Eastern States, which has remained complex for quite some time because of diverse demands of ethnic groups and various militant outfits, improved substantially in 2016. The number of insurgency related incidents in the region decreased by more than 15% compared to 2015 (2015 - 574, 2016 - 484). The year 2016 witnessed the lowest number of insurgency incidents since 1997. Similarly, security forces casualties in the region declined from 46 (2015) to 17 (2016).

Civilian casualties declined in all States except Assam where it increased from 9 in 2015 to 29 in 2016, thereby leading to an overall marginal increase (2015 - 46, 2016 - 48). The number of kidnapping / abduction incidents also declined in the region (2015 - 267, 2016-168). Counter Insurgency Operation led to the killing of 87 militants, arrest of 1202 and recovery of 605 weapons in 2016 in the region.

(Table-4) SECURITY SITUATION IN NORTH EAST REGION FROM 2012-2016[29]

Security Situation in North East Region since 2012								
Years	Incidents	Extremist arrested	Extremist killed	Arms recovered/ surrendered	SFs killed	Civilians killed	Extremists surrendered	Persons kidnapped
2012	1025	2145	222	1856	14	97	1161	329
2013	732	1712	138	1596	18	107	640	307
2014	824	1934	181	1255	20	212	965	369
2015	574	1900	149	897	46	46	143	267
2016	484	1202	87	698	17	48	267	168

(ii) *To ensure that the democratic process is sustained and the primacy of civil administration restored to effectively tackle the socio-economic problems facing the people on account of the effects of prolonged militancy in the State; and*

(iii) *To ensure a sustained peace process and to provide adequate opportunities to all sections of people in the State who eschew violence to effectively represent their view points and to redress their genuine grievances.*

[28] While the States of Sikkim, Mizoram and Tripura had no insurgency related violence in 2016, there was considerable decline in incidents in Meghalaya (44%) and Nagaland (43%) compared to 2015. In 2016, the State of Manipur accounted for about 48% of total violent incidents in the region and the State of Arunachal Pradesh experienced an increase in violent activities by 38%, primarily on account of violence by NSCN/K. In Assam, insurgency related violence continued to decline and the year 2016 witnessed the lowest number of insurgency incidents since 1997. The state-wise details of violence during the last five years **(**upto 31.12.2016**)** in North Eastern Region are given below in the table:

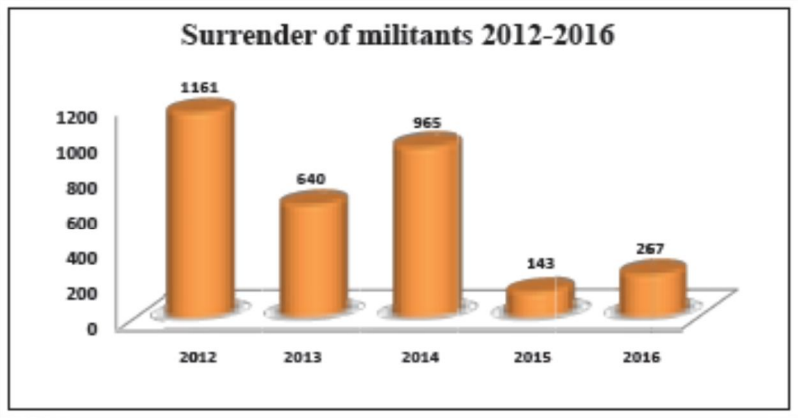
[29]See. '*ANNUAL REPORT*', Ministry of Home Affairs, Government of India, (2016-17) at P-20.

SURRENDER OF MILITANTS IN NORTH EASTERN STATES:[30]

MHA scheme provided for:

1. *An immediate grant of `1.5 lakhs to each surrenderee, which is to be kept in the name of the surrenderee as Fixed Deposit in a bank for a period of 3 years. This money can be utilized as collateral security / Margin Money against loan to be availed by the surrenderee from the bank for self-employment;*
2. *Payment of stipend of `3,500/- per month to each surrenderee for a period of one year. State Governments may consult Ministry of Home Affairs, in case support to beneficiaries is required beyond one year;*
3. *Vocational training to the surrenderees for self-employment.*

(Graph-2) SURRENDER OF MILITANTS IN SOUTH EASTERN STATES (2012- 16)[31]



1.3 RESEARCH METHODOLOGY

Research methodology is a systematized investigation to gain new knowledge about the phenomena or problems. But in wider sense 'methodology' includes the philosophy and practice of the whole research process. It provides standards which the researchers use for integrating data and reaching conclusion.

Methodology has been proved as a foundation stone for any research process**.** If good methodology is adopted by a researcher, the result will be more authentic and reliable.

The methodology preferred for the present research is comparative study on the basis of original semi non-doctrinal research. More specifically, the parts of examination of facts and regulations have been written by means of conducting doctrinal research on current international and national resources concerning the subject. Literatures of fundamental theories, international instruments,

[30]See. '*ANNUAL REPORT*', Ministry of Home Affairs, Government of India, (2016-17) at P-25.
[31]*Ibid.* p. 25.

reports and working papers, USA, UK and Indian national legislation and case law are mainly available from libraries and the Internet.

1.3.1. OBJECTIVES OF RESEARCH-

- *To explore the possibility of evolving new principles of law.*
- *To identify the extent of the need for checks and balances on the exercise of executive power of detaining a person accused of offences against the State*
- *To make a comparative study of the anti-terrorism laws*
- *To identify and critically evaluate the operation of national security legislations*
- *To identify the causes of terrorism and other related crimes.*
- *To suggest practical ways in which the menace of terrorism can be curbed with the help of national security or preventive detention laws and legislations.*

1.3.2 RESEARCH PROBLEM

1. What are national security laws? Its origin, evolution and development.
2. What is the status of national security laws enacted in India?
3. What are the consequences of such laws on the human rights?

1.3.3 HYPOTHESIS

- If the laws are properly implemented, the problems like terrorism can be solved effectively.
- Adoption of best practices could wield good results in combating the problem of terrorism.

1.3.4 IMPORTANCE OF RESEARCH

A wide and extensive research in the area of laws relating to terrorism seems to be the need of the hour. The curse of terrorism which has haunted the humanity warrants us all to deal with the problem meticulously. Due to the adventures made in the field of science and technology, there seems to be a change in the *modus oprandi* in affecting the terrorist attacks by the terrorists. In the wake of such developments, the national security laws need to be altered and studied.

Thus, the present research will be instrumental in identifying various problems pertaining to anti-terrorism laws. The present research is very vital to our day to day decision making and will arm us against terrorism and save time and money.

The purpose of research is to inform action. Research is designed to solve particular existing problems so there is a much larger audience eager to support research that is likely to be profitable or solve problems of immediate concern.

The menace of terrorism poses problems to the all countries in the world. Almost every nation in the world is affected by the disease called terrorism. Generally speaking, national security laws and laws on preventive detention are mainly the measures adopted by the States in this context. A research in this area is indeed the need of the hour as the issues is demanding and nuanced in many countries.

1.3.5 SCOPE OF RESEARCH

The researcher will make a survey of the existing laws available on the issues and collect the data. The present research proposes to study all laws provided they are relevant to the present study. However, the focus of the study will be laws prevalent in INDIA.

1.3.6 DATA COLLECTION AND ANALYSIS

The whole research process is carried out in three rounds. In first round, existing literature survey related to present work has been carried out and examined. The researcher primarily followed qualitative document /content analysis approach to discover answers to the research questions. The second round dealt with the scrutiny of various anti-terrorism laws as prevalent in USA, UK and India. The major international conventions and instruments have also been examined and reviewed in the present research.

The third round of the process is consisting of making the thorough analysis of all the data so collected at various stages. The researcher used the qualitative context/document analysis method of data analysis. The ability to collect, to interpret, to criticize and provide a balanced argument on critical issues are the basic elements of data analysis. The textual data during this research process was qualitatively analyzed into manageable themes. A critical examination ensued with information collected from relevant open source information. The objective was to provide an appropriate argument as a basis for this study.

1.4 DEFINING TERRORISM

The Law Lexicon Dictionary defines the word ***'terror'*** as the following; [32]

"Terror signifies more than "alarm" or "force". It is agitating or excessive fear, which usually venoms the faculties. It is one of the passions, the existence of which sometimes reduces, homicide from murder to man slaughter, but it is never necessarily an element of self defense".

According to the anonymous French Dictionary Definition;[33]

"A period when measures are deployed to terrify and destroy an enemy; more generally, measures to that end as a whole….An action of egregious violence but brief duration, aimed at breaking and adversary's will to fight…..A provisional phenomenon of limited physical extent, terrorism is a means to an end"

Krueger and Maleckova[34] defines '*terrorism'*:

"As premeditated political violence against civilians with the objective of maximizing media exposure to the act and, ultimately, to the terror group and/or to its "cause".

-The authors in their work[35] take the theory that low education and poverty breed terrorism[36], and subject it to its empirical scrutiny. This definition adds more aspects into terrorism and

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[32] See. P. RAMANATHA AIYAR, 'THE LAW LEXICON'; THE ENCYCLOPEADIC LAW DICTIONARY WITH LEGAL MAXIMS, LATIN TERMS, WORDS AND PHRASES, Wadhwa Nagpur, 2nd eds, (Reprint- 2006) at p-1879

[33] It is to be noted that this is a strategic definition which *vis-à-vis* the aspect of political phenomenon which was in existence at that period and is not linked to 1789. ; GERARD CHALIAND AND ARNAUD BLIN, *THE HISTORY OF TERRORISM, FROM ANTIQUITY TO AL QAEDA*, 2007, UNIVERSITY OF CALIFORNIA PRESS, BERKELEY LOS ANGELES LONDON, P- 100.

[34] See. ALAN B. KRUEGER AND JITKA MALECKOVA, '*EDUCATION, POVERTY AND TERRORISM: IS THERE A CASUAL CONNECTION?*' Journal of Economic Perspectives, vol.17 No.4 (Fall, 2003). P-119-144; *Also see*. NAURO F. CAMPOS AND MARTIN GASSEBNER, 'INTERNATIONAL TERRORISM, POLITICAL INSTABILITY AND THE ESCALATION EFFECT', IZA, DP NO. 4061, MARCH, 2009(P-1)

[35] See. CHRISTINA PAXON, *'COMMENT ON ALAN KRUEGER AND JITKA MALECKOVA, "EDUCATION, POVERTY AND TERRORISM: IS THERE A CASUAL CONNECTION?*', Princeton University, (May 8, 2002).; The authors make four major points. First, they review the literature on hate crimes and conclude there is no evidence that hate crimes are counter-cyclical or that the fraction of people involved in hate groups is higher in regions with lower education attainment or higher unemployment. Second, they examine public opinion data from the West Bank and Gaza Strip, and conclude that support for armed attacks on Israeli civilians does not decrease among those with more education and better jobs. Third, they compare the education levels of Hezbollah participants with those of 'controls'- people of similar ages surveyed in the Lebanese population and Housing survey- and conclude that, if anything, Hezbollah participants have better-than-average education levels. Fourth, they conduct a time-series analysis that relates terrorist attacks in Israel to real GDP growth in the West Bank and Gaza Strip, and conclude that there is no robust relationship between the incidence of attacks against Israeli citizens and current or lagged GDP growth. *Ibid* at p-2.

[36] See. ALAN B. KRUEGER AND JITKA MALECKOVA, *'DOES POVERTY CAUSE TERRORISM: THE ECONOMICS AND THE EDUCATION OF SUICIDE BOMBERS'*, The New Republic, (June 24, 2002). P-27-33 The authors conclude as:

"On the whole, we must conclude that there is little reason to be optimistic that a reduction in poverty or increase in educational attainment will lead to meaningful reduction in the amount of international terrorism without other

categorically defines the terrorism as the political violence against the civilians. However, one must be thoughtful of the fact that the acts of terror are not always against the civilians. Also, it need not necessarily be related to violence that remains political in nature as terrorists' motives can be different from time to time and places to places.

Enders and Sandler[37] gives yet another fascinating opinion on '*terrorism'* as:

"Terrorism is the premeditated use or threat of use of extra-normal violence or brutality by sub-national groups to obtain a political, religious or ideological objective through intimidation of a huge audience, usually not directly involved with the policy making that the terrorists seek to influence" [38]

Eventually, **Schmid and Jongman** put forth their own definition-

"Terrorism is an anxiety-inspiring method of repeated violent action, employed by (Semi) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby-in contrast to assassination- the direct targets of the violence are not the main targets. The Immediate human victims of violence are generally chosen at randomly (target of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat-and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target

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changes…..in order to use education as part of a strategy to reduce terrorism, the international community should not limit itself to increasing years of schooling, but should consider very carefully the content of education". Ibid. at p-33. *Also See*. CRAIG P. AUBUCHON, SUBHAYU BANDOPADHYAY AND JAVED YOUNAS, '*INCREASING POLITICAL FREEDOM MAY BE KEY TO REDUCING THREATS',* available at http://www.stloiusfed.org/publications/regional-economist/pctober-2009/increasing-political-freedom-may-be-ket-to-reducing-threats> last visited on 27-07-2017 at 10-45 p.m.; BANDOPADHYAY, SUBHAYU, YOUNAS, JAVED, *'DOES DEMOCRACY REDUCE TERRORISM IN DEVELOPING NATIONS?*' Federal Reserve Bank of St. Louis Working papers 2009-023A, *also available* at <http://research.stloisfed.org/wp/2009/2009-023.pdf> last visited on 27-07-2017 at 10.50 p.m.

[37] See. TODD SANDLER, '*THE ANALYTICAL STUDY OF TERRORISM: TAKING STOCK'*, Journal of Peace Research, vol.51 (2), (2014) p- 257-271.; This definition is consistent with others in literature. Violence is a hallmark of terrorism, with some terrorist groups engaging in gruesome attacks to create widespread anxiety or revulsion. As per the qualifications of terrorism, an attack must have a political motive. By limiting terrorism to sub-national agents, the above definition rules out state terror, where a government terrorizes its own people. However, the definition does not eliminate the state sponsored terrorism, in which a government secretly aids a terrorist group through funds, intelligence, safe passage, or some other means. Finally the definition emphasizes that the true target of the anxiety-generating attacks is a wider public, who may pressure the government to concede to the demands of the terrorists.

[38] Also See. OMAR LIZARDO, ' DEFINING AND THEORIZING TERRORISM: A GLOBAL ACTOR-CENTERED APPROACH', JOURNAL OF WORLD SYSTEMS RESEARCH, VOL.XIV, NO.2, PG-93, ISSN 1076-156 X

(audience), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought"[39].

The study of definitional literature of terrorism could not be considered as complete, if we don't examine the definition put forwarded by the two legendary authors Alex Schmid and Albert Jongman. The authors have examined and studied nearly *'109 definitions'*[40] of terrorism and have observed multiple anomalies and similarities. After their meticulous scrutiny of the various definitions, the authors have decided to come up with their own definition which is perhaps the lengthiest definition of all which we have studied in the previous part. The authors propose their thesis by focusing on the anxiety inspiring fear and repeated violent actions of terrorism. The actors may be individuals, groups or states and that they use terrorism for idiosyncratic, criminal or political purposes. They also highlight the distinction between direct targets and main targets and that the targets are message generators for communication process intended to change behavior of main audience- for intimidation, coercion, or propaganda purposes. [41]. Leonard Weinberg, Ami Pedahzur and Sivan Hirsch-Hoefler in their published work[42] also **surveyed 73 definitions** in the year 2002.

Indian government's effort to make concrete national security laws is ongoing since its independence in 1947. Soon after independence, India had to witness a dark emergency period

[39] See. SCHMID, ALEX & JONGMAN, ALBERT (1988), '*POLITICAL TERRORISM: A NEW GUIDE TO ACTORS, AUTHORS, CONCEPTS, DATABASES, THEORIES AND LITERATURE'*, Amsterdam: North Holland, Transaction Books, P-28.; ALEX SCHMID, '*TERRORISM: THE DEFINITIONAL PROBLEM'*, 36 Case W. Res. J. Int'I L. 375 (2004).; ALEX SCHMID, *'THE REVISED ACADEMICC CONSENSUS DEFINITION OF TERRORISM'*, Perspectives on Terrorism, Vol.6, No.2 (2012).; ASTA MASKALIUNAITE, 'DEFFINING TERRORISM IN POLITICAL AND ACADEMIC DISCOURSE', Baltic Defense Review, Vol. 2, No.8 (2002).; ALEX P. SCHMID AND ALBERT JONGMAN, 'POLITICAL TERRORISM: A NEW GUIDE TO ACTORS, AUTHORS, CONCEPTS, DATA BASES, THEORIES, AND LITERATURE', Transaction publishers (1988).; *Also See.* LEONARD WEINBERG, AMI PEDAHZUR AND SIVAN HIRSCH-HOEFLER, *'THE CHALLENGE OF CONCEPTUALIZING TERRORISM'*, Terrorism and Political violence, 16-4, (2010).

[40] See. JESSIE BLACKBOURN, FERGAL F. DAVIS AND NATASHA TAYLOR, '*ACADEMIC CONSENSUS AND LEGISLATIVE DEFINITIONS OF TERRORISM: APPLYING SCMID AND JONGMAN'*, Statute Law Review, Vol.34, Isse3, October 1, 2013.; In 1989, Schmid and Jongman sent a Questionnaire and proposed definition of terrorism to 200 acknowledged terrorism experts; They received 109 responses, which they coded according to 22 word categories; The 109 responses triggered, on average 8 of the 22 codes.

[41] See. WILLIAM G. CUNNIGHAM JR, '*TERRORISM DEFINITIONS AND TYPOLOGIES'*, in '*TERRORISM: CONCEPTS, CAUSES AND CONFILCT RESOLUTION'*, the Defence Threat Reduction Agency, Virginia (January, 2003).

[42] LEONARD WEINBERG, AMI PEDAHZUR AND SIVAN HIRSCH-HOEFLER, *'THE CHALLENGE OF CONCEPTUALIZING TERRORISM'*, Terrorism and Political violence, 16-4, (2010).

which triggered political and economic instability in the country[43]. This motivated the Indian Parliament to pass the Terrorists Affected Areas Act of 1984 (TAAA), which granted more structured and comprehensive police and intelligence gathering powers.

This statute contained the first legislative definition of a 'terrorist'[44], which required that if a person kills, act violently, disrupts essential services, or damages property; with the purpose of intimidating the public; coercing the government, endangering the sovereignty or integrity of India or 'affecting adversely the harmony between different religious, racial, linguistic or regional groups or castes or communities, he would be a designated terrorist.

In the wake of Prime Minister Indira Gandhi's assassination, the Parliament passed the Terrorists and Disruptive Activities (Prevention) Act, 1985. This Act also defined 'terrorism'[45] in much similar lines to the TAAA.

The definition offered by TADA however, did differ in many other aspects. India remains home for many diverse religions, languages, cultures and communities. To keep this diverse populace under one roof, sometimes gives tough time to the government. Thus, the government had the clearly stated while defining the terrorism that the purpose of the terrorists should not to overthrow the government and also to should not aim towards affecting the harmony amongst various communities. The definition also specifically deals with the mode by which a terrorist act can be caused. The most important feature of the definition which separates itself from all other definitions which we have studied above is the special mention of disruption of essential services as one of the cause of falling an act under terrorism.

The TADA, 1985 could not live upto the expectation and was soon repealed in 1995. In the year, 2001, the world witnessed the downfall of twin towers in New York and in India there was a

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[43] In the 1980s, the Punjabi Separatist movement fueled the government fears that violence would escalate and spread throughout the country would gain strength and momentum.

[44] *See*. Sec. 2 (1) (h) of the Terrorists Affected Areas Act, 1984.

[45] *See*. Part II of TADA, 1985 :

"Whoever with intent to overawe the government as by Law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of people does any act or thing by using bombs, dynamite, or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause or is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of property or disruption of any supplies or services essential to the life of the community, commits a terrorist act.". Ibid.

terrorist attack at the Indian parliament, which was regarded as the attack on the very symbol of Indian democracy.

In a response to the Parliament attacks, Indian Parliament enacted legislation in the form of the Prevention of Terrorism Act, 2002[46].

Section 3 (1) (a) of the POTA, 2002 provided for the definition of perpetrator of a terrorist act as one who:

"With intent to threaten the unity, integrity, security or sovereignty of India, or to strike terror in the people, or any section of the people does any act or thing by using bombs, dynamites or explosive substances or inflammable substance or firearms or other lethal weapons or poisons or noxious gasses or other chemicals or by any other substances…of a hazardous nature or by any other means whatsoever, in such a manner as to cause…death of or injuries to any persons or loss of or damage to….Property or disruption of any supplies or services essential to the life of the community"[47].

Although the POTA 2002 met with the similar fate as of TADA, 1985, some of the POTA provisions were nonetheless included in the Unlawful Activities (Prevention) Act, 1967 (UAPA) by virtue of introducing several new amendments[48].

On 26th November, 2008, couple of terrorists illegally migrated through sea route from Pakistan rocked the Indian Mumbai city with the terrorist attacks. The attacks claimed 163 lives and injured many others. The Parliament enacted yet another legislation in response to Mumbai terror attack which became the National Investigation Agency Act, 2008 along with several major amendments in the UAPA, 1967. The NIA Act, 2008 alongside the UAPA amendments rather broadened the definition of terrorist act from the previous definition used in POTA, 2002 so that acts *'likely to cause'* the type of damage contemplated in the POTA-era legislation are now also considered to be *'terrorists acts'*.[49]

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[46] *See*. The Prevention of Terrorism Act, 20002 (Act No. 15 of 2002).
[47] *See*. Chapter-II – Sec. 3 (1) (a) the Prevention of Terrorism Act, 2002.
[48] *See*. The Unlawful Activities (Prevention) Amendment Ordinance, (No. 2 of 2004),; The 2004 UAPA amendments included incorporation of the definition of terrorism which was not a part of the original UAPA, 1967 legislation.
[49] See. SUDHA SETTY, '*WHAT'S IN A NAME: HOW NATIONS DEFINE TERRORISM TEN YEARS AFTER 9/11'*, U. Pa. J. Int'I L., Vol.33:1, (2011).

1.5. THE SLEEPLESS BLOODIEST NIGHT OF MUMBAI[50]

A heinous criminal conspiracy was planned and hatched in Pakistan by the internationally banned ***LeT*** to execute a series of attacks at prominent places in Mumbai, the financial capital of the country on 26th November 2008. This was with the express intention to destabilized India, wage war against India, terrorize its citizens, create financial loss and issue a warning to other countries whose citizens were also targeted, humiliated and cold bloodedly killed. This Fidayeen mission was a part of larger criminal conspiracy planned in Pakistan for attacking the commercial capital of India with intent to wage war, to weaken India economically and to create terror and dread amongst the citizens of the Mumbai metropolis in particular and India in general and thereby through the said unlawful activities, its perpetrators committed terrorists act.

Success of the terrorist operation on 26/11/ 2008 could not have been successful without the inputs and assistance provided by Fahim Ansari[51] and Sabauddin Ahmad[52]. All ten terrorist would precisely reach the targeted locations due to the maps and other information which was provided by Fahim Ansari and Sabauddin Ahmad.[53] It were these Maps and Directions which enabled all terrorists to arrive with absolute precision at the targeted locations and further to comprehend the topography and layout the targets.

In the Charge sheet filed by the Mumbai Police, it had named 35 named terrorist accused who belonged to the LeT and had their accomplice in Pakistan and other places have aided and abated in executing these attacks after Military precision like planning and training between December 2007 to November 2008 in Pakistan.[54] Later it was revealed that the terrorists were trained at the various locations in Pakistan and Pakistan occupied Kashmir. The training modules were held at

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[50] See. *'TEXT OF THE CHARGESHEET FILED BY THE MUMBAI POLICE ON THE MUMBAI TERROR ATTACKS CASES'*, In The Court of Additional Ch.M.M, 37th Court, Esplanade, Mumbai (25 February, 2009). Also enclosed herewith as Annexure No. I.

[51] *Ibid*. Fahim used different names for the covert operations, his popular names were; Fahim Arshad Muhommad Yusuf Ansari @ Abu Jarar @ Sakib @ Sahil Pwalaskar @ Sameer Sheikh @ Ahmad Hasan

[52] Like Fahim Sabauddin Ahmad also used different names to carry out his operations, his other names were Shabbir Ahmad Sheikh @ saba @ Farhan @ Mubbashir @ Babur @ Samer Singh @ Sanjeev @ Abu al Qasim @ Iftikhar @ Murshad @ Muhammad Shafiq @ Ajmal Ali

[53] Investigations have further revealed that a map of important information in Mumbai was found in the deceased terrorist Abu Ismaill. Further it has also conspired that this map was the one prepared by Fahim Ansari.

[54] These 35 wanted terrorists were, Hafiz Muhhammad Saeed @ Hafiz Saab, Zaki ur Rahman Lakhvi, Abu Hamza, Abu al Qama@ Amjid, Abu Qahafa, Mujjammil alias Yusuf, Zarar Shah, Abu Fahadullah, Abu Abdul Rahman, Abu Annas, Abu Bashir, Abu Imran, Abu Mufti Saeed, Hakim Saab, Yusuf, Mursheed, Aakib, Abu umar Saeed, Usman, Major General Sahab- Anonymous, Kharag Singh, Muhhammad Ishfaq , Javed Iqbal, Sajid Iftikhar, Colonel R. Saadat Ullah, Khurram Shaadat, Abu Adur Rahman, Abu Mavia, Abu Anis, Abu Bashir, Abu Hanjla Pathan, Abu Saria, Abu Saif ur Rahman, Abu Imran and Hakim Sahib.

Muridke, Manshera, Muzaffarabad, Hazizabad, Paanchteni etc in Pakistan and Pakistan occupied Kashmir. They were trained for physical fitness, swimming, weapon handling, tradecraft, battle inoculation, guerilla warfare, firing sophisticate assault weapons, use of hand grenades and rocket launchers, handling of GPS and Satellite phones, map reading etc.[55]

During the investigation of attacks it was evident that along with the wanted terrorist residing in Pakistan there were 12 terrorists in total who had directly committed the acts of terrorism.[56] It was revealed that for the purpose of attacking sites in Mumbai, these terrorists were selected and grouped in five 'buddy pairs' of two terrorists each. Each of these 10 highly trained terrorist was equipped and provided with the firearms, live ammunition, explosives and other materials.[57] It was also further revealed that these terrorists used sophisticated communicating gadgetry and services to remain in constant touch and contact with co- conspirators in Pakistan.[58] Terrorists even used fake identity cards of Indian colleges to mislead the investigating agency so that to hide their true identities and nationality.

In the afternoon of November 23rd, 2008, these 10 terrorists, with the help of criminal force captured 'M.V. Kuber' a fishing troller in the Jakhau Area within the Indian territorial waters. Out of the five sailors onboard M.V. Kuber, four sailors were taken into Pakistani, LeT Boat 'Al Husaini' while the navigator of M.V. Kuber viz. Amarsingh Solanki was forcibly kept on Indian fishing troller M.V. Kuber. Then, the 10 terrorists and the Captain of M.V. Kuber set sail towards Mumbai.[59] M.V. Kuber reached approximately to nautical miles of Mumbai on November 26th,

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[55] They were also indoctrinated in the tenats of Jihad and the recitation of Quran and Hadis. The trainers namely Abu al Qama@ Amjid, Abu Qahafa, Mujjammil alias Yusuf, Zarar Shah, Abu Fahadullah, Abu Abdul Rahman, Abu Annas, Abu Bashir, Abu Imran, Abu Mufti Saeed, Hakim Saab, Yusuf, Mursheed, Aakib, Abu umar Saeed, Usman, Major General Sahab- Anonymous, Kharag Singh, Muhhammad Ishfaq , Javed Iqbal, Sajid Iftikhar, Colonel R. Saadat Ullah, Khurram Shaadat, Abu Adur Rahman, Abu Mavia, Abu Anis, Abu Bashir, Abu Hanjla Pathan, Abu Saria, Abu Saif ur Rahman, Abu Imran and Hakim Sahib were experts in their field and trained them to a degree of perfection. During the last phase of their training, the ten selected terrorists were shown the maps of targeted sites of Mumbai City by Abu Qahafa.

[56] Among the arrested terrorists there were Muhammad Ajmal Muhammad Amir Kasab, alias Abu Mujahid, Fahim Arshad Muhammad Yusuf Ansari and Sabuddin Ahmad and amongst the deceased terrorist there were Ismail Khan alias Abu Ismail, Imrtan Babur, alian Abu Aakasha, Nasir alias Abu Umar, Nasir Ahmad aliad Abu Umer, Hafiz Arshad alias Abdul Rahman Bada alias Hayaji, Abdul Rahman Chota alias Sakib, Fahadullah, Javed alias Abu Ali and Shoaib alias Abu Shoaib.

[57] For detail please See. '*TEXT OF THE CHARGESHEET FILED BY THE MUMBAI POLICE ON THE MUMBAI TERROR ATTACKS CASES'*, In The Court of Additional Ch.M.M, 37th Court, Esplanade, Mumbai (25 February, 2009). Also enclosed herewith as Annexure-I

[58] During the course of this telephonic contact, the terrorists received a continuous flow of operational and motivational inputs from Pakistan.

[59] During the sea journbey the 10 terrorists were in constant contact with their handler in Pakistan on the Satellite phone. Similarly, they navigated the 582 nautical miles journey to Mumbai with the help of a GPS device.

2008 at approximately 1600 hours. When the troller was near to Mumbai, Ajmal Kasab beheaded Amar Singh Solanki by slitting his throat with a knife. After this, they inflated the rubberized dinghy, which they had carried on board the M.V. Kuber. The rubberized dinghy reached the shore of Mumbai at the Bhai Bhandarkar Machimar Colony, opposite Badhwar Park, Cuffeparade at approximately 2030 hours of November 26th, 2008.

Two terrorists Fahadullah and Abdul Rahman Chota sailed towards Hotel Oberoi in the sea in the ultramodern rubberized dinghy. Two terrorists Babur Imran and Nasir along with their firearms and ammunitions walked towards the Nariman House. The remaining 6 accused terrorists travelled to their pre- decided targets by hailing taxis.

1.5.1 ATTACK ON C.S.T. RAILWAY STATION

Terrorist Ajmal Kasab and Ismail Khan alias Abu Ismail arrived CST Railway Station in a Motor Taxi.[60] After reaching the CST Railway Station, Kasab entered the Lavatory and Abu Ismail planted the IED which he carried himself in the CST Station Premises. Thereafter these two terrorists ruthlessly and indiscriminately commenced firing with the A.K. 47 Assault Rifle and lobbed deadly hand grenades on the passengers. They kept on attacking innocent people, police officers, constables and the home guards etc. Being hounded by the police officer and personnel lead by P.I. Shashank Shinde, these two terrorist were pushed out of the Railway Station premises onto the foot over bridge adjoining platform no. 1. Crossing over, they entered the bylane adjoining the Times of India building and Anjuman Islam School. Continuing their march forward, these two terrorists approached the entrance of the Cama Hospital where they fired indiscriminately and threw hand grenades on the police party. Then they left cama hospital building and walked down Mahapalika Marg enroute they fired and killed a police officer who was regulating the public there. They also killed 3 senior police officers and 3 police constables seated in the Totyota Qualis vehicle and injuring a police constable. However due to the firing of the brave and courageous police officers viz. Hemant Karkare, Ashok Kamthe, Vijay Salaskar and P.N. Arun Jadhav, Kasab received injuries on both hands. Taking charge of the Qualis these two terrorists further fired from the police vehicle at the crowd which had gathered at Metro Junction. Two persons including a policeman dies in this firing. After a while one tyre and tyretube of the police jeep developed a puncture and the vehicle started wobbling, compelled to abandon the police vehicle, these two

[60] Enroute this journey Ajmal Kasab was seated on the rear seat of the taxi cab while Abu Ismail engaged the taxi driver in a conversation. Kasam planted a Rdx- laden-ied which he had feried himself beneath the driver's seat..

terrorists then hijacked a Skoda car.[61] Based on the alert released by the Police Control room, a police party from Dr. D.B. Park Police Station reached Café Ideal near Girgam Chaupati and organized the road blocks and a Nakabandi. As soon as the terrorist reached the Nakabandi point in the hijacked Skoda Car the police party ordered them to shut off the headlights of the Skoda Car. On realizing that there was no other way out the terrorists attempted to turn around the Skoda car thereby crashing it on the road dividers.

1.5.2 ATTACK ON THE NARIMAN HOUSE[62]

The second buddy pair of terrorist, Babur Imran and Nasir reached Nariman House, Colaba, Mumbai. Before entering the targeted building, one of the terrorist planted the RDX laiden IED, weighing approximately 8 to 10 kgs. Also on entering the building the second terrorist planted another 8 to 10 kgs RDX laiden IED near the staircase at ground level Area, subsequently both these RDX laiden IED's exploded. Both these terrorists held some residents of the building as the hostage and compelled one of the jewish hostage to speak to their embassy on the phone. These terrorist repeatedly contacted their co-conspirators in Pakistan and further contacted the media and mislead them by citing reasons for their attacks.[63] A total of 8 people were killed including 3 helpless women. These terrorist also killed a National Security Guard Commando viz. Head Constable, Gajendra Singh.

1.5.3 ATTACK ON THE LEOPOLD CAFÉ[64]

A third pair of terrorist Abu Shoaib and Abu Umair reached Café Leopold by hiring a Motor Tax Cab. Enroute this journey one of the terrorist an 8 kgs of RDX laden IED below driver's seat. These two terrorists then left the taxi and walked toward Café Leopold and began their indiscrimante firings using A.K.47 Assault Rifles.

They also lobed Hand Grenades thereby killing, 11 persons including 2 foreigners. Besides a total of 28 persons including 9 foreign nationals have been injured seriously. On completion of this

[61] Skoda Car bearing no. MH 02 JP 1276, the driver and the two occupants of the Skoda car were forcibly evicted and the two terrorists then commenced their onward journey in this Skoda car. As soon as the two terrorists abandoned the police Qualis vehicle, the seriously injured police Naik Arun Jadhav picked up the wireless set iinstalled in the police vehicle and informed about the incident in the police control room, which immediately flashed and wired the message of the terrorist movement in the hijacked vehicle.

[62] Nariman House was a five storied building which has been purchased two years before the attack by the Chabad of India Trust and orthodox Jewish organization and renamed as the Chabad House.

[63] This conversation has been telecast by 'India T.V. '

[64] Leopold Café, was established in 1871 and frequented by foreigners as well as Indians is known as the tourist spot.

mayhem both these terrorists walked immediately towards the Hotel Taj. Enroute one of the terrorists planted 8 to 10 kgs of RDX laden IED on the kerb near Gokul restaurant and bar.[65]

1.5.4 ATTACK ON THE HOTEL TAJ MAHAL[66]

The fourth pair of terrorist Hafiz Arshad and Javed reached the landmark Hotel Taj Palace and Towers by Motor Taxi Cab. Before entering the hotel both the terrorist planted 8 to 10 kgs of RDX laden IED near a chowky outside the main porch of the Taj Hotel.[67] These two terrorist entered the hotel Taj Mahal from front gate entrance and subsequently these terrorists fiored indiscriminately at the Indians and the Foreign guest who were present there. The other two terrorist who had attacked the Leopold café entered the Hotel Taj entered from the North Cote and began firing around the swimming pool area. Soon these two terrorists were inside the hotel and started moving on various floors of Hotel Taj, firing indiscriminately and shooting at everything that move. These terrorist planted 8 to 10 kgs of RDX laden IED on the fifth floor of the central dome which was exploded immediately causing damage to the structure. They also set afire the sixth floor of the hotel and in the meanwhile they were in constant contact with their Pakistani co-conspirators.

1.5.5 ATTACK ON HOTEL TRIDENT AND OBEROI HOTEL

Then fifth pair of terrorist viz. Fadaullah and Abdul Rehman Chota alias Sakib landed the Seacoast opposite to Trident and Oberoi with the aid of rubberized and motorized Dinghy, after dropping off their companionate terrorist. Before entering Hotel Trident the terrorists planted 8 to 10 kgs of RDX laden IED on the slope of the flower be adjacent to Trident Hotel main entrance gate subsequently this IED exploded.[68] Immediately on entering the Hotel the terrorists commenced firin from their A.K. 47 and lobed hand grenades. The terrorists after planted 8 to 10 kgs of RDX laden IED, near the Tuffin Restaurant which subsequently exploded. Further they forcibly took the hostages from the Kandahar Restaurant and went to the higher floors.

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[65] Mumbai Police Bomb Detection and Disposal Squad (BDDS), diffused the bomb just at the nick of the time. The RDX laden IED planted by the terrorist in the Taxi Motor Cab caused a massive explosion when the Taxi cab reached opposite BPT, Mazgaon, Mumbai killing instantly two lady passengers including the male driver.

[66] Hotel Taj Mahal is a heritage building and an iconic structure built in the year 1903.

[67] However the Bomb Detection and Disposal Squad (BDDS) were successful in diffusing the bomb before it could even explode.

[68] However the damage was absolutely minimized by the BDDS placing a bomb blanket on this IED.

1.6 CONCLUSION

As observed earlier Terrorism is a war in fantasy[69] which remains very much real for some while for many others it is merely an unreal war. However, it is one of the phenomenon or a threat which can't be avoided at any cost. Thus, one cannot ignore its repercussions and has to face the harsh reality of its existence. Thus, it poses serious threats to the empire of security and security of empire.

While dealing briefly with some of the theories pertaining to terrorism, this chapter also provided the explanation of various terms which often are confused with the terrorism and causes much problem among the readers.

The next part of the Chapter deals with some of the facts and figures which offer us a promised insight into the problem of terrorism. It explains the significance of this research well and further sensitizes the efforts towards its eradication. The recent data pertaining to terrorism has meticulously been cited for the readers' references. The Chapter then explain the research methodology adopted, objectives of research, research problem, and hypothesis, significance of research, its scope and modes of data collection.

AN ATTEMPT BY THE RESEARCHER TO DEFINE 'TERRORISM'

After analysis various definitions of terrorism offered by classic dictionaries, legendary scholars, international jurists and the domestic legislations, it would be appropriate here to provide a new definition with the researcher's own understanding and interpretation.

Thus, keeping in mind the various other definitions and their interpretations, the researcher proposes the following new definition of the term, '***terrorism***' as:

"An act employing uncertain violence among the uncertain targets and enticing intensive fear in the masses in order to unduly manipulate the establishment so that political and religious goals are accomplished."

The above definition overlooks the modus operandi adhered to by the terrorist in order to commit the terrorist act. Much stress on criminalizing any kind of 'violence' has been given in the abovementioned definition. A brief and precise definition is attempted by the researcher in order to get wide acceptance of the same in the future course of the problem of terrorism.

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[69] See. FRANCO FERRACUTI, *'A SOCIOPSYCHIATRIC INTERPRETATION OF TERRORISM'*, Annals of the American Academy of Political and Social Science, Vol. 643, International Terrorism, (Sep. 1982). p-129-140;

CHAPTER- II

THE CLASH OF TERMINOLOGIES: PROTECTING HUMAN RIGHTS WHILE DEFENDING THE NATIONAL SECURITY

2. THE CLASH OF TERMINOLOGIES: PROTECTING HUMAN RIGHTS WHILE DEFENDING THE NATIONAL SECURITY

2.1. INTRODUCTION:

The problem of terrorism remains an anti-national and anti-social issue. Albeit there may be different opinions of jurists as to its nature and its inter-relationship between the various causes of such heinous act, the commonly accepted proposition is that such acts are being condemned all over world even by those countries where as per the common belief the very problem of terrorism originates[70]. The major problem in this context is the very weakness of international law and inability of many international conventions to deal with such countries in categorical way. The major causative factor that apparently has posed the greatest challenge before such countries is the dicey presumption of heroism hidden secretly beneath every single national freedom movement[71]. The tragic and sympathetic side of the story is the unresolved dilemma of the government and unwanted sympathy towards some terrorist groups which secretly carry out its operations right under the neck of the Government. There are various reasons for which many countries keep on supporting such groups by providing an effective cover to their terror acts. The most prominent reason before the States to support such terror acts is the self-interest which is blended with a number of other interests such as unwarranted greed for more power, more autonomy, more share of land, river, forests etc. The Ethnic identities of various groups and the larger population can also be not ignored in the measurement of the various cases of the Countries supporting terrorism[72]. Religious and geographical differences and the apparent unrest in the populace due to

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[70] Please See. MOORTHY. P., '*CHALLENGES OF THE TWENTY FIRST CENTURY*', Concept Publishing Company Pvt Ltd, first published in 2010. This can also be illustrated by considering the case of Pakistan which is known commonly as the safe haven for the terrorists. The capture and death of Osama Bin Laden by Special Military Forces from United States of America can also be served as a relevant example. Please See. Brown Adrian, '*Osama Bin Laden's death: How it happened'* also available at < http://www.bbc.com/news/world-south-asia-13257330 > last retrieved on 11/04/2015 at 11.15 a.m. *Also See*. Prabhakar Peter Wilson,' W*ars Proxy-Wars & Terrorism: Post Independent India*' A Mittal Publication 1st Ed, 2003.

71 See. WEIR NAOMI, '*ATTEMPTS TO DEFINE TERRORISM: TERRORIST OR FREEDOM FIGHTER'* also available at <http://www.academia.edu/1557605/Attempts_to_Define_Terrorism_Terrorist_or_Freedom_Fighter> last retrieved on 12/04/2015 at 3.30 p.m. *Also See*. Schmid A, '*Terrorism: Definitional Problem'*, Case Western Reserve Journal of International Law, 36:375, 2004

[72] Please See. CHOUDHARY B.A. & SHUGHART W. F., '*ON ETHNIC CONFLICT AND THE ORIGINS OF TERRORISM'* also available at <file:///C:/Users/NLC1/Downloads/ethnic%20conflict%20and%20the%20origin%20of%20terrorism.pdf> last retrieved on 14/04/2015 at 4.15 p.m. *Also See*. Bayman Daniel, '*The Logic of Ethnic Terrorism'*, Studies in Conflict & Terrorism', Vol-21, Issue- 2, 1998.

religion can also be the most dominant aspect for countries to not only hiding the terror activities but also supporting them at large level[73].

These problems of some countries which are lending their helping hands to some terrorist organizations has led to yet another important dimension of the terrorism and needs to be discussed thoroughly. There are discussions being made worldwide regarding the very notion of human rights of terrorists and simultaneously the existence of nation security laws[74]. More particularly the pressing need for more stringent national security laws have been raised in recent times due to the continuous changing patterns and places of terrorist activities.

The discussion on the various causes of terrorism and their justification by some in the name of freedom struggle needs a detailed audit and analysis. However, at the same time it should not be forgotten that the basic notion of non-violence remains the bloodline of entire humanity. The history is still waiting to be blamed and mourned in future because of such barbaric acts committed by human beings against other humans.

The sacrosanct nature of human rights and the promises made by the countries to abide by the standard code of international human rights has also posed serious threats while dealing with the problems of terrorists activities. There seems to be a direct clash between the rights of terrorists which they get by virtue of being human beings and which are undoubtedly so called their human rights and the effective protection of citizens by the Government through applying various national security laws in the country which sometimes deliberately deprives such terrorists of their human rights. Apparently there are various views and opinions expressed by various international legal jurists over such a debate and the equilibrium of rights was seen to be shaken and misbalanced.

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[73] See. HOFFMAN BRUCE, '*HOLY TERROR: THE IMPLICATIONS OF TERRORISM MOTIVATED BY A RELIGIOUS IMPERATIVE'*, Published by RAND, 1993. *Also See*. The Guardian, '*RELIGIOUS EXTREMISM MAIN CAUSE OF TERRORISM, ACCORDING TO REPORT*', 18/11/2014 also available at < http://www.theguardian.com/news/datablog/2014/nov/18/religious-extremism-main-cause-of-terrorism-according-to-report> last retrieved on 13/04/2015 at 2.45 p.m.

[74] Please See, Office of the United Nations High Commissioner for Human Rights, '*HUMAN RIGHTS, TERRORISM & COUNTER-TERRORISM'* Fact Sheet No. 32, also available at <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf > last retrieved on 15/04/2015 at 1.30 p.m. Also See. Tatia Prakash, the Chief Justice of High Court of Jharkhand, *'Law, Terrorism and Human Rights'*, available at <http://calcuttahighcourt.nic.in/sesqui/lect2a.pdf > last visited on 09/04/2015 at 1.15 p.m.

The recent terrorist attacks like Charlie Hebdo shootings[75], gunning down of so many children with their teachers in a primary school in Pakistan[76], random firing shots at a crowded shopping Mall in Kenya[77] and the Mumbai Terror Attacks[78] warrants us to examine the fluctuating patterns of such acts and the changing modes of violent attacks.

The modus operandi of the various terrorist groups attracts the attention towards the growing and blatant misuse of technology and the never before advancements made in the regime of firearms and ammunitions. The brutal nature of terror attacks has also been condemned worldwide and almost all of us must share the views that terror acts such as brutal killing of so many children in a School in Pakistan must not be tolerated. A Culture of hatred towards such terror acts must be generated so as to combat the problems of terrorism in more effective manner.

This chapter will offer an in-depth analysis on terrorism and human rights, its various causative factors *vis a vis* the proper, generous and genuine application of national security laws which cannot be comprised at any level and time. The first part of this paper will provide the great debate of protection of human rights at one hand and the enactments and the strict and literal enforcement of the various national security legislations on the other which are implemented by the Parliament from time to time. The Second part will briefly scan various concepts interpreted by the Judiciary so far as maintaining a balance is concerned between human rights of the terrorists and the State's power to punish him to such an extent as would directly infringe his / her human rights. Moral and ethical concerns on both the State as well as terrorists rights are being taken care by part three of this paper which displays a clear picture of the dilemma that exists between maintaining the balance of rights and also the duty of the State to ensure safety and security to each of its citizen. The last part of this article thoroughly covers the Social effects of terrorism on the society. Most importantly it will analyze the common belief of the terrorists that by resorting to violent acts thereby causing chaos and civil disturbance, they will succeed to achieve their ultimate goals.

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[75] Please See. MADI M, RYDER S, MACFARLANE J, BEACH A & PARK V, *'AS IT HAPPENED: CHARLIE HEBDO ATTACK'* available at < http://www.bbc.com/news/live/world-europe-30710777> last visited on 12/03/2015 at 12.30 p.m.

[76] See. The Guardian, '*More than 100 children killed in Taliban attack on Pakistan school'*, dated 16/12/2014

[77] See. The Telegraph, '*Kenya Mall Attacks'*, dated 17/08/2013

[78] Please See. The Times of India , dated 27/ 11/2008

Ironically, it is to be noted that there are some set of authors and jurists who believes that terrorism can be an effective tool which if used properly, limitedly and systematically can wield desired results.[79] This trend of jurists who are lending towards justification of violence is disturbing and needs to be controlled. Violence no matter how productive and successful its end may be shall not be tolerated in any form. Whatever it may be but violence surely cannot provide solution to any of the problem even if the desired results are aimed to receive vengeance from the government or the State. Both the means and the ends to achieve result must be filtered and must stand the test of non-violence. If someone deviate from this path of non-violence, it becomes the duty of States either jointly or individually to combat such population from time to time.

The State would be failing in its duty if it tolerates any kind of violent activities on its land or support knowingly or unknowingly the cause of such groups. In order to achieve success in this regime, the States must co-operate with each other in tackling such anti-national, anti-human elements. However, to achieve these parameters, the State themselves must compromise on several issues land disputes, economic disparities, religious differences, ethnic variances, political issues and like matters[80]. The inability of international law due to obstacles caused by the principles of non-interference and equal sovereignty must also be discussed in the chapter as it had negatively contributed towards the growth of unfortunate practices and non-obedience of common law by the various States.

Thus, there seems to be a great tussle between the ideas of protecting human rights of the individuals and enacting the national security laws in the country.[81] The state, the population and the law enforcement authorities are often in dilemma as to which side they should stick to more[82].

Such laws which focus on the national security are often being made in haste thereby leaving much room for the defenders of human rights to point out fingers at the law enforcement authorities[83].

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[79] Radical Prophecies of certain Islamic authors such as Ibn Taymiya, Syed Kutub are some of the examples in this regard.

[80] See. STOHL & LOPEZ (eds.), '*THE STATE OF TERRORIST*', (1984). Also See. BERMAN & CLARK, '*STATE TERRORISM: DISAPPEARANCES*', Rutgers Law Journal, (1982).

[81] See. KALHAN, CONROY, KAUSHAL, MILLER & RAKOFF, '*COLONIAL CONTINUTIES: HUMAN RIGHTS, TERRORISM, AND NATIONAL SECURITY LAWS IN INDIA*', 20 Colum J. Asian l. 93, (Fall 2006)

[82] See. WILLIAM F. FELICE, '*MILITARISM AND HUMAN RIGHTS*', International Affairs (Royal institute of International Affairs), vol. 74 No.1, (January, 1998).

[83] See. STEVEN C. POE AND C NEAL TATE, '*REPRESSION OF HUMAN RIGHTS TO PERSONAL INTEGRITY IN THE 1980S: A GLOBAL ANALYSIS*', The American political Science Review, Vol.88, No.4 (December, 1994).

Many a time, such laws are being misused at different places and at different manner.[84] Thus it will be expeditious at this juncture to examine the various human rights which are directly alleged to be infringed time and again by the law enforcement agencies.

2.2 BRINGING JUSTICE TO TERRORISTS: RECOGNIZING CERTAIN RIGHTS OF THE TERRORISTS

"Adherence to the constitutional principle of 'substantive due process' is an integral part of our collective response to terrorism. As a part of the legal community, we must uphold the right of fair trial for all individuals, irrespective of how heinous their crimes may be".[85]

- Justice K.G. Balakrishnan
Former Chief Justice of India

Human Rights are the product of a long deliberation and freedom struggles all over the world.[86] Almost every country sooner or later revolted against their unreasonable rulers or dictators/ governments and after creating new history has achieved independence to their citizens. The global movement for independence by every small or big States marked the realization of a bundle of rights which these states regarded so precious as not to compromise with them in future in any possible way. This realization of the importance of rights gave impetus to the world wide movement for the universalization of these rights across the globe. The first step in this direction was the formation and recognition of the national Constitutions by various countries in their own homeland.[87] Many countries inspired by these freedom struggles started their own campaigns to gain independence. When such countries became independent, it was common for them to have a national constitution embodying all major human rights within one umbrella and also prescribing roadmap for its actual enforcement and implementation.[88] As a result, many States were successful

[84] The black history of TADA, POTA in India, the Military Commission Act, in USA and the Terrorism Act, in UK are the shining example which proves the statement.
[85] See. *'TERRORISM, RULE OF LAW AND HUMAN RIGHTS'*, The Hindu, December 16, 2008
[86] For ex. albeit, the human rights can be traced to ancient history, but the impetus for human rights movement worldwide took place only after the World War-II.
[87] See. WILLIAM F. FELICE, *'MILITARISM AND HUMAN RIGHTS'*, International Affairs (Royal institute of International Affairs), vol. 74 No.1, (January, 1998).
[88] See. DR. JOSEPH ISANGA, *'COUNTER-TERRORISM AND HUMAN RIGHTS: THE EMERGENCE OF A RULE OF CUSTOMARY INTERNNATIONAL LAW FROM U.N. RESOLUTIONS'*, 37 Denv. J. Int'l L. & Pol'y 233 (Spring, 2009).

in claiming independence which ultimately clamoured to achieve peace in the international regime as well.[89]

In the global process of national movements, the States realized the need to unite and establish a new world order.[90] In the need to come together and to be governed by a common international code of conduct, the States joined their hands to form the famous League of Nations. This ignited, for the first time, the start of a never before platform to discuss the problems of various states and also became the focal point to resolve all sorts of international disputes. The League of Nations was created by the international community with number of ambitions and a global aspiration in the aftermath of World War-I and it was believed that this one stop forum shall soon acquire the important position. It was also expected that this will give birth to a new era where in to exercise limited control over States would be possible. However, the dreams of international community shattered due to the unwarranted interception of World War-II. As a consequence, the League of Nations had to be suspended and did not work in continuity.[91] After the end of World War-II and lessons learnt from the devastating failure of the League of Nations, the international community again united to form in even a greater union than it was in the form of League of Nations. This has led to the birth of United Nations Organization (UNO) which became the successor to the League of Nations[92]. In many aspects, United Nations was much similar to its predecessor and incorporated similar organs and principles[93]. An international code of conduct was formulated in

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[89] See. W. MICHAEL REISMAN, *'INTERNATIONAL LEGAL RESPONSES TO TERRORISM'*, 22 Hous. J. Int'l L. 7 (1999-2000).

[90] See. KARIMA BENNOUNE, *'TERROR/TORTURE'*, 26 Berkeley J. int'l L.1 (2008).

[91] See. W. MICHAEL REISMAN, *'INTERNATIONAL LEGAL RESPONSES TO TERRORISM'*, 22 Hous. J. Int'l L. 7 (1999-2000).

[92] This Conference which was sometimes also called as the Crimea Conference and codenamed 'Argonaut Conference' was held during February, 1945 for the purpose of discussing Europe's post-World War re-organization. Interestingly, the major focus of the conference was towards various States' re-organization and the future of the world with the sacred notions of peace and order. However, while States were considering the formation of United Nations, the United States came with a plan with respect to voting procedure (Veto) in UN and urged members to consider the same. This was made possible only at San Francisco Conference which was attended by 50 states and which ultimately gave birth to the United Nations with a Charter and other organs thereby ushering a new era in the history of mankind filled with new hopes and ambitions. **Please See.** '*The Yalta Conference: Milestones'*, Archives of US Department of State, Office of the Historian, also available at < https://history.state.gov/milestones/1937-1945/yalta-conf> last accessed on 17/09/2014 at 5.35 p.m.

[93] Please See. '*History of UN*' available at < http://www.un.org/en/aboutun/history> last accessed on 16/09/2014 at 4.33 p.m.; In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the United Nations Charter. Those delegates deliberated on the basis of proposals worked out by the representatives of China, the Soviet Union, the United Kingdom and the United States at Dumbarton Oaks, United States in August-October 1944. The Charter was signed on 26 June 1945 by the representatives of the 50 countries. Poland, which was not represented at the Conference, signed it later and became

the form of UN Charter which operates more like an international constitution[94]. The United Nations started its full-fledged functions in tune with the objectives enshrined in the Charter. One of the core objectives of the UN was the establishment of new economic world order and the promotion and protection of human rights of all human beings[95]. To fulfil its promises, the United Nations started its deliberation to draft an international bill of human rights which will be applicable to all universally without any kind of discrimination being made on the basis of religion, ethnicity, caste, sex, birth etc. However, the aspirations and ambitions were high and sources were limited. It seemed almost impossible to frame all human rights in one document. Also, there were different opinions as to preferences of various kinds of rights.[96] The Representatives of different countries differed on major aspects like whether they should prefer the political rights over social and cultural rights and vice versa.

Nonetheless, the result in the nutshell of these deliberations to create an international bill of human rights was the creation of one of the most revered document in the form of Universal declaration of Human Rights[97]. The Universal Declaration of Human Rights (UDHR) became the fountain source of inspiration for the global movement of human rights. Within a very short span of time, UDHR was soon came to be recognized as the 'Magna Carta' of the present Century catering all needs of vulnerable beings and establishing a world order so far as protection of human rights are concerned. However, being merely a declaration, UDHR only served as the guiding document without any compulsory force. To make the rights mentioned in UDHR more effective and meaningful, two more international covenants were established in the form of international Covenant on Civil & Political Rights (ICCPR) and International Covenant on Economic, Social &

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one of the original 51 Member States. The United Nations officially came into existence on 24 October 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, the United States and by a majority of other signatories. United Nations Day is celebrated on 24 October each year

[94] See. Sobel Russell S, ' *The League of Nations Covenant and the United Nations Charter'* Constitutional Political Economy, Vol. 5, No. 2 1994

[95] Please See, '*The charter of the United Nations Organization'*, also available at < http://www.un.org/en/documents/charter/preamble.shtml> last retrieved on 10/04/2015 at 10.55 a.m. More particularly it goes on explaining *"to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small*, and…"

[96] See. SARAH E. SMITH, '*INTERNATIONAL LAW: BLAMING BIG BROTHER: HOLDING STATES ACCOUNTABLE FOR THE DEVASTATION OF TERRORISM*', 56 Okla. L. Rev. 735 (Fall, 2003).

[97] The Universal Declaration of Human Rights was adopted by the United Nations General Assembly resolution 217A at its 3rd session in Paris on 10 December 1948. From 1946-1948 delegates to the United Nations discussed and drafted an international declaration on the subject of human rights that has become a standard of principles for human rights. **See.** '*A Historical Record of the Drafting Process'* also available at http://research.un.org/en/undhr/introduction> last visited on 09/04/2015 at 11.16 a.m.

Cultural Rights (ICESCR) in the year 1966 which came into force in the year, 1976. The Universal Declaration of Human Rights with these two international Covenants alongside two additional protocols went on to become *'International bill of Human Rights*[98]*'*.

The famously so called '*International Bill of Human Rights'* implies a number of rights which can be termed as the basic and foundational rights of every human beings.[99] Greater respect for human rights, democracy and social justice will prove to be the only remedy in combating terrorism. The entire edifice of the Justice delivery system stands on the principle that 'No one shall be presumed guilty unless proved guilty in the court of law'. Thus, it is argued by many jurists and thinkers that the need exists provide justice to the terrorists by taking into consideration their basic human rights to which they are entitled. The surest foundation for stability and peace would be to provide justice to the terrorists and preserving the best values of democracy and rule of law.[100] Certain sacrosanct bundles of rights are vested in every human being so that they can live a dignified life *"not by chance or choice but by being human*" and this is equally applicable even to terrorists.[101]

-As put succinctly in **the US Declaration of Independence**[102]

-*"All men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness".*

This statement does not even exempt the terrorists from its application. To many authors and human rights defenders, certain rights are available even to terrorist irrespective of their inhumane acts.

As per some legal jurists and thinkers, the terrorists are entitled to *the following human rights:-*

- *The Right to life*

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[98] Please See. Fact Sheet No.2 (Rev.1), 'The International Bill of Human Rights' also available at < <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> last retrieved on 13/04/2015 at 4.12 p.m.

[99] See. NAURO F. CAMPOS AND MARTIN GASSEBNER, '*INTERNATIONAL TERRORISM, POLITICAL INSTABILITY AND THE ESCALATION EFFECT*', IZA Discussion paper No. 4061 (March, 2009).

[100] See. ALBERT J. BERGESEN AND OMAR LIZARDO, '*INTERNATIONAL TERRORISM AND THE WORLD SYSTEM*', Sociological Theory, Vol. 22 No.1, Theories of Terrorism: A Symposium, (March, 2004).

[101] See. THOMAS WEATHERALL, '*THE STATUS OF THE PROHIBITION OF TERRORISM IN INTERNATIONAL LAW: RECENT DEVELOPMENTS'*, 46 Geo J. int'l L. 589. (Winter, 2015).

[102] See. '*Charters of Freedom: A New World is at Hands'*, also available at <http://www.archives.gov/exhibits/charters/declaration_transcript.html > last visited on 05/03/2015 at 4.22 p.m.

- *The Right against torture*
- *The Right to fair Trial and Due Process*
- *The Right to Non-Discrimination*
- *The Right against Transfer of Individuals Suspected of Terrorists Activity*

Thus, it would be necessary at this point to briefly have a glimpse of these rights which have been provided by certain international instruments as well as protection has been accorded by the domestic laws.

2.2.1 RIGHT TO LIFE[103]:-

The first and foremost important right of the terrorists is that of the right to life. It is a globally protected right and slowly is on the verge of converting itself into a customary international law. This right is available even to captured persons who are suspected of committing a terrorist act within the boundaries of a State. States cannot take away this right from suspected persons without procedure established by law. The Human Rights Committee has stated that "the protection against deprivation of life…is of paramount importance".[104] In actual practice, however, States have adopted such measures which pose a grave danger to the right to life which includes "*deliberate*" or "*target killings*" or "*shoot-to-kill*".

The Indian Constitution prescribes that *"No one shall be deprived of his life or personal liberty except according to the procedure established by law[105]"*. **The High Commissioner for Human Rights** has cautioned that, *"in fight against terrorism, **law enforcement machinery should instil a culture of respect for the law** above all and extreme vigilance"*.

2.2.2 THE RIGHT AGAINST TORTURE[106] :

This is another important right which is followed after the right to life. Under the international and regional human rights treaties, the prohibition of torture and other cruel, inhuman or degrading

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[103] *See*. Article 3 of UDHR, 1948.
[104] **See**. RAMACHANDRAN B.G, '*THE RIGHT TO LIFE IN INTERNATIONAL LAW*', Martius Nijoff Publishers, 1985; **Also See.** Butler William E., '*The Non- Use of Force in International Law*', Kluwer Academic Publishers 1989.
[105] See. Article 21 of the Constitution of India
[106] Please See. Article 5 of the UDHR, 1948

treatment or punishment is a *peremptory norm* or a *norm of 'Jus Cogens' and is non-derogable right* even in state of emergency threatening the life of the nation[107]. However, States have often resorted to such policies which circumvent and undermine this absolute prohibition. The Human Rights Committee has confirmed that *this right is to be protected at all times*, including a state of emergency.

Thus, in order to provide justice to terrorists and to add feathers to the Rule of law's cap of glory, *the States must ensure* that the full range of legal and practical safeguards to prevent torture is available, including guarantees related to the right to personal liberty and security**.**

2.2.3 THE RIGHT TO FAIR TRIAL AND DUE PROCESS

The right to fair trial and due process is said to be yet another facet of principal of natural justice. Justice can be delivered effectively only by *guaranteeing due process rights*, including for individuals suspected of terrorists' activity. These rights include the right to be *presumed innocent, the right to a hearing* with due guarantees and within a reasonable time, by a competent, *independent and impartial tribunal* and the right to have a conviction and sentence *reviewed by a higher tribunal* satisfying the same standards. However, the State's counter-terrorism policies and process poses a number of challenges to these rights and thus, *should be protected* by the States. The text of the UDHR runs as , '*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.'*[108]

2.2.4 THE RIGHT TO NON-DISCRIMINATION[109]

In the specific context of counter-terrorism, *the Committee on the Elimination of Racial Discrimination* has said that the principle of non-discrimination is not capable of limitation and since it has become a norm of '*jus cogens'*. Right of not to be discriminated is one of the

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[107] See. NIETO-NAVIA RAFAEL, '*INTERNATIONAL PEREMPTORY NORMS (JUS COGENS) AND INTERNATIONAL HUMANITARIAN LAW*' available on
< http://www.iccnow.org/documents/WritingColombiaEng.pdf> last retrieved on 03/04/2015 at 5.44 p.m.

[108] See. Article 10 of the Universal Declaration of Human Rights , 1948 inter alia provides that:
"everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal".

[109] Please see. Article 2 of the Universal Declaration of Human rights which runs as : *'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."*

fundamental foundations of basic principal rights of human being. Discrimination in any and every form must be condemned in every possible way. It is the discrimination which leads to a series of other problems including brutal violent acts. Thus, it has been emerged as one of the core rights in the regime of human rights. This has provided an effective cover to the vulnerable groups who were the victims of such discrimination in past and has provided them an opportunity to succeed in all spheres of their lives.[110]

Apart from the international instruments, several regional human rights documents also provides for the right against discrimination.[111] The European Convention on human rights stipulates that the enjoyment of rights and freedoms shall be secured without discrimination on any ground to all the individuals.[112]

2.2.5 THE RIGHT AGAINST TRANSFER OF INDIVIDUALS SUSPECTED OF TERRORISTS ACTIVITY

This is somewhat a new right which has emerged for the protection of persons of suspected for terrorist activities. In the aftermath of 9/11 terror attacks on the World Twin Towers, the laws transformed into draconian form and gave wide powers to the executive to control any terrorist activities of secret operations. While exercising their powers, the government empowered such executive to transfer the terrorist at such places and undisclosed locations which remains a top secret and where the terrorist can be tortured to any level.[113] Thus, the jurists started to propagate and promote the right of the terrorist not to be transferred to any undisclosed location in any dicey or arbitrary manner. This has resulted in the incorporation of this right into major international conventions which now protects the rights of persons suspected of terrorists' activities against any such arbitrary actions on the part of the executive.

Hence, now the state of affair warrants that the "States have an obligation to conduct any transfer of detainees *in a manner which is transparent and consistent with human rights and the rule of*

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[110] See. *'THE RIGHT TO NON-DISCRIMINATION: A FUNDAMENTAL HUMAN RIGHT AFFIRMED BY THE UNITED NATIONS AND RECOGNIZED IN REGIONAL TREATIES'*, Europe-Third World Centre (CETIM), (June, 2011).

[111] For ex. African Convention on Human Rights, European Convention on Human Rights etc

[112] See. Article 14 of the European Convention on Human Rights

[113] Guantanamo Bay Detention Cap can be served as an example in this context. Please See. FLORENCE DAVEY-ATTLEE, *'INMATE'S BOOK EXPOSES HORRORS OF GITMO'*, also available on < http://edition.cnn.com/2015/01/21/americas/guantanamo-bay-prisoner-book> last retrieved on 12/03/2015 at 4.15 p.m.

law, including the right to respect for a person's inherent dignity, the right of everyone to recognition before law and the right to due process." [114]

Having enumerated all the human rights protection clauses that may be available for a terrorist, now the focus of this chapter shall move on to another important leading aspect of maintaining a balance between human rights of terrorists on one hand and the nation's security at the other. We all must agree that whenever one needs to chose between these two parameters, we should always prefer the national security cause on the priority. To compromise or not to compromise with the aspect of security, safety and public order is the question that is so big and vital that often the human rights of the deserving persons who are suspected of terror acts are getting offended. We must maintain a fine balance between these two crucial areas in order to ensure security and at the same time preserving the basic notions of the rule of law and order.

2.3 JUDICIAL ENDEAVORS FOR LEGAL REFORMS

The delicate and soft fabric of the human rights is always protected and safeguarded by the sentinel of individual and group's rights i.e. by the judicial wing of the governments both in USA and in India. Since the 9/11 terror attacks and the establishment of horror and torture cells, so many applications started coming to court to provide for the order of justice and fairness. The US Supreme Court, however, has never seemed to compromise the individual right with that of the executive's power to detain a person merely on suspicion. The US government has made a number of orders with the approval of congress denying habeas corpus to detainees at Guantanamo in the usual court of law.

Three US Supreme Court decisions in ***Rasul* V. *Bush***[115]***; Hamdi* V. *Rumsfeld***[116] and ***Hamdan* V. *Rumsfeld***[117] had ordered detainees access to court within United States but after each judicial mandate, the congress responded with legislation aimed at thwarting the court's decision.

114 Please See. Art. 33 (1) of the 1951 Convention relating to the Status of Refugees, Art.3 of the Convention Against Torture, 1984 , Art.16 of the International Convention for the Protection of All persons from Enforced Disappearance, 1992 & Art. 7 of the International Covenant on Civil and Political Rights, 1966.

115 See. ***Rasul V. Bush***, 542 U.S. 466 (2004),

116 Please See. *Hamdi* **V**. *Rumsfeld*, 542 U.S. 507 (2004)

117 See. *Hamdan V. Rumsfeld*, 548 U.S. 557 (2006)

Finally on 12-06-2008 in ***Boumediene* V. *Bush***[118], the US Supreme Court in a 5:4 decision held ouster of habeas corpus rights of these detainees under the Military Commissions Act, 2006 to be ***unconstitutional,*** and the alternative process contained in the Detainees Treatment Act, 2005 for scrutiny of the designation of detainees as "enemy combatants" did not provide an adequate substitute for the writ of habeas corpus.

Similarly, the House of Lords in *A* V. *Secretary of State for Home Department*[119], (famously known as the Belmarsh Decision), ruled against a provision which allowed the indefinite detention of foreign terror suspects. In April 2006, in his Judgment in the case of *RE MB*[120], Mr. Justice Sullivan issued a declaration under section 4 of the Human Rights Act, 1998 that section 3 of the Prevention of terrorism Act of 2005 ***was incompatible*** with the right to fair proceedings under Art. 6 of the European Convention on Human Rights.

In India also the Supreme Court has acted as the watchdog of rights of millions and promoted human rights of all its population. With the growing misuse of anti-terrorist laws, the Supreme Court of India has time and again alarmed the legal system to remain vigilant to any such misuse of powers and law.

On the constitutionality of TADA being challenged, TADA provisions were subject to Judicial review by the apex court in India. In ***Kartar Singh* V. *State of Punjab***[121], the Supreme Court found the law to be generally valid passing the muster of Constitution. The Court struck down as unconstitutional one of its provisions that had provided for "identification of accused" on the basis of his "Photograph", during the proceedings in absentia upon he being declared an absconder.

In the context of provision rendering confession before a police officer admissible, Supreme Court *laid down certain guidelines* including by insistence on ***"free atmosphere",*** or ***"use of language"*** of the person examined and, most important, production of maker of the confession "without reasonable delay" before Chief Judicial Magistrate who would be expected to record the statement, if any, made by the confessor and who would also order his medical examination in case there was a complaint of torture.

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[118] See. *Boumediene* ***V****. Bush*, 553 U.S. 723 (2008)

[119] *A* V. *Secretary of State for Home Department*,(2004) UKHL 56,

[120] Please See. Re MB [1997] EWCA Civ- 3093

[121] See. *Kartar Singh* V. *State of Punjab*, 1994 SCC (3) 569

The Most significant contribution to the jurisprudence governing counter-terrorism measures in India came in the form of a direction from the SC, for the constitution of ***"Screening or Review Committees".***

In compliance of aforesaid directions, ***Screening Committee or a Review Committee*** was constituted by the Governments in various States. *A High Power Committee* under the Chairmanship of the Chief Secretary of one particular unit of Union of India reviewed the prosecutions made under TADA and the Government conveyed its approval to the Director of Prosecution for deletion of the charges under TADA in the specified criminal cases pending before the Designated Courts.

The Special Prosecutor filed applications for withdrawal of charges under TADA. The Designated Court ***dismissed those applications*** taking the view that administrative decisions cannot interfere with the working of the Judicial system.

The constitutionality of POTA was also challenged before the Supreme Court of India, but found without merit. In ***People's Union for Civil Liberties V. Union of India***[122], the challenge was on the ground that the basic human rights were being violated. The View of the Court in this regard is now well known namely that the "protection and promotion of human rights under the rule of law is essential in the prevention of terrorism".

2.4. MORAL & ETHICAL CONCERNS

Apart from the legal concerns, one must also worry about the moral and ethical concerns involved in the heinous nature of terror acts.[123] Terrorism can be a way in which the revolutionary process can be carried out so that control over a particular targeted population can be made and who do not bother about their guerrilla warfare tactics. S.K Singh in his work ironically points out that sometimes terrorism can be justified if its use is limited and means are less violent[124]. He cites examples of both success and failures of the government which resorted to terrorist practices in

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[122] See. *People's Union for Civil Liberties* V. *Union of India* AIR [2003] SC 2363.

[123] See. HERSH M.A, '*TERRORISM, HUMAN RIGHTS AND ETHICS: A MODELLING APPROACH*', J Socialomics 5:148 (2016)

[124] Please See. SINGH S.K., 'TERRORISM*: A GLOBAL PHENOMENON'*, Authors Press Publication, 1st Ed. 2000; Author keeps on stating, '*Terrorism is a very good weapon in the armory of guerillas if it remains confined to limited or selective killings. It ca be dangerous if used without rhyme or reason or used without control and co-ordination. Illogical killing is dangerous. It is a double-edged weapon which, if not used properly, can cut the hands of the user.*" Id.

past. He takes the illustration of Communist extremists in Malaya and explains how brutally they have executed the killings which in fact resulted in public outrage and generated mass hatred. Mau Mau Terrorists in Kenya also had the same story with their own so called revolutionary activities where they claimed lives of thousands of innocent people. He further explains that as compared to Communist terrorists in Malaya and Mau Mau in Kenya, the Vietcongs were more rational in selecting the potential targets of annihilation and considerable gains were achieved into the Vietcong fold[125].

It is submitted that violence of any kind must not be tolerated at any time and in any form though in even limited form or committed selected targets. However great the cause may be, resorting to violence albeit in limited form can never be a solution to the problem to curb the menace of terrorism. Morally the cause of a fight may be greater than the actual fight but we must not forget that the problems can also be solved through arbitration, mediation, conciliation and hundreds of other amicable remedies available for individual and also for groups to negotiate their terms with the government or the ruling people those who are in power. Ethically, morally and legally, the acts of terrorism in as much as it involves the horrible acts of violence is not justified in any form and must be condemned at international and domestic level.[126] Talking about the ethics of terrorism, Clark said 'there aren't any ethics'. That's part of what makes a terrorist a terrorist. However, terrorism does indeed raise some ethical questions for those who would respond to terrorism[127].

2.5 POLITICAL AND SOCIAL EFFECTS

In the last phase of this chapter, the researcher proposes to analyze the various political and social effects the problem of terrorism can bring with it. The terrorism, of course, imbibes the inbuilt problems and has the diverse social effects on the nations or States. Economically, it may hurt the very foundations on which economy of the country is based and may also shake the growth rate with which the country is expected to develop. Socially the problem of terrorism may bring disturbance to the social balance of the general population.

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[125] *Ibid* at pg-3

[126] See. D.J.C. CARMICHAEL, '*TERRORISM: SOME ETHICAL ISSUES'*, 24 Chitty's L.L. 233, Vol. 24 No.7 (1976)

[127] See. BRUCE A. CLARK, '*THE ETHICS OF TERRORISM'*, available at <www.spectacle.org/clark> last visited on 09-10-2016

It is sometimes argued that the effects of terrorism are quite minimal, and that the current concern with terrorism is well out of proportion to the threat that terrorism actually poses.[128] Counting the number of terrorist fatalities and comparing this to the number of fatalities in conventional wars, or even traffic accidents, leads some to claim that the threat of terrorism is wildly exaggerated. But counting fatalities from terrorist attacks is the crudest and most simplistic way to measure the impact of terrorism. The consequences of terrorist attacks often go far beyond the deaths and destruction they cause. The effects of terrorism are not limited to its actual victims. They can be wide-ranging and far-reaching.[129]

Social structure and order, governance of society and politics are dependent on good communication, and good communication requires agreement on definitions of terminology[130]. We define a multidimensional terrorism index based not only on deaths but also on other variables such as injuries, bombs and kidnappings. The weight of each terrorist activity is given by its social impact, which is estimated through its relevance in the media[131].

The acts of terrorism have wide social impacts in as much as it may sometimes instigate the other group of the population to join the terrorist camps. The problem of indoctrination of young population and children must also not be forgotten as it also poses a great difficulty to deal with such anti-national elements.

Whereas the economic impact of terrorism ranges from minimal to moderate, the same is not necessarily the case with the social impact of terrorism. The social effects of terrorism can be pronounced and far-reaching, influencing many different aspects of a society. The starting point for the impact of terrorism on a society is the affect that terrorist attacks have upon people's beliefs and attitudes. Major events influence people's beliefs and attitudes.[132]

A common feeling of victimhood is quite normal to society which experiences terrorism. Usually the civilian population is not involved in the political or religious or any other conflicts in which

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[128] See. DOV WAXMAN, *'LIVING WITH TERROR, NOT LIVING IN TERROR: THE IMPACT OF CHRONIC TERRORISM ON ISRAELI SOCIETY'*, Perspectives on Terrorism, Vol 5, No 5-6 (2011).

[129] *Ibid.*

[130] Please See. GREGOR BRUCE, '*DEFINITION OF TERRORISM – SOCIAL AND POLITICAL EFFECTS'*, Journal of Military and Veterans' Health, Volume 21 No. 2

[131] Please See. JUAN PRIETO-RODRÍGUEZ, '*QUANTIFYING FEAR: THE SOCIAL IMPACT OF TERRORISM* 'Journal of Policy Modelling Volume 31, Issue 5, September–October 2009, Pages 803–817

[132] See. DOV WAXMAN, *'LIVING WITH TERROR, NOT LIVING IN TERROR: THE IMPACT OF CHRONIC TERRORISM ON ISRAELI SOCIETY'*, Perspectives on Terrorism, Vol 5, No 5-6 (2011).

the state is indulged. Thus, general public feels victimized. The terrorists often target this civilian population and when targeted this population becomes more furious and compels the government to deal with the problems. [133]

The extensive social effects of terrorism described above often have political implications. In some cases, the political effects of terrorism are clear-cut and pronounced, but often they can be difficult to accurately assess because specific political outcomes cannot be casually linked to terrorism due to the multiplicity of potential causes. A government's policy or a particular political decision may be the result of any number of factors, and can therefore rarely be definitively attributed only to a terrorist attack or series of attacks. While the political impact of terrorism is often hard to pinpoint, nevertheless it can hardly be doubted that terrorism has political effects and influences the political process, at least in democratic and partially democratic states. The most obvious way in which terrorism can influence the political process is by bringing about changes in public opinion, which governments then tend to take into account when formulating their policies.

It can be very hard for governments to resist the pressure from public opinion for a strong reaction in the wake of a terrorist attack. For an elected policymaker, the political costs of under-reacting to a terrorist attack are always higher than the political costs of overreacting. The failure to prevent future attacks due to inaction can be fatal to a politician's career, while failing to prevent them after having taken strong measures can be justified as having done everything possible.[134]

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[133] *Ibid.*

[134] The impact of terrorism on public opinion, however, is not as straightforward or predictable as one might imagine. There is no uniform public response to a terrorist attack. Numerous factors affect how a public responds to a terrorist attack, such as the nature and scale of the terrorist attack, and the context in which it occurs. Moreover, different groups within the general public respond in different ways to a terrorist attack. People with different political orientations are likely to have different responses since existing political orientations serve as a mechanism through which new information is received and processed.[106] Nor do terrorist attacks necessarily change people's political opinions. The greater a person's confidence in their views, the less likely they are to change as a result of a major event, like a terrorist attack.

2.6 CONCLUSION

The present Chapter offers a fascinating story of enactment of national security laws to prevent violent acts such as terrorism and its over-riding effects on the various human rights guaranteed to the individuals at various levels.

In the first part of the chapter, the emphasis has been laid much upon the very need to discuss various percussions of the problems caused by the terrorism and the attitude and approach of some of the problematic states towards the same.[135] It had been reiterated at this juncture that the approach of some of the states which openly sponsor terrorism, give shelter and safe haven to terrorists must be amended in order to achieve universality of human rights.

The Chapter also highlights the changing modus operandi of terrorists from merely the use of small swords form the time of the Zealots and Assassins to the use of Vehicle Borne Improvised Explosive devices (VB-IEDs) to the time of yet other deadliest terrorist organizations such as the Islamic State. These changing methods by the terrorist have also changed the shifting targets. Nowadays, even schools and universities are being targeted because they are easy to hit and not much security concerns are there so far as these schools and universities are concerned.

The present Chapter importantly further identifies the inevitable struggle or clash between the terminologies of human rights *vis* a *vis* the necessity of national security laws in order to protect one's homeland.

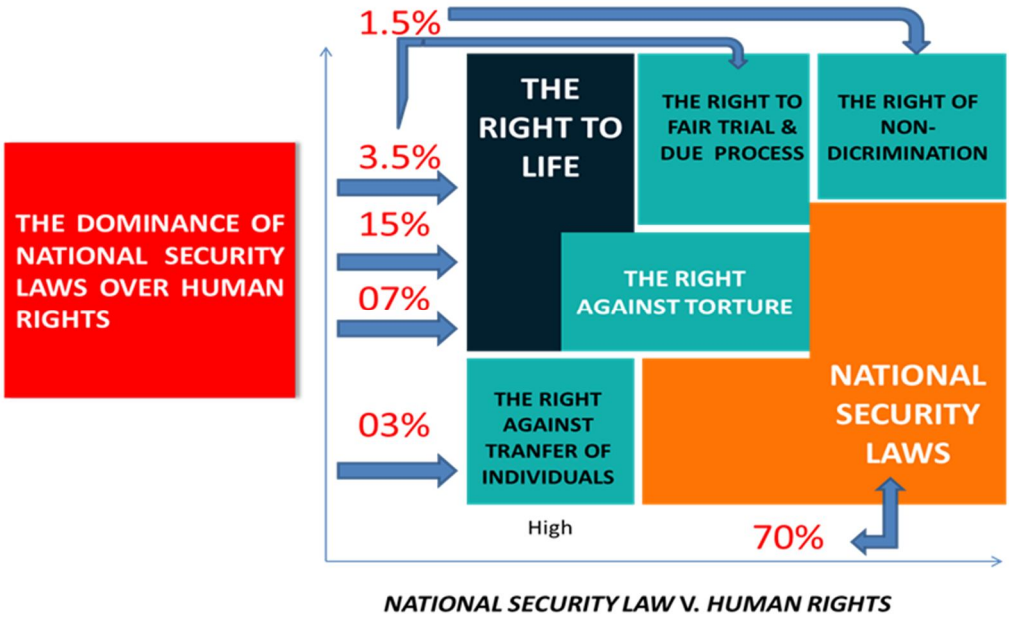
The Chapter then proceeds to bring the complete justice to the terrorists who have been accused of various violent acts. It goes on to recognize some of the basic rights which are available even to terrorists. These rights are[136] right to life, the right against torture, the right to fair trial and due process, the right of non-discrimination and the right against the transfer of individuals suspected of terrorists activity. The Chapter meticulously scans the approach of the various courts with regard to human rights of terrorists and the executive sanctions. The present Chapter also brief throws a light on moral and ethical concerns attached to the concept of terrorism. Finally, the Chapter goes

[135] *Supra f.n.* 2252; P- 693. .
[136] *Supra f.n.* 2267; P- 700-704.

on to discuss the various political and social effects of terrorism which bothers the conscious and development of the country.

The tussle between human rights defenders and the state sanctions on terrorists can be illustrated by the following chart.

(Graph-8)THE DOMINANCE OF NATIONAL SEUCRITY LAWS OVER HUMAN RIGHTS



NATIONAL SECURITY LAW V. HUMAN RIGHTS

This chart has especially been prepared in order to give the readers an average percentage of autonomy which is usually enjoyed by the laws enacted to secure the nation and its citizens. Albeit, there is a clear struggle between human rights and the provisions which curtail human rights the average percent of prevalence and dominance of national security laws over human rights is 70. All other rights have been prevalent in all corners of the world. However, their percentage of significance differs from time to time. Nonetheless, these rights have been prioritized here in order to understand their nature and significance. As one can observe, the right to life receives the highest percentage among all other rights which depicts that the states must give preference to right to life over all other subservient rights in all cases. Thus, the states must give more importance to right to life to the average count of 15 %. The second most important right in the list if that of the right against torture which gets to an average of 7% which is followed by the right to fair trial and due

process which marks upto 3.5%. The right against transfer of individuals receives 3.5% while the right to non-discrimination gets 1.5% in total in terms of priority of these human rights.

India has tried to follow a path wherein *"rule of law"* continues to be the fundamental benchmark and the basic rights are ensured even to those who are suspected of involvement in terrorist crimes. India's response has throughout abided by the principle of "universal respect for and observance of human rights and fundamental freedoms", as commended by various UN resolutions The recent trial of *Amir Ajmal Kasab* demonstrates India's adherence to the principles of natural justice and respect for the rights including fair trial and to be represented by a legal counsel. This was *the speediest trial in the history*. Periodic Review of laws and the *recent passing of two Bills in 2008* i.e. The Unlawful Activities (Prevention) Amendment, Act, 2008 and the NIA, 2008. The concept of "*Judicial Review*" has thus been successfully followed in India as a major check on the abuse of power thereby minimizing the complaints of wrongful detention. India *does not* subscribe to the radical view in certain quarters that "*torture*" should be available in extreme situation of terrorist acts". Under the Indian Evidence Act, confessions made to police officers are inadmissible as substantive evidence against the accused. India has never purported to derogate from any of the ICCPR's provisions. Safeguards should be provided for arbitrary, politicized, and discriminatory Police decision making. Efforts may require the Central Government to develop mechanisms that provide for greater administrative and judicial oversight of investigative and prosecutorial decision making and transparency in decision making to ensure enforcement of fundamental rights.

As Hobbes puts it, 'No law can be unjust law.'[137] Justice shall be done at any cost though the heaven falls. Justice shall not only be done but shall be seen to be done. Justice is not only the property of rich persons, it is the right of every common man. Justice is embodied in nature, law finds it, decorates it in the form of rights. Justice in common connotation suggests fairness and reasonableness of the rule, principles and standards. Justice look into the content of legal norms, institutional arrangements, their effect on human beings, their worth in terms of contribution to human happiness, building of civilization etc. The major aim of Justice is to satisfy the reasonable needs and claims of individuals. Thus, every terrorist must brought to justice along with keeping in mind the basic tenets of rule of law, justice and fairness.

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[137] *See.* ALLEN BEVER, *' FORGOTTEN JUSTICE: THE FORMS OF JUSTICE IN THE HISTORY OF LEGAL AND POLITICAL THEORY'*, Oxford University Press, (2013).

CHAPTER-III

NATIONAL-SECURITY LAWS IN

INDIA

3. NATIONALSECURITY LAWS IN INDIA

3.1 INTRODUCTION

The Indian scenario of anti-terrorism legislations is often interlinked with its ill-history of preventive detention laws. Soon after the independence, the drafters of the Indian constitution thought it apt to adhere to the colonial preventive detention laws which were designed to protect the civilians and help the law enforcement authorities basically to prevent crimes from occurring in the first place.

This was the eventual reason for the inclusion of preventive detention provisions in the Constitution of India. By including preventive detention provisions, the founding fathers of the Constitution indirectly institutionalized the preventive detention system in the Constitution itself.

Besides the Constitutional provisions, the Parliament soon thought it necessary to implement and enact a special legislation prescribing for the preventive detention and the situations pertaining to it. The result was the Preventive Detention legislation made three years post-independence in 1950 which was passed in haste by the Parliament.

Independent India's first tryst with real anti-terrorism laws, however, occurred when the Maintenance of Internal Security Act was passed in the year 1971. Maintenance of internal peace and security were among the few reasons cited by the Parliament to justify the enactment of the law. However, the MISA, 1971 short-lived because it inevitably became one of the powerful tool in the hands of government during the dark period of emergency and the Act totally failed to stood the test of time.

Alongside the MISA, 1971, the Parliament also had the privilege of enacting the Unlawful Activities (Prevention) Act, 1967 (UAPA, 1967) which contained the minimum provisions enough to deal with situations penalizing situations disturbing the peace and order in the country. In the year 1980, the Parliament came up with yet another legislation in the form of the National Security Act, 1980 (NSA, 1980) which also well in tune with UAPA, 1967 provided for minimum safeguard to deal with the violent situations.

However, in order to deal with rising disturbances in the various parts of the country, the Parliament enacted the Terrorists and Disruptive Activities (Prevention) Act, 1985 (TADA) which had to be repealed due to its infamous application and implementation in 1995.

In December, 2001, there was a direct attack on the sovereignty and integrity of India where in few terrorists launched a well planned attack on the Indian Parliament which was considered as the hallmark of Indian democracy. The outcome was the enactment of yet another infamous legislation in the form of Prevention of Terrorism Act, 2002 (POTA). The year 2002 also marked the outbreak of the communal riots and massive violence in some parts of the country where once again, the POTA like its predecessor TADA was misused rampantly and which at last led to its ultimate demise in the year 2004.

On 26th November, 2008, the city of Mumbai became the target of terrorist attacks and the drama went on continuously for 72 hours. This outraged the Indian government and the general public which further gave an impetus to the birth of National Investigation Agency Act, 2008 (NIA-2008) and also led to certain amendments in the Unlawful Activities Prevention Act, 1967 which further consolidated Indian anti-terrorism laws. The NIA 2008, the NSA, 1980, the UAPA, 1967 are some of the laws which remains in force even today and required much attention. These special anti-terrorism laws are also supported by the general provisions of the Criminal Code[138] as well as by the interpretations accorded to it by the Indian Judiciary from time and again alongside protecting and watch guarding the fundamental rights of its citizens.

Thus, an attempt shall be made in this part to showcase brief history of Indian anti-terrorism laws which will provide the basic ground to understand the Indian panorama. The section by section analysis is proposed to be made here in order to note the Indian experience its each anti-terrorism law and the compelling reasons justifying the its demise well before time.

This part shall also scan the legislative history of each of the legislation and the various problems and arguments encountered by the Parliament while passing these laws. Beginning from the constitutional provisions, this part shall highlight the Indian experience of preventive detention laws and anti-terrorism laws which are the subject matter of the present thesis.

[138] Such as Indian Penal Code, 1860 (IPC, 1860) and the Code of Criminal Procedure, 1973.

3.2. KEEPING CONSTITUTIONAL PROMISES & BALANCING THE DEVIATIONS

The preventive detention laws are indeed the unwelcomed gift of the British heritage to the newly independent India[139]. During the British India period, there were various preventive detention laws inherent in a couple of legislations and were dominant enough to crush any suspected activity of any individual or group[140].

After India became an independent nation, the Drafting Committee[141] of the Indian Constitution sought after providing the basic and fundamental freedoms to individuals. This was the period which recently witnessed the bloody massacre in the form of the great communal riots that followed after the unpleasant partition of India and Pakistan. Opponents of due process thus believed that preventive detention policies, without constitutional guarantees for the due process, provided the best check on the communal violence that was gripping India at that point, which had only further intensified following the Gandhi's assassination on January 30, 1948[142].

Thus, preventive detention practices clearly were a legacy of British colonial rule in India. The British had used the preventive detention laws to detain potential saboteurs or insurgents, without trial and with minimum procedural safeguards. After the Drafting Committee of the Indian Constitution ruled out the possibility of inclusion of *'Due Process'*[143] clause, pressure from other groups[144] steered so much so that it was decided to create an alternate way to comfort the opponents. This resulted in the introduction of a new draft Article 15-A by Dr. Ambedkar, which proposed to require the arrested persons be brought "before a Magistrate within twenty four hours of his arrest, informed of the nature of the accusation, and detained further only on the authority

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139 See. DEREK P. JINKS, '*THE ANATOMY OF AN INSTITUTIONALIZED EMERGENCY: PREVENTIVE DETENTION ANDPERSONAL LIBERTY IN INDIA*', 22 MICH. J. INT'L LAW 311. (2001).

140 For example, the 1818 Regulation of Bengal, the Indian Council Act, 1961, The Government of India Act, 1919, The Government of India Act, 1935, The Defense of India Act, 1935, The Defense of India Act, 1939, The Anarchical and Revolutionary Crimes Act, 1919 etc.

141 The Drafting Committee was set up on August 29, 1947, with Dr. B.R. Ambedkar as its Chairman and was entrusted with the task of preparing the Constitution for *'an independent, sovereign republic'* alongside other six members on the Board including A.K. Ayyar, K.M. Munshi, B.L. Mitter, D.P. Khaitan, N. Gopalaswamy Ayyangar and the lone Muslim League member Saiyid Mohd. Saadulla. A few replacements were made to this committee due to reasons of resignation and death; T.T. Krishnamachari and Madhav Rao later joined as members of the committee.

142 See. MANOJ MATE, *'THE ORIGINS OF DUE PROCESS IN INDIA: THE ROLE OF BORROWING IN PERSONAL LIBERTY AND PREVENTIVE DETENTION CASES'*, 28 BERKELEY J. INT'L Law. 216 (2010). at p-223.

143 See. SHIVANGI GANGWAR, '*DUE PROCESS V. PROCEDURE ESTABLISHED BY LAW: FRAMING AND WORKING THE INDIAN CONSTITUTION'*, CALQ, Vol. 1.3, (2013).

144 *Ibid*. Groups such as the Indian Law Review of Calcutta and the Calcutta Bar etc.

of the Magistrate". However, these provisions in Article 15-A did not apply to detainees under preventive detention legislation passed by Parliament, which could effectively detain individuals for upto three months without any procedural safeguards; after three months, specific procedural safeguards had to be complied with to allow continued detention. These standards included the requirement that an Advisory Board composed of judges find sufficient cause for continued detention. Ultimately, however, the government succeeded in amending Article 15-A to all but removes judicial interference with executive detention[145].

Albeit reluctantly, the Constituent Assembly did accepted the inclusion of preventive detention provisions in the Constitution. The observations made by **Alladi Krishnaswamy Ayyar[146]** are worth noticing:

"There were people determined to undermine the sanctity of the Constitution, the security of the State and even individual liberty…..thus preventive detention is a necessary evil…."

Dr. B. R. Ambedkar likewise stated[147]:
"…in the present circumstances of the country, it may be necessary for the executive to detain a person who is tempering either with the public order or with the defense services of the country. In such a case, I don't think that the exigency of the liberty of an individual shall be above the interests of the state…"[148]

Finally draft Article 15-A was adopted and subsequently became Article 22 under Chapter-III of the Indian Constitution. It would thus, be expeditious at this juncture, to take a quick look at Article 22.

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[145] Ibid.
[146] See. K.M. MUNSHI, '*PILGRIMAGE TO FREEDOM: INDIAN CONSTITUTIONAL DOCUMENTS'*, Bharatiya Vidya Bhavan, Hardcover (eds. 2013).
[147] Ibid. *Also See*. RAJESH KUMAR, '*PREVENTIVE DETENTION AND THE RIGHT OF PERSONAL LIBERTY IN INDIA: A CRITICAL STUDY*', International Journal of Socio-Legal Analysis and Development', Vol. 3. Issue.1, p-18-24.
[148] *Ibid.* at p- 18.

Article 22- Protection against arrest and detention in certain cases:

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) **Nothing in clauses (1) and (2) shall apply**—

(*a*) to any person who for the time being is an enemy alien; or

(*b*) to any person who is arrested or detained under any law providing for preventive detention

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the period of two months that there is in its opinion sufficient cause for such detention:[149]

Provided that an Advisory Board shall consist of a Chairman and not less than two other members and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court.

Provided further, that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of CI. (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such

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[149] Substituted by THE CONSTITUTION (FORTY FOURTH AMENDMENT) ACT, 1978; Clause (4) of Article 22 also provides for the following explanation. ***Explanation*** - In this clause "*appropriate High Court*" means –

(i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the union territory of Delhi.

(ii) In the case of the detention of person in pursuance of an order of detention made by the Government of any State (other than a Union Territory) the High Court for that State; and

(iii) In case of detention made by the administrator of a union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf.

person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in CI. (5) Shall require the authority making such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament shall by law prescribe -[150]

(a) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(b) the procedure to be followed by an Advisory Board in an inquiry under CI. (4)".

There is no certain authority to explain preventive detention laws in precise terms. The expression *'preventive detention'* seems to be originated by Lord Justices in England while examining the detentions under the war time more particularly the provisions of the Defense of Realm Consolidation Act, 1914[151].

-The first two clauses in Article 22 represent the basic and fundamental right of persons to exercise in case of their arrest. Two rights flow from clause (1) which guarantees the detainee the basic right to be communicated of the grounds on which the arrest has been made and also his inviolable right to consult and to be defended by the legal practitioner of his own choice.

Clause (2) of Article 22 guarantees that the person so arrested must be produced before the nearest Magistrate within 24 hours and the detention authorities shall have no power to keep the person so arrested in detention without the further authority of the Magistrate.

The major problem begins with clause (3) of Article 22 which states that the abovementioned protections and safeguards will not be applicable to a person who is an enemy alien. To complicate the issues further and also to empower Parliament to equip with the worst situations, the Article further provides that the protection shall not be available to person who is arrested or detained pursuant to any preventive detention law passed by the Parliament.

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[150] Article 22 of the Constitution has been amended as follows: Clause (4) of this Article has been substituted for the original CI. (4); and the original sub-clause (a) of CI. (7) omitted, and the original sub-clauses (b) and (c) thereof re-lettered as (a) and (b); and the words CI. (4)" occurring at end of sub-clause (b) thereof, have been substituted for the original words "sub-clause (a) of CI. (4)" by Sec. 3 of the Constitution (Forty-Amendment) Act, 1978.

[151] *See*. The Defense of Realm Consolidation Act, 1914, which was enacted during the World War-I in England to crush the small and big rebels alongside dealing effectively with suspected individuals.

Clause (4) of Article 22 stipulates that any preventive detention law made by parliament can authorize the detention of any person beyond two months. The so called period of detention before the Constitution (44th Amendment) Act, 1978 was three months. However, if the detention authority wishes to extend the detention of any person beyond the prescribed two months period, it had to be supported by the sufficient and reasonable cause which in turn to be endorsed for this purpose specifically by an Advisory Board. However, any such extension of detention period, if at all granted by the Advisory Committee which finds sufficient cause shall not exceed the period prescribed by the very preventive detention law as passed by the Parliament.

Once again under clause (5) of Article 22, the authority making the detention order is required to communicate the grounds of arrest to the detainee and also to offer him the earliest opportunity of making a representation. The Facts and background behind the arrest need not be communicated if it remains against the very public order.

Finally clause (7) of Article 22 empowers the Parliament to make laws which authorizes the preventive detention of individuals of any class or classes alongside the period of any such detention[152]. The parliament may also prescribe for the procedure to be followed by an Advisory Board while making a detention order or during the course of the inquiry.

Upon a crucial scrutiny of these provisions of Article 22, one may conclude that find that Clauses (1) and (2) give three very valuable rights to detunes (other than those detained under the law of Preventive detention), namely:

i. Right of being informed, as soon as may be, of the grounds of arrest;

ii. Right to consult and be defended by a legal practitioner of his choice;

iii. Production before the nearest magistrate within 24 hours of such arrest.

However, the protections and safeguards provided by the preceding clauses shall not be available to persons arrested under the preventive detention laws which have been duly passed and enacted by the Parliament.

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[152] The Previous Sub-clause (*a*) stands omitted by the Constitution (Forty-fourth Amendment) Act, 1978 which provided as follows:
(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

3.3 THE ISSUES OF LEGISLATIVE COMPETANCE

Part-XI of the Constitution of India deals with the relationship between the Union and the States which stipulates the legislative distribution between the Centre and the States[153]. It becomes expeditious here to examine the constitutional provisions that provides for the distribution of law making powers of the Central and the State Governments.

Article 246 of the Constitution of India, thus, is reproduced here as follows-

246. Subject-matter of laws made by Parliament and by the Legislatures of States-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State[154] also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
*(3) Subject to clauses (1) and (2), the Legislature of any State 1*** has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List"). (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included[155][in a State] notwithstanding that such matter is a matter enumerated in the State List.*
(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included[156][in a State] notwithstanding that such matter is a matter enumerated in the State List.

As apparent from a casual reading of Article 246 of the Indian Constitution, The Central Government has the legislative competence to make laws that falls under the Union List, State government under the 'State List' and while for the matters those belong to the 'Concurrent List', both the Central and State Governments are endowed with the law making powers. If at all, there remains any left out areas, the jurisdiction to make laws lies of course with the Union Government. This is also known as 'residuary powers' of the Central government. The law relating to

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[153] *See*. Article 245 of the Indian Constitution which, inter alia, provides-
245. Extent of laws made by Parliament and by the Legislatures of States.
(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

[154] The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

[155] Subs. by s. 29 and Sch., *ibid.* for "in Part A or Part B of the First Schedule".

[156] *Ibid.*

terrorism[157] fall within multiple entries of the Seventh Schedule to the Constitution of India. In the Union List, it relates to 'the defense of India', 'armed forces', and of course, 'preventive detention'[158]. In the State List, it relates to 'public order', and 'police'[159] are used to legislate on the activities related to terrorism, while 'criminal law', 'criminal procedure and 'preventive detention in cases with public order'[160] finds a place in the Concurrent List.

The questions, issues and concerns pertaining to the legislative competence of Central and the State Governments have surfaced in a number of important cases.

In ***Kartar Singh* v. *State of Punjab***[161], the question of lack of legislative competence to enact anti-terror laws by Central government was raised. It was argued that such a law falls within the ambit of State under Entry-I of List-II on the public order. However, the Court held that the Central government indeed has the competency to enact anti-terrorism law such as TADA.

The Court applied similar theory in ***PUCL* v. *Union of India***[162] where it once again upheld the legislative competence of the Union Government to enact terrorism related laws.

When the Armed Forces Special Powers Act, 1958 (AFSPA) was enacted and implemented in certain states, the constitutional validity of the same was challenged where the Court once again reiterated its earlier rulings[163].

Similarly, the questions pertaining to the State's legislative competence[164] have also been raised quite often by the parties where the Court ruled that certain legislations fall under the subject matter of both Union and State List and hence, even the States are competent to make laws.

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[157] *See*. S. SEN, R. DAS, R. GUPTA AND V. BHANDARI, '*ANTI-TERROR LAW IN INDIA: A STUDY OF STATUTES AND JUDGMENTS, 2001-2014'*, Vidhi Centre for Legal Policy, (2015).

[158] *See*. Constitution of India, Schedule VII, List-I, Entries 1, 2, and 9.

[159] *See*. Constitution of India, Schedule VII, List-II, Entries 1, and 2.

[160] *See*. Constitution of India, Schedule VII, List-III, Entries 1, 2, and 3.

[161] [1994] 3 SCC 569; The Court went on to explain that the 'public order' under Entry-I of List-II is confined to the disorders of lesser gravity having an impact within the boundaries of the State. More serious activities threatening the security and integrity of the Country as a whole were held to be falling within the ambit of Entry-I of the Union List. *Ibid*.

[162] AIR 2004 SC 456

[163] See. *Naga People's Movement of Human Rights* v. *Union of India* [1998] 2 SCC 109.

[164] See. *Zameer Ahmed Latifur Rehman Shaikh* v. *State of Maharashtra* [2010] 13 SCC 5; The Court noted that MCOCA is an Act to make provisions for, inter alia, organized crime syndicates. It was held that in pith and substance, MCOCA falls under Entry-I of the Concurrent List that refers to Criminal Law. An accidental overlap or entrenchment between state and central laws is permissible. *Ibid*. at paras- 47 and 48.

In yet another case, the Supreme Court held that the subject matter of MCOCA is maintaining public order and prevention by police of commission of serious offences affecting public order and therefore, it is related to Entries-I of List-II[165].

3.4 A REVIEW OF THE PREVENTIVE DETENTION ACT, 1950[166]

Endowed with Article 22 of the Constitution of India which empowers the Parliament to enact laws for preventive detention in certain circumstances and in accordance with the conditions as set out, the Parliament did enacted the first piece of legislation to experiment on people in the newly independent India.

The Act came to be known as the Prevention Detention Act, 1950 (PDA, 1950) and extended in its application throughout India. The PDA was set to expire on 31st December, 1969[167]. It contained 15 Articles in total prescribing the draconian provisions throughout the Act murdering the promises of freedom and personal liberty.

Section 2 of the Act provided for the definitions of the terms like, 'State Government'[168], 'Detention Order'[169] and 'Appropriate Government'[170].

Section 3 dealt with the powers to make preventive detention orders of certain category of persons. It stipulates that the Central or the State Government may detain a person to prevent him from acting in any manner pre-judicial to defense of India, relations of India with foreign persons, security of state, maintenance of public order, maintenance of supplies and services essential to the community etc. The District Magistrates, Additional District Magistrates, Commissioner of Police in Metropolitan cities[171], Collectors, were empowered to exercise powers of detention. The officers entrusted with making the detention order were required to report back to the government

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[165] See. *State of Maharashtra* v. *Bharat Shanti Lal Shah* [2008] 13 SCC 5.
[166] THE PREVENTIVE DETENTION ACT, 1950 [Act 4 of 1950 25th February, 1950]
[167] *See*. Sec. 1 of the Preventive Detention Act, 1950.
[168] *See*. Sec. 2 (a) of the Preventive Detention Act, 1950; *"State Government*" in relation to a Union Territory, means the Administrator thereof.
[169] *See*. Sec. 2 (b) of the Preventive Detention Act, 1950; "*detention order*" means an order made under Sec.3.
[170] *See*. Sec. 2 (c) of the Preventive Detention Act, 1950;) "*appropriate Government*" means, as respects a detention order made by the Central Government, or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government
[171] Like Bombay, Calcutta, Madras or Hyderabad.

about the facts, grounds and reasons for the detention of any person. The State Government was required to report back to the Central Government with the details of any such detentions.

A detention order could be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code.[172]

Section 4 provided for the powers to regulate the places and conditions of detention. It prescribed that any detainee could be detained in such places and under such conditions as prescribed by the Government. Further, the detainee could be moved from one place to another secretly by the order of the Government[173].

No detention order could be invalid just because the person or the officer making the detention was outside the territorial jurisdiction of the Government.[174] In case of person fearing detention absconded or had concealed himself in order to evade the order, the government could make a report to the Magistrate of that area and required that person to be present as per the time, place and conditions as put forward by the officer making the arrest.[175]

Upon the detention, the authorities were required to communicate the grounds of any such detention to detune within the time framework of five days and were also required to afford him representation[176].

As stipulated by Article 22, the Government was required to constitute an Advisory Board[177].

In every case where a detention order has been made under this Act the appropriate Government was required, within thirty days from the date of detention under the order place before the Advisory Board constituted by it under Sec. 8 to communicate the reasons and grounds on which the order has been made and the representation, if any, made by the person affected by the order[178].

Section 10 of the Preventive Detention Act, 1950 provided for the procedures to be adopted by the Board in relation to cases pertaining to detentions.

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[172] *See*. Sec. 3-A of the Preventive Detention Act, 1950; the Code of Criminal Procedure, 1898 (5 of 1898)13.
[173] *See*. Sec. 4 of the Preventive Detention Act, 1950.
[174] *See*. Sec. 5 of the Preventive Detention Act, 1950.
[175] *See*. Sec. 6 of the Preventive Detention Act, 1950.
[176] *See*. Sec. 7 of the Preventive Detention Act, 1950.
[177] *See*. Sec. 8 of the Preventive Detention Act, 1950.
[178] *See*. Sec. 9 of the Preventive Detention Act, 1950.

The Advisory Board was required after considering the materials placed before it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if in any, particular case it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report.

The report was required to specify the opinion of the Advisory Board with regard to detention so authorized. In cases of difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

Section11-A provided for maximum period of detention which was ironically 12 months. The Government provided itself with the blanket powers so that it could detain a person upto 12 months and it could revoke and modify the order any time it wished.

Making the matter even worse, the Government could, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the directions as that person accepts, and may at any time cancel his release[179].

Soon after its implementation, the Act had widely been criticized and condemned. The final nail in the coffin was the case[180] which reached to the apex court where the Act came to be challenged on the ground of being ultravires and in violation of certain rights guaranteed by the Constitution of India. This case changed the internal dynamics of the Act and the wide criticism of the Act became responsible for its repeal. The Act finally ceased to exist in the year 1969.

[179] *See*. Sec. 14 of the Preventive Detention Act, 1950.
[180] See. *A.K. Gopalan* v *State of Madras,* 1950 AIR 27

3.5 THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967[181]

The National Integration Council appointed a Committee on National integration and Regionalization. Pursuant to the acceptance of recommendations made by the Committee, the Constitution (Sixteenth Amendment) Act, 1963 was enacted. In order implement the provisions of the 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament which subsequently was converted into an Act[182].

The Preamble of the Act undertakes to state its purpose which is to provide for effective prevention of certain unlawful activities of individuals and association[183], and dealing with terrorist activities and for matters that remains incidental to it. Some more additions were done in the Preamble to the Act in the year 2008 which undertake its pledge to abide by the international promises based on certain resolutions of Security Council that dealt with the prevention of terrorism. To begin with, the Preamble recalled the United Nations Security Council Resolution which required all the states to take measures to combat international terrorism[184]. The Preamble also recalls the Security Council Resolution that requires the states to take actions against certain terrorists and terrorists organizations, to freeze their assets and other economic resources.[185].

The Preamble also recorded that the Central Government by virtue of section 2 of the United Nations (Security Council) Act, 1947[186] has made the Prevention and Suppression of Terrorism (implementation of Security Council Resolutions) Order, 2007. The Preamble then went on to

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[181] *See*. The Unlawful Activities (Prevention) Act, 1967 [Act 37 of 1967]; The Unlawful Activities (Prevention) Bill having been passed by both the Houses of Parliament received the assent of the President on 30th December, 1967. It came on the statute books as the 'Unlawful Activities (Prevention) Act, 1967 [37 of 1967].

[182] See. THE STATEMENT OF OBJECT AND REASONS, which, *inter alia*, reads as follows:

The Object of this Bill is to make powers available acceptance by Government of a unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National integration Council, the Constitution (Sixteenth Amendment) Act, 1963, was enacted empowering the Parliament to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India, on the-

i) Freedom of Speech and Expression;
ii) Right to assemble peaceably and without arms;
iii) Right to form associations or unions.
for dealing with activities directed against the integrity and sovereignty of India.

[183] Ins. By Act 29 of 2004, sec. 2 [w.r.e.f. 21-9-2004]

[184] Ins. By Act 35 of 2008, sec. 2; *Also See*. U.N.S.C. Res. 1373/2001 [28th September, 2001]

[185] See. U.N.S.C. Res. 1267 [1999], 1333 [2000], 1363 [2001], 1390 [2002], 1455 [2003], 1526 [2004], 1566 [2004], 1617 [2005], 1735 [2006] and 1822 [2008].

[186] *See*. the United Nations (Security Council) Act, 1947 [Act 43 of 1947]

realize the need to give effect to these resolutions and the order and also to make special provisions for the prevention of *vis a vis* to combat terrorists activities and matters incidental to the same.

The Act extends in its application to the whole of India and anyone who contravenes the provisions of the Act shall be liable to punishment. Section 2 of the Act typically deals with the task of defining certain basic terms like, 'associations'[187], 'cession of a part of the territory of India'[188], 'Code'[189], 'Court'[190], 'designated authority'[191], 'order'[192], 'prescribed'[193], 'proceeds of terrorism'[194], 'property'[195], 'schedule'[196], 'secession of a part of territory from Union'[197], 'State

[187] *See*. Sec. 2 (a) of the Unlawful Activities (Prevention) Act, 1967; "*Association*" means any combination or body of individuals.

[188] *See*. Sec. 2 (b) of the Unlawful Activities (Prevention) Act, 1967; "*Cession of a part of territory of India*" includes admission of the claim of any foreign country to any such part.

[189] *See*. Sec. 2 (c) of the Unlawful Activities (Prevention) Act, 1967; "*Code*" means the Code of Criminal Procedure, 1973 [2 of 1974]

[190] *See*. Sec. 2 (d) of the Unlawful Activities (Prevention) Act, 1967; "*Court*" means a criminal court having jurisdiction, under the Code, to try offences under this Act and also includes a special court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008 [34 of 2008].

[191] *See*. Sec. 2 (e) of the Unlawful Activities (Prevention) Act, 1967; "*Designated Authority*" means such officer of the Central Government not below the rank of Joint Secretary to that Government or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may be specified by the Central government or the State Government, by notification published in the Official Gazette.

[192] *See*. Sec. 2 (e-a) of the Unlawful Activities (Prevention) Act, 1967; "*Order'* means the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007, as may be amended from time to time.

[193] *See*. Sec. 2 (f) of the Unlawful Activities (Prevention) Act, 1967; "*prescribed'* means prescribed by rules made under this Act.

[194] *See*. Sec. 2 (g) of the Unlawful Activities (Prevention) Act, 1967; "*proceeds of terrorism*" means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used or is intended to be used, for the purpose of a terrorist organization or terrorist gang.

[195] *See*. Sec. 2 (h) of the Unlawful Activities (Prevention) Act, 1967; "*Property*" means property and sets of every description; whether corporeal or incorporeal, moveable or immoveable, tangible or intangible and legal documents, deeds and instruments in any form including electronic or digital, evidencing title to, or interest in, such property or assets by means of bank credits, travelers' cheques, bank cheques, money orders,, shares, securities, bonds, drafts, letters of credit, cash and bank account including fund, however acquired.

[196] *See*. Sec. 2 (h-a) of the Unlawful Activities (Prevention) Act, 1967; "*Schedule"* means the schedule to this Act.

[197] *See*. Sec. 2 (i) of the Unlawful Activities (Prevention) Act, 1967; "*Secession of a part of a territory from the Union"* includes the assertion of any claim to determine whether such part will remain a part of the territory of India.

Government'[198], 'terrorist act'[199], 'terrorist gang'[200], 'terrorist organization'[201], 'tribunal'[202], 'unlawful activity'[203], and 'unlawful association'[204].

The Act further bestows power to the Government to make a declaration of an association as an unlawful. The provision requires the Government to specify the reasons for making any such declaration and also to notify the public of such an association to be of unlawful nature. The Government is also required to make the declaration public by officially notifying in the official gazette[205]. The Government is further required to publish the same in at least one newspaper in the area where the principal office of that organization is located. The Government may also cause fixtures to be affixed on the conspicuous part of the office of that organization.

After the Government decides to declare any organization as an unlawful and makes the declaration subsequently, it is required to refer the same to the Tribunal for the review within thirty

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[198] *See*. Sec. 2 (j) of the Unlawful Activities (Prevention) Act, 1967; "*State Government'* in relation to a Union territory, means the Administrator thereof.

[199] *See*. Sec. 2 (k) of the Unlawful Activities (Prevention) Act, 1967; "*terrorist act"* has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly.

[200] *See*. Sec. 2 (l) of the Unlawful Activities (Prevention) Act, 1967; "*terrorist gang"* means any association other than terrorist organization, whether systematic or otherwise, which is concerned with, or involved in, terrorist act.

[201] *See*. Sec. 2 (m) of the Unlawful Activities (Prevention) Act, 1967; "*terrorist organization"* means an organization listed in the Schedule or an organization operating under the same name as an organization so listed.

[202] *See*. Sec. 2 (n) of the Unlawful Activities (Prevention) Act, 1967; "*Tribunal'* means the Tribunal constituted under Section 5.

[203] *See*. Sec. 2 (o) of the Unlawful Activities (Prevention) Act, 1967; "*unlawful activity'* in relation to an individual or association, means any action taken by such individual or association (Whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise-

i) *Which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or*

ii) *Which disclaims, questions, disrupts, or is intended to disrupt the sovereignty and territorial integrity of India; or*

iii) *Which causes or is intended to cause disaffection against India*.

[204] *See*. Sec. 2 (p) of the Unlawful Activities (Prevention) Act, 1967; "*unlawful associations'* means any association-

i) *Which has for its objects any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or*

ii) *Which has for its objects any activity which is punishable under section 153-A or 153-B of the Indian Penal Code (45 of 1860) or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity*

: Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir.

[205] In the proviso to sub-section (3) of section 3, the word 'its' qualifies the word 'declare' and it is this declaration which needs to be published in the Official Gazette and come in effect from the date of its publication in the Official Gazette. Thus, the order directing that the notification under section 3 (1) declaring an association as unlawful shall have immediate effect, has to be published in the Official Gazette; Please see. *Dr. Rajendra Prasad Agarwal* v. *Union of India,* AIR [1993] ALL. 258.

days. The Tribunal in turn is required to serve a show cause notice to the concerned organization as to why such a declaration should not be made[206].

Upon considering the causes and the reasons as forwarded by the organization, the Tribunal is required to endorse the government's decision of declaring the organization as unlawful or to set it aside. The process is required to be completed as soon as possible but not later than six months from the date of the notification. The order of the Tribunal is also required to be published in the Official Gazette much in line with the Government's notification[207].

Section 5 of the Act stipulates that the Central Government may as and when require constitute a Tribunal which will be known as 'Unlawful Activities (Prevention) Tribunal'. In case of vacancy, the Central Government may fill the same by subsequent appointment of another person of the similar caliber. The Central Government may also facilitate the necessary required staff to assist the Tribunal and the Tribunal shall have the same powers as that of the Civil Courts under the Code of Civil procedure, 1908.

The Central Government may also prohibit a person from making any payments to anyone. The Government may issue a prohibitory order with which the authorities can enter premises and can carry search operations in the suspected premises or building. Any person aggrieved by the prohibitory order issued in accordance with subsection (1) of section 7 of the Act may make an application the District Court for clarifying that the assets against which prohibitory order has been issued are not used for the benefit of a banned organization or for terrorist activities[208] and the Judge then will decide the issue.

Section 8 of the Act prescribes that the Central Government, after declaration of an organization as unlawful, may notify the places which were used by that organization. After such notification, the District Magistrate in whose locality the place is located or the officer on his behalf shall make a list of all articles those are found in that place. If it is found to the satisfaction of the Court that the place indeed was used for such unlawful organization, the Court may restrict other person from entering into such premises without the court's permission.

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[206] *See*. Sec. 4 of the Unlawful Activities (Prevention) Act, 1967.
[207] *Ibid.*
[208] *See*. Sec. 7 of the Unlawful Activities (Prevention) Act, 1967.

Chapter-III of the Act (Sec. 10 to 14) deals with the offences and the penalties. Section 10 stipulates that once an organization is declared unlawful, any person who continues to be a member of such organization, takes part in meetings, contributes to or receives or solicits any contribution for the purpose of such organization or in any way assists the operation of such association shall be punishable with two years imprisonment and shall also be liable to fine. Also if any person voluntarily does an act aiding or promoting in any manner the objects of such association and is found in possession of any unlicensed firearms, ammunition, explosive or other instrument of mass destruction or if a person commits any act which claims any human life shall be punishable with death or imprisonment for life and shall also be liable to fine. In all other cases, the punishment shall of five years of imprisonment and fine[209].

Further if any person pays, delivers, transfers or deal in manner violating the prohibitory order issued in accordance with section 7 of the Act shall be punishable with 3 years imprisonment or fine or with both. The Court has also empowered to impose additional fine to recover from him the amount of money in respect of which the prohibitory order has been contravened[210].

The Act also prescribes the penalty for contravention of an order made in respect of a notified place. If any person uses any article in contravention of a prohibitory order, he shall be punishable with one year imprisonment and shall also be liable to fine. Also if a person knowingly and willfully effects or attempts to enter into any premises contravening the order made under section 8 of the Act, he shall be punishable with one year imprisonment and fine[211].

Section 13 of the Act provides that if any person commits, advocates, abets, advises or incites the commission of unlawful activities, he shall be punishable with 7 years imprisonment or with fine or with both. If a person assists any unlawful activity, he shall be punishable with five years imprisonment or fine or with both.[212] Section 14 of the Act stipulates that an offence punishable under this Act shall be cognizable.

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[209] *See*. Sec. 11 of the Unlawful Activities (Prevention) Act, 1967.
[210] *Ibid.*

[211] *See*. Sec. 12 of the Unlawful Activities (Prevention) Act, 1967.
[212] See. *R.K. Krishna Kumar* v. *State of Assam*, AIR [1998] SC 530; The FIR alleging involvement of appellant-officers of company in illegal and unlawful activities of the United Liberation Front of Assam (ULFA) and other militant organization. Materials collected during investigation endorsed that the company funded such organization and appellant assisted operations of ULFA through contributions. However, when those material allegations levelled

Chapter-IV of the Act deals with the punishment for the terrorists activities[213].

Section 15 of the Act provides the definition of the terrorism[214] and stipulates the terrorist act. It provides that if any person with intention to threaten the sovereignty of India or intends to strike terror in the people in India or in any foreign country by using bombs, dynamite or other explosive substances or inflammable substances or firearms or lethal weapons or poisonous or noxious gases or other chemicals or by any other hazardous substances to cause or is likely to cause death, injury to persons, loss or damage to property, disruption of any supplies or essential services, damage or destruction of any property commits a terrorist act.

Also if a person overawes by means of criminal force or the show of criminal force or attempts to do so or causes or attempt to causes death of any public functionary or detains, kidnaps, or abducts any person and threatens to kill or injure such person in order to compel the government to do or to abstain from doing something commits a terrorist act[215].

Section 16 of the Act deals with the punishment for the 'terrorist act' and if such an act results in death of any person the punishment prescribes death or life imprisonment and fine. In other cases where death of any person has not resulted, the punishment is five years extendable to life imprisonment and fine.

After the Mumbai Terror attacks a new section was added in the form of section 16-A[216] which prescribed punishment for making demands of radioactive substances, nuclear devices, bombs or dynamite with intention to commit or abet terrorist act. The punishment extends to 10 years and fine. Section 17 of the Act[217] deals with the punishment for raising funds for terrorist act and the punishment is five years extendable to life imprisonment and fine. The Act also provides for

against the appellants, are considered vis-avis the unlawful activities envisaged under the Act, it cannot be said that they are liable for an offence under section 13 of the Act.

[213] Chapter-IV (From sections 15 to 23), Chapter V (From sections 24to 34), Chapter VI (From sections 35 to 40), and Chapter-VII (From sections 41 to 53 and the Schedule) have been substituted by Act 29 of 2004, Sec. 7, For Chapter IV (From sections 15 to 21) [w.r.e.f 21-09-2004].

[214] Subs. By Act 35 of 2008, section 4, for section 15.

[215] Section 15 of the Act further provides explanation pertaining to the meaning of public functionary. Public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central government as the public functionary.

[216] Ins. by Act 35 of 2008, Section 5.

[217] Ins. by Act 35 of 2008, Section 6.

punishment for conspiracy to commit terrorist act which shall not be less than five years imprisonment and remains extendable to life imprisonment and fine[218].

Section 18-A of the Act prescribes punishment for organizing terrorist camps and the punishment is not less than five years extendable to life imprisonment and fine[219]. Similarly section 18-B of the Act[220] stipulates that if any person recruits or causes to be recruited any person or persons for the commission of terrorist act, he shall be punishable with imprisonment not less than five years extendable to life imprisonment and fine.

Section 19 of the Act provides for punishment for harboring which is imprisonment for three years extendable life imprisonment and fine. Section 20 of the Act prescribes punishment for being a member of a terrorist gang or organization and the punishment is imprisonment extendable to life and fine. Section 21 of the Act provides punishment for holding proceeds of terrorism and the punishment is extendable to life and fine. If any person threatens any witness, he shall be punishable with three years imprisonment and fine[221]. Section 23 of the Act deals with the enhanced punishments under the Act. It provided that if any person with intent to aid any terrorist gang or organization contravenes any provisions of the Explosives Act, 1884[222] or the Explosive Substances Act, 1908[223], the Inflammable Substances Act, 1952[224] or the Arms Act, 1959[225] or is in unauthorized possession of any bomb, dynamite or hazardous explosive substances or other lethal weapon capable of mass destruction, he shall be punishable with five years imprisonment extendable to life imprisonment and fine.

Chapter-V of the Act deals with the provisions relating to the forfeiture of proceeds of terrorism. Section 24 of the Act mandates that no person shall hold or to be in possession of any proceeds of terrorism and such proceeds of terrorism shall be confiscated by Government.

Section 25 of the Act extensively deals with the powers of investigating officer and the Designated Authority and the provisions pertaining to appeal against order of Designated Authority. It

[218] *See*. Sec.18 of the Unlawful Activities (Prevention) Act, 1967.
[219] Ins. by Act 35 of 2008, Section 8.
[220] *Ibid.*
[221] *See*. Sec.22 of the Unlawful Activities (Prevention) Act, 1967.
[222] See. The Explosives Act, 1884 [Act 4 of 1884].
[223] See. The Explosive Substances Act, 1908 [Act 6 of 1908].
[224] See. The Inflammable Substances Act, 1952 [Act 20 of 1952].
[225] See. The Arms Act, 1959 [Act 54 of 1959].

prescribes that an investigating officer with the prior approval of Director General of Police may make an order on suspicion to seize such property or to attach the property. The investigating officer is required to inform the Designated Authority within 48 hours of any such seizure or attachment[226]. The Designated Authority in turn is obligated to confirm or revoke the order of seizure or attachment within 60 days after giving the aggrieved person an opportunity of making a representation.

The investigating officer may confiscate cash if he has reasonable grounds for suspecting that it is intending to be used for terrorism or to help the terrorist organization provided that cash is required to be released within 48 hours unless the Designating Authority allows its further retention[227]. Before making any such order that requires the forfeiture of the property, the Court is required to serve the show cause notice to the person whose property had been forfeited, seized or attached by the officer and confirmed by the Designating Authority[228]. The forfeiture order by the Court is also not supposed to interfere with other punishments under the Act[229]. Any claims by the third party to such seizure, attachment or forfeiture shall be subject to investigation by the investigating officer and the burden of proving such claim lies on such third party[230].

The powers of the Designating Authority shall be the similar to that of the Civil Court[231]. Any transfer made to the property seized, attached or forfeited by any person shall be null and void[232]. If any person is found guilty of the offences under the Act, the Court also has the power to seize all or any part of his property[233].

Section 34 of the Act provides that where any share in a company stands forfeited to the Central or the State Government, the company shall transfer shares to the Government.

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[226] In the case of immoveable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority. *See*. Sec. 25 (4) of the Unlawful Activities (Prevention) Act, 1967.

[227] Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property. *See*. Sec. 25 (6) of the Unlawful Activities (Prevention) Act, 1967.

[228] *See*. Sec. 27 of the Unlawful Activities (Prevention) Act, 1967.

[229] *See*. Sec. 29 of the Unlawful Activities (Prevention) Act, 1967.

[230] *See*. Sec. 30 of the Unlawful Activities (Prevention) Act, 1967.

[231] *See*. Sec. 31 of the Unlawful Activities (Prevention) Act, 1967.

[232] *See*. Sec. 32 of the Unlawful Activities (Prevention) Act, 1967.

[233] *See*. Sec. 33 of the Unlawful Activities (Prevention) Act, 1967.

Chapter VI of the Act deals with the terrorist organizations. Section 35 of the Act pertains to the amendment of schedule. It prescribes that the Central Government may add an organization or such organization identified as a terrorist organization in a resolution adopted by the Security Council courtesy Chapter VII of the UN Charter to combat international terrorism. Similarly the Central Govern can also remove such organizations from the schedule or amend the schedule in any other way.

As per Article 36 of the Act states that an application to remove the organization form the schedule may be made to the Central Government by the organization or person affected by such notifiBation of the Government pertaining to that organization. The procedure and th emode of such applications shall be decided by the Central Government as per its convinience. In case the Government rejects the application, the person or organization may apply for a review within one month before the Review Committee which is supposed to be established by the Central Government to deal with such applications.The Central Government after the application is allowed by the Review Committe shall remove the organization from the schedule.

The Central Government for this purpose is required to constitute one or more Review Committee[234].

Section 38 of the Act prescribes the offences relating to the membership of a terrorist organization. Any person who associates himself or professes to be associated with a terrorist organization commits an offence and he shall be punishable with 10 years imprisonment or fine or with both. Further if a person commits the offence relating to support given to a terrorist organization, he shall be punishable with 10 years imprisonment or fine or with both.[235]

Similarly if a person commits the offence of raising funds for the terrorist organization, he shall be punishable with imprisonment not less than 14 years or fine or both[236].

Chapter VII of the Act deals with the miscellanuous provisions. Section 41 of the Act prescribes that an association shall not be deemed to have ceased to exist by reason only of any formal act of

[234] *See*. Sec. 37 of the Unlawful Activities (Prevention) Act, 1967.
[235] *See*. Sec. 39 of the Unlawful Activities (Prevention) Act, 1967.
[236] *See*. Sec. 40 of the Unlawful Activities (Prevention) Act, 1967.

its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

The Central Government may also delegate its authority and powers the State Government as and when it requires[237]. As per section 43 of the Act, in case of Delhi Police Establishment a person not below the rank of Deputy Supritendent of Police, in case of Mumbai, Kolkata, Channai and Ahmedabad, a person not below the rank of Assistant Police Commissioner and in all other cases, a person not below the rank of Deputy Supritendent of Police are required to investigate the case under the Act.

Any officer of the Designated Authority knowing of a design to commit any offence or has reason to believe from person knowledge or information given by any person may authorize any officer subordinate to him to arrest such a person or search a building, conveyance or place[238]. Any officer arresting a person shall inform him of the grounds for such arrest. Every person so arrested shall be handed over to the nearest Police station without any delay[239]. The provisions of the Code shall continue to apply unless they are inconsistent with the provisions of this Act relating to arrest, searches and seizures[240].

Section 43-D of the Act deals with certain modifications pertaining to certain sections of the Code. Section 43-E of the Act deals with the presumptions as to offences under section 15 of the Act. It states that the burden of proof shall lie on the accused that he is not guilty under the Act. The failure to provide information is punishable with 3 years imprisonment or fine or with both[241].

Section 44 of the Act deals with the protection of Witnesses. It prescribes that if the Court has a reasonble cause to believe, it may take measure to keep witnesses as safe. The Court for this purpose may tak eadditional measures such as holding the trial at some other place, avoid the names and addresses of witnesses in the judgments or order, decide not to publish some order in public for larger interests etc. Any person who contravens this section will be liable to punishment with 3 years imprisonment or fine or both.

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[237] *See*. Sec. 42 of the Unlawful Activities (Prevention) Act, 1967.
[238] *See*. Sec. 43-A of the Unlawful Activities (Prevention) Act, 1967.; Ins. by Act 35 of 2008, section 12
[239] *See*. Sec. 43-B of the Unlawful Activities (Prevention) Act, 1967.; Ins. by Act 35 of 2008, section 12
[240] *See*. Sec. 43-C of the Unlawful Activities (Prevention) Act, 1967.; Ins. by Act 35 of 2008, section 12
[241] *See*. Sec. 43-F of the Unlawful Activities (Prevention) Act, 1967.; Ins. by Act 35 of 2008, section 12

The Court cannot take cognizance of any offence under chapter-III, IV and VI without the previous sanction of the Central or the State Government. Sanction for prosecution shall be given within such time as may be prescribed only after considering the reports of such authority appointed by the Central or State Government which makes an independent review of the evidences and make a recommendation within such time as prescribed by the Government[242].

The evidence gathered by the investigation authorities through interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 or the Information Technology Act, 2000 or any other law, is approved as evidence. The authorities are required to inform the accused of such interception which was done in accordance with law and an order passed by competent authority well before 10 days of the trial unless the Judge waives this period and if he comes to conclusion that it was not possible to furnish the accused with such order ten days before trial.

The actions taken by the investigation officer, Designated Authority, Central or the State Government or the District Magistrate shall not stand against any prosecution in any court[243]. Section 48 of the Act provides that the provisions of this Act or any rule or order made shall have effect notwithstanding anything inconsistent contained in any other enactment. Section 49 of the Act bars any prosecution against the Central or the State Government for the actions taken in good faith. This act shall not affect the jurisdiction and authority of other courts established under the Code. The authorities also have the power to impound the passport of the accused[244].

Section 51-A of the Act endows certain powers to the Central Government to freeze, seize, or attach funds and other financial resources, prohibit any individual from making funds or from extending financial help any person or organization suspected of being a terrorist gang or organization. Section 52 of the Act pertains to the rule making power of the Central Government. It states that the Central Government may make rules for the serving of notices or orders issued, the manner in which such notices or orders may be served, the procedure to be followed by the Tribunal or the Court, the determination of the price of the forfeited property, the qualifications of

[242] *See*. Sec. 45 of the Unlawful Activities (Prevention) Act, 1967.; Ins. by Act 35 of 2008
[243] *See*. Sec. 47 of the Unlawful Activities (Prevention) Act, 1967.
[244] *See*. Sec. 51 of the Unlawful Activities (Prevention) Act, 1967

members of review committee, the time within which sanction for prosecution and recommendation to the Central Government shall be given, and any other matters

3.6 THE MAINTENANCE OF INTERNAL SECURITY ACT, 1971[245]

In the twenty-second year of its independence, India witnessed the birth of the Maintenance of Internal Security Act, 1971 (MISA, 1971)[246] which was to change the thought process of the legislators, judiciary and the human rights defenders across the country. The Preventive Detention Act, 1950 came to an end in 1969 and the nation could not wait but to come up with yet another preventive detention law in the form of MISA, 1971.

The Act extended in its application to the whole of India except the State of Jammu and Kashmir[247]. Much in tune with the Preventive Detention Act, 1920, Section 2 of the MISA provided definitions of the terms like 'appropriate government[248]', 'detention order'[249], and 'foreigner'[250].

Similarly section 3 of the Act empowers the Parliament with the powers to make detention orders against certain persons. It states that the Government could detain a person including a foreigner in order to prevent him from the commission or the omission of any act which may endanger the defence, security and maintenance of public order, relations of the country with any foreign nation, maintenance of supplies and essential supplies to the community. The government can also detain a foreigner in order to secure his continued presence in the country or to make his expulsion from the country. The District Magistrates, Additional District Magistrates and the Commissioner of Police were made the persons in charged with issuing any such detention order.

These officers are required to report back to the government justifying the detention order and the detention order shall continue to be in force for a maximum period of twelve days unless approved by the government. The twelve days period was required to be substituted by twenty two days

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[245] The Maintenance of Internal Security Act, 1971 [Act No.26 of 1971]; to be referred to hereinafter as 'MISA'.

[246] The Preamble attached to the Act explained its purpose which was to provide for detention in certain cases for the purpose of maintenance of internal security and to deal effectively with the matters incidental to it.

[247] *See*. Sec.1 (1) of the Maintenance of Internal Security Act, 1971.

[248] *See*. Sec. 2 (a) of the Maintenance of Internal Security Act, 1971.; "*appropriate Government*" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a a State Government or as (respects a person detained under .such order, the State Government;

[249] *See*. Sec. 2 (b) of the Maintenance of Internal Security Act, 1971; "*detention order*" means an order made under section 3.

[250] *See*. Sec. 2 (b) of the Maintenance of Internal Security Act, 1971; "*foreigner*" has the same meaning as in the Foreigners Act.

when the officers detaining a person communicates the grounds of detention in between 5 to fifteen days as in accordance with the section 8 of the Act. Where any such detention order is approved by the State government, the said government was required to report back to the Central government with all the details pertaining to the detention order and the compelling reasons alongside circumstances and need for making such an order[251].

The execution of the detention order could take place anywhere in India however, the same was required to be subjected to the Criminal Code[252].

Section 5 of the MISA further empowered the Government by stating that the Government could lay down conditions, circumstances and the duration of any such detention. It also could move the detainees from one place to another, however, in case of transfer or removal of detainees from one state to another, the government was required to obtain prior permission of that State government where the authorities are proposing the detainees to be removed or transferred.

Further the detention order could not be held invalid or inoperative just because the person to be detained remains outside the territorial jurisdiction of the country or the place of such detention is outside the country[253]. In relation to any person who remains absconding, the Government has the power to make a report to the Magistrate of any state where the person is suspected to be hiding and direct the absconding person to appear before the officer in such place, circumstances and conditions as prescribed by that officer[254].

Section 8 of the Act stipulated that the authorities were required to inform the detainee about the grounds of such detention within five days and in exceptional circumstances within fifteen days. What could be the nature of the exceptional circumstances was not provided by the Act and the Government was required to use its discretion so far as communication of grounds of detentions is concerned. However, the authorities were required to note the circumstances for any such delay in writing.

Like the preventive detention Act, MISA also provided for the constitution of an Advisory Board which was supposed to be consisting of three persons who have been or are judges of the high court with one member as its chairman[255].

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[251] *See*. Sec. 3 (4) of the Maintenance of Internal Security Act, 1971.
[252] *See*. Sec. 4 of the Maintenance of Internal Security Act, 1971; THE CODE OF CRIMINAL PROCEDURE, 1898.
[253] *See*. Sec. 6 of the Maintenance of Internal Security Act, 1971;
[254] *See*. Sec. 7 of the Maintenance of Internal Security Act, 1971;
[255] *See*. Sec. 9 of the Maintenance of Internal Security Act, 1971;

The Government making the detention order was required to make a reference to the Advisory Board within thirty days. The reference so made was required to be with the details of such detention, grounds and the circumstances leading to such detention[256].

Section 11 of the Act dealt with the procedure which was supposed to be followed by the Advisory Board. It required that after any reference being made by the appropriate government, the Advisory Board, after considering the referral and after calling for any desired information from government or any person, was required to submit its reports within 10 week from the date of detention.

The content of the Advisory Board's report was required to contain the opinion of the Advisory Board. In case of difference of opinion views of majority of such members constituted the final opinion of the Advisory Board.

Nothing in this section could entitle any person against whom a detention order has been made to appear by any legal practitioner[257] excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential. Section 12 prescribed that upon the endorsement from the Advisory Board of the sufficient cause, the Government could continue the detention. In case the Board could not find substance in the referral, the Government could revoke the order and release the person.

The maximum period of detention of a person was 12 months and nothing could stop the government from revoking or modifying the detention order[258]. While section 15 of the Act deals with the temporary release of detainee, section 16 stipulated that no prosecution can lie in the court of law for any actions or detention order effected under the Act in good faith.

If any foreigner enters or attempts to enter the territory of India or is found with arms, ammunitions or explosives, contravenes the criminal law, the provisions of Border Security Force Act, 1968 or the official Secrets Act, 1923, the opinion of the Board could be avoided[259].

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[256] *See*. Sec.10 of the Maintenance of Internal Security Act, 1971;

[257] *See*. Sec. 11 (4) of the Maintenance of International Security Act, 1971.

[258] *See*. Sec. 13 (2) and 14 of the Maintenance of International Security Act, 1971; The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section **3** against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government.

[259] *See*. Sec. 17 of the Maintenance of International Security Act, 1971.

3.7 THE DISTURBED AREAS (SPECIAL COURTS) ACT, 1976[260]

Before the birth of the Terrorist Affected Areas Act, 1984, there was yet another law that dealt with the similar provisions. The Act was the Disturbed Areas (Special Courts) Act, 1976.

The preamble of the Act provided the reasons for the enactment of the legislation which was specifically to facilitate for the expedite process in trial of certain offences under the Act. The Act contains 10 sections in all and one scheduled attached to it. The Act extended to the whole of India in its application except Jammu and Kashmir and became operative on 15th August, 1976[261].

Section 2 of the Act provided the definitions of various terms like, 'Code'[262], 'disturbed area'[263], 'period of disturbance'[264], 'Scheduled Offence',[265] and 'Special Court'.[266] It further directed that the words and expressions used but not defined in this Act, and defined in the Code shall have the meanings respectively assigned to them in the Code.

Section 3 of the Act prescribes that where a State Government is satisfied that there was, or there is, in any area within a State extensive disturbance of the public peace and tranquillity, by reason of differences or disputes between members of different religious, racial, language or regional groups or castes or communities, it may, by notification in the Official Gazette, declare such area to be a disturbed area specifying the period for which the area to be remained as disturbed area.

Section 4 of the Act lays down that the State Government may constitute as many Special Courts as may be necessary in or in relation to such disturbed area or areas which shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government[267]. Further a scheduled offence committed in any disturbed area at any time during the period during which it is a disturbed area shall be triable, whether during or after such period, only by the Special

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[260] THE DISTURBED AREAS (SPECIAL COURTS) ACT, 1976 [ACT NO. 77 OF 1976]

[261] Vide notification No. S.O. 549(E), dated 13th August, 1976, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

[262] *See*. Sec. 2 (a) of the Disturbed Areas (Special Courts) Act, 1976; "*Code*" means the Code of Criminal Procedure, 1973 (2 of 1974);

[263] *See*. Sec. 2 (b) of the Disturbed Areas (Special Courts) Act, 1976; "*disturbed area*" means an area declared as a disturbed area under section 3;

[264] *See*. Sec. 2 (c) of the Disturbed Areas (Special Courts) Act, 1976; "*period of disturbance*", in relation to a disturbed area, means the period during which it is to be a disturbed area for the purposes of section 3;

[265] *See*. Sec. 2 (d) of the Disturbed Areas (Special Courts) Act, 1976; "*scheduled offence*" means an offence specified in the Schedule being an offence forming part or arising out of, or connected with, any such disturbance as is referred to in section 3;

[266] *See*. Sec. 2 (e) of the Disturbed Areas (Special Courts) Act, 1976; "*Special Court*" means a Special Court constituted under section 4;

[267] *See*. Sec. 4 (2) of the Disturbed Areas (Special Courts) Act, 1976; *Explanation.*—In this sub-section, the word "*appoint*" shall have the meaning given to it in the *Explanation* to section 9 of the Code.

Court constituted in or in relation to the disturbed area in which the offence has been committed. It may also take cognizance of any offence other than the scheduled one[268].

Section 6 provides that every scheduled offence shall be cognizable. A Special Court may try any scheduled offence, where under Code such offence is an offence triable exclusively by a Court of Session, upon its being committed to it under section 209 of the Code as if the Special Court were a Court of Session and in any other case, upon a police report of the facts together with a certificate from the public prosecutor to the effect that the offence is triable exclusively by the Special Court. Where a scheduled offence is an offence which is punishable for more than 3 years but which, according to the provisions of the Code, is not an offence triable exclusively by a Court of Session, a Special Court would function as a Magistrate and would abide by section 207 of the Code and thereafter try such offence like Sessions Court as if the Special Court were a Court of Session and the case had been committed to it for trial under the provisions of the Code[269].

A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof[270].

The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court is a Court of Session trying cases within the local limits of the jurisdiction of the High Court[271].

The provisions of this Act shall prevail but save as expressly provided in this Act, the provisions of the Code shall apply to the proceedings before a Special Court.[272]

Finally section 10 of the Act provides that nothing in this Act shall affect the authorities for naval, military or air forces.

[268] *See*. Sec. 5 (2) of the Disturbed Areas (Special Courts) Act, 1976;
[269] *See*. Sec. 6 (4) of the Disturbed Areas (Special Courts) Act, 1976;
[270] *See*. Sec. 6 (6) of the Disturbed Areas (Special Courts) Act, 1976;
[271] *See*. Sec. 8 of the Disturbed Areas (Special Courts) Act, 1976;
[272] *See*. Sec. 9 of the Disturbed Areas (Special Courts) Act, 1976;

3.8 THE NATIONAL SECURITY ACT, 1980[273]

The MISA did all the mischief it had to within the span of 7 years, the period which was enough to land the country in a mess and the period where the preventive detention law was put to experiment with full force. The period between 1977-1980 was the only period in the independent India where there was no preventive detention law of any kind in force. However, the Government again though it expeditious to enact yet another preventive detention law and this time, in the form of the National Security Act, 1980. The study of this Act becomes vital to the subject because this is the law which is still in force in spite of the various special anti-terrorism laws that country witnessed from time and again. Thus, an attempt shall be made to make a detailed analysis of the Act and to examine its various provisions which often are the subject of criticism by the human rights defenders across the country.

In the Thirty-first Year of its independence, the Government came up with another piece of legislation which came to be known as the National Security Act, 1980. The Act contained 18 sections in total. It was stated that the major purpose of the Act is to provide for preventive detention in certain cases and for matters connected therewith. The Act applied to the whole of India except J & K.

Section 2 of the Act provided for various definitions of the terms like 'appropriate Government'[274], 'detention order'[275], 'foreigner'[276], 'person'[277], and 'State Government'[278].

Section 3 of the Act deals with the powers to make orders that authorize the detention of certain persons. It provides that the Government may make an order directing that any person be detained for the purpose of prevention of certain crimes from happening. The satisfaction of the

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[273] THE NATIONAL SECURITY ACT, 1980 [ACT NO. 65 OF 1980] (27*th December*, 1980).

[274] *See*. Sec. 2 (a) of the National Security Act, 1980; "appropriate Government" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government;

[275] *See*. Sec.2 (b) of the National Security Act, 1980; "detention order" means an order made under section 3.

[276] *See*. Sec. 2 (c) of the National Security Act, 1980; "foreigner" has the same meaning as in the Foreigners Act, 1946 (31 of 1946).

[277] *See*. Sec. 2 (d) of the National Security Act, 1980; "person" includes a foreigner.

[278] *See*. Sec. 2 (e) of the National Security Act, 1980; "State Government", in relation to a Union territory, means the administrator thereof.

Government is totally subjective but liable for the judicial review by the Court in case it is challenged by the aggrieved person or persons[279].

If the State Government is satisfied that it is necessary so to do, it may, by order, direct the duration of detention for such period as may be specified in the order[280].

When any such order is made by an officer, he shall report it to the Government. No such order shall be active more than twelve days unless approved by the Government[281]. In case the order is confirmed by the State Government, the State Government required to report back to the Central Government within 7 days with all details. A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code.[282]

Section 5 is related to the power to regulate place and conditions of detention. The place, conditions and manner of detention shall be authorized by the Government. Person so detained shall also be liable to be removed from one place of detention to another place of detention.[283]

Section 5-A[284] is related to the Grounds of detention severable. It provides that where a person has been detained on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds. Such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are vague, non-existent, not relevant, not connected or not proximately connected with such person, or invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or officer making such

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[279] *See*. Sec. 3 (2) of the National Security Act, 1980; This sub-section also calls for the explanation which is reproduced as follows:

Explanation.—For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the *Explanation* to sub-section (*1*) of section 3 of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act.

[280] *See*. Sec. 3 (3) of the National Security Act, 1980; Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.; *Ibid.*

[281] *See*. Sec. 3 (4) of the National Security Act, 1980; Provided that where under section 8 the grounds of detention are communicated by the officer making the order after five days but not later than [fifteen days] from the date of detention, this sub-section shall apply subject to the modification that, for the words "twelve days", the words "[twenty days]" shall be substituted.; *Ibid.*

[282] *See*. The Code of Criminal Procedure, 1973 (2 of 1974).

[283] *See*. Sec. 5 of the National Security Act, 1980; Provided that no order shall be made by a State Government for the removal of a person from one State to another State except with the consent of the Government of that other State.

[284] Ins. by Act 60 of 1984, s. 2 (w.e.f. 21-6-1984).

order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention.

Section 6 of the Act provides for certain detention orders not to be invalid or inoperative on certain grounds. It prescribes that no detention order shall be invalid or inoperative merely by reason that the person to be detained is outside the limits of the territorial jurisdiction of the Government or officer making the order, or that the place of detention of such person is outside the said limits.

Section 7 of the Act deals with the powers in relation to absconding persons. It lays down that if a person has been absconded or is concealing himself so that the order cannot be executed, that Government or officer may make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the First Class.

It may also require the said person to appear before such officer, at such place and within such period as may be specified in the order. Upon the making of a report against any the provisions of the Code shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by the Magistrate.

It further provides that if any person fails to comply with an order, he shall, unless he proves that it was not possible for him to comply, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Section 8 of the Act states that when a person is detained, the authority making the order shall, inform to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government within 15 days.[285]

Section 9 of the Act mandates the composition of Advisory Board which shall be composed of three persons out of whom one shall be the Chairman who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.

In every case where a detention order has been made, the Government is required to place before the Advisory Board the grounds on which the order has been made and the representation, if any, made by the person affected by the order[286].

[285] Also See. Sec. 8 (2) of the National Security Act, 1980; Nothing in sub-section (*1*) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

[286] See. Sec. 10 of the National Security Act, 1980.

The Advisory Board shall, after considering the materials placed before it and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the Government within seven weeks which must specify the sufficient cause for the detention of the person. In case of conflict, the opinion of the majority of such members shall be deemed to be the opinion of the Board[287].

The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be twelve months[288].

Section 14 governs provisions relating to the revocation of detention orders. It provides that a detention order may, at any time, be revoked or modified, whether made by an officer, state or the Central Government.

The expiry or revocation of a detention order shall not bar the making of another detention order. [289]

Section15 of the Act deals with the temporary release of persons detained. It states that the appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release. The appropriate Government may also require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

Any person so released shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release.

Section 18 of the Act deals with the repeal and saving of certain provisions. The National Security Ordinance, 1980 (11 of 1980), was repealed and the Act was made.

[287] See. Sec. 11 of the National Security Act, 1980.

[288] *See*. Sec. 13 of the National Security Act, 1980; Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time. *Ibid*.

[289] *See*. Sec. 14 of the National Security Act, 1980; Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.; *Ibid*.

3.9 THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1985[290]

This Act[291] which received the assent of the President on May 23, 1985 and was published in the Gazette of India came into force on May 24, 1985 in whole of India for a period of two years. The provisions of this Act were made applicable to Jammu and Kashmir. The preamble of this Act revealed that this Act was made "for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto".[292]

3.9.1 THE BACKGROUND AND THE NECESSITY OF THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987 [293]

Act 28 of 1987 was established as Act 31 of 1985 was expected to lapse on May 23, 1987 and as it was felt that to battle and adapt to fear monger and troublesome exercises successfully, it was important to proceed with the said law as well as to fortify it further. Since both the Houses of Parliament were not in session and it was important to make quick move, the President declared the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) on May 23, 1987 which came into drive w.e.f. May 24, 1987.

Be that as it may, this Act cancelling the Ordinance got the consent of the President of India on September 3, 1987 and was distributed in the Gazette of India, Extra. Part II, Section 1, dated September 3, 1987. The plan of Act 31 of 1985 and Act 28 of 1987 as reflected from their preludes is the same. [294].

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[290] THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1985 [Act 31 of 1985] - to be referred hereinafter as TADA 1985;

[291] The Statement of Objects and Reasons of this Act read as follows:

*"**Prefatory Note Statement of Objects and Reasons.-** Terrorists had been indulging in wanton killings, arson, looting of properties' and other heinous crimes mostly in Punjab and Chandigarh. Since the 10th May, 1985, the terrorists have expanded their activities to other parts of the country, i.e. Delhi, Haryana, Uttar Pradesh and Rajasthan as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to terrorise, to create fear and panic in the minds of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires to be taken serious note of and dealt with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern."*

[292] The Bill as introduced sought to make provisions for combating the menace of terrorists and disruptionists, *inter alia*, to-

(a) Provide for deterrent punishment for terrorist acts and disruptive activities;

(b) confer on the Central Government adequate powers to make such rules as may be necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities; and

(c) provide for the constitution of Designated Courts for the speedy and expeditious trial of offenses under the proposed legislation.

[293] THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987 [Act 28 of 1987]

[294] The scheme of the special provisions of these two Acts were/are *"for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto".*

According to sub-section (1) of Section 1, Sections 5, 15, 21 and 22 came into compel on the double and the rest of the arrangements of this Act were esteemed to have come into drive on 24th day of May 1987. As per sub-segment (4) of Section 1, this Act was to stay in constrain for a time of two years from May 24, 1987 however in this way sub-segment (4) was altered by righteousness of the Amendment Act 16 of 1989 whereby for the words "two years", the words "four years" were substituted and the legitimacy of this Act was reached out for a further time of two years. Resultantly, the Act was to terminate on May 23, 1991. From there on as it was felt that the Act should proceed with, the President proclaimed an Ordinance whereby for the words "four years", "six years" were substituted in sub-area (4) of Section 1.[295].

The following table explains some of the provisions which are similar in the Act of 1985 and the Act of 1987:[296]

(Table-6) TADA 1985 & TADA, 1987

The Terrorist and Disruptive Activities (Prevention)Act, 1985	The Terrorist and Disruptive Activities (Prevention)Act, 1987
Section 7	Section 9
Section 8	Section 10
Section 9(2)	Section 11(2)
Section 13	Section 16
Section 16	Section 19
Section 17(2)	Section 20(4)
Section 17(4	Section 20(7)
Section 17(5)	Section 20(8)

[295] Subsequently, this Ordinance was repealed by Act 35 of 1991 thus extending the life of the Act 28 of 1987 to six years. As the Act even by the extended period of six years was to expire on May 23, 1993, another Amendment Act 43 of 1993 which received the assent of President on May 22, 1993, was enacted extending the life of the Act for eight years instead of six years.

[296] See. *Kartar Singh* v. *State of Punjab* [1994] 3 SCC 569; Para-14 at p- 5.

3.9.2 DETAILED ANALYSIS OF THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

The Preamble of the Act provided its very purpose which was to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto. It extends to the whole of India, and it applies also to citizens of India outside India, to persons in the service of the Government, wherever they may be, and to persons on ships and aircraft registered in India, wherever they may be[297].

It should stay in constrain for a time of eight years from the 24th day of May, 1987, however its expiry under the operation of this sub-area did not influence the past operation of, or anything properly done or endured under this Act or any control made there under or any request made under any such run, or any right, benefit, commitment or risk obtained accumulated or caused under this Act or any administer made there under or any request made under any such run, or any punishment, relinquishment or discipline acquired in regard of any offense under this Act or any negation of any manage made under this Act or of any request made under any such run, or any examination, lawful continuing or cure in regard of any such right, benefit, commitment, obligation, punishment, relinquishment or discipline, and any such examination, legitimate continuing or cure might be organized, proceeded or upheld and any such punishment, relinquishment or discipline might be forced as though this Act had not lapsed.

Section 2 of the Act provided for the definitions of the various terms like, 'abet'[298], 'Code'[299], 'Designated Court'[300], 'Disruptive activity'[301], 'High Court'[302], 'notified area'[303], 'public

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[297] *See*. Sec. 1 of the Terrorists And Disruptive Activities Act, 1987.

[298] *See*. Sec. 2 (a) of the Terrorists And Disruptive Activities Act, 1987; "*abet*", with its grammatical variations and cognate expressions, includes, - the communication or association with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists; the passing on, or publication of, without any lawful authority, and information likely to assist the terrorists or disruptionists, and the passing on, or publication of, or distribution of, any document or matter obtained from terrorists or disruptionists and the rendering of any assistance, whether financial or otherwise, the terrorists or disruptionists;

[299] *See*. Sec. 2 (b) of the Terrorists And Disruptive Activities Act, 1987; "*Code*" means the Code of Criminal Procedure 1973 (2 of 1974);

[300] *See*. Sec. 2 (c) of the Terrorists And Disruptive Activities Act, 1987; "*Designated Court*" means a Designated Court constituted under Section 9;

[301] *See*. Sec. 2 (d) of the Terrorists And Disruptive Activities Act, 1987; "*Disruptive activity*" has the meaning assigned to it in Section 4, and the expression "disruptionist" shall be construed accordingly;

[302] *See*. Sec. 2 (e) of the Terrorists And Disruptive Activities Act, 1987; "*High Court*" means the High Court of the State in which a judge or an additional judge of a Designated Court was working immediately before his appointment as such judge or additional judge;

[303] *See*. Sec. 2 (f) of the Terrorists And Disruptive Activities Act, 1987; "*notified area*" means such area as the State Government may, by notification in the official Gazette, specify;

prosecutor'[304], 'property'[305], and 'terrorist act'[306]. Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area[307].

Section 3 (1) defines **the terrorist acts[308]** and other provisions deals with the punishments. Guilt by membership was also punished with five years imprisonment which could extend to life.[309]. Section 4 of the Act deals with the punishment for disruptive activities.[310]

The act also provided that any person who is found in possession of any arms and ammunition specified in Columns 2 and 3 of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorizedly in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine[311].

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[304] *See*. Sec. 2 (g) of the Terrorists And Disruptive Activities Act, 1987; "*public prosecutor*" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under Section 13, and includes any person acting under the directions of the Public Prosecutor;

[305] *See*. Sec. 2 (gg) of the Terrorists And Disruptive Activities Act, 1987; "*property*" means property and assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived or obtained from the terrorist Act and includes proceeds of terrorism;

[306] *See*. Sec. 2 (h) of the Terrorists And Disruptive Activities Act, 1987; "*terrorist act*" has the meaning assigned to it in sub-section (1) of Section 3, and the expression "terrorist" shall be construed accordingly;

[307] *See*. Sec. 2 (2) of the Terrorists And Disruptive Activities Act, 1987;

[308] *See*. Sec. 3 (1) of the Terrorists And Disruptive Activities Act, 1987; It reads as follows:

"Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act."

[309] *See*. Sec. 3 (5) of the Terrorists And Disruptive Activities Act, 1987;

[310] *See*. Sec. 4 (2) of the Terrorists And Disruptive Activities Act, 1987; For the purposes of sub-section (1), "*disruptive activity*" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, -

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation – For the purposes of this sub-section, -

(a) "cession" includes the admission of any claim of any foreign country to any part of India, and

(b) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

[311] *See*. Sec. 5 of the Terrorists And Disruptive Activities Act, 1987;

The Designated Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Government free from all encumbrances[312].

Part-III of the Act deals with the establishment, composition, and powers of the Designated Court. It provided that the Government may, constitute one or more Designated Courts for such area as may be specified[313]. In case of a Designated Court established by both the State and the Central government, the Court established under Central Government shall prevail and will be competent to try the case.

A Designated Court could be directed by a Judge to be delegated by the Central Government or, all things considered, the State Government, with the simultaneousness of the Chief Justice of the High Court. A Designated Court could, all alone movement or on an application made by the Public Prosecutor, and on the off chance that it thinks of it as convenient or attractive so to do, sit for any of its procedures at wherever, other than its standard place of sitting[314].

Each offense culpable under any arrangement of this Act or any run made there under could be triable just by the Designated Court inside whose neighborhood purview it was submitted.[315] The Central Government could exchange any case pending under the steady gaze of a Designated Court in that State to some other Designated Court inside that State or in some other State.

Section 12 of the Act manages the forces of the Designated Court as for different offenses and where the Special Court could attempt the cases. It was likewise recommended that For each Designated Court, the Central Government or, by and large, the State Government, might name a

[312] *See*. Sec. 8 of the Terrorists And Disruptive Activities Act, 1987;
[313] *See*. Sec. 8 (1) of the Terrorists And Disruptive Activities Act, 1987;
[314] *See*. Sec. 10 of the Terrorists And Disruptive Activities Act, 1987;
[315] *See*. Sec. 11 of the Terrorists And Disruptive Activities Act, 1987;

man to be the Public Prosecutor and may select at least one people to be the Additional Public Prosecutor or Additional Public Prosecutors .[316].

Section 13 of the Act provided that for every Designated Court, the State Government shall appoint a Public Prosecutor or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors. Section 14 of the Act stipulates the system to be trailed by the Designated Court. It gave that a Designated Court may take comprehension of any offense, without the charged being focused on it for trial, after getting a grumbling of actualities which constitute such offense or upon a police report of such certainties. Where an offense triable by a Designated Court is culpable with detainment for a term not surpassing three years or with fine or with both, the Designated Court may, attempt the offense summarily[317].

The Designated Court had the similar powers of Session court to try the offences. Most importantly section 15 of the Act came up again with the most deadliest and draconian provision in the Act. It stated that a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person, co-accused, abettor or conspirator provided co-accused, abettor, or conspirator be tried for same offence.

However it also stipulated that the police officer shall, before recording any confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily[318].

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[316] *See*. Sec. 13 of the Terrorists And Disruptive Activities Act, 1987; Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases a Special Public Prosecutor.

[317] *See*. Sec. 14 (2) of the Terrorists And Disruptive Activities Act, 1987; Provided that when, in the course of a summary trial under this sub-section, it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Designated Court as they apply to and in relation to a Magistrate: *Provided* further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.

[318] *See*. Sec. 15 (2) of the Terrorists And Disruptive Activities Act, 1987;

The Act also provided provisions for the protection of witnesses and mandated that the proceedings under the Act shall be held in camera. A Designated Court could take such measures as it deems fit for keeping the identity and address of any witness secret[319]. Any person who violated any direction of the Court in this regard, he could be punishable with one year imprisonment and could also be liable to fine of one thousand rupees.

The trial under this Act of any offence by a Designated Court was to have precedence over the trial of any other case against the accused in any other court, not being a Designated Court[320].

Part-IV of the Act dealt with the miscellaneous residuary things. Section 20 of the Act provided provisions for application of Cr.PC and Section 20-A dealt with the cognizance of the offences under the Act.

Section 21 of the Act provided yet another draconian provision which deviates from the principles of justice. It provided that the onus of proving innocence for the offences under the Act, the burden shall lie on the accused persons and it will be presumed unless proved to the contrary that such persons have committed the offences.

The Supreme Court has the power to make rules relating to Designated Court[321]. The Central Government may also make rules under the Act and more particularly regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from areas, the entry into, and search of any vehicle, vessel or aircraft; or any place, or conferring powers upon, the Central Government, a State Government, an Administrator of a Union Territory under Article 239 of the Constitution, an officer of the Central Government not lower in rank than of a Joint Secretary; or an officer of a State Government not

[319] *See*. Sec. 16 of the Terrorists And Disruptive Activities Act, 1987; the measures which a Designated Court may take under that sub-section may include,-

a. the holding of the proceedings at a place to be decided by the Designated Court;
b. the avoiding of the mention of the names and addresses of the witnesses in it orders or judgments or in any records of the case accessible to public;
c. the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.
d. that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

[320] *See*. Sec. 17 of the Terrorists And Disruptive Activities Act, 1987;
[321] *See*. Sec. 27 of the Terrorists And Disruptive Activities Act, 1987;

lower in rank than that of a District Magistrate[322] to make general or special orders to prevent or cope with terrorist acts or disruptive activities.

Section 30 of the Act dealt with the provisions relating to repeal and savings.

3.10 PREVENTION OF TERRORISM ACT, (POTA) 2002[323]

Much on the lines of the TADA 1987, this Act was enacted in 2002 in the aftermath of the attack on the Indian Parliament which is considered to be the hallmark of world largest successful democracy. The Preamble of the Act laid down its purpose which was mainly to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith. The Act came to be known as the Prevention of Terrorism Act, 2002 (to be referred hereinafter as POTA, 2002). It extended to the whole of India in its application and is comprising of 64 sections in all. Every person was made liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India and any person who commits an offence beyond India which is punishable under this Act was to be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India. The provisions of this Act applied also to citizens of India outside India, persons in the service of the Government, wherever they may be and persons on ships and aircrafts, registered in India, wherever they may be[324].

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[322] *See*. Sec. 28 of the Terrorists And Disruptive Activities Act, 1987;

[323] THE PREVENTION OF TERRORISM ACT, 2002 [Act No. 15 of 2002]

[324] *See*. Sec. 1 of the Prevention of Terrorism Act, 2002; Save as otherwise provided in respect of entries at serial numbers 24 and 25 of the Schedule to this Act, it shall be deemed to have come into force on the 24th day of October, 2001 and shall remain in force for a period of three years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect—
(a) the previous operation of, or anything duly done or suffered under this Act, or
(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act, or
(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act, or
(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and, any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired. *Ibid*. sec. 1 (6) of the Prevention of Terrorism Act, 2002.

Section 2 of the Act defines terms like, 'Code'[325], 'Designated Authority'[326], 'proceeds of terrorism'[327], 'property'[328], 'public prosecutor'[329], 'special court'[330], 'terrorist act'[331], and 'state government'[332].

Further the words and expressions used but not defined in this Act and defined in the Code had the meanings respectively assigned to them in the Code. Chapter-II of the Act prescribes measures and various punishments.

Section 3 of the Act defines what constitute terrorist acts and also prescribes punishment for the same. It provides that whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defense of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure

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[325] *See*. Sec. 2 (a) of the Prevention of Terrorism Act, 2002; "*Code*" means the Code of Criminal Procedure, 1973 (2 of 1974);

[326] *See*. Sec. 2 (b) of the Prevention of Terrorism Act, 2002; "*Designated Authority*" shall mean such officer of the Central Government not below the rank of Joint Secretary to the Government, or such officer of the State Government not below the rank of Secretary to the Government, as the case may be, as may be specified by the Central Government.

[327] *See*. Sec. 2 (c) of the Prevention of Terrorism Act, 2002; "*proceeds of terrorism*" shall mean all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, and shall include cash irrespective of person in whose name such proceeds are standing or in whose possession they are found;

[328] *See*. Sec. 2 (d) of the Prevention of Terrorism Act, 2002; "*property*" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets and includes bank account;

[329] *See*. Sec. 2 (e) of the Prevention of Terrorism Act, 2002; "*Public Prosecutor*" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 28 and includes any person acting under the directions of the Public Prosecutor;

[330] *See*. Sec. 2 (f) of the Prevention of Terrorism Act, 2002; "*Special Court*" means a Special Court constituted under section 23;

[331] *See*. Sec. 2 (g) of the Prevention of Terrorism Act, 2002; "*terrorist act*" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly;

[332] *See*. Sec. 2 (g) of the Prevention of Terrorism Act, 2002; "*State Government*", in relation to a Union territory, means the Administrator thereof;

such person in order to compel the Government or any other person to do or abstain from doing any act; and

Further whoever is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.[333]

Whoever commits a terrorist act, shall, if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine and in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine[334]. Also whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.[335]

Further whoever voluntarily harbors or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine provided that this sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender[336].

Section 5 of the Act makes special provisions for the enhanced penalties. The Act further mandated that no person shall hold or be in possession of any proceeds of terrorism.[337]

Section 7 of the Act dealt with the powers of investigating officers and appeal against certain orders.

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[333] *See*. Sec. 3 (a) (b) of the Prevention of Terrorism Act, 2002; It also provides the explanation which reads as follows: ***Explanation***.—For the purposes of this sub-section, "*a terrorist act*" shall include the act of raising funds intended for the purpose of terrorism.

[334] *See*. Sec. 3 (2) of the Prevention of Terrorism Act, 2002;

[335] *See*. Sec. 3 (3) of the Prevention of Terrorism Act, 2002;

[336] *See*. Sec. 3 (4) of the Prevention of Terrorism Act, 2002;

[337] *See*. Sec.6 of the Prevention of Terrorism Act, 2002;

Section 8 of the Act stipulated that the Special Court may order forfeiture of property, whether or not the person from whose possession it is seized or attached, is prosecuted in a Special Court for an offence under this Act.

Area 9 of the Act gave that no request relinquishing any returns of fear based oppression might be made under segment 8 unless the individual holding or possessing such continues is given a notice in composing advising him of the grounds on which it is proposed to relinquish the returns of psychological warfare and such individual is given a chance of making a portrayal in composing inside such sensible time as might be indicated in the notice against the grounds of relinquishment and is additionally given a sensible chance of being heard in the issue. No request of relinquishment should be made such individual builds up that he is a true blue transferee of such continues for an incentive without realizing that they speak to continues of fear mongering[338].

Any person aggrieved by an order of forfeiture under section 8 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the Special Court, who passed the order appealed against, is situated[339].

The officer investigating any offence under this Act, with prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act[340].

Where, after the issue of an order under section 7 or issue of a notice under section 9, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Act, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void[341]. Further Where any person is accused of any offence under this Act, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, if not already attached under this Act[342].

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[338] *See*. Sec. 9 (2) of the Prevention of Terrorism Act, 2002;
[339] *See*. Sec. 10 of the Prevention of Terrorism Act, 2002;
[340] *See*. Sec. 14 of the Prevention of Terrorism Act, 2002;
[341] *See*. Sec. 15 of the Prevention of Terrorism Act, 2002;
[342] *See*. Sec. 16 of the Prevention of Terrorism Act, 2002;

Chapter- III dealt with the terrorists organizations. The Central Government may exercise its power under n respect of an organisation only if it believes that it is involved in terrorism. an organisation shall be deemed to be involved in terrorism if it commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism, or is otherwise involved in terrorism[343].

Section 20 of the Act lays down that a person commits an offence if he belongs or professes to belong to a terrorist organisation, provided that this sub-section shall not apply where the person charged is able to prove that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation. A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not exceeding ten years or with fine or with both[344].

Section 21 of the Act stipulates that a person commits an offence if he invites support for a terrorist organisation, and the support is not, or is not restricted to, the provision of money or other property within the meaning of section 22. A person also commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is to support a terrorist organisation, or to further the activities of a terrorist organisation, or to be addressed by a person who belongs or professes to belong to a terrorist organisation[345].

Section 22 of the Act dealt with the fund raising offences for the terrorist organizations. **Chapter-IV of the Act** dealt with the provisions relating to the establishment of the Special Courts. It stipulates that the Central Government may constitute one or more Special Courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification[346].

The Supreme Court additionally had the ability to exchange any case pending under the steady gaze of a Special Court to some other Special Court inside that State or in some other State and the High Court may exchange any case pending under the steady gaze of a Special Court arranged in that State to some other Special Court inside the State[347].

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[343] *See*. Sec. 18 of the Prevention of Terrorism Act, 2002;
[344] *See*. Sec. 20 (2) of the Prevention of Terrorism Act, 2002;
[345] *See*. Sec. 21 (2) of the Prevention of Terrorism Act, 2002;
[346] *See*. Sec. 23 (1) of the Prevention of Terrorism Act, 2002;
[347] *See*. Sec. 25 (2) of the Prevention of Terrorism Act, 2002;

While attempting any offense, a Special Court may likewise attempt some other offense with which the denounced may, under the Code, be charged at a similar trial if the offense is associated with such other offense. On the off chance that, over the span of any trial under this Act of any offense, it is discovered that the denounced individual has conferred some other offense under this Act or under some other law, the Special Court may convict such individual of such other offense and pass any sentence or honor discipline approved by this Act or such administer or, by and large, under such other law[348].

When a police officer investigating a case requests the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate in writing for obtaining samples of handwriting, finger-prints, foot-prints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonably suspected to be involved in the commission of an offence under this Act, it shall be lawful for the Court of a Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate to direct that such samples be given by the accused person to the police officer either through a medical practitioner or otherwise, as the case may be[349].

A Special Court could take comprehension of any offense, without the blamed being focused on it for trial, after getting a grumbling of certainties that constitute such offense or upon a police report of such realities. Where an offense triable by a Special Court is culpable with detainment for a term not surpassing three years or with fine or with both, the Special Court may attempt the offense summarily[350].

Section 30 of the Act makes special provisions for the protection of the witnesses. It prescribes that all proceedings under the Act to be held in Camera.

The trial under this Act of any offense by a Special Court had priority over the trial of some other body of evidence against the denounced in some other court (not being a Special Court) and should be closed in inclination to the trial of such other case and appropriately the trial of such other case might stay in cessation[351].

Section 32 of the Act provided yet another draconian provision. It stipulated that a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like

[348] *See*. Sec. 26 of the Prevention of Terrorism Act, 2002;
[349] *See*. Sec. 27 of the Prevention of Terrorism Act, 2002;
[350] *See*. Sec. 29 of the Prevention of Terrorism Act, 2002;
[351] *See*. Sec. 31 of the Prevention of Terrorism Act, 2002;

cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or the rules made there under.
If a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence[352].
Section 34 of the Act endorsed that an interest might lie from any judgment, sentence or request, not being an interlocutory request, of a Special Court to the High Court both on realities and on law. The ward presented by this Act on a Special Court, should, until the point that a Special Court is constituted under segment 23, on account of any offense culpable under this Act, despite anything contained in the Code, be practiced by the Court of Session of the division in which such offense has been submitted and it might have every one of the forces and take after the methodology gave under this Chapter .[353].

Chapter-V of the Act made provisions for the interception of communication in certain cases.
Section 36 of the Act provided definitions for the various terms like, 'electronic communication'[354], 'intercept'[355], 'oral communication'[356], and 'wire communication'[357].

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[352] *See*. Sec. 33 of the Prevention of Terrorism Act, 2002;
[353] *See*. Sec. 35 of the Prevention of Terrorism Act, 2002;
[354] *See*. Sec. 36 (a) of the Prevention of Terrorism Act, 2002; "*electronic communication*" means any transmission of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include—
(i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit; or
(ii) any wire or oral communication; or
(iii) any communication made through a tone only paging device; or
(iv) any communication from a tracking device;

[355] *See*. Sec. 36 (b) of the Prevention of Terrorism Act, 2002; "*intercept*" means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;
[356] *See*. Sec. 36 (c) of the Prevention of Terrorism Act, 2002; "*oral communication*" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.
[357] *See*. Sec. 36 (d) of the Prevention of Terrorism Act, 2002; "*wire communication*" means any aural transmission made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication.

The Central Government or the State Government, as the case may be, may appoint an officer not below the rank of Secretary to the Government in the case of State Government and not below the rank of Joint Secretary to the Government in the case of Central Government, to be the Competent Authority for the purposes of this Chapter[358]. A police officer not below the rank of Superintendent of Police supervising the investigation of any terrorist act under this Act may submit an application in writing to the Competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when he believes that such interception may provide, or has provided evidence of any offence involving a terrorist act[359].

Upon such application, the Competent Authority may dismiss the application, or issue a request, as asked for or as altered, approving or favoring capture attempt of wire, electronic or oral correspondences, if the Competent Authority decides on the premise of the certainties put together by the candidate that——[360]

(a) there is a reasonable justification for conviction that an individual is submitting, has conferred, or is going to submit, a specific offense depicted and made culpable under areas 3 and 4 of this Act;

(b) there is a reasonable justification of conviction that specific correspondences worried that offense might be gotten through such capture attempt;

(c) there is reasonable justification of conviction that the offices from which, or where, the wire, electronic or oral correspondences are to be caught are being utilized or are going to be utilized, regarding the commission of such offense, rented to, or are recorded in, the name of or generally utilized by such individual.

The Competent Authority shall, immediately after passing the order under sub-section (1) of section 39, but in any case not later than seven days from the passing of the order, submit a copy of the same to the Review Committee constituted under section 60 along with all the relevant underlying papers, record and his own findings, in respect of the said order, for consideration and approval of the order by the Review Committee[361]. It additionally provides that no request issued under this segment may approve or endorse the capture of any wire, electronic or oral correspondence for any period longer than is important to accomplish the target of the

[358] *See*. Sec. 37 of the Prevention of Terrorism Act, 2002;
[359] *See*. Sec. 38 of the Prevention of Terrorism Act, 2002;
[360] *See*. Sec. 39 of the Prevention of Terrorism Act, 2002;
[361] *See*. Sec. 40 of the Prevention of Terrorism Act, 2002;

authorisation, nor in any occasion longer than sixty days and such sixty days time frame should start on the day promptly going before the day on which the exploring officer initially starts to lead an interference under the request or ten days after request is issued whichever is prior[362]. A block attempt under this Chapter might be directed in entire or to some degree by an open worker, acting under the supervision of the researching officer approved to lead the capture attempt [363].

It likewise prescribed that the proof gathered through the capture attempt of wire, electronic or oral correspondence under this Chapter might be permissible as confirmation against the blamed in the Court amid the trial of a case, gave that, the substance of any wire, electronic or oral correspondence caught as per this Chapter or proof inferred in this way should not be gotten in prove or generally unveiled in any trial, hearing or other continuing in any court unless each denounced has been outfitted with a duplicate of the request of the Competent Authority, and going with application, under which the block attempt was approved or endorsed at least ten days before trial, hearing or continuing[364].

Further the Central and the State Government is required to prepare an annual report containing all details of the interceptions made under the Act[365].

Chapter-VI of the Act deals with the miscellaneous provisions under the Act. Section 49 of the Act provided provisions which modifies the application of the Code for the purpose of this Act. No court shall take cognizance of any offence under this Act without the previous sanction of the Central Government or, as the case may be, the State Government[366].

Where a Police Officer captures a man, he should set up an authority update of the individual captured and the individual captured might be educated of his entitlement to counsel a legitimate professional when he is conveyed to the police headquarters. It likewise endorsed that at whatever point any individual is captured, data of his capture might be quickly conveyed by the cop to a relative or in his nonappearance to a relative of such individual by message, phone or by some other means and this reality should be recorded by the cop under the mark of the individual captured[367].

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[362] *See*. Sec. 41 of the Prevention of Terrorism Act, 2002;
[363] *See*. Sec. 42 of the Prevention of Terrorism Act, 2002;
[364] *See*. Sec. 45 of the Prevention of Terrorism Act, 2002;
[365] *See*. Sec. 48 of the Prevention of Terrorism Act, 2002;
[366] *See*. Sec. 50 of the Prevention of Terrorism Act, 2002;
[367] *See*. Sec. 52 of the Prevention of Terrorism Act, 2002;

In every case, the presumption shall lie against the accused and the Court was supposed to presume him guilty unless proved contrary[368].

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act[369].

No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act[370].

Any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Act, shall be punishable with imprisonment which may extend to two years, or with fine, or with both. If the Special Court is of the opinion that any person has been corruptly or maliciously proceeded against under this Act, the Court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or Government, as may be specified in the order[371].

The passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the Special Court may deem fit[372].

The Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes of this Act. Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed[373].

The High Court may, by notification in the Official Gazette, make such rules, if any, as they may deem necessary for carrying out the provisions of this Act relating to Special Courts within their territories[374].

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[368] *See*. Sec. 53 of the Prevention of Terrorism Act, 2002;
[369] *See*. Sec. 56 of the Prevention of Terrorism Act, 2002;
[370] *See*. Sec. 57 of the Prevention of Terrorism Act, 2002;
[371] *See*. Sec. 58 of the Prevention of Terrorism Act, 2002;
[372] *See*. Sec. 59 of the Prevention of Terrorism Act, 2002;
[373] *See*. Sec. 60 of the Prevention of Terrorism Act, 2002;
[374] *See*. Sec. 61 of the Prevention of Terrorism Act, 2002;

Besides the High Court, the Central government may also make rules for the purpose of this Act[375]. Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule[376].

Section 64 of the Act dealt with the provisions relating to the repeal and the saving clauses of the Act.

3.11 THE NATIONAL INVESTIGATION ACT, 2008[377]

In the aftermath of the Mumbai terror attacks, the Parliament alongside introducing certain amendments in the Unlawful Activities (Prevention) Act, 1967, also enacted yet another piece of legislation in the form of National investigation Act in the year 2008. The introductory part attached to the Act is reproduced here as follows:

"For the last several years, there have been innumerable incidents of terrorists attacks, not only in militancy and insurgency affected areas and areas affected by Left-Wing extremism, but also in the form of terrorist attacks and bomb blasts, etc, in various parts of the hinterland and major cities. A large number of such incidents are found to have complex inter-state and international linkages. It has for long felt that there is need for setting up an Agency at the Central level for investigation of offences related to terrorism and other acts which have national ramifications. Several experts and Committees and Administrative Reforms Commission have recommended for establishing such an Agency. The Government after due consideration and examination of the issues involved has proposed to enact legislation to make provisions for the establishment of a

[375] *See*. Sec. 62 of the Prevention of Terrorism Act, 2002;
[376] *See*. Sec. 63 of the Prevention of Terrorism Act, 2002;
[377] THE NATIONAL INVESTIGATION ACT, 2008 [Act No. 34 of 2008]; The National Investigation Agency Bill having been passed by both the Houses of Parliament received the assent of the President on 31st December, 2008. It came on the Statute Book as 'THE NATIONAL INVESTIGATION AGENCY ACT, 2008 (34 OF 2008).

National Investigation Agency. Accordingly, the National Investigation Agency Bill was introduced in the Parliament"[378].

The Preamble of the Act provides the very reasons for the implementation of the Act which is mainly to constitute an investigation Agency at the national level to investigate and prosecute offences affecting the sovereignty, security, and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions, and resolutions of the United nations, its agencies, and other international organizations, and for matters connected therewith or incidental thereto.

The Act extended throughout India in its application.[379] Section 2 of the Act provided definitions of the various terms like, 'Agency'[380], 'Code'[381], 'High Court'[382], 'Prescribed'[383], 'public prosecutor'[384], 'Schedule'[385], 'Scheduled Offence'[386], and 'Special Court'[387].

Section 3 of the Act makes special provisions for the establishment of the National Investigation Agency. It stipulates that the Central government may constitute a special agency to be called as the National Investigation Agency for investigation and prosecutiaon of offences under the Acts specified in the schedule. The officers so appointed shall have all the powers, duties, privileges, and liabilities which police officers have in connection with the investigation of offences committed[388]. It further directs that any officer of the Agency or the rank of Sub-inspector may exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and then so exercising such powers shall be deemed to be officer in charge of a police stations discharging the functions of such an officer.[389]

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[378] *See*. 'THE STATEMENT OF OBJECTS AND REASONS' of The National Investigation Act, 2008.

[379] *See*. Sec. 1 of the National Investigation Act, 2008.

[380] *See*. Sec. 2 (a) of the National Investigation Agency, Act, 2008; "*Agency*" means the National Investigation Agency constituted under section 3;

[381] *See*. Sec. 2 (b) of the National Investigation Agency, Act, 2008; "*Code"* means the Code of Criminal Procedure, 1973 (2 of 1974);

[382] *See*. Sec. 2 (c) of the National Investigation Agency, Act, 2008; "*High Court"* means the High Court within whose jurisdiction the Special Court is situated;

[383] *See*. Sec. 2 (d) of the National Investigation Agency, Act, 2008; "*Prescribed"* means prescribed by rules;

[384] *See*. Sec. 2 (e) of the National Investigation Agency, Act, 2008; "*Public Prosecutor"* means a Public Prosecutor or an Additional Public Prosecutor or a Special public Prosecutor appointed under section 15;

[385] *See*. Sec. 2 (f) of the National Investigation Agency, Act, 2008; "*Schedule"* means Schedule to this Act;

[386] *See*. Sec. 2 (g) of the National Investigation Agency, Act, 2008; "*Scheduled Offence"* means an offence specified in the Schedule;

[387] *See*. Sec. 2 (h) of the National Investigation Agency, Act, 2008; "*Special Court"* means a Special Court constituted under section 11 or as the case may be, under section 22;

[388] *See*. Sec. 3 (2) of the National Investigation Agency, Act, 2008;

[389] . Sec. 3 (3) of the National Investigation Agency, Act, 2008;

Section 4 of the Act lays down that the superintendence of the Agency shall vest in the Central Government. The Agency shall be administered by the officers designated as the Director-General who shall so be appointed by the Central Government and his powers will be similar to that of the Director-General of Police[390].

Section 5 of the Act provides that the Agency shall be constituted in such manner and conditions of services of members shall be such as may be prescribed by the rules[391].

Section 6 of the Act makes special provisions for the investigation of the Scheduled offences under the Act. It states that on receipt of information and recording under section 154 of the Code, relating to any Scheduled offence, the Officer-in-charge of the police station shall forward the report to the State Government forthwith. Upon the receipt of such report, the State Government shall forwards the report to the Central Government as early as plausible[392]. The Central Government in turn is required to determine, within 15 days, on the basis of information available, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offences and other factors, it is a fit case to be investigated by NIA[393]. Upon the required determination as mentioned above, the Central Government shall direct the Agency to investigate the said offence. Further, if the Central Government is of the opinion that a Scheduled Offence has been committed, it may also, *suo motu*, direct the Agency to investigate the case[394]. Upon such direction from the Central Government to the NIA, the State Government or any police officer shall not proceed with the investigation and shall transmit the relevant documents and records to the NIA.

Section 7 of the Act deals with the provisions relating to the powers to transfer investigation to the State Government. Having regard to the gravity of the offence and other factors, if NIA thinks deems fit, it may request the State Government to associate itself with the investigation or with the previous approval of Central government, transfer the case to the State Government for investigation and trials of the offence.

Section 8 of the Act provides that while investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is

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[390] *See*. Sec. 4 (2) of the National Investigation Agency, Act, 2008;
[391] *See*. Sec. 5 of the National Investigation Agency, Act, 2008
[392] *See*. Sec. 6 (2) of the National Investigation Agency, Act, 2008
[393] *See*. Sec. 6 (3) of the National Investigation Agency, Act, 2008
[394] *See*. Sec. 6 (5) of the National Investigation Agency, Act, 2008

connected with the Scheduled Offence. The State Government is required to extend all assistance and co-operation to the NIA for the effective and timely investigation of the Scheduled Offence[395]. Nothing shall bar the power of the State Government to investigate any Scheduled Offence or any other offences under any law for the time being in force[396].

Section 11 of the Act prescribes the powers of the Central Government to constitute Special Courts for the purpose of the Act. Questions pertaining to the jurisdictions of Special Courts shall be resolved by the Central Government. A Special Court shall be presided over by a Judge to be appointed by the Central Government on the recommendations of the Chief Justice of the High Court. The Chief Justice before whom request has been made shall recommend the name of a judge for being appointed to preside over the Special Court.[397]

Section 13 of the Act provides that every case shall be tried only by the Special Court having competence. If owing to compelling reasons or problems prevailing in a State, the Supreme Court may transfer any case pending before a Special Court to any of the Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court in that State to any other Special Court within that State[398].

Section 14 of the Act stipulates that when trying any offences, A Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.

Section 16 of the Act deals with the procedure and powers of the Special Courts. It prescribes that a Special Court may take cognizance of any offence, without accused being committed to it for trial, upin receiving a complaint of facts that constitutes such offence or on police report. The Special Court may try the offence in summary way[399]. For the purpose of this Act, the Special Court shall have powers similar to that of the Sessions Court under the Code[400].

Section 17 of the Act mandates the provisions for the protection of witnesses. It states that the Special Court may decide to proceed with trial in Camera. The Special Court may take special measures to provide protection to the witness or witnesses pertaining to the trial of the offences[401].

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[395] *See*. Sec. 9 of the National Investigation Agency, Act, 2008
[396] *See*. Sec. 10 of the National Investigation Agency, Act, 2008
[397] *See*. Sec. 11 (3), (4), (5), and (6) of the National Investigation Agency, Act, 2008
[398] *See*. Sec. 13 (2) of the National Investigation Agency, Act, 2008
[399] *See*. Sec. 16 (2) of the National Investigation Agency, Act, 2008
[400] *See*. Sec. 16 (3) of the National Investigation Agency, Act, 2008
[401] *See*. Sec. 17 of the National Investigation Agency, Act, 2008

The trial conducted under this Act shall have precedence over all other cases[402]. If the Special Court thinks that the trial is not triable by it, it may transfer the case to such court which has the jurisdiction to try[403].

Section 21 of the Act provides that an appeal from the order of the Special Court shall lie to the High Court. Every such appeal shall be heard by two judges of High Court and shall be disposed within three months.

Section 22 of the Act stipulates that the State Government may also constitute one or more Special Court to try the offences under the Schedule.

Chapter-V of the Act deals with the miscellaneous provisions under the Act. Section 23 of the Act prescribes that the High Court may make rules as it may deems necessary for the purpose of carrying out any function under the Act.

In case of any difficulties, the Central government had the power to remove the same and every order made under the Act shall be laid before each House of the Parliament[404].

Section 25 of the Act prescribes that the Central Government may make rules to carry out the provisions under the Act. [405]

[402] *See*. Sec. 19 of the National Investigation Agency, Act, 2008
[403] *See*. Sec. 20 of the National Investigation Agency, Act, 2008
[404] *See*. Sec. 24 of the National Investigation Agency, Act, 2008
[405] *Also See.* Sec. 26 of the National Investigation Agency, Act, 2008

CHAPTER-IV

JUDICIAL-RESPONSE TO NATIONAL SECURITY LAWS IN

INDIA

4.1 JUDICIAL RESPONSE TO NATIONAL SECURITY LAWS IN INDIA

"When Law ends, tyranny begins

Legislations begins where evil begins

The function of Judiciary begins

When the function of legislature ends"

-Kartar Singh v. State of Punjab[406]

Any law is not a good law unless tested with time on the touchstone of judicial interpretation and analysis. Each and every Parliament's experimentation of various legislations has to undergo this process in order to survive and continue to be a law in the civil society. Every law had to pass several arduous tests on the parameters of personal liberty, due process and fundamental freedoms guaranteed to the citizens by the Constitution which institutionalized various provisions for checks and balances. Since ages, the Preventive Detentions laws have been considered to be the sworn enemies of the notions of personal liberty and fundamental human rights. Since its inception, they have consistently been the subject of criticism and challenges in the judicial corridors.

Often the common problem posed by many jurisdictions is the preventive detention laws as they have been retained to prevent any crimes from occurring are not followed in its true spirit and letter. They have usually become a tool of suppression and oppression in the hands of law enforcement authorities and governments thereby causing much distress to the concepts of individual liberty and justice.

India's tryst with preventive detention laws is thus no exception. Since independence various preventive detention measures have been introduced and retained by the Government, however, as and when Judiciary confronted with such laws with its torch of virtuous justice, these laws have been proven supremely disappointing and liable to be struck down on various grounds.

An attempt shall be made here to enumerate the vast and lengthy experience of Indian judiciary with preventive detention laws and several anti-terrorism laws as they have been enacted from time to time addressing various needs and stating various purposes through the Preambles and the Statements of Objects and reasons thereof. Further an attempt shall be made to highlight the crucial

[406] *Kartar Singh* v. *State of Punjab* [1994] 3 SCC 569;

judgments of the Supreme Court of India where the apex court has went on to issue guidelines and provided guiding light for the legislature to enact laws in future keeping in mind the basic tenets of standard norms created by the Court time and again in various judicial pronouncements.

There was a spurt of preventive detention cases especially since the year 1968 when persons were detained on grounds[407], for example, snatching away cash and valuables and teasing school girls'[408], injuring one individual with a knifes[409]; causing assault to one individual and inflicting grievous injury to his right leg[410], causing undue harassment to respectable young ladies[411], shouting slogans like 'Naxalites Zindabad', 'Long live Revolution' and 'Mao Tse Tung Zindabad"[412] demanding forcibly money from an individual',[413] etc.

Albeit there seems to be a crystal clear difference between the 'public order' and the 'law and order', former being the subject matter falling within the ambit of the States while the latter being the subject matter of the Union, still it is evident that often the States encroach upon the subject matter of the Union thereby leaving ample room for the law enforcement agencies to interpret the law and implement the same as per their whims and fancies[414].

The overlapping feature of the subject matter believed to cause much problems to the issues concerned and here exactly the executive becomes habitual to resort to out of the way machinery in hands thereby making criminal law subservient[415].

Thus, it is very important that the executive should before detaining any person must find sufficient reasons to be supported by the logical analysis. In ***Kishori Mohan* v. *State of W.B.***[416], the apex

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[407] See. C.M. JARIWALA, '*PREVENTIVE DETENTION IN INDIA: EXPERIENCES AND SOME SUGGESTED REFORMS*', in '*INDIAN CONSTITUTION: TRENDS AND ISSUES'* (DHAVAN, RAJEEV AND JACOB, ALICE eds.), Indian law Institute, New Delhi (1978). P-203-215.

[408] *Sushanta v, State of West Bengal,* A.l.R. 1969 SC. 1004.

[409] *Sudhir Kumar v. Police Commr. Calcutta*. A.I.R 1970 S.C. 814. See also assault cases: *Mintu Bhakta v. State of W.B.,* A.I.R. 1972 S.C. 2132; *Dlpak Bose* v. *State of W.B.,* A.I R. 1972 S.C. 2686.

[410] *P. Mukherjee* v. *State of W.B.* A.I.R. 1970 SC. 852; See also. *Manu Bhusan, v. State of W.B.,* A.l.R. 1973 S.C. 295.

[411] *Arun Ghosh* v. *State OF W.B.,* A.I.R. 1970 S.C. 1228. See also *In the matter of Adhir Kumar Sharma, The Unreported* cases (S.C.).

[412] *Sundara Roo v. State of Orissa,* A.I.R. 1972S.C. 739.

[413] *R K. Paul. v. State of W.B.,* A.I.R. 1972S.C. 863.

[414] Chief Justice Hidayatullah made a fine distinction between 'public order' and 'law and order' in one of his landmark cases. See. A.I.R. 1970 S.C. 1228, 1230.

[415] *G. Sadanandan v, State of Kerala,* A.I.R. 1966S.C. 1925, 1928.

[416] *Kishori Mohan* v. *State of W.B.,* A.I.R. 1972 S.C. 1949; Also see. *Akshoy Kanal* v.*State of W.B.,* A.l.R. 1973 S.C. 300.

Court struck down the detention order on the ground that the authority making the detention order did not apply its mind which was required by the Act.

Similarly in ***Misrilal*** v ***State***[417], the Court held that the control of food adulteration through preventive detention cannot be justified.

Also the measures to control social boycott and ex-communication while justifying the use of preventive detention laws was held to be void by the Court in ***Shamrao* v. *District Magistrate***[418].

Further the Court in ***Misrilal Jain v. District Magistrate, Kanpur***[419], found no nexus between the preventive detention measures taken and the measures undertaken by the executive for the price control.

In ***Srilal Shaw*** v. ***State of Bengal***[420], a preventive detention order was issued against a person mainly on the ground that he had stolen railway property. A criminal case filed against him was withdrawn and detention order was passed. It was held by the Court that as there was no apparent reason for the detention, the detention order was bad in law.

On much similar lines, the Court in ***Biram Chand*** v. ***State of U.P***.[421], held a detention order to be bad because it was passed during the course of prosecution of the person in a Court on certain charges. The Court held that the two parallel proceedings should not be resorted to simultaneously against a person.

Finally in ***Noor Chand* v. *State of West Bengal***[422], a person was detained after her was discharged in a criminal trial. The apex court struck down detention order as the fact of discharge from a criminal case was a relevant material which the detaining authority must not ignore.

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[417] *Misrilal* v. *State* A.I.R. 1971 Pat. 134

[418] *Shamrao* v. *District Magistrate,* A.I.R. 1952 S.C 324.

[419] *Misrilal Jain v. District Magistrate, Kanpur,* U.R. (S.C.) 1972,100, 102.

[420] *Srilal Shaw* v. *State of Bengal* A.I.R. 1975 S.C. 393; Also See. *L.K. Das* v. *State of Bengal,* A.I.R. 1975 S.C. 753;

[421] *Biram Chand* v. *State of U.P.,* A.I.R.1974S.C. 1161.

[422] *Noor Chand* v. *State of West Bengal,* A.I.R. 1974 S.C. 2120.

4.2 THE TRAGEDY WITH A.K. GOPALAN

The first potential came to challenge the validity of the Preventive Detention Act, 1950 emerged in the form of ***A.K. Gopalan*** case[423].

The aggrieved that was kept in custody under the Preventive Detention Act, 1950 requested under Art. 32 of the Constitution for a writ of habeas corpus and for his discharge from confinement, on the ground that the said Act negated the arrangements of Arts. 13, 19, 21 and 22 of the Constitution and was a subsequently ultra custom and that his detainment was consequently unlawful.

The Court held, per KANIA C.J., PATANJALI SASTRI, MUKHERJEA and DAS JJ. (FAZL ALI and MAHAJAN JJ. disagreeing)- - that the preventive Detention Act, 1950, except for Sec. 14 thereof did not contradict any of the Articles of the Constitution and despite the fact that Sec. 14 was ultra customs because it repudiated the arrangements of Art. 9.9, (5) of the Constitution, as this segment was severable from the rest of the segments of the Act, the weakness of Sec. 14 did not influence the legitimacy of the Act overall, and the confinement of the candidate was not unlawful.

FAZL ALI and MAHAJAN JJ held that Section 12, of the Act was also ultra vires, and since it contravened the very provision in the Constitution under which the Parliament derived its competence to enact the law, the detention was illegal.

The Court collectively held that section 14 of the Preventive Detention Act, 1950, repudiates the arrangements of Art. 9.9. (5) of the Constitution in so far as it forbids a man kept from uncovering to the Court the grounds on which a detainment arrange has been made or the portrayal made by him against the request of confinement, and is to that degree ultra vires and void.

According to KANIA C.J., PATANJALI SASTRI, MAHAJAN, MUKHERJEA and DAS JJ. (FAZL ALI J. contradicting).- - Article 19 of the Constitution has no application to a law which relates straightforwardly to preventive confinement despite the fact that because of a request of detainment the rights alluded to in sub-cls. (a) to (e) and (g) by and large, and sub-cl. (d) specifically, of cl. (1) of Art. 19 might be confined or compressed; and the sacred legitimacy of a law identifying with such detainment can't in this way, be judged in the light of the test recommended in el. (5) of the said Article.

In any case, FAZL ALI.J noted that the Preventive detainment is an immediate encroachment of the privilege ensured in Art. 19 (1) (d), regardless of the possibility that a restricted development

[423] 1950 AIR 27,

is set on the said sub-statement, and a law identifying with preventive detainment is accordingly subject to such constrained legal audit as is allowed by Art. 19 (5).

The Court viewed [424] that the idea of the right "to move unreservedly all through the region of India" alluded to in Art. 19 (1) (d), of the Constitution is totally unique in relation to the idea of the privilege to "individual freedom" alluded to in Art. 21, and Art. 19 ought not, along these lines, be perused as controlled by the arrangements of Art. 21. The view that Art. 19 ensure substantive rights and Art. 21 recommends the system is mistaken.

Encourage the Court held that Article 22 does not frame a total code of sacred protections identifying with preventive detainment. To the degree that arrangement is made in Art. 9.9, it can't be controlled by Art. 9,1, yet on purposes of strategy which explicitly or by important ramifications are not managed by Art. 22, Art. 9.1 will apply [425].

Additionally in Art. 9.1 the word 'law" has been utilized as a part of the feeling of State-made law and not as a likeness law in theory or general sense epitomizing the standards of characteristic equity; and "strategy set up by law" implies technique set up by law made by the State, in other words, the Union Parliament or the Legislatures of the States. It isn't appropriate to translate this articulation in the light of the importance given to the articulation "due procedure of law" in the American Constitution by the Supreme Court of America.[426].

Finally the court also held that while it is not proper to take into consideration the individual opinions of members of Parliament or Convention to construe the meaning of a particular clause,

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[424] However, FAZL ALl J (Dissenting) held that even if it be assumed that Art. 19 (1) (d) does not refer to " personal liberty" and that it bears the restricted meaning attributed to it,that is to say, R signifies merely the right to move from one locality to another, preventive detention must be held to affect this limited right of movement directly and substantially. One of the objects of preventive detention is to restrain a person detained from moving from place to place so that he may not spread disaffection or indulge in dangerous activities in the places he visits. The same consideration applies to the cases of persons who are interned or externed. Hence, externment, interment and certain other forms of restriction on movement have always been treated as kindred matters belonging to the same group or family, and the rule which applies to one must necessarily apply to the others.; *Ibid.* at p- 5.

[425] However, MAHAJAN J. (Dissenting) observed that Art. 99. contains a self-contained code of constitutional safeguards relating to preventive detention and cannot be examined or controlled by the provisions Art. 21. The principles underlying Art. 21 are however kept in view in Art. 22 and there is no conflict between these articles. *Ibid.* at p-6.

[426] FAZL, ALI J (Dissenting) observed that there is nothing revolutionary in the view that "procedure established by law "must include the four principles of elementary justice which inhere in and are at the root of all civilized systems of law, and which have been stated by the American Courts and jurists as consisting in (1) notice, (2) opportunity to be heard, (3) impartial tribunal and (4) orderly course of procedure. These four principles are really different aspects of the same right, namely, the right to be heard before one is condemned. Hence the words "procedure established by law ", whatever its exact meaning be, must necessarily include the principle that no person shall be condemned without hearing by an impartial tribunal.

when a question is raised whether a certain phrase or expression was up for consideration at all or not, a reference to the debates may be permitted.

4.3 THE HABEAS CORPUS CALAMITY

A.K. Gopalan was just the beginning of a series of judicial errors that were about to happen to blacken the history of Indian judiciary. After the Preventive Detention Act, 1950, now there was the time for the Maintenance of Internal Security Act, 1971 to be tested by the judiciary. However, this case brought a permanent black spot to the fabric of Indian judiciary which till now was considered to be the infallible.

BRIEF FACTS OF THE CASE[427] WERE:

Consequent on the Pakistani aggression, the President issued a Proclamation *of* Emergency on 3.12.1971 on the ground that the security *of* India was threatened by external aggression. By an order dated 5.12.1971 issued u/Art. 359 (1) of the Constitution, the right of 'foreigners' to move to any Court was suspended.

On 25/6/1975 in exercise of powers conferred by CI. (1) of Art. 359 the President declared that the right of any person including a foreigner conferred by Arts. 14, 21 & 22 and all proceedings pending in any Court shall remain suspended during which the Proclamations of Emergency made under Article 352 (1) on 3.12.1971 and on 25/6/1975 are both in force[428].

The President promulgated the amending Ordinances No. 4 & 7 of 1975, were replaced by the Maintenance of Internal Security (Amending Act), 1975 introducing a new Sec. 16-A and giving a deemed effect to Sec. 7 of the Act was on 25.6.1975. A new Sec. 18 was also inserted w.e.f 25.6.1975[429].

Various persons detained u/s 3 (1) of MISA filed petitions in different HCs for relief and also challenged the legality of the Ordinance issued by the President on 27.6.1975, as unconstitutional

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[427] *A.D.M.Jabalpur* v. *Shivkant Shukla*, [1976] 2 SCC 521. ; For the background leading to the Habeas Corpus case please also See. *State of Uttar Pradesh* v. *Raj Narain* [1975] A.I.R. 865.

[428] The Presidential order of 27.6.1975 further stated that the same shall be in addition to and not in derogation of any order made before the date of the aforesaid order u/Article 359 (1).

[429] By the Constitution (Thirty-eighth Amendment) Act, 1975, Article 123, 213, 239 (b), 352, 356, 359 & 368 were amended. Cls. (4) & (5) were added in Article 352. The above Amendment renders the satisfaction of the President or the Governor in the relevant Articles final and conclusive and to be beyond any question in any Court on any ground. The Constitution (Thirty-ninth Amendment) Act was published on 10.8.1975, amending Arts. 71, 329 & 329 (A) and added Entries after Entry 86 in the 9" Schedule and also the Maintenance of Internal Security Act, 1971 as item 92 in the above Schedule. All the amendments made by the Ordinance were given retrospective effect for the purpose of validating all acts done previously. On 25.1.1976 the said Ordinances were published as the Maintenance of Internal Security (Amendment) Act 1976.

and inoperative in law and prayed for setting aside of the order and for directing their release immediately. In some of the cases, the petitioners challenged the validity of the Thirty-eighth and Thirty-ninth Constitution Amendment Acts.

The preliminary objections have been rejected for one reason or another by the HCs of Allahabad, Bombay, Delhi, Karnataka, M.P., Punjab and Rajasthan[430].

The questions before the Court were-

1. Whether, in view of the Presidential order dated 27.6.1975, under CI. (1) of Article 359, any writ petition is maintainable u/Article 226, before a HC for Habeas Corpus to enforce the right to personal liberty of a person detained under the MISA on the ground that the order of detention or the continued detentions, for any reason, not under or in compliance with MISA?
2. If such a petition is maintainable, what is the scope or extent of judicial scrutiny, particularly, in view of the aforesaid Presidential order which covers, *inter alia,* CI. (5) of Article 22, and also in view of sub-section (9) of Section 16-AoftheMlSA?

It was held that the jurisdiction of the Court in times of emergency in respect of detention under the Act is restricted by the Act because the Government is entrusted with the task of periodical review. The Court said that an action to decide the order on the grounds of *mala fides* does not lie because under the provisions no action is maintainable for the purpose.

The following were key observations of the Court:

In view of the Presidential Order dated 27.6.1975 under CI. (1) of Article 359 of our Constitution no person has *locus standi* to move any writ petition u/Article 226 before a HC for *Habeas corpus* or any other writ or order or direction to enforce any right to personal liberty of a person detained under the Act on the grounds that the order of detention or the continued detention is for any reason not under or in compliance with the Act or is illegal or *mala fide.*

Art. 21 is the sole repository of rights to life and personal liberty against the State. Any claim to a writ *of habeas corpus* is enforcement of Article 21 and is therefore, barred by the Presidential

[430] Broadly, these HCs have taken the view that despite the Presidential order it is open to the detenus to challenge their detention on the ground that it is *ultra vires*, as e.g., by showing that the order on the face of it is passed by an authority not empowered to pass it, or it is in excess of the power delegated to the authority, or that the power has been exercised in breach of the conditions prescribed in that behalf by the Act. Some of these HCs have further held that the detenus can attack the order of detention on the ground that it is *malafide*, as for example, by showing that the detaining authority was influenced by irrelevant considerations, or that the authority was actuated by improper motives.

order. Section 16-A (9) of the Act is valid. It is a rule of evidence and it is not open either to the detenus or to the Court to ask for grounds of detention.

It was clearly visible by now as to what exactly was going on in the Supreme Court. The Court ruled in favour of the Government and justified the so declared emergency and detention of thousands of people under the MISA, 1971.

However, there was one Judge who stood as firm as a rock and gave the dissenting judgment in the case defying all the odds. He was Justice H.R. Khanna. The stand he took during the crucial period is now very much celebrated in the fraternity in India and abroad[431]. Thus, it would be worth to note his dissenting opinion separately.

Justice Khanna, in his dissent, stated:[432]

"What is at stake is the rule of law....the question is whether the law speaking through the authority of the Court shall be absolutely silenced and rendered mute.."

4.4 THE MANEKA REDEMPTION

Soon after its decision in *ADM Jabalpur* v *Shivkant Shukla*[433] case, the Supreme Court was widely criticized all over the world. All the four judges who delivered the judgment to favour the Government were widely condemned and one judge who dissented became the star of Indian Judiciary who kept the torch of justice and rule of law alive.

It was thus, the time for the Supreme Court to repent and rebuild its image to instill full faith of the Indian masses. Then there was an opportunity in the form of Maneka Gandhi's case[434] where in the Supreme Court pledged to redeem its devastating loss in the Habeas Corpus case. The Supreme Court of India was all set to make redemption in Maneka Gandhi's case which was just apt case for the apex court to bring back the lost glory of Art. 21 of the Constitution of India.

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[431] See. C.G. RAGHVAN, "*INDIAN CONSTITUTION: TRENDS AND ISSUES*", Indian Law Institute (1978); The New York Times commented that 'it deserved to be engraved in letters of gold'. It followed as:
"Indian democrats are likely to remember in infamy the four judges who obediently overturned the decisions of more than half a dozen lower (High) courts who had ruled in defiance of the Government that the writ of the habeas corpus could not be suspended even during emergency But they will long cherish the lonely grounds, but it could have exposed in a limited way the procedural laxity, the arbitrary manner and the partisan motivations which appear by all accounts to have accompanied the mindless exercise of the draconian powers of detention" Ibid. at p. 271.

[432] See. ANIL DIVAN, *'A PROFILE IN JUDICIAL COURAGE'*, THE HINDU, March 07, 2008.

[433] *A.D.M.Jabalpur* v. *Shivkant Shukla*, [1976] 2 SCC 521;

[434] *Maneka Gandhi* v. *Union of India* [1978] A.I.R. 597;

In this case, the petitioner was issued a passport under the Passport Act, which was impounded by the authoritiess 'in public interest'. The petitioner therefore filed a writ petition challenging the validity of the Government's order.

The Act[435] was enacted on 24-04-1967 in view of the decision of this Court in Satwant Singh Sawhney's case[436]. Position which got preceding the coming into power of the Act was that there was no law directing the issue of travel papers for leaving the shores of India and traveling to another country.

The issue of international ID was completely inside the unguided and unchannelled carefulness of the Executive. In Satwant Singh's case, this Court chime by a lion's share that the articulation 'individual freedom' in Article 21 takes in, the privilege of velocity and travel abroad and under Art. 21 no individual can be denied of his entitlement to travel to another country aside from as per the technique set up by law. This choice was acknowledged by the Parliament and the sickness pointed yet by it was set ideal by the authorization of the Passports Act, 1967. The introduction of the Act demonstrates that it was sanctioned to accommodate the issue of international ID and travel records to control the takeoff from India of natives of India and different people and for coincidental and auxiliary issues.

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[435] Section 3 of the Passport Act 1967 provides that no person shall depart from or attempt to depart from India unless he holds in this 'behalf a valid passport or travel document. Section 5(1) provides for making of an application for issue of a passport or travel document for visiting foreign country. Sub-section (2) of section 5 says that on receipt of such application the Passport Authority, after making such enquiry, if any, as it may consider necessary, shall, by order in writing, issue or refuse to issue the passport or travel document or make or refuse to make that passport or travel document endorsement in -respect of one or more of the foreign countries specified in the application. Sub-section (3) requires the Passport Authority where it refuses to issue the passport or travel document or to make any endorsement to record in writing a brief statement of its reasons for making such order. Also, section 6(1) lays down the grounds on which the Passport Authority shall refuse to make an endorsement for visiting any foreign country and provides that on no other ground the endorsement shall be refused. Section 6(2) specifies the grounds on which alone and on no other grounds the Passport Authority shall refuse to issue the Passport or travel document for visiting any foreign country and amongst various grounds set out there the last is that in the opinion of the Central Government the issue of passport or travel document to the applicant will not be in the public interest. Sub-section (1) of section 10 empowers the Passport Authority to vary or cancel the endorsement on a passport or travel document or to vary or cancel it on the conditions subject to which a passport or travel document has been issued having regard to, inter alia, the provisions of s. 6(1) or any notification under s. 19. Sub-section (2) confers powers on the Passport Authority to vary or cancel the conditions of the passport or travel document on the application of the holder of the passport or travel document and with the previous approval of the Central Government. Sub-section (3) provides that the Passport Authority may impound or cause to be impounded or revoke a passport or travel document on the grounds set out in cl. (a) to (h).

[436] *Satwant Singh Sawhney* v. *D. Ramarathnam Assistant Passport Officer, Government of India, New Delhi & Ors.* [1967] 3 SCR 525; Also see. *Kharak Singh* v. *State of U.P. & Ors*. [1964] 1 SCR;

Position which got preceding the coming into power of the Act was that there was no law managing the issue of travel permits for leaving the shores of India and traveling to another country.

The issue of identification was completely inside the unguided and unchannelled caution of the Executive. In Satwant Singh's case, this Court ringer by a larger part that the articulation 'individual freedom' in Article 21 takes in, the privilege of movement and travel abroad and under Art. 21 no individual can be denied of his entitlement to travel to another country aside from as indicated by the methodology built up by law. This choice was acknowledged by the Parliament and the ailment pointed however by it was set appropriate by the order of the Passports Act, 1967. The preface of the Act demonstrates that it was ordered to accommodate the issue of international ID and travel reports to manage the takeoff from India of nationals of India and different people and for coincidental and auxiliary issues.

The petitioner contended-[437]

1. The right to go abroad is part of "personal liberty" within the meaning of that expression as used in Art. 21 and no one can be deprived of this right except according to the procedure prescribed by law. There is no procedure prescribed by the Passport Act, for impounding or revoking a Passport. Even if some procedure can be traced in the said Act it is unreasonable and arbitrary in as much as it does not provide for giving an opportunity to the holder of the Passport to be heard against the making of the order.
2. Section 10(3) (c) is violative of fundamental rights guaranteed under Articles 14,19(1) (a) and (g) and 21.
3. The impugned order is made in contravention of the rules of natural justice and is, therefore, null and void. The impugned order has effect of placing an unreasonable

[437] The order impounding the passport in the present, case, was made by the Central Government under cl. (c) which reads as follows :-
"(c) If the passport authority deems it necessary so to do in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with the foreign country, or in the interests of the general public." Sub-section (5) requires the Passport Authority impounding or revoking a passport or travel document or varying or cancelling an endorsement made upon it to record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same, unless, in any case, the Passport Authority is of the opinion that it will not be in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interest of the general public to furnish such a copy. The Central Government declined to furnish a copy of this statement of reasons for impounding the passport of the petitioner on the ground that it was not in the interest of the general public to furnish such copy to the petitioner.

restriction on the right of free speech and expression guaranteed to the petitioner under Article 19(1) (a) as also on the right to carry on the profession of a journalist conferred under Art. 19 (1) (g).

4. The impugned order could not consistently with Articles 19(1)(a) and (g)be passed on a mere information of the Central Government that the presence of the petitioner is likely to be required in connection with the proceedings before the Commission of Inquiry.
5. In order that a passport may be impounded under s. 10 (3) (c), public interest must actually exist in present and mere likelihood of public interest .arising in future would be no ground for impounding the passport.
6. It was not correct to say that the petitioner was likely to be required for .giving evidence before the Shah Commission.

-The Court ruled that the privilege of travel and to go outside the nation is incorporated into the battle to individual freedom. Article 21 however surrounded as to show up as a shield working adversely against official infringement over something secured by that shield, is the legitimate acknowledgment of both the insurance or the shield and additionally of what it ensures which lies underneath that shield[438].

The questions relating to either deprivation or restrictions of personal liberty, concerning laws falling outside Art. 22 remain really unanswered by the Gopalan's case. The field of 'due process' for cases of preventive detention is fully covered by Art. 22 but other parts of that field not covered by Art 22 are 'unoccupied' by its specific provisions.

In a nutshell, the Court ruled that the procedure which deprives a person of his life and personal liberty must be ‘just, fair, and reasonable’.

[438] *Haradhan Saha* v. *The State of West Bengal & Ors.* [1975] 1 SCR 778; *Shambhu Nath Sarkar* v. *State of West Bengal* [1973] 1 S.C.R. 856; *R. C. ,Cooper* v. *Union of India* [1973] 3 SCR 530;

4.5 THE CONTINUED LEGACY TO A.K.ROY

The unfortunate experiment of Indian democracy with the MISA, 1971 ultimate ended in 1977. The Parliament soon came up with the National Security Act, 1980 which replaced the earlier laws and provisions made for the preventive detention. The NSA, 1980 as discussed in the previous part of this chapter provided for similar grounds on which the executive could detain a person. This resulted in yet another challenge in the Supreme Court this time courtesy ***A.K. Roy* v. *Union of India***[439]. This case presented yet another opportunity for the Supreme Court of India to expand the jurisprudence of individual's life and personal liberty. Thus, it becomes expeditious at this juncture to make the detailed analysis of the present case.

In this case, the candidate was confined under the arrangements of the statute on the ground that he was enjoying exercises biased to open request. In his request of under Article 32 of the Constitution the candidate fought that the ability to issue a mandate is an official power, not administrative power, and subsequently the law isn't law.

Segment 1(2) of the Constitution (Forty fourth Amendment) Act 1978 gives that "It might come into compel on such date as the Central Government may, by notice in the official Gazette select and diverse dates might be named for various arrangements of this Act." Section 3 of the Act substituted another statement (4) for the current sub-condition (4) Article 22. By a warning the Central Government had brought into constrain every one of the areas of the Forty fourth Amendment Act aside from segment 3. Meanwhile the Government of India issued the National Security statute 2 of 1980 which later turned into the National Security Act 1980.

The Court held[440] that the energy of the President to issue a law under Article 123 of the Constitution is an administrative and not an official power. The Court further held that contention that the word 'law' in Article 21 must construed to mean a law made by the legislature only and cannot include an ordinance, contradicts directly the express provisions of Articles 123 (2) and 367 (2) of the Constitution. Besides, if an ordinance is not law within the meaning of Article 21,

[439] *A.K. Roy* v. *Union of India*, [1982] AIR 710.

[440] HELD: [per Chandrachud, C.J., Bhagwati & Desai, JJ.] [Gupta and Tulzapurkar, JJ dissented on the question of bringing into force section 3 read with section 1(2) of the Forty fourth Amendment Act. Gupta J. dissented on the question whether ordinance is law].

it will stand released from the wholesome and salutary restraint imposed upon the legislative power by Article 13(2) of the Constitution.

The Court referred to a number of reliable authorities like *A.K. Gopalan*[441], *Sant Ram*[442], *State of Nagaland* v. *Ratan Singh*[443], *Govind* v. *State Madhya Pradesh & Anr*[444], *Ratilal Bhanjl Mithani* v. *Asst. Collector of Customs, Bombay & Anr*[445] and *Pandit M.S.M. Sharma* v. *Shri Sri Krisna Sinha & Anr*[446] and observed that the argument of the petitioner that the fundamental right conferred by Article 21 cannot be taken away by an ordinance really seeks to add a proviso to Article 123(1) to the effect: "that such ordinances shall not deprive any person of his right to life or personal liberty conferred by Article 21 of the Constitution." An amendment substantially to that effect moved in the Constituent Assembly was rejected by the Constituent Assembly.

Further the Court also observed that it is not possible to accept the plea that the proceedings of the Advisory Board should be thrown open to the public. The right to a public trial is not one of the guaranteed rights under our Constitution[447]. Yet the Government must afford the detenus all reasonable facilities for an existence consistent with human dignity. They should be permitted to wear their own clothes, eat their own food, have interviews with the members of their families at least once a week and, last but not the least, have reading and writing material according to their reasonable requirements. The Court also noted that persons who are detained under the National Security Act must be segregated from the convicts and kept in a separate part of the place of detention. It is hardly fair that those who are suspected of being engaged in prejudicial conduct should be lodged in the same ward or cell where the convicts whose crimes are established are lodged[448].

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[441] [1950] SCR 88
[442] [1960] 3 SCR 499,
[443] *State of Nagaland* v. *Ratan Singh* [1966] 3 SCR 830
[444] *Govind* v. *State of Madhya Pradesh & Anr.* [1975] 3 SCR 946,
[445] *Ratilal Bhanjl Mithani* v. *Asstt. Collector of Customs, Bombay & Anr.* [1967] 3 SCR 926.
[446] *Pandit M.S.M. Sharma* v. *Shri Sri Krisna Sinha & Anr*. [1959] Supp. ISCR 806.
[447] *Puranlal Lakhanpal* v. *Union of India*, [1958] SCR 460; *Dattatreya Moreshwar Pangarkar* v. *State of Bombay*, [1952] SCR 612, 626,
[448] *Sunil Batra* v. *Delhi Administration* [1980] 3 S CR 557; *Sampat Prakash* v. *State of Jammu & Kashmir* [1969] 3 SCR 754;

4.6 THE TADA ORDEAL IN KARTAR SINGH

The Supreme Court's next confrontation to evaluate the direct anti-terrorism law occurred in the celebrated case of ***Kartar Singh* v. *State of Punjab***[449]. Before this, the Supreme Court was indirectly dealing with the anti-terrorism laws through the preventive detention cases thereby expanding its jurisprudence to fullest. Thus, this was the first time opportunity availed to the apex court to literally evaluate the provisions of anti-terrorist laws and justify the use of its retention or otherwise to struck it down as bad in the eyes of law.

In this case, the constitutional validity of the TADA Act of 1985 &1987, and the Terrorists Affected Areas Act, 1984 was challenged on the ground that it is violative of certain fundamental rights which were guaranteed by the Constitution.

The Supreme Court made a detailed and section by section analysis of the various provisions of the Acts challenged, brilliantly quoted the binding precedents and thoroughly made a fine distinction of good and bad provisions.

The Court **summed up the judgment** as follows:

- ✓ The Terrorist Affected Areas (Special Courts) Act, 1984 (Act 61 of 1984); The Terrorist and Disruptive Activities (Prevention) Act, 1985 (Act 31 of 1985); and The Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987) fall within the legislative competence of Parliament in view of Article 248 read with Entry 97 of List I and could fall within the ambit of Entry 1 of List I, namely, 'Defence of India'.
- ✓ As the meaning of the word 'abet' as defined under Section 2(1)(i)(a) of 1987 Act is vague and imprecise, 'actual knowledge or reason to believe' on the part of person to be brought within the definition, should be read into that provision instead of reading that provision down;
- ✓ The power vested on the Central Government to declare any area as 'terrorist affected area' within the terms of Section 3(1) of the Act of 1984 does not suffer from any invalidity;
- ✓ The contention that Sections 3 and 4 of the Act of 1987 are liable to be struck down on the grounds that both the sections cover the acts which constitute offenses under ordinary laws and that there is not; guiding principle as to when a person is to be prosecuted under these sections, is rejected;

[449] *Kartar Singh* v. *State of Punjab*, [1994] SCC (3) 569.

- ✓ Section 8 of the TADA Act is not violative of Articles 14 and 21 of the Constitution;
- ✓ The challenge on the validity of Section 9 on the ground of lack of legislative competence has no merit.
- ✓ The Court upheld sub-section (7) of Section 9 of the TADA Act with a suggestion that the Central Government and the State Governments at the time of appointing a Judge or an Additional Judge to the Designated Court should keep in mind that the Judge designate has sufficient tenure of service even at the initial stage of appointment so that no one may entertain any grievance for continuance of service of a Judge of the Designated Court after attainment of superannuation;
- ✓ The order granting 'concurrence' by the Chief Justice of India on a motion moved in that behalf by the Attorney General to transfer any case pending before a Designated Court in that State to any other Designated Court within that State or in other State, is only a statutory order and not a judicial order since there is no adjudication of any *'lis'* and determination of any issue. Therefore, sub-sections (2) and (3) of Section 11 are not violative of Articles 14 of the Constitution;
- ✓ Section 15 of the TADA Act is neither violative of Article 14 nor of Article 21. But the Central Government may take note of certain guidelines which we have suggested and incorporate them by appropriate amendments in the Act and the Rules made there under;
- ✓ The challenge made to Section 16(1) does not require any consideration in view of the substitution of the newly introduced sub -section by Amendment Act 43 of 1994 giving discretion to the Designated Court either to hold or not to hold the proceedings in camera;
- ✓ Sub-sections (2) and (3) of Section 16 are not liable to be struck down. However, in order to ensure the purpose and object of cross-examination, the Court upheld the view of the Full Bench of the Punjab and Haryana High Court in Bimal Kaur[450] holding, "the identity, names and addresses of the witnesses may be disclosed before the trial commences" but subject to an exception that the court for weighty reasons in its wisdom may decide not to disclose the identity and addresses of the witnesses especially of potential witnesses, whose life may be in danger;
- ✓ The existing appeal provisions provided under Section 19 are not constitutionally invalid. But having regard to the practical difficulties to be faced by the aggrieved person under the

[450] AIR 1988 P&H 95 :(1988) 93 Punj LR 189: 1988 Cri LJ 169

appeal provisions, the Parliament may devise a suitable mode of redress by making the necessary amendments in the appeal provisions, as suggested during the discussion of the validity of Section 19; (13) Sub-section (3) and (4)(a) of Section 20 do not suffer from any infirmity on account of the inclusion of the Executive Magistrate and Special Executive Magistrate within the purview of Sections 164 and 167 of the Code of Criminal Procedure in respect of their application in relation to a case involving an offence punishable under the TADA Act or any rule made there under. Likewise, clause (a) of Section 15 of the Special Courts Act, 1984 does not suffer from any infirmity;

- ✓ Section 20(7) of the TADA Act excluding the application of Section 438 of the Code of Criminal Procedure in relation to any case under the Act and the Rules made there under, cannot be said to have deprived the personal liberty of a person as enshrined in Article 21 of the Constitution;
- ✓ The deletion of the application of Section 438 in the State of Uttar Pradesh by Section 9 of the Code of Criminal Procedure (U.P.) Amendment, 1976 does not offend either Article 14 or Article 19 or Article 21 of the Constitution and the State Legislature is competent to delete that section, which is one of the matters enumerated in the Concurrent List (List III of the Seventh Schedule) and such deletion is valid under Article 254(2) of the Constitution;
- ✓ Sub-section (8) of Section 20 of TADA Act imposing the ban on release of bail of a person accused of any offence punishable under the Act or any rule made there under, but diluting the ban only on the fulfilment of the two conditions mentioned in clauses (a) and (b) of that sub-section cannot be said to be infringing the principle adumbrated in Article 21 of the Constitution;
- ✓ Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the Act 1987, that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters;
- ✓ Section 22 of the TADA Act is struck down as being opposed to the fair and reasonable procedure enshrined in Article 21 of the Constitution.

4.7 TERRORISM BY ASSASINATION: ASSESSING THE NALINI APPROACH

The Supreme Court indeed encountered first of its kind case after the sad demise of former Prime Minister of India. It was the case which involved gruesome and brutal act of terrorism and needed deterrent punishment to the perpetrators of the crime.

In case of *the State of Tamil Nadu through Superintendent of Police/ CBI/SIT* v. *Nalini & 35 others*[451], the apex court mainly dealt with the notion of expanding the jurisprudence so far as the punishment of terrorism is concerned.

BRIEF FACTS OF THE CASE WERE AS FOLLOWS:

On May 21, 1991 there was an explosion of human bomb, an unprecedented event in Sriperambudur (Tamil Nadu) at 10.20 p.m. -- which resulted in extirpation of a National leader, a former Prime Minister of India, Shri Rajiv Gandhi, killing of 18 others and leaving 43 persons seriously injured. This incident was a result of wickedly hatched conspiracy which was skillfully planned and horridly executed. While in office as Prime Minister of India, Shri Rajiv Gandhi, to bring about a settlement of disputes between Tamil-speaking ethnic minority and Government of Sri Lanka, signed Indo-Sri Lankan Accord on July 22, 1987 under which the Government of India took upon itself certain role. A prominent organisation of Tamils - Liberation Tiger of Tamil Elam (LTTE) - was among the signatories to that Accord.

In discharge of its obligation under the Accord, Government of India sent Indian Peace Keeping Force (IPKF) to Sri Lanka to disarm LTTE. This fact together with the alleged atrocities of IPKF against Tamilians in Sri Lanka and non-cooperation of Government of India with the LTTE, at what is termed as the hour of their need, gave rise to grouse which culminated in plotting of a conspiracy to assassinate Shri Rajiv Gandhi, which was put through on the fateful day, May 21, 1991. It caused severe blow to the democratic process, sent shock waves throughout the world and the nation had to pass through excruciating time. The investigation of that horrible incident was entrusted to the Central Bureau of Investigation (CBI)/Special Investigating Team (SIT).

On June 26, 1992, after a lengthy investigation, the SIT filed charge sheet in respect of offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Indian Penal Code, 1890 (IPC), Explosive Substances Act, 1908, Arms Act, 1959, Passport Act, 1967, Foreigners Act,

[451] *The State of Tamil Nadu through Superintendent of Police/ CBI/SIT* v. *Nalini & 35 others* decided on May 11, 1999.

1946 and the Indian Wireless Telegraphy Act, 1933, against 41 persons, 12 of them died (2 in the blast and 10 having committed suicide) and three were declared absconding. The case was thus tried against the 26 accused persons[452].

The Designated Court, on consideration of the material placed before it, found all the twenty six accused guilty of all the charges framed against them and awarded punishment of fine of varying amounts, rigorous imprisonment of different period and sentenced all of them to death. The Designated Court referred the case to this Court for confirmation of death sentence of all the convicts, numbered as Death Reference No.1 of 1998. The convicts filed appeals, Criminal Appeals 321 to 324 of 1998, against their conviction for various offences and the sentence awarded to them. These cases were heard together.

IT WAS HELD-

The Supreme Court examined various contours of the conspiracy and held that in the crimes of terrorism it is indeed very difficult to prove the guilt of all conspirators and thus, an adverse inference can be drawn against all accused that they all had the full knowledge of the crime to be committed or committed and have actually played an important equal role in executing the crime. The Court found all the perpetrators as guilty and sentenced them to severe punishment and to some offenders the punishment of death. However, the Court was divided initially on the issue of whether a capital punishment would be proper if the crime is committed by a woman. After the third Judge's opinion, the death sentence of the women was confirmed. The Supreme Court had made a detailed analysis of the possibilities of awarding death punishment to women and concluded with certainty that the present case was a fit case to award death penalty to women.

However, recently, the Supreme Court on review petition filed by the appellants had reduced the same to life imprisonment[453].

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[452] The charges against these 26 persons can be summarized as follows: A. Under Section 120-B read with Section 302 IPC; B. Under Sections 3,4 and 5 of the TADA Act; and C. (i) Under various provisions of IPC (ii) Under Sections 3,4 and 5 of the Explosive Substances Act, 1908; (iii) Section 25 of the Arms Act, 1959; (iv) Section 12 of the Passport Act, 1967; (v) Section 14 of the Foreigners Act, 1946; (vi) Section 6(1A) of the Wireless Telegraphy Act, 1933. To bring home the guilt of the accused in respect of the charges framed against each of them, the prosecution placed on record confessions of seventeen accused and also plethora of evidence. It examined 288 witnesses exhibited 1448 documents, marked Exs.P-1 to P1448.

[453] See. *Nalini and Others* v *State through Superintendent of Police, CBI/SIT,* Death Reference case no 1 of 1998 (@ D.No. 1151 of 1998).

4.8 THE JUDICIAL ROAST OF PREVENTION OF TERRORISM ACT, 2002

After the Supreme Court's review and declaration of TADA as invalid law, now it was the turn of Prevention of Terrorism Act, 2002 (POTA, 2002) to come under judicial scrutiny where the Judiciary was all set up to roast the provisions of POTA, 2002.

This time the judicial roast was done in the PUCL's case[454]. In this case, the constitutional validity of the POTA 2002 was challenged by the petitioners. The petitioners contented that since the provisions of POTA, in pith and substance, fall under the Entry 1 (Public Order) of List II Parliament lacks legislative competence. The Court referred to various previous decisions delivered by the Supreme Court and held that the legislature did had the power to legislate the POTA, 2002. Another issue that the Petitioner has raised at the threshold is the alleged misuse of TADA and the large number of acquittals of the accused charged under TADA. The Court pointed out that it cannot go into and examine the 'need' of POTA. It is a matter of policy. Once legislation is passed the Government has an obligation to exercise all available options to prevent terrorism within the bounds of the Constitution. Moreover, the Court pointed out that it has repeatedly held that mere possibility of abuse cannot be counted as a ground for denying the vesting of powers or for declaring a statute unconstitutional[455].

Section 4 of the POTA 2002 provided for punishing a person who is in 'unauthorised possession' of arms or other weapons The petitioners argued that since the knowledge element is absent the provision is bad in law. A similar issue was raised before a Constitution Bench of Supreme Court in Sanjay Dutt V. State[456].

Here, the apex Court observed that:

"... Even though the word 'possession' is not preceded by any adjective like 'knowingly', yet it is common ground that in the context the word 'possession' must mean possession with the requisite mental element, that is, conscious possession and not mere custody without the awareness of the nature of such possession. There is a mental element in the concept of possession. Accordingly,

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[454] *People's Union for Civil Liberties & Anr* v. *Union of India*, [WP 389 of 2002] {(6/12/2003).

[455] See. *State of Rajasthan* v. *Union of India*, (1978) 1 SCR 1*; Collector of Customs* V. *Nathella Sampathu Chetty*, AIR 1962 SC 316; *Keshavananda Bharati* v. *State of Kerala*, 1973 (4) SCC 225; *Mafatlal Industries* v. *Union of India*, (1997) 5 SCC 536 etc.

[456] *Sanjay Dutt* v. *State* (II), (1994) 5 SCC 410 at Para- 19.

the ingredient of 'possession' in Section 5 of the TADA Act means conscious possession. This is how the ingredient of possession in similar context of statutory offence importing strict liability on account of mere possession of an unauthorised substance has been understood."

In the light of Sanjay Dutt's case (supra) this Section presupposes knowledge of terrorist act for possession. There is no question of innocent persons getting punished. Therefore, the Court held that there is no infirmity in Section 4.

Contentions have been raised in regard to provisions relating to seizure, attachment and forfeiture of proceeds of terrorism. However, the Court abstained from providing any opinion with reference to the same.

The constitutional validity of Section 14 was challenged by advancing the argument that it gives unbridled powers to the investigating officer to compel any person to furnish information if the investigating officer has reason to believe that such information will be useful or relevant to the purpose of the Act.

The Court held that in as much as the main purpose of Section14 of POTA is only to allow the investigating officers to procure certain information that is necessary to proceed with the further investigation thus, the Court found there is no merit in the argument of the petitioners and we uphold the validity of Section 14.

Sections 18 and 19 deals with the notification and de-notification of terrorist organizations. Petitioners submitted that under Section 18(1) of POTA a schedule has been provided giving the names of terrorist organization without any legislative declaration; that there is nothing provided in the Act for declaring organizations as terrorist organization; that this provision is therefore, unconstitutional as it takes away the fundamental rights of an organization under Articles 14, 19(1)(a) and 19(1)(c) of the Constitution. However, the Court upheld the validity of both the sections.

Petitioners assailed Sections 20, 21 and 22 mainly on the ground that no requirement of *mens rea* for offences is provided in these Sections and the same is liable to misuse therefore it has to be declared unconstitutional. The Court also upheld the validity of these sections.

Under Section 27, a police officer investigating a case can seek a direction through the Court of Chief Judicial Magistrate or the Court of a Chief Metropolitan Magistrate for obtaining samples of handwriting, finger prints, foot-prints, photographs, blood, saliva, semen, hair, voice of any accused person reasonably suspected to be involved in the commission of an offence under the

Act. The Court can also draw adverse inference if an accused refuses to do so. The Court also upheld the validity of this section.

Section 30 contains provision for the protection of witness. It gives powers to the Special Court to hold proceedings in camera and to taking measures for keeping the identity of witness secret. Petitioners challenged the constitutional validity of this Section by leveling the argument; that the right to cross-examine is an important part of fair trial and principles of natural justice which is guaranteed under Article 21; that even during emergency fundamental rights under Article 20 and 21 cannot be taken away; that Section 30 is in violation of the dictum in Kartar Singh's case (supra) because it does not contain the provision of disclosure of names and identities of the witness before commencement of trial. The Court upheld the validity of this section as well.

This Section made it lawful of certain confessions made to police officers to be taken into consideration. Concerning the validity and procedural difficulties that could arise during the process of recording confessions the Petitioners submitted that there is no need to empower the police to record confession since the accused has to be produced before the Magistrate within forty-eight hours, in that case magistrate himself could record the confession. The Court upheld the validity of this section.

In the result, these petitions stand dismissed subject, however, to the clarifications that the Court had set out above on the interpretation of the provisions of the enactment while dealing with the constitutionality thereof.

4.8 ATTEMPT TO SLICE THE DEMOCRATIC PULSE[457] & SUPREME COURT'S RESPONSE

On 13th December, 2001, five heavily armed persons practically stormed the Parliament House complex and inflicted heavy casualties on the security men on duty. This unprecedented event bewildered the entire nation and sent shock waves across the globe. In the gun battle that lasted for 30 minutes or so, these five terrorists who tried to gain entry into the Parliament when it was in session, were killed. Nine persons including eight security personnel and one gardener succumbed to the bullets of the terrorists and 16 persons including 13 security men received injuries. The five terrorists were ultimately killed and their abortive attempt to lay a seize of the Parliament House thus came to an end, triggering off extensive and effective investigations spread

[457] *State v. Navjot Singh Sandhu* [2005 (11) SCC 600].

over a short span of 17 days which revealed the possible involvement of the four accused persons who are either appellants or respondents herein and some other proclaimed offenders said to be the leaders of the banned militant organization known as "Jaish-E-Mohammed".

After the conclusion of investigation, the investigating agency filed the report under Section 173 Cr.P.C. against the four accused persons on 14.5.2002. Charges were framed under various sections of Indian Penal Code (for short 'IPC'), the Prevention of Terrorism Act, 2002 (hereinafter referred to as 'POTA') and the Explosive Substances Act by the designated Court. The designated Special Court presided over by Shri S.N. Dhingra tried the accused on the charges and the trial concluded within a record period of about six months[458].

In conformity with the provisions of Cr.P.C. the designated Judge submitted the record of the case to the High Court of Delhi for confirmation of death sentence imposed on the three accused. Each of the four accused filed appeals against the verdict of the learned designated Judge. The State also filed an appeal against the judgment of the designated Judge of the Special Court seeking enhancement of life sentence to the sentence of death in relation to their convictions under Sections 121, 121A and 302 IPC. In addition, the State filed an appeal against the acquittal of the 4th accused on all the charges other than the one under Section 123 IPC.

The Division Bench of High Court, speaking through Pradeep Nandrajog, J. by a well considered judgment pronounced on 29.10.2003 dismissed the appeals of Mohd. Afzal and Shaukat Hussain Guru and confirmed the death sentence imposed on them. The High Court allowed the appeal of

[458] Total 80 witnesses were examined for the prosecution and 10 witnesses were examined on behalf of the accused S.A.R. Gilani. Plethora of documents (about 330 in number) were exhibited. The three accused, namely, Mohd. Afzal, Shaukat Hussain Guru and S.A.R. Gilani were convicted for the offences under Sections 121, 121A, 122, Section 120B read with Sections 302 & 307 read with Section 120- B IPC, sub-Sections (2), (3) & (5) of Section 3 and Section 4(b) of POTA and Sections 3 & 4 of Explosive Substances Act. The accused 1 & 2 were also convicted under Section 3(4) of POTA. Accused No.4 namely Navjot Sandhu @ Afsan Guru was acquitted of all the charges except the one under Section 123 IPC for which she was convicted and sentenced to undergo R.I. for five years and to pay fine. Death sentences were imposed on the other three accused for the offence under Section 302 read with Section 120-B IPC (it would be more appropriate to say\027 Section 120-B read with Section 302 IPC) and Section 3(2) of POTA. They were also sentenced to life imprisonment on as many as eight counts under the provisions of IPC, POTA and Explosive Substances Act in addition to varying amounts of fine. The amount of Rs.10 lakhs, which was recovered from the possession of two of the accused, namely, Mohd. Afzal and Shaukat Hussain, was forfeited to the State under Section 6 of the POTA.

the State in regard to sentence under Section 121 IPC and awarded them death sentence under that Section also. The High Court allowed the appeals of S.A.R. Gilani and Navjot Sandhu @ Afsan Guru and acquitted them of all charges. This judgment of the High Court has given rise to these seven appeals\027 two appeals preferred by Shaukat Hussain Guru and one appeal preferred by Mohd. Afzal and four appeals preferred by the State/Government of National Capital Territory of Delhi against the acquittal of S.A.R. Gilani and Navjot Sandhu[459].

The Supreme Court held-[460]

"In the instant case, there can be no doubt that the most appropriate punishment is death sentence. That is what has been awarded by the trial Court and the High Court. The present case, which has no parallel in the history of Indian Republic, presents us in crystal clear terms, a spectacle of rarest of rare cases. The very idea of attacking and overpowering a sovereign democratic institution by using powerful arms and explosives and imperiling the safety of a multitude of peoples' representatives, constitutional functionaries and officials of Government of India and engaging into a combat with security forces is a terrorist act of gravest severity. It is a classic example of rarest of rare cases. This question of attack on the army and the killing of three soldiers sent shock waves of indignation throughout the country. We have no doubt that the collective conscience of the society can be satisfied by capital punishment alone."

4.9. JUSTICE TO THE RED FORT ATTACKERS[461]

On 22.12.2000 at about 9 p.m. in the evening some intruders started indiscriminate firing and gunned down three army Jawans belonging to 7th Rajputana Rifles. This battalion was placed in Red Fort for its protection considering the importance of Red Fort in the history of India. There was a Quick Reaction Team of this battalion which returned the firing towards the intruders. However, no intruder was killed and the intruders were successful in escaping by scaling over the rear side boundary wall of the Red Fort.

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[459] It may be mentioned that the accused Mohd. Afzal and Shaukat Hussain Guru were related, being cousins. The 4th accused Navjot Sandhu @ Afsan Guru is the wife of Shaukat Hussain. The third accused S.A.R. Gilani is a teacher in Arabic in Delhi University. It was he who officiated the marriage ceremony of Shaukat Hussain Guru and Navjot Sandhu who at the time of marriage converted herself to Islam.

[460] *State v. Navjot Singh Sandhu* [2005 (11) SCC 600] at p- 107.

[461] *Mohd. Arif @ Ashfaq* v. *State of NCT of Delhi*, [Crim. Appeal No.98-99 of 2009]

This attack rocked the whole nation generally and the city of Delhi in particular as Red Fort is very significant in the history which was taken over by British Army way back in 1857 and was retrieved back to India on 15.8.1947. It is also significant to note that the Prime Minister addresses the nation from this very Red Fort on every 15th of August.

The Police reached the spot and recorded the statement of one Capt. S.P. Patwardhan which was treated as the First Information Report. This First Information Report refers to two persons in dark clothing and armed with AK 56/47 rifles having entered the Red Fort from the direction of Saleem Garh Gate/Yamuna Bridge.

On the next day, i.e. on 23.12.2000, in the morning at about 8.10 a.m., the BBC news channel flashed the news that Lashkar-e-Taiba had claimed the responsibility for the shooting incident in question which was entered in the daily diary. On the same morning one AK56 assault rifle (Exhibit PW-62/1) lying near Vijay Ghat on the back side of Lal Qila was found abandoned.

In the present case, the trial Court awarded the death sentence to the appellant Mohd. Arif @ Ashfaq for the offence under Section 121 IPC for waging war against the Government of India.

Similarly, he was awarded death sentence for the offence under Section120B read with Section 302, IPC for committing murder of Naik Ashok Kumar, Uma Shankar and Abdullah Thakur inside the Red Fort on 22.12.2000.

For the purpose of the sentences, the other convictions being of minor nature are not relevant. On a reference, the High court concurred with the finding of the trial Court that this was a rarest of the rare case.

An appeal was made in the Supreme Court against the judgment. The Supreme Court observed that:[462]

"This was, in our opinion, a unique case where Red Fort, a place of paramount importance for every Indian heart was attacked where three Indian soldiers lost their lives.... It is not just another place which people from within and outside the country visit to have a glimpse of the massive walls on which the Fort stands or the exquisite workmanship it displays. It is not simply a tourist destination in the capital that draws thousands every year to peep and revel into the glory of the times by gone. Its importance lies in the fact that it has for centuries symbolised the seat of power in this country.... It was a blatant, brazenfaced and audacious act aimed to over awe the Government of India. It was meant to show that the enemy could with impunity reach and destroy

[462] *Ibid.* at p-146, 148 and 153.

the very vitals of an institution so dear to our fellow countrymen for what it signified for them..... We, therefore, have no doubts that death sentence was the only sentence in the peculiar circumstance of this case. We, therefore, confirm the judgment of the trial Court and the High Court convicting the accused and awarding death sentence for the offences under Section 302, IPC. We also confirm all the other sentences on all other counts and dismiss these appeals."

4.10 THE KASAB TRIAL[463] AND THE TRIMPH OF RULE OF LAW

The terrorist attack in the city of Mumbai shocked the nation. The only terrorist who was captured by the Police was Mohammad Amir Ajmal Kasab. The trial of Kasab provided a unique opportunity for the Indian judicial system to uphold the rule of law and the basic tenets of fair trail which it did very well. It served the case as the shining example to the rest of the world and it was proved that the principles of fair trial and complete justice were very well followed in India.

Kasab has earned for himself five death penalties and an equal number of life terms in prison for committing multiple crimes of a horrendous kind in this country. Some of the major charges against him were: conspiracy to wage war against the Government of India; collecting arms with the intention of waging war against the Government of India; waging and abetting the waging of war against the Government of India; commission of terrorist acts; criminal conspiracy to commit murder; criminal conspiracy, common intention and abetment to commit murder; committing murder of a number of persons; attempt to murder with common intention; criminal conspiracy and abetment; abduction for murder; robbery/dacoity with an attempt to cause death or grievous hurt; and causing explosions punishable under the Explosive Substance Act, 1908.

He was found guilty of all these charges besides many others and was awarded the death sentence on five counts, life-sentence on five other counts, as well as a number of relatively lighter sentences of imprisonment for the other offences.

Apart from Kasab, two other accused, namely *Fahim Ansari* and *Sabauddin Ahamed*, both Indian nationals, were also arraigned before the trial court and indicted on the same charges as the appellant.

At the end of the trial, however, the appellant was convicted and sentenced to death as noted above (*vide* judgment and order dated May 3/6, 2010 passed by the Addl. Sessions Judge, Greater

[463] *Mohammad Ajmal Mohammad Amir Kasab@ Abu Mujahid* v. *State of Maharashtra*, [Crim. Appeal No.1899-1900 of 2011].

Mumbai in Sessions Case No. 175 of 2009). The other two accused were acquitted of all charges. The trial court gave them the benefit of the doubt as regards the charges of conspiracy and abetment of other offences by conspiracy, and further held that the prosecution completely failed to establish those other charges that were made directly against them. The judgment by the trial court gave rise to a reference to the Bombay High Court[464].

The High Court, by its judgment and order dated February 21, 2011, confirmed the death sentences given to the appellant by the trial court and dismissed both the appeals.

From the judgment of the High Court two appeals have come to Supreme Court: one is a jail appeal by *Kasab* and the other is by the State of Maharashtra. The State's appeal seeks to challenge the acquittal of the other two accused by the trial court and affirmed by the High Court. The other two accused are impleaded in the State's appeal as Respondents No. 1 and 2. *Kasab* was unrepresented in the appeal preferred by him from jail and this Court, therefore, appointed Mr. Raju Ramachandran, senior advocate, assisted by Mr. Gaurav Agrawal, to represent him. He was thus able to get legal assistance of a standard and quality that is not available to a majority of Indian nationals approaching this Court against their conviction and sentence.

The Supreme so far the sentencing of Ajmal Amir Kasab is concerned, held-[465]

"We are thus left with no option but to hold that in the facts of the case the death penalty is the only sentence that can be given to the appellant. We hold accordingly and affirm the convictions and sentences of the appellant passed by the trial court and affirmed by the High Court."

So far as the appeals of the State against the acquittal of two more accused in the case was concerned, the Court upheld the views of the trial Court and the High Court and dismissed the appeals.

The Kasab's trial undisputedly showcases India's commitment towards its adherence to the long cherished principles of rule of law, fair trial and procedure which remains just in nature. The opportunity of an adequate representation which had been accorded to Kasab was undoubted the unprecedented move of Indian judiciary which had been appreciated world over. In fact the representation which was accorded to Kasab cannot be afforded by several Indian nationals. Kasab

[464] In addition to the reference, two appeals also came to the High Court from the judgment and order passed by the trial court, one by the appellant against his conviction and sentences (Criminal Appeal No. 738 of 2010) and the other by the State of Maharashtra against the acquittal of the other two accused (Criminal Appeal No. 606 of 2010).

[465] *Mohammad Ajmal Mohammad Amir Kasab@ Abu Mujahid* v. *State of Maharashtra*, [Crim. Appeal No.1899-1900 of 2011] at Para- 586.

case clearly depicts India's victory over the unfair and arbitrary procedure and led to the huge triumph of rule of law.

4.11. THE JUDICIAL EXPERIMENTATION OF THE NIA & SPECIAL COURTS

Establishment of Special Courts to try the scheduled offences is a common phenomenon in India and TADA, 1985/1987 and POTA, 2002 provides much evidence to this fact. Under the NIA Act, 2008, the both centre and state governments are empowered to establish special courts to try the scheduled offences under the Act[466].

It has been nearly 9 years since the enactment of the NIA Act, 2008 and in pursuance to the various provisions of the Act, various 'Special Courts' have been established to try the offences and several investigations have been carried out by the National Investigation Agency which have further led to the prosecution of several persons.

Since its establishments, the NIA Courts have delivered judgments in almost 25 cases and there are several other cases which are pending before the NIA Courts waiting for their final disposal.

To be very precise on the matter, more than 35 Special Courts have been set up by the Indian Government under the NIA Act, 2008. Many terrorism cases, including Kasab's trial, the Parliament Attack case[467], the Hyderabad Mecca Masjid Blast Case[468], Samjhauta Express Blasts, and Delhi High Court Blast case have involved trial in Special Courts.

In Redaul Khan v. NIA[469], the Supreme Court held that where a person NIA, 2008 only special court can remand the accused to police or judicial custody. Once the investigation is handed over to the NIA, only the Special Court can authorise further detention of the accused. Where a special court has not been constituted, such powers lies with the Sessions Court. The Source of power to grant bail in such cases is section 437 of the Cr.PC, which is the general provision for granting bail for non-bailable offences.[470].

The Special Courts and the decisions delivered by such court will open yet another corridor of terror related legal jurisprudence. Thus, it would be expeditious to examine briefly the various

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[466] *See*. Sec. 11 (1) of the National Investigation Agency Act, 2008;
[467] *State* v. *Mohd Afzal*, 107 (2003) DLT 385.
[468] *NIA, Hyderabad* v. *Devendra Gupta*, 2013 SCC Online AP 136 (AP High Court).
[469] *Redaul Khan* v *NIA*, [2010] 1 SCC 521.
[470] *Redaul Hussain Khan* v. *State of Assam* [2009] 3 GLT 855 (Guwahati HC); *Jayanta Kumar Ghosh* v. *NIA*, [2014] 1 GLT; *Jibangshu Paul* v *NIA*, [2013] (3) GLT 615 (Guwahati HC).

cases decided by these special courts since its inception which may offer us yet another view of terrorism.

4.11.1 *KANGUJAM RAVI KUMAR SINGH* V. *UNION OF INDIA*[471]

In this case, an appeal has been preferred by Kangujam Ravi Kumar and is directed against the judgment and order passed by the Sessions Judge, Darjeeling in NIA case[472] had been preferred by Neera Tamang and Menjor Singh alias Sorokhybam Menjor Singh and is directed against the judgment and order dated 20th July, 2011 passed by the Sessions Judge, Darjeeling in the same NIA case.

It was the prosecution's case that on 14th March, 2010, the Deputy Superintendent of Police, Siliguri received a written requisition from the Officer-in-Charge of Commando Imphal, East Manipur Police that one Ningthoujam Tomba alias Koireng alias Rajen, (hereinafter referred to as Tomba) a prominent leader of an extremist group operating in Manipur, was wanted in criminal cases. He was to pass through Siliguri along with his associates and that he was moving in the vicinity of the Matigara Police Station area. A vehicle was intercepted after obtaining prior information. The two persons in the vehicle, Tomba and Saraswati Rai were taken into custody. Several articles were seized from their possession including two mobile phones and some currency. On the basis of the statement of Tomba some other persons, namely, Sorokhaibam Memcha Devi and N. Rama Chanu were arrested. All the persons were identified by the Officer-in-Charge, Commando Imphal, East Manipur, as the members of the extremist group Kanglei Yaol Kunba Lup (hereinafter referred to as 'KYKL'). The FIR was registered for investigation being No. 51/2020 dated 14.3.2010 at Matigara Police Station under Sections 121/121A/122/124A of the Indian Penal Code.

The Case eventually was transferred to the NIA to investigate[473] and during the investigation it was revealed that other offences had been committed by the accused under sections 17, 18(B), 19,

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[471] *Kangujam Ravi Kumar Singh* v. *Union of India,* MANU/WB/1088/2013; [The High Court of Calcutta]

[472] Case No. 6 of 2010. [CRA No. 469 of 2011]

[473] An order was issued by the Government of India, Ministry of Home Affairs (Internal Security-I Division) dated 8th April, 2010 signed by the Joint Secretary to the Government of India indicating that the Central Government, having regard to the gravity of the offences and other material in its possession, was of the opinion that the offences were scheduled offences under the National Investigation Agency Act, 2008 (hereinafter referred to as 'NIA Act') and offences connected to the scheduled offences under Section 8 of the NIA Act affecting the security of the State.

20, 21, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called 'UAP Act') and therefore these sections were invoked.

According to the prosecution the involvement of the appellants came to light and they were also arraigned. The prosecution claimed that all of them were arrested[474].

The Court went on to heard the arguments made on behalf of the appellants and the Prosecution and rejected the bail of all appellants on the ground that the charges framed were found to be true as per the evidences lay down before the Court.

The Court observed--[475]

"We do not think it appropriate to enlarge the appellants on bail, considering the gravity of the offences allegedly committed by the appellants. The material on record, prima facie, shows their complicity and there are reasonable grounds for believing that the accusations against them are true."

4.11.2 *STATE OF MAHARASHTRTA, THROUGH NIA* V. *RAVI DHIREN & OTHERS*[476]

The accused stand charged by National Investigation Agency (For short 'NIA') New Delhi, alleging that a deep rooted criminal conspiracy was hatched by them alongwith wanted accused Shoukat Marfat Ali to circulated fake Indian Currency Notes (for short 'FICN') of high quality, printed and manufactured across the border, which is a terrorist act aimed at destabilizing the economy and to threaten the unity, integrity, security and sovereignty of this country.

It was the case of the prosecution that on 14/5/09 PW1 Sanjay Patil, Head Constable attached to Antiterrorist Squad (for short 'ATS') Police Station Kalachowky, received a secret information from an informer on condition of anonymity that A/1 Ravi Dhiren Ghosh@ Jadhav@Ruby Ghosh and A/2 Nuruddin Islam Abdul Bari would be delivering FICN to A/3 Mohd.Samad Mohd.Shahid

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Therefore, in exercise of the powers conferred under Section 6(5) read with Section 8 of the NIA Act, the Central Government suo motu directed the NIA to take up the investigation of the aforesaid case and such other offences which may be revealed during the investigation. The FIR was re-registered as NIA/New Delhi Crime No. 6/2010 dated 24.4.2010 against four named accused persons and other unknown persons.

[474] However according to the appellant in C.R.A. 431 of 2011, Kangujam Ravi Kumar Singh, (hereinafter referred to as Ravi Kumar) he complied with the directions of the NIA team and met them on several occasions after which he surrendered before the court and was not required to be arrested.

[475] *Kangujam Ravi Kumar Singh* v. *Union of India,* MANU/WB/1088/2013; [The High Court of Calcutta]; Ibid in Para- 20 at p-7.

[476] *State of Maharashtra, through NIA* v. *Ravi Dhiren & Others,* [SESSIONS CASE NO.674 OF 2009 (NIA)]

Shaikh and A/4 Mohd.Aizul Mohd.Sarali Shaikh on the same day at about 13.30 hrs., near Star Cinema, Barrister Nath Pai Marg, Mazgaon, Mumbai.

Accordingly the Police set up a trap and encircled all four accused and made a search immediately and accused persons were found in possession of fake Indian currency notes.

During the trial the guilt of all accused was proved beyond all the doubts and the Court held all accused guilty. The Court pronounced the sentence of life imprisonment and a fine of 1000 Rs to each accused and found them guilty and gave the punishment also for various other crimes of which they were accused.

The Court observed—[477]

"after going through the entire facts, circumstances and evidence on record I must say that this is not an ordinary crime against an individual or for that matter an organized crime syndicate involved in extortion, kidnapping etc., but it is much more serious as it would not only affect the Government's fiscal policy but also affect and destabilize the entire economy as well as banking system which is the backbone of the nation. It is indeed a terrorist act as defined in Sec.15 of Unlawful Activities (Prevention) Act, 1967. As already held that the accused knowingly conspired and abetted the offence of circulating the FICN in this country and, therefore, only maximum sentence prescribed in the statute book would be just and proper for the ends of justice as it is the need of the hour to have deterrence in the mind of not only the accused but the others who are involved in such nefarious design of circulating FICN in our country."

4.11.3 *REDAUL HUSSAIN KHAN* V. *THE NATIONAL INVESTIGATION AGENCY*[478]

The case under Section 120B/121/121(A) IPC read with Section 25(1B) (An) Arms Act, was, at first, enlisted against two blamed people, to be specific, Phojendra Hojai and Babulal Kemprai, on the ground that, on 01.04.2009, at around 4-00 p.m., when vehicle Nos. AS-01-AH-1422 and AS-01-1-0609 were caught at fourteenth Mile G.S. Street, Guwahati, and looked, both the charged, associated to be units and linkmen with a prohibited association, to be specific, DHD (J), were found in the vehicles, wherefrom a whole of rupees one crore, in real money, and two guns were recouped, the cash being implied for buy of arms and ammo for the said restricted association. The denounced were as needs be arrested and examination was begun by the Assam Police. On being

[477] *Ibid.* at P-189.

[478] *Redaul Hussain Khan* v. *NIA*, [CRL. APPEAL NO. 226 OF 2011] (High Court of Assam).

delivered before the Chief Judicial Magistrate, Kamrup, Guwahati, the two charged previously mentioned were remanded to police care. On 18.05.2009, both the charged were allowed safeguard by the High Court, in exercise of its forces under Section 439 Cr.PC.

On 31.05.2009, Mohit Hojai, the then Chief Executive Member, N. C. Slopes Autonomous Council, and R. H. Khan (i.e. the blamed litigant in this), who isn't just the Deputy Director, Social Welfare Department, yet additionally the Liaison Officer, N. C. Slopes Autonomous Council, were captured by Assam Police and, on their generation before the Chief Judicial Magistrate, Kamrup, they were remanded to police authority for two days. The Court, on the petition for expansion of police guardianship made by the Investigating Officer of the Assam Police, permitted facilitate augmentation of the police care for a time of two more days by its request, dated 02.06.2009. Nonetheless, promote petition for custodial cross examination was dismissed by the Chief Judicial Magistrate, Kamrup, who, in any case, allowed authorization to the Investigating Officer to grill the present denounced appealing party, Redaul Hussain Khan, in Central Jail, Kamrup, Guwahati. Around the same time, the scholarly Court dismissed the present litigant's supplication for allowing safeguard. The case was eventually transferred to the NIA[479] for further investigation. Before, however, registration of the case aforementioned by the NIA, three more persons, namely, 1. Mihir Barman @ Jewel Garlossa @ Debojit Sinha, 2. Ahsringdaw Warrisha @ Partha Warisha, and 3. Sameer Ahmed, were arrested by the Assam Police, at Bangalore, in connection with the same case.

The NIA moved, on 05.06.2009, the Chief Judicial Magistrate, Kamrup, and filed FIR in the NIA Case No. 1/2009. The accused persons were, remanded to police custody. On the prayer of the NIA, the Court of the Chief Judicial Magistrate, Kamrup, added Sections 17/18/19 of the Unlawful Activities (Prevention) Act, 1967 & the Court of the Chief Judicial Magistrate, Kamrup, remanded the accused to judicial custody, in exercise of its power under Section 167 of the Cr.PC, on the ground that no court has so far been constituted under the NIA Act. Three bail applications which were made under Section 439 Cr.PC, seeking to invoke High Court’s jurisdiction to grant bail in favour of the accused were rejected.

[479] While investigation of Basistha Police Station Case No.170/2009 aforementioned was pending with the State police, the Central Government, in exercise of its power under Section 6(5), read with Section 8 of the NIA Act, directed, on 01.06.2009, investigation of the said case by the National Investigation Agency (in short, ‘the NIA’). In terms of the directions, so issued by the Central Government, the NIA registered a case under the NIA Act, the Case being NIA Case No. 1/2009.

The High Court, therefore, held in its order, dated 29.07.2009, that such an appeal would require hearing by a Division Bench of the High Court and that in such an appeal, even the merit of the order, granting or refusing bail, can be questioned. The decision came to be reported, in 2009[480] While laying down the law, as indicated hereinbefore, the Court observed and held as under:-[481]

"What emerges from the above discussion is that it is the Special Court under the NIA Act, or the Court of Session, when the Special Court has not been constituted, where an accused is required to be produced if he is arrested in connection with an offence punishable under the NIA Act and, upon his production, it is the Special Court or the Court of Session, as the case may be, which shall have the power to grant bail. The source of power of the Special Court or the Court of Session, as the case may be, to consider an application for bail is traceable to, and governed by, the provisions of Section 437 of the Code and while considering such an application for bail, the Special Court or the Court of Session, as the case may be, will not exercise the power of bail as if it is considering an application for bail under Section 439 and, consequently, the Special Court or the Court of Session, as the case may be, would have all the limitations, which a Magistrate has, while deciding an application for bail, under Section 437 of the Code."

Complying with the position of law, as had been laid down, in **Redaul Hussain Khan** the appellant herein filed an application before the Sessions Judge (Special Court), Kamrup, Guwahati, seeking bail, but his bail application came to be rejected. Thereafter, on an application, made by the NIA, the learned Sessions Judge (Special Court), Kamrup, Guwahati, by its order, dated 28.08.2009, extended the period for completion of investigation into the case by a further period of 60 days in terms of Section 43D(5)(b) of the 1967 Act read with Section 167 Cr.PC.

In the meanwhile, however, the Special Court, Central Bureau of Investigation, Assam, Guwahati, was notified by the Central Government, in exercise of its power under Section 11(1) of the NIA Act, vide Gazette notification, dated 01.09.2009, issued by the Government of India, Ministry of Home Affairs, as the '*Special Court*'.

The Supreme Court further held that it was unable to accept the submissions, made on behalf of the petitioner, Redaul Hussain Khan (i.e., the appellant herein) that merely because of the fact that DHD(J) had not been declared as an '*unlawful organization*', when Redaul Hussain Khan was arrested, the said organization could not have been taken to have been indulging in *terrorist act*, or that the petitioner could not have been alleged to have the knowledge of such activities of the DHD(J).

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[480] *Redaul Hussain Khan & Ors* v. *State of Assam & Ors*. [2009] 3 GLT 855

[481] *Ibid*.at Para-77.

The Court held-[482]

"In the result and for the reasons discussed above, we do not find that the appellant has been able to make out any case for interfering with the impugned order, whereby his prayer for allowing him to go on bail was declined. The appeal, therefore, fails and the same shall accordingly stand dismissed."

4.11.4 STATE THROGH NIA V. DILBAGH SINGH & OTHERS[483]

The accused were arrested by the Police of P.S. State Special Operation Cell, Amritsar and it was a case pertaining to cross-border smuggling of arms and drugs as well as that of fake Indian currency infiltrated from across the border having intentional ramifications and the offences attracted to the case were covered under the scheduled offences under the NIA Act, 2008. As per the prosecution, based on secret information, a notorious smuggler of Indo-Pak border Dilagh Singh and his nephew Gurpratap Singh who are involved in smuggling of Heroin, fake currency and arms ammunitions, received the consignments of all these incriminating articles from the cross border and further developed all the smuggled things to the different cities of Punjab and Chandigarh. Accordingly the Police party reached the spot and arrested the accused persons.

The Court held the accused guilty and sentenced the accused to undergo rigorous imprisonment for 7 years and to pay fine of Rs. 7000 and also found the accused on different counts of NDPS, Act[484].

The Court observed-[485]

"The prosecution i.e. National Investigation Agency has fully proved the charges under section 120-B of IPC and 29 of the NDPS Act against all the accused and the charge under section 28 of the NDPS Act against the accused Harpal Singh. In addition to this, the prosecution also proved the charge against Dilbagh Singh and Bikramjit Singh under section 25 of the Arms Act, under section 489-B, 489-C of IPC, and under section 21 of the NDPS Act and the charge under section 25 of the NDPS Act against Bikramjit Singh and as such, they are hereby found guilty, and convicted there under".

[482] *Redaul Hussain Khan* v. *NIA*, [CRL. APPEAL NO. 226 OF 2011] (High Court of Assam); *Ibid.* at Para 168.
[483] *State through NIA* v. *Dilbagh Singh & Others*, CIA/NDPS/0000039/2014 [Sessions Case No.16/7.4.2014]
[484] Order of sentence was passed on 20.07.2017 [S.C.No. 16/07.04/2014]
[485] *Ibid.* at Para- 71

4.11.5 *MORJEN HUSSAIN V. STATE THROUGH NIA, HEDERABAD*[486]

It was the case of the prosecution that Morjen Hussain and other accused were smuggling counterfeit Indian Currency Notes of 500 and 1000 rupees denominations from Pakistan through India Bangladesh border and getting them circulated across India. Thereafter, the Home Ministry has given the directions to NIA to register and investigate the case.

All accused persons were charged under sections 489-B, 489-C, and 120-B of the Indian Penal Code and sections 16 & 18 of the Unlawful Activities (Prevention) Act, 1967.

The accused persons however were not found guilty under the provisions of UAPA Act, 1967. They were found guilty of offences under section 489-B & 489-C of IPC.

4.11.6. *THE NIA, HYDERABAD V. ASADULLAH AKHTAR & OTHERS*[487]

The National Investigation Agency, Hyderabad laid charge sheet No.1 against the accused No.1 to 5 stating that the Indian Mujahideen an association declared as Unlawful Association as per the provisions of the Unlawful Activities (Prevention) Act, 1967, which was started as "*Usaba*" in Bhatkal, Karnataka State. The word Usaba means "Congregation" and its object is to collect the persons having same mentality and dedication to do something, and it also includes waging Jihad or holy war against Hindus, other communities and the Indian State. Usaba meetings were held on regular basis on every Friday in the house of Iqbal Bhatkal in which issues like weapon training, finance, talent spotting, spiritual discourse and other matters pertaining to procurement of logistics were discussed.

The role of Indian Mujahideen in commission of terrorist incidents was revealed for the first time through email sent to certain media channels/news networks after bombings in the courts of Varanasi, Faizabad (Ayodhya) and Lucknow etc., showing the major reasons as Babri Masjid demolition and Gujarat riots.

On 21-02-2013 at 18:58:38 hours and 18:58:44 hours two consecutive bomb blasts took place at Dilsukhnagar, Hyderabad resulting in the death of 18 persons including a quick born child and injuries to 131 persons.

Accordingly initial investigation undertaken by the above Police stations but subsequently, the Government of India entrusted the investigation to the National Investigation Agency as per

[486] *Morjain Hussain* v. *State through NIA, Hyderabad*, [Special Sessions Case no.2 of 2013]
[487] *NIA, Hyderabad* v. *Asadullah Akhtar*, [Special Sessions Case No.1 of 2015]

Orders[488]and thereafter the cases were re-registered[489]. The NIA made 6 persons as accused in case and registered the case. The Court went on to examine various witnesses and also dealt with different provisions of law while delivering the judgment.

The Court found the accused guilty of the offences charged except the charged levied upon them under the UAPA, 1967. The Court also dealt with in details the possibilities of the severe punishment such as death penalty and the life imprisonment for the various offences committed by the accused.

4.11.7 *THE NIA, HYDERABAD V. MUHAMMAD SAKIR HUSSAIEN & OTHERS*[490]

The Police intercepted the accused Mohammad Sakir Hussaien on the basis of the specific information that he is indulging in spying activities as an agent of Pakistan to cause explosion in American Consulate in Chennai and is preparing for the same. Hussaien admitted his link with the officers of Pakistan Consulate in Colombo, Sri Lanka. He was also found in possession of two thousand rupees denomination and two five hundred rupees denomination counterfeit Indian Paper currencies, which he informed the inspectors, were given to him by Ameer Subar Siddiquie an official of Pakistan Consulate in Colombo, Sri Lanka. Therefore, the Police arrested Mohammad Sakir Hussaien and charged him for various offences.

In the gravity of offences, the Central Government through the Home Ministry directed[491] the NIA to take up further investigation in this case. Accordingly, NIA registered the case[492] on 20.06.2014 and filed the FIR before the special Court for the NIA cases.

To establish the case of the prosecution, the prosecution has cited 41 witnesses. The Court dealt with the various parts of the NIA investigation and also recorded the confessions of the accused.

At the end, the Court found the accused guilty of the offences committed and sentenced him on various fronts. The accused was sentenced to imprisonment for the 14 years and also the fine.

[488] MHA F.No.11011/14/2013-IS-IV [dt.13-03-2013]
[489] As R.C.No.01 & 02/2013/NIA/HYD [14-03-2013]
[490] *NIA, Hyderabad* v. *Muhammad Sakir Hussaien*, [Calender Case No.5 of 2014] ;
[491] Vide Order in Ref. No. F.No. 11011/07/2011-IA-IV [18/06/2014
[492] R.C. No. 2/2014/NIA/HYD [20/06/2014]

4.11.8 *STATE THROUGH NIA, DELHI V. THADIYANTEVIDA NASEER & OTHERS*[493]

As per the NIA investigation, 8 accused persons along with Naseer conspired, planned and executed the twin bomb blast in KSRTC bus stand and Mofussil bus stand, Kozhikode city on 03//03/2006 as a retaliation against the perceived partisan attitude of the Executive and the Judiciary in non-granting bail to the Muslim accused persons involved in II Marad incident.
So in order to show the resentment of the Muslim community, these accused persons conspired among themselves and manufactured bombs which they subsequently exploded at two main bus stands of Kozhikode city causing panic, terror and hardship to general public thereby waging war against the establishment and the Government.

By this act of terror, the accused persons wanted to create communal disharmony at busy places by which innocent persons would get injured and this would lead to further communal disturbances in the area. Initially, the investigation was carried out by local police unless it got transferred to the NIA.[494]
During the trial, the Special Court examined various witnesses and evidences as produced by both Prosecution and the defence side and found accused no. 1 & 4 as guilty[495] for the various offences under UAPA, Arms Act, the Explosive Substances Act and also under various provisions of the IPC.

4.11.9 *STATE THROUGH NIA, DELHI V. ABDUL JALEEL & OTHERS*[496]

Based on a complaint of Sunil Kumar, SI of Police, a crime was registered on 18/10/2008 against the accused Abdul Jaleel and unknown others under section 120-B, 121, 122, 123, 124 (A), 212, 465, 471 r/w Section 34 of the PIC and section 3 r/w section 13 (2), 16, 18,19,38, 39 and 40 of the UAPA, 1967 stating the SI had received reliable information that the said accused was aiding and assisting an organization banned by the Government of India and was a strong sympathiser of

[493] *State through NIA, Delhi* v. *Thadiyantevida Naseer*, [Sessions Case No. 2 of 2010] (11-08-2011).
[494] Vide Order No. 11034/31/2009-IS-VI [01-12-2009]
[495] Accused No. 1 & 4 were sentenced as follows. For the offence under section 18 of the UAPA, 1967, both are each sentenced to undergo imprisonment for life and to pay the fine of Rs. 50,000/- with default sentence of imprisonment of 1 year; for the offence under section 16 (1) of the UAPA, 1967 each are sentenced to undergo life imprisonment and Rs. 50,000 as fine; under section 124 (A) of IPC, to undergo 3 years imprisonment and Rs.10,000 as fine; under section 153 (A) of IPC, to undergo 2 years imprisonment; In additional Accused No. 1 is also sentenced under section 4 (b) of the Explosive Substance Act to undergo imprisonment for life and also fine of Rs. 50,000/-.
[496] *State through NIA, Delhi* v. *Abdul Jaleel*, [Sessions Case No. 1 of 2010] (01-10-2013).

Student Islamic movement India (SIMI). It was revealed that he was connected to terrorists who were killed in an encounter with security forces in Jammu and Kashmir. Consequently he was arrested. Initially the case was investigated by the Edakkad Police. Subsequently, the case was transferred to Joint Investigation Team (JIT) Kerala on 23/10/2008. The JIT Kerala Police after completion of the investigation filed charge sheet against 22 accused persons before Additional Chief Judicial Magistrate, Kannur. Subsequently the investigation was taken over by the NIA.

The NIA Court examined various witnesses and evidence which was produced before it by the Prosecution and the Defence sides. The Court found 13 accused as guilty for the offences committed under various Act and passed Life imprisonment to Abdul Jaleel and to others punishment differed as per the gravity of the offences.

The Court held-[497]

"*Reading the evidence based on the above tests, it is seen that the tests laid down are sufficiently satisfied. The rule is not that every transaction spread over different places and over a span of time, has to be independently proved so as to form a chain...In the present case, the conduct of Jihadi classes under the guise of Twarikath classes, the intention of A-3 Naseer expressed at the end of classes, the attendance of the accused persons in such classes, the formation of the conspiracy, their journey to Hyderabad, their further onward journey to Delhi, joining hands with LeT militants including Pakistanis in the Lolab forests etc amounts to preparing to wage war and to commit terrorist acts*".

4.11.10 *STATE OF KERALA THROUGH NIA, ERNAKULAM V. P.A.SHADULY*[498]

The case of the Prosecution was that the accused along with 16 others entered into a criminal conspiracy at Ernakulum and other places to do illegal act of advocating, inciting and abetting unlawful activities for cession of Kashmir from India and to bring hatred and contempt towards the Government of India and th accused no.1 to 5 organized a secret meeting in Happy auditorium in Ernakulum District and circulated books and pamphlets containing anti-national, seditious and inflammatory writings with intent to bring hatred and contempt against the Government of India, that the accused No 2 to 4 addressed the audience and advocated for cession of Kashmir through Jihad and for bringing back Muslim rule in India, steering up communal feelings, that the books

[497] *Ibid.* at Para-578 at p-351.

[498] *State of Kerala through NIA, Ernakulum* v. *P.A. Shaduly*, [Sessions Case no.1 of 2011](R.C. No.3/2010/NIA);

and pamphlets were actually publications of SIMI, a banned organization, that the meeting of SIMI was convened in order to bring hatred and feelings of contempt against the Government of India. The NIA Court examined various witnesses, appreciated the evidence brought to its notice by the Prosecution and the Court found 5 persons guilty of the offences under the various Acts.

The Court held-[499]

"In view of the above finding, the prosecution has succeeded in proving that the accused 1 to 5 have committed the offences under section 120-B IPC r/w section 124-A IPC and under sections 10 (a) (ii) and 13 (1) (b) of the Unlawful Activities (Prevention) Act and under sections 10 (a) (ii) and 13 (1) (b) of the Unlawful Activities (Prevention) Act, that the accused 2 and 3 have committed offences under section 124A IPC and accused 1 & 2have committed the offence under section 10 (a) (i) of Unlawful Activities (Prevention) Act and they are convicted there under....."

4.11.11 *STATE OF KERALA THROUGH NIA, ERNAKULAM V. ABDUL AZEEZ & OTHERS*[500]

The prosecution case in brief was that on 23.4.2013 accused 1 to 21 were found engaged in arms training inside a building owned by Thanar Foundation a religious and charitable trust run by PFI at Narath. They also attended the training inside the building, in weapons and explosives. A-22 and A-23 were guarding the building and on seeing the police party they ran away.

The Police party reached the place, detected the offence, arrested A1 to A21 at .6.30 hours, seized the articles such as sword, lathies, country made bombs, raw materials for making country bombs, pamphlets etc and registered the case[501]. The DYSP conducted the investigation. Later the investigation was taken over by the NIA and the case was re-registered the crime[502].

The Court after perusing various documents produced and evidence deduced, found all accused guilty and was convinced that the terrorist camp indeed was there in existence to overawe the Government of India and to bring communal riots to the fore.

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[499] *Ibid.* at Para-529 at p-215.
[500] *State of Kerala through NIA, Ernakulum* v.*Abdul Azeez & Others*, [Sessions Case No. 2 of 2013]
[501] Crim. Case No. 276/2013,
[502] As Crime No. RC/05/2013/NIA/KOC.

4.11.12 *STATE OF KERALA THROUGH NIA, ERNAKULAM V. ABOL MAJID BALOUCH*[503]

The case of the prosecution in this matter was the accused who was an Iranian national, while holding charge as Master of the Foreign Fishing Vessel registered in Chabahar port[504] in Iran was found by the India Coast Guard in the Exclusive Economic Zone of India. In the Arabian Sea at a distance of 58.5 nautical miles off Kerala Coast on 04/07/2015 at 04.58 hours without any valid licence or permit issued by the competent Indian authority under the Maritime Zones of India (Regulation of Fishing Vessels) Act, 1981 and without keeping the fishing gear of the vessel stowed in the manner prescribed under the Act and thereby he has committed the above offences. As per the FIR, there were 12 accused and all were alleged to have committed offences under the Suppression of Unlawful Acts against safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (SUA) along with the offences under the Maritime Zones of India Act, 1981.

However, after the NIA investigation, it was revealed that all other accused were not involved in the crimes under SUA and thus, the Court issued proper orders to the authorities so that the rest of the accused may be deported to their countries respectively.

Since, offences alleged were not the scheduled offences under the NIA Act, 2008, the Court doubted its jurisdiction to try the case and went on to discuss the issues. However, the Court was of the opinion that since the NIA is endowed with the Police like powers, it shall try the offence on the basis of report submitted to it by the NIA.

Eventually, the accused pleaded guilty and also pleaded for leniency which the Court accepted. The Court found the accused guilty and sentenced him to one month's simple imprisonment and one lakh rupees as fine. The Court also directed the Indian authorities to confiscate the vessel as required under Maritime Zones Act and disposed off the case.

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[503] *State of Kerala through NIA, Ernakulum* v.*Abdol Majid Balouch,* [Sessions Case No. 1 of 2016]

[504] Vide No. 4/3517021-10-2003,

4.11.13 STATE V. *ABID HUSSAIN*[505]

On 7-09-2011 at about 10.15 a.m. near the Reception counter between gate no. 4 & 5 of Delhi High Court, a bomb blast extinguished a several precious lives and injured scores of persons present at the spot of blast. Several prosecution witnesses deposed about occurrences of blast, death of people at the spot, injuries sustained by them and others and damage caused to property due to blast. On 11-12-2012, JCL Abid Hussain admitted the post-martem report and MLC reports of 15 persons who lost their lives and 79 persons who sustained injuries in the blast. Initially the FIR[506] was registered by Special Cell/NDR, Delhi and ACP of the Special Cell investigated the case, the same day, MHA transferred the case to NIA[507]. Rakesh Chandra who was Senior Producer with Aaj Tak TV, New Delhi deposed that on 7-9-2011 at 1.14 p.m., Aaj Tak Channel received an Email from harkatuljihadi2011@gmail.com which took complete responsibility of the blasts[508].

Eventually the investigations revealed that the email was sent from a Cyber Cafe and there were witnessed and evidences to prove that the email was sent by the accused. The JCL was held involved in the commission of offence under section 120-B r/w Sec. 121/121-A/122/123/307/323/325/302/436/440, IPC, under section 4, 5, of the Explosive Substances Act and under section 16, 18,20,38,39 of the UAPA, 1967,

4.11.14 STATE THROUGH NIA, DELHI V. EKRAMUL ANSARI & OTHERS[509]

The case of the prosecution was that a red alert notice was issued on 04-04-2014 by the Directorate of Revenue Intelligence (DRI) against accused Ekramul Ansari. On the basis of this notice, accused was detained by the official son terminal -3, IGI Airport on 18-04-2014. During his search and the search of his baggage, 4988 high Quality Fake Indian Currency Notes (FICN) each of 1,000/- denomination were recovered. Cognizance was taken of the offence under Custom Act, 1962.

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[505] *State* v. *Abid Hussain*, [RC No.09/2011/NIA/DLI]
[506] FIR No. 49/11 [07-09-2011]
[507] Vide Order Ex. PW-27/A.
[508] The contents of the email were:
"We owe the responsibility of today's blast at High Court, Delhi…Our demand is that Afzal Guru's death sentence should be repealed immediately else we would target major high Courts and THE SUPREME COURT OF INDIA". Ibid.at Para-3 P-3.
[509] *State through NIA, Delhi* v. *Ekramul Ansari,* [Sessions Case No. 9121/16]

Thereafter, the Ministry of Home Affairs directed[510] the authorities to register the case under section 120-B, 489-B & 489-C IPC and Section 16 and 18 of the UAPA, 1967 against accused Ekramul Ansari and other accused persons and later the case was transferred to the NIA.

During the investigation, it was found that the accused Ekramul Ansari was tailor who got employed in that capacity in a firm in Dubai. There he met Noor Mohd who offered him the job of delivery of FICNs form Dubai to India. The FICNs were to be provided by accused another accused Chacha@ Safi. In furtherance of the said criminal conspiracy, accused Ekramul Ansari bright FICNs to India on 20-03-2014 and delivered the same to one person named Farmullah. All these accused persons remained in touch with each other on mobile phones and thereafter, the accused Ansari was again flew back to Dubai on the expenses of co-accused persons who are based in Dubai.

Accused again came to India for the next delivery on 17-04-2014 from Dubai to India. He remained in touched with other accused and while he reached India he was apprehended by the DRI officials. FICNs amounting to Rs, 49, 88,000/- were recovered from him. Considering that the amount was huge, the investigation was transferred to the NIA. During further investigations, it was revealed that another co-accused Sharda Shankar Mahato was in constant touch of the accused Ansari and was the person to whom the delivery was to be made at Patna.

The Court after the perusal of all relevant documents and various reports, letters form concerned authoritiesfound the accused guilty.

4.11.15 *NIA V. SH. PRADIP BHRAHMA*[511]

The case of the prosecution was that on 01.05.2014 at about 11.30 p.m., a group of militants belonging to NDFB, attacked innocent people belonging to a particular community living at village Balapar Part-I under Gossaigaon Police station in the district of Kokrajhar, Assam with deadly fire arms and other lethal weapons.

As a result of the gruesome attack, 7 persons lost their lives. Out of the 7 persons, 2 persons died due to the severe injuries caused by sharp and blunt object and the remaining 5 died due to bullet injuries while two others sustained bullet injuries and somehow survived.

[510] Vide order F. No. 11011/35/2014-IS.IV [16-07-2014]

[511] *NIA* v. *Sh. Pradip Brahma,* [Special NIA Case No. 5 of 2015]

Police arrived at the spot only to find out that the assailants already left the place. Information regarding the incident was registered in police station[512].

The investigation was initially conducted by Special Task Force (STF), Assam but later MHA handed over the investigation to the NNIA which registered the case[513] under section 448, 457, 302, 307, 326, 324, 427 r/w section 34 of IPC and section 27 of the Arms Act as well as under section 16, 18, and 20 of the UAPA, 1967.

The Investigation revealed that the attack was perpetrated by the accused Pradip Brahma and his other associates who belonged to the banned outfit (NDFB). The assault was carried out on the instructions of senior leaders of NDFB, namely I.K. Songbijit and Bishnu Goyari @ Bidai. The purpose of the attack was to kill and terrorise people of a particular community and thereby disrupt peace and harmony in the state. The accused and his associates entered into the houses of the most suspecting victims one after another and indiscriminately fired on them killing and injuring persons and even children were not spared.

After a thorough examination of various documents produced before it, the Court found the accused guilty of all the offences he was charged except with the offence of waging war against India.

4.11.16 NIA, DELHI V. ZIA UL-HAQUE AND OTHERS [514]

The case of the prosecution was that an organization namely Lashkar E Taiba (LeT) is a terrorist organization banned by the Government of India in terms of Schedule of UAPA, 1967. On 03.05. 2010, the Police personnel who was investigating the Odeon Deluxe Theatre, Hyderabad Blast case, on receiving information, he along with his team on specific identification apprehended on Mohd Zia Ul-Haque who was found in possession of a hand grenade and other material documents. Later a search at his residential premises was conducted which lead to the recovery of another hand grenade, pistol with magazine, six numbers of live cartridges and other documents.

The accused confessed that he entered into criminal conspiracy with Accused No. 2 Abdul Azeeb, a Pakistani LeT operator and other LeT operators outside India to wage war against India branding India as Kafir/Hindu country and to indulge in terrorist acts by using explosives, arms and ammunitions and some funds provided by Abdul Aziz of Pakistan for terrorist activities. The

[512] As PS Case No. 155/2014;
[513] As RC No. 03/2014/NIA-GUW [22/07/2014]
[514] *NIA, Delhi* v. *Zia ul-Haque and Others*, [Special Case No. 567/2010]

accused also went to Pakistan for terrorist activities and got trained in Baitul Mujahiddin 9LeT) Training Center at Musaffarabad,, Pakistan for about 45 days in handling weapons namely AK-47, pistol, hand grenades, using of explosives, browsing of internet and checking of emails along with other trainees to wage war against India by Jihad. Abdul Aziz arranged tickets for the accused No.1 from Saudi Arabia to New Delhi via Karachi in Pakistan International Airlines. He was received by LeT Cadre who managed airport officials to take him out of airport illegally without stamping/checking of the passport.

However, the Court raised certain questions pertaining to the procedure of collecting evidences and acquitted the accused of all charges but held him guilty under section 5 of the Arms Act and was punished as per section235 of the Cr.P.C.

The accused was sentenced to seven years of imprisonment in addition to the 4 years already spent in jail and also fine.

4.11.17 STATE OF KARNATAKA THROUGH NIA V. SHOIAB AHMED MIRZA AND OTHERS[515]

The case of the prosecution is that the City Crime Branch, Bengaluru (in short 'CCB') received credible information that members of banned terrorist organizations i.e, Lashkar-e-Taiba(L-e-T) and Harkat-ul-Jehad-e-Islami(Huji) have hatched a conspiracy to indulge in subversive activities like target killings of important personalities of Hindu Community in Bangalore and Hubli and thereby to disturb communal harmony.

Accordingly surveillance was arranged by CCB over the activities of the suspected members at Hubli and Bangalore and finally on 29.8.2012 Accused Nos.1 and 2 were arrested with possession of illegal weapon when they had reached near the house where their target Sri Pratap Simha, a well known columnist of Kannada Prabha, a daily newspaper used to visit.

A case was registered[516] in Basaveshwara Nagar Police Station on 29.8.2012 under S.120B, 121m, 121A, 122, 153A, 153B, 307, 379 of IPC, S.3 and 25 of the Arms Act, 1959 and S.10, 12, 13 of UAP Act on the complaint of Sri K.N. Jithendranath, ACP, Bangalore City.

During the investigation of the said case, the investigating agency found a larger conspiracy hatched by the accused in Riyadh and Dammam in Kingdom of Saudi Arabia.

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[515] *State of Karnataka through NIA* v. *Shoaib Ahmed Mirza and Others*, [Special Case No. 52/2013]

[516] As CrimeNo.384/2012

Having regard to the gravity and seriousness of the case, the Government of India passed orders to transfer the case to National Investigation Agency (for short 'NIA') for investigation. As per the Orders of Ministry of Home Affairs[517], Government of India NIA took over the investigation of the case and re-registered the case[518] and case was investigated by NIA Field Office, Hyderabad. The prosecution claimed[519] that the investigation conducted by the Karnataka Police and the NIA revealed that the accused being members of terrorist organization Lashkar-e-Taiba (L-e-T), in order to further the activities of L-e-T and to associate with it, entered into a criminal conspiracy to commit terrorist activities by way of target killings of important personalities by using illegal lethal weapons like pistols and ammunition and thereby to strike terror in the people, to disturb communal harmony, to raise funds for terrorist activities, made preparations by procuring implements.

On being satisfied as to prima facie materials and proper sanctions from the competent authority to prosecute the case, this Court took cognizance for the aforesaid offences.. However, after the span of two years accused pleaded guilty and the Court did accepted the petitions.

The Court found the accused persons guilty and sentenced them to five years imprisonment and fine.

4.11.18 STATE OF KERALA THROUGH NIA, ERNAKULAM V. SAVAD AND OTHERS[520]

The case of the prosecution was such that Professor T.J. Joseph who was working as Malayalam professor in Newman College, Thodupuzha, in the question paper set by him for the second semester B' com examination held on 23.3.2010, incorporated some blasphemous reference against Prophet Muhammad and lslam. The accused, who are active members of Popular Front of India

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[517] Vide order No.1-11011/55/2012-IS-IV [16th November, 2012]

[518] As RC No.04/2012/NIA/HYD

[519] The Investigating Agency has contended that the investigation has revealed following facts in the case, which constitute and prove commission of alleged offences: Accused No.13 was the main handler in India, who motivated other accused persons from September, 2010 onwards. Accused No.2 and 10 had visited Pakistan during 2011-12 with the help of Accused No.13 in furtherance of their Jihadi activities, where they met some senior ISI Officials, L-e-T Operatives and others, who motivated Accused No.2 and 10 to collect intelligence and carryout espionage activities in India. Further, Accused No.2 and 10 received training in collection of intelligence, cyber crime, handling and shooting of weapons. Accused No.1 received three illegal firearms i.e, pistols and ammunition at Bangalore in the first week of June, 2012 and also funds as per the instructions of Accused No.13 for target killings and Accused No.1, 2, 4, 8, 9, 11 and 12 tested the weapons on the out skirts of Hubli and Dandeli. The accused had also planned to commit robbery/dacoity of certain jewellery shops at Hubli and intended to use the money looted for terrorist and jihad activities and during the month of August, 2012 Accused No.1 and 8 visited Mumbai for procuring the implements required for committing dacoity like lock pickers, cutters, pepper spray cans, torches and tyre spikes, purchased a car for using it as an escape vehicle and rented a house for conducting conspiracy meetings and to store materials required for commission of dacoity.

[520] *State of Kerala through NIA, Ernakulam* v. *Savad*, [Special Case No.1 of 2013]

(PFl) and its political wing Social Democratic Party of India (SDPI), with an intention to pass the message to the public and other religions that anyone who offends the prophet or the lslam will not be spared and to promote communal harmony among members of different religions and fear in the minds of public and as members of a terrorist gang hatched criminal conspiracies.

The accused met in Seemas auditorium in order to hatch criminal conspiracy. On 4.5.2010 at Kothamangalam Municipal Park from where 42 to A7 and A28 decided to arrange money and to procure weapons, explosives, vehicles, sufficient number of mobile phones and SIM cards by using fake identity cards and A2 was made the leader of the team.

Professor T.J. Joseph was returning from church after Sunday holy mass in his car along with his sister and mother when in pursuance of the conspiracy, came in a Maruthi Omni van bearing fake number KL-07/AD-7201 driven by A7 Pareed, intercepted and wrongfully restrained the Wagon R car driven by CW2. A7 stopped the Omni van after turning it around and remained in driver's seat for quick escape from the scene, after committing the offence.

ln the meanwhile A1 to A6 came out of the Omni van with choppers, hatchet, knives and explosives, surrounded the Wagon R car. Then A1 smashed the right front side door glass of the car with hatchet, 43 smashed the front windscreen with a chopper and A2, with a chopper smashed the left front side door glass and thereby caused damage to the vehicle to the tune of (8000/-. A1 to 4 pulled CW2 out of the car. When CW3 Sister Marie Stella tried to interfere A5 pressed the neck of cw3 sr. stella, restrained and attacked her by pressing her towards the compound wall. A-2 inflicted injuries on the left ankle of CW2 with a chopper and A1 inflicted cut injuries on the left thigh, left foot and left ankle of CW2 with hatchet. A1 to A4 together pulled down CW2 on the road at the back side of the car. 43 and A4 guarded the place by standing on both sides of the road with weapons.

On seeing CW1 Salomy, wife of CW2 and her son CW4 Mithun rushing towards the spot, A6 hurled explosives to prevent them from approaching and to generate fear among the public. A-1 pressed the right hand of CW2 on the road and A1, with an intention to kill CW2 by inflicting serious injuries, cut on the right hand of CW2 several times with the hatchet knowingly that his act would cause the death of CW2 and thus chopped off the right hand and told CW2 in Malayalam that you have ridiculed Islam by using this hand, you don't write with this hand again. 41 threw the severed hand in a nearby compound with intention to cause the death of CW2 and thus committed terrorist act and caused terror in the minds of the people. After inflicting grievous hurt

to CW2, 41 to A7 boarded the Omni van and left the place. The Court found all accused guilty and passed the sentence for imprisonment.

4.11.19 *STATE OF MAHARASHTRA THROUGH NIA V. RAVI DHIREN AND OTHERS*[521]

The case of the prosecution was that the accused stand charged by the NIA, New Delhi alleging that a deep rooted criminal conspiracy was hatched by them alongwith wanted accused Shoukat Marfat Ali to circulated Fake Indian Currency Notes (FICNs) of high quality, printed and manufactured across the border, which is a terrorist act aimed at destabilizing the economy and to threaten the unity, integrity, security and sovereignty of the country.
The Court found the accused persons guilty for the offences charged.

4.11.20 *STATE THROUGH NIA V. MALGONDA PATIL AND OTHERS*[522]

The brief case of the prosecution was that the deceased accused no.1 Malgonda Patil and the deceased accused no.2 Yogesh Naik along with other accused persons hatched a criminal conspiracy during the period from June to October 2009, with the common object or with intention to strike terror in the minds of the people i.e. viewers, organizers and participants of Narakasur Vadh Competition held on 16/10/2009.
In pursuance of the said conspiracy, the accused persons brought explosive materials like gelatine sticks, detonators and other accessories like printed circuit boards, translators, batteries, wires etc, and made Improvised Explosive Devices (IEDs). They assembled these accessories at the residence of Lakshmikant Naik brother of accused no.2 Yogesh at Talaulim, Ponda-Goa. It was their perception that the Narakasur Vadh Effigy Competition was against the Hindu religion and practice. The accused in pursuance of their conspiracy had prepared the IEDs. They even conducted several test blasts on the hillock behind the residences of the accused persons.
Thereafter, in order to accomplish their object, they decided to blast IEDs at five places in Goa on the day of Narakasur Vadh Effigy Competition on 16-10-2009. The accused No.5 had downloaded the circuit diagrams using internet. He got the PCBs prepared from Sai Shop at Kolhapur. He purchased the other materials like electronic items, alarm clocks and transistors form different

[521] *State of Maharashtra through NIA* v. *Ravi Dhiren and Others*, [Special Case No.674 of 2009]
[522] *State through NIA* v. *Malgonda Patil*, [Special Case No. 1 of 2013]

shops. Accused No. 3 & 4 had purchased SIM cards on 15-10-2009 on fake and forged documents. They had purchased second hand mobiles with intention to hide their identity during the Police investigation.

The accused were according charged. In the course of investigations, accused no. 3 to 6, 10, 11 were arrested. They were produced before the Court from judicial custody. Copies of the charge-sheets were furnished to them. Accused no. 7,8 and 9 have been shown as absconding. Accused No 1 & 2 expired in the bomb blast. Prosecution was directed to file separate charge-sheet against absconding accused persons as and when arrested.

Accordingly, charges were framed for offences punishable under sections 120-B and 121-A of the IPC, section 16,18 and 23 of the UAPA, 1967 and sections 3,4 and 5, of the Explosive Substances Act, 1908, against the accused No.3,to 6, 10 and 11. Charges were also framed for offences punishable under sections 420, 468 and 471 of the IPC against accused no.4 and charge was framed for the offence punishable under section 201 of IPC against accused No. 10 and 11.

The prosecution has witnessed in all 122 witnesses in support of their case. During the trial, some of the witnesses have produced documents in support of the prosecution's case.

The Court went on to discuss various positions of law and the evidences at hands and concluded that there is not enough evidence to convict the accused persons of the said offences.

4.11.21 *STATE THROUGH NIA, DELHI V. SAMIR MANSURI AND OTHERS*[523]

This case was registered with PS Special Cell, Delhi Police, New Delhi[524] u/s 120-8,489-8 and 489-C lPC. After recovery of Fake Indian Currency Notes (FlCNs) from the possession of the accused Samir Mansuri and Kudarat Khan, they were arrested in the case on the same day i.e.25.02.2015. During investigation/interrogation in police custody, accused Samir Mansuri and Kudarat Khan admitted their involvement in the case disclosing that the recovered FICN were supplied by one of the accused namely Sonaul @ Sona @ Mama s/o Sh. Terajuddin r/o Village Jagadishpur, PO-Jadupur, PS-Kaliyachak, Distt.- Malda, West Bengal on 23.02.2015. Accused Sonaul@'Sona @ N4ama was arrested on 23.06.2015. During interrogation, he disclosed that he had supplied this consignment of FICN. Pursuant of order of Ministry of Home Affairs[525],

[523] *State through NIA, Delhi* v. *Samir Mansuri and Others*, [Special Case No.2 of 2015]
[524] Vide FIR N0.15/2015 [25.02.2015]
[525] Vide Order no.11011/26/2015 [30.4.2015]

Government of India, National investigation Agency (NlA) re-registered the above case[526] in NIA Police Station, New Delhi.

A charge was framed against the accused Samir Mansuri and Kudarat Khan for the offence punishable under section 1208, 4BgB, 4BgC IPC and 16, 18 & 20 of Unlawful Activities Prevention Act '1967 (as amended) and against accused Sonaul @ Sona @ Mama for the offence punishable under section 1208, 489-B IPC and 16, 18 & 20 of Unlawful Activities Prevention Act 1967 (as amended), to which they pleaded not guilty and claimed trial.

The court examined various documents on record produced by the Prosecution and on later stage ion trial the accused persons pleaded guilty for their crimes. The court admitted the plea and convicted the accused persons.

4.11.22 ***STATE THROGH NIA, DELHI V. PHOJENDRA HOJAI AND OTHERS[527]***

The factual matrix of the case on which the case proceeded was that the Police based on a tip off, intercepted two vehicles and on search they found 2 pistols in a brief case and other papers and one air bag containing huge amount of Indian currency. Subsequently the police seized the vehicles and the currency which was found to be of worth Rs. 1 crore. The Police also found a letter of Mohet Johai addressing the Superintending Engineer to issue work order in favour of Phojendra Hojai for an amount of 88 lakhs.

The prosecution case was that the apprehended persons have carried the said huge sum to be delivered to the DHD (J) for procuring arms and ammunitions so as to wage war against the Government of India. Accordingly, an FIR[528], was lodged with the Basistha Police Station upon the case[529] was registered. Pending the investigation, the Government of India handed over the investigation of the case to the NIA[530].

The NIA then carried out the investigation by visiting the place of occurrence, examined witnesses and seized some of the defalcated amount and recovered arms and ammunitions and arrested 15 accused persons and forwarded them to the Court.

TO bring home the charges against the accused, the prosecution side had examined 150 witnesses and exhibited as many as 464 documents and also exhibited 71 materials. After the examination

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526 RC No. 03/2015/NlA/DLl

527 *State through NIA, Delhi* v. *Phojendra Hojai and Others*, [Special Case No.1 of 2009]

528 As Ext No. 37 [01-04-2009]

529 As Case No. 170/2009

530 Vide order No.17011/20/2009-IS-VI [01-06-2009] ext-462.

of the prosecution witnesses, all accused were examined under section 313 of Cr.P.C. The accused persons totally denied the charges which were framed against them.

At the end, the Court found all accused as guilty and proceeded to declare the sentence order.

The Court observed-[531]

"In the result we find and hold that the prosecution side has been able to bring home the charges against the accused shown in the list below all reasonable doubt and they are convicted accordingly under the sections law as shown against their names".

All accused persons were sentenced for imprisonment for minimum of 10 years and also were made to pay fine.

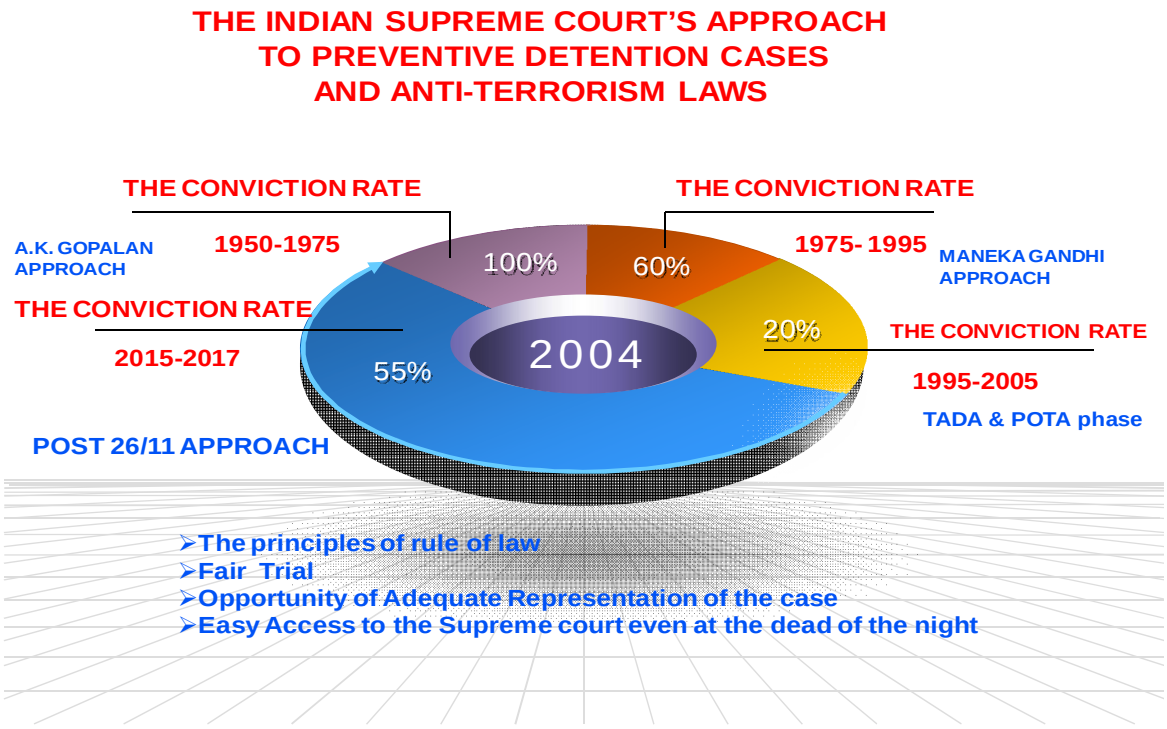
[531] See. Para-472 at P-289.

4.12 CONCLUSION

The Chapter provides the cases which have been dealt with the National Investigation Agency as well as the approach adopted by the special NIA Courts by virtue of the NIA Act, 2008. This is the new feature which has been added in the present chapter as there are no text-books available which provides an insight into these cases.

The part of this Chapter meticulously highlights the judicial confrontation of national security legislations in India. Like in United Kingdom, the judiciary in India has also struggled a lot to liberate human rights from the shackles of preventive detention laws which were adopted right after the independence. The Judicial Pattern of judgments pertaining to preventive detention laws and anti-terrorism laws in India can be highlighted well through the following graph.

(GRAPH-6) INDIAN SUPREME COURT'S APPROACH

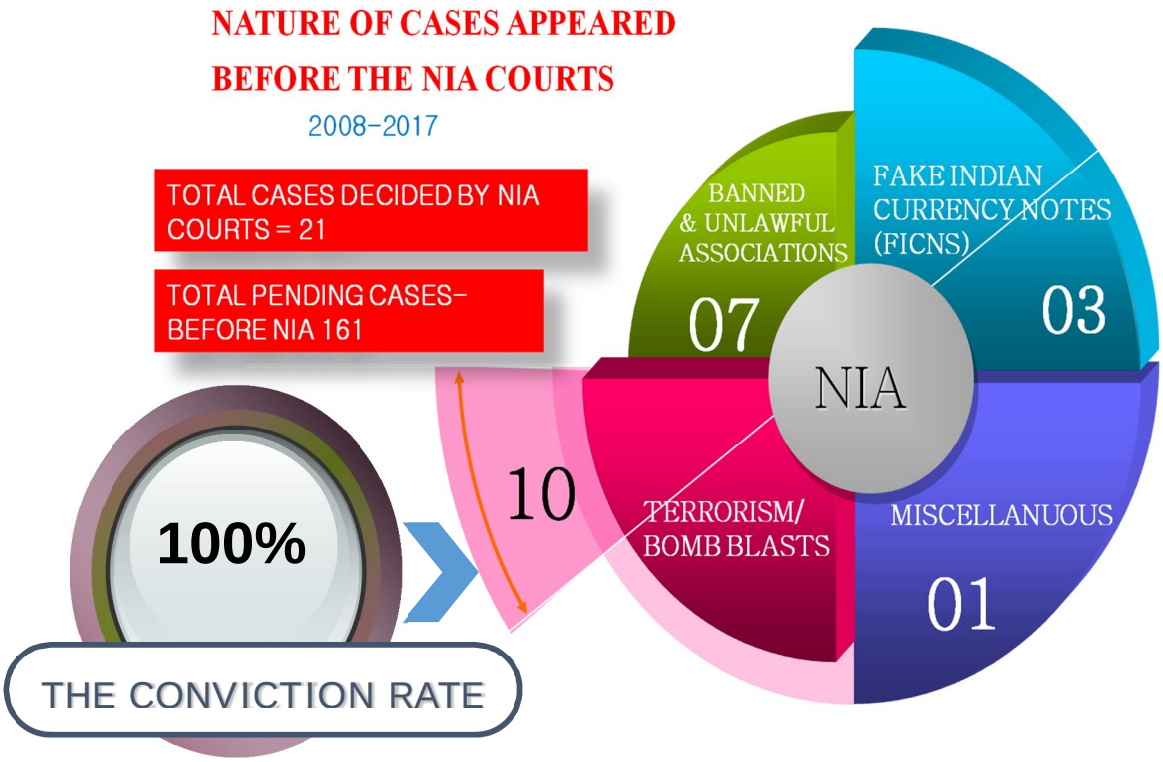


As we can observe from the above graph, the cases which have appeared before the Supreme Court chronicles a similar tale as that of the courts in UK. In India too, the Supreme Court was tied up with a number of preventive detention cases and the prominent among them all was the case of AK Gopalan which became the reason for the Preventive Detention Act, 1950 to be lapsed. The

conviction rate under the PDA, 1950 was quite higher and the Courts in India were determined to protect its preventive detention laws which continued upto ADM Jabalpur case. However, the Maneka Gandhi case totally changed the course of judiciary in India and a new era of individual liberty began in India which is being continued even today. The period in between 1995 to 2005 saw the two of the most draconian legislations in India in the form of TADA and POTA thereby leaving much room for the misuse and more and more petitions coming to the Court. However, after 2005, a subtle approach had been adopted by the apex court where in the conviction rates were much in control and the judgments were given on the basis of rule of law and fair trial. Persons who were unable to get any legal assistance, it was provided back to them by the Court and this period saw the triumph of rule of law in India. For some terrorists, the doors of Supreme Court were made open even at 3.45 a.m. in the morning so that complete justice could be made.

The Final part of the Chapter deals with the new experiment which has been done in India by establishing Special Court under the NIA Act, 2008. While the Act remains still in its infant stage, it shall complete its successful 10 years in 2018. Thus, a closure look at the NIA Special court's approach towards the terrorism would be appreciated at this juncture. The Central government had established nearly 35 special courts under the NIA Act, 2008 and these courts are empowered to deal especially in the matters relating to terrorism. The manner and nature of cases which appear before the NIA Courts can be understood by the following graph.

(Graph- 7) NATURE OF CASES APPEARED BEFORE THE NIA COURTS



This graph very well explains the nature and number of cases that have appeared before the Special Courts established under the NIA, 2008. Overall there are 21 cases directly or indirectly relating to terrorism which has been decided by the NIA Court and in some cases by the apex court while exercising its appellate jurisdiction. There are still a big number as much as 161 cases which still awaits a thorough investigation by the NIA. Apart from the regular cases pertaining to terrorism, the NIA has paid more attention to the cases relating to FICNs. Thus, there are nearly 7 cases which are related to the matter of Fake Indian Currency notes. This is a welcome step by the NIA as it will prevent FICNs to be part of the larger future conspiracy against India. At least 3 cases belong to the category of banned organizations or unlawful association. Another important aspect to be noted here is that in all 21 cases, the conviction rate is 100% which means in each of these cases, many accused have been found guilty in the case and have been convicted under various terms.

The above discussion on various prevalent laws relating to terrorism in USA, UK and India reveals interesting stories of the various Governments' zeal to enact effective legislations to fight terrorism. Both the legislative and the judicial pattern in three countries differ in their interpretations and approach. While Courts in the United States initially supported the Executive actions, later it did ruled against it. The Courts in UK seems to adhere strictly to the laws passed by the Parliament to defend the national security of the State.

The Indian Courts differ from both USA and UK courts in many respects. While the anti-terrorism laws implemented by the Indian Parliament have often been subjected to misuse by the police personnel and the executive, the National Investigation Agency Act, 2008 indeed offers wider prospects to effectively deal with the terrorism related cases. The jurisdiction of the Special Courts established under the NIA Act, 2008 has greatly been expanded to the cases relating to the Fake Indian Currency Notes (FICNs).

While the National Investigation Agency has successfully handled many cases and implemented various provisions of Act to effectively combat terrorism, it also remains subjected to huge number of pending cases. As per the latest figures, there are as many as 164 cases till pending for investigation and charge sheets to be filed in the court.

The Unique nature of the NIA Special Courts offers a handy tool in various states to try the offence scheduled under the Act successfully.

However, the NIA Act, 2008 is still in its infancy and requires some more time to be tested on the touch stone of the great principle of rule of law and complete justice. It will be interesting to note the fate of these 164 cases and the NIA court's future approach in combating terrorism.

CHAPTER-V

CONCLUSIONS & SUGGESTIONS

5. THE CONCLUSION & SUGGESTIONS

"We need spiritual values; we need a revolution of the mind. This is the only way toward a new culture and new politics that can meet new challenges of our time. We have changed our attitude toward some matters such as religion. Now, we not only proceed from the assumption that no one should interfere in matters of the individual's conscience; we also say that the moral values that religion generated and embodied for centuries can help in the work of renewal in our country, too"

-Mikhail Gorbachev[532]

5.1 INTRODUCTION

The terrorism traces back its origin to the biblical times and many scholars have believed that it existed in all ages in some form or the other. In some age, it came to be known to be propounded by the Zealots and Assassins while in other ages it absorbed the most aggravated and violent form when certain individuals started revolting against powerful regimes on the basis of religious or other political grounds.

The advent of Islam and its misleading interpretations led to some of the deadliest organizations coming into force.

A sneak peek into the pre-history and the journey terrorism has traversed during all these years as well as the problems encountered by the jurists and authors to define the term terrorism brings home multiple problems and issues that needs to be addressed on urgent basis. The pre-history of terrorism indeed teach us many lessons and also cautions the government to take care of the interests of the population which may not be so happy and concurring over its actions which certain groups believes to be acts of injustices especially to target a particular section of the society. It warns us that if the regime continue to ignore their hue and cry and deny their basic rights to survive with all other equally, some day they may resort to violent activities which ultimately be turned into the acts of terrorism. Various factors such as social, political, religious or economical

[532] MIKHAIL GORBACHEV, '*THE ROAD WE TRAVELED, THE CHALLENGES WE FACE: SPEECHES, ARTICLES, INTERVIEWS*', Izdatelsto VES MIR, Gorbachev Foundation, Moscow (2006).

anxieties are responsible for compelling humans to turn violent and to commit such acts that shame the entire humanity.

The various prevalent laws relating to terrorism in USA, UK and India reveals interesting stories of the various Governments' zeal to enact effective legislations to fight terrorism. Both the legislative and the judicial pattern in three countries differ in their interpretations and approach. While Courts in the United States initially supported the Executive actions, later it did ruled against it. The Courts in UK seems to adhere strictly to the laws passed by the Parliament to defend the national security of the State.

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The Unique nature of the NIA Special Courts offers a handy tool in various states to try the offence scheduled under the Act successfully.

However, the NIA Act, 2008 is still in its infancy and requires some more time to be tested on the touch stone of the great principle of rule of law and complete justice. It will be interesting to note the fate of these 164 cases and the NIA court's future approach in combating terrorism.

India has tried to follow a path wherein *"rule of law"* continues to be the fundamental benchmark and the basic rights are ensured even to those who are suspected of involvement in terrorist crimes.

India's response has throughout abided by the principle of "universal respect for and observance of human rights and fundamental freedoms", as commended by various UN resolutions

The recent trial of *Amir Ajmal Kasab* demonstrates India's adherence to the principles of natural justice and respect for the rights including fair trial and to be represented by a legal counsel. This was *the speediest trial in the history*. Periodic Review of laws and the *recent passing of two Bills in 2008* i.e. The Unlawful Activities (Prevention) Amendment, Act, 2008 and the NIA, 2008. The concept of "*Judicial Review*" has thus been successfully followed in India as a major check on the abuse of power thereby minimizing the complaints of wrongful detention. India *does not* subscribe to the radical view in certain quarters that "*torture*" should be available in extreme situation of terrorist acts". Under the Indian Evidence Act, confessions made to police officers are inadmissible as substantive evidence against the accused. India has never purported to derogate from any of the ICCPR's provisions.

Safeguards should be provided for arbitrary, politicized, and discriminatory Police decision making. Efforts may require the Central Government to develop mechanisms that provide for greater administrative and judicial oversight of investigative and prosecutorial decision making and transparency in decision making to ensure enforcement of fundamental rights.

As Hobbes puts it, 'No law can be unjust law.'[533] Justice shall be done at any cost though the heaven falls. Justice shall not only be done but shall be seen to be done. Justice is not only the property of rich persons, it is the right of every common man. Justice is embodied in nature, law finds it, decorates it in the form of rights.

Justice in common connotation suggests fairness and reasonableness of the rule, principles and standards. Justice look into the content of legal norms, institutional arrangements, their affect on human beings, their worth in terms of contribution to human happiness, building of civilization etc. The major aim of Justice is to satisfy the reasonable needs and claims of individuals. The international law's efforts to consolidate the laws to prevent acts of terrorism suffer from various vires. First, the international law depends on the cardinal principle of consent and willingness of the States to implement anything that is workable under international law.[534]

Secondly, the problem pertaining to drawing a world-wide definition acceptable to rest of the states is highly impossible. Finally, the states which are being accused of sponsoring the terrorists or

[533] See. ALLEN BEVER, ' *FORGOTTEN JUSTICE: THE FORMS OF JUSTICE IN THE HISTORY OF LEGAL AND POLITICAL THEORY*', Oxford University Press, 2013

[534] *Ibid.*

states which shelters the terrorists' purpose and training camps are unwilling and remain non-co-operative in nature.

One may also reason that the international law tries to evade many questions of importance and the topic of terrorism often remains off the table in any process of negotiations.

Indeed time has come for the states and the United Nations to come together to effectively deal with the problems of terrorism. This can happen with the principles of co-operation and friendly relations between the states. There also remains a severe need for the other states to pressurize the defaulter states to pursue international goals to eradicate terrorism from its very base.

5.2 CONCLUSIONS

After dealing with almost every legal aspect pertaining to problems of terrorism, the following conclusions can safely be laid down:

1. **No Consensus on Definition**- The present research and findings reveals that there is no universal consensus at the definition of the term 'terrorism' and hence many problems persist in various jurisdictions. Under international law, due to the existence of cardinal principles such as non-interference and consent, it is impossible to arrive at a universal consensus to define terrorism. Lack of political will, reluctance of some states and infirmity of international law may be some of the reasons for it.

2. **New Modus Operandi of Terrorists**- The fluctuating pattern of terrorists' attacks unleashes the new and innovative methods employed by the terrorists. The use of technology has changed the dimensions of various modes and methods used by terrorists. The rampant use of GPS devices, internet, Google Maps, IEDs and VBIEDs is the shining example proving the statement.

3. **Different Reasons Responsible-** There are various reasons which are responsible for the terrorism. They are mainly:

    a) Socio-Economic discord and disparity

    b) Political aspirations

    c) Religious fanaticism

Socio-economic disparity remains one of the prime reasons for dragging innocent individuals to the heinous crimes such as terrorism. Economic vulnerability remains one of the stubborn causes to turn individuals into human bombs. Often political aspirations or discord also remains one of the reasons for terrorism. Recently, religious fanaticism is seen as the sole motive of terrorism.

4. **Financial Assistance to Terrorists**- Facilitating the required finance to the terrorists for the various deadliest purposes is also equally heinous crime. Many establishments seem to undermine this aspect and thus, prescribe for only minimum punishment to the perpetrators. Albeit, there exist several legislations to combat these kinds of situations, the problem still persists and needs to be tackled in more effective ways.

5. **Al Qaeda still remains a global threat while LeT remains a persistent threat to India**: While it is apparent from the discussion made in various part of this thesis, Al Qaeda remains a global threat to every nation in spite of the demise of Osama Bin Laden and Lashkar –E-Taiba remains a clear threat to India. LeT has especially been created to carry out various military operations focussing mainly against the mainland India and more particularly aims at the liberation struggle of Jammu & Kashmir.

6. **Pakistan- A Terror Capital**- It is quite apparent from the findings of the research that Pakistan remains a state which openly sponsors terrorism and shelters their aspirations. It is because the country knows that it cannot afford a direct face off neither with India nor with any other potential country in the world. In spite of the international pressure especially from the countries like USA and UK, Pakistan continues to sponsor terrorism endlessly. In this context, Pakistan remains the capital of terrorism.

7. **Lack of co-operation among Nations to deal effectively with perpetrators of Terrorism**: There also seems to be zero consensus among the states in international law to co-operate with each other so far as taking certain firm actions against the perpetrators of terrorism. In spite of multiple treaties and agreements which makes provisions for extending every possible mutual legal support to each other, many nations fail to follow the law provided by such treaties or agreements due to overwhelming interference of politics and mischievous-diplomacy.[535]

10. **Enactment of national security laws and violations of human rights-** It has been observed in the present research that as and when laws were enacted to effectively combat terrorism, there also have been various cases alleging misuse of such laws and thereby resulting in gross violation of human rights.[536] A quick look at the history of such laws would unleash the horrifying facts pertaining to mass violations of human rights.

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[535] *Infra* at P-435; to deal with such problems, a Model Bilateral Treaty has been suggested by the Researcher.
[536] *See*. Chapter-III, *Supra f.n.* 1289, P- 348;

11. **Need for Stricter laws against FICNs**- Although under the NIA Act, 2008, the NIA and the special NIA courts are taking special cognizance of the offences involving the use , import and export of Fake Indian currency Notes (FICNs), there remains a severe need for a new law in this aspect. The new law must provide for the special courts and procedure to be followed in such cases.

12. **Supply of Weapons and Logistic Assistance to terrorists**- It has also been observed that the terrorists are easily provided with the lethal weapons and other logistic assistance to execute various terror attacks. The supply of weapons and logistic assistance to terrorists must be condemned in all ways and the Arms Act must be implemented in stricter ways.

13. Rampant Corruption- The rampant corruption in various parts of the world and even at domestic set up remains one of the probable cause for promotion of terrorism and law enforcement authorities often turn their eyes blind on major happenings in their jurisdictions.

14. **Ineffective Intelligence Network and Failure to take Cognizance:** There also remains ineffective intelligence network to combat terrorism efficiently. It has been observed that on many accounts, the intelligence report is often being ignored by the law enforcement authorities. Such casual approaches to such vital intelligence inputs remains one of the probable cause of terrorists attacks.

15. **Political Interference and misuse of Intelligence and the law enforcement agencies**- There is also huge political interference in the Intelligence agencies and the law enforcement agencies which is why these agencies are unable to produce the desired results. These agencies need to work without any kind of pressure being put on them.

16. **Lack of Political motivations and will**- The problem of terrorism is more political in nature than legal. There exist the politics of vote bank in almost every corner of the country. This vote-bank politics is fatal so far as exploring the ways to combat terrorism. The anti-terrorism laws which often are implemented often remain vulnerable to such vote-bank politics.

17. **Anything and everything cannot be related to terrorism-** Albeit, the NIA which is the product of NIA ACT, 2008 has resolved multiple terror related cases, there are still as many as 161 cases still pending for investigation and subsequent trial by the NIA. Recently it has been the trend of the Central Government to refer almost every case of blast to the NIA for investigation. Anything and everything cannot come within the ambit of NIA. The NIA needs to be consolidated

based on its short term experience and needs. There remains a need to separate other offences with that of the terrorism before allotting every case to the NIA.

18. **Tussle Between National Security and the Human Rights-** While enacting and implementing the anti-terrorism laws, it has widely been observed that there exist a tussle between national security at one hand and the promotion and protection of human rights of individuals at the other. It is very difficult to satisfy the needs and demands of human rights defenders while enacting such laws. Thus, the choice is often been left to the people to choose either national security or human rights principles.

19. **Effective Legislations remains Need of the Hour-**In spite of wide allegations against the authorities for the misuse of anti-terrorism laws, there remains a dire need for enactment and implementation of an effective anti-terrorism laws clearly defining terrorism and prescribing the punishment for various offences.

20. **Law is not the only way-** To conclude, the present research stresses that the law is not the only way to combat terrorism. Law comes with its own problems starting from its inception to its implementation and thus, change of mindset, is required at all quarters to resolve the problem of terrorism.

5.3 SUGGESTIONS

a) Effective Anti-Terrorism Law- In spite of the existing NIA Act, 2008, there remains a need for a comprehensive law to deal with acts of terrorism. The declaration of any organization as terrorist organization, definition of terrorism, offences and punishment all shall be brought under one roof.[537]

b) Establishment of Review Committees- As per the guidelines laid down by the apex court, there should be established Review committees to meticulously scan and scrutinize every act of terrorism. This is needed to ensure proper implementation of the anti-terrorism laws.

[537] See. *Infra* P-445; An Attempt has been made by the Researcher to prescribe for the Model legislation to Combat Terrorism at national level.;

c) Proper Co-ordination of the Investigation Agencies- There must be provisions for the proper co-ordination of the investigation agencies in order to ensure fair investigation into the matters of terrorism. [538]

d) Special Cognizance over Intelligence inputs- The Authorities must ensure that there is special cognizance be given to every intelligence inputs provide by the investigation agencies of the probable attacks in the country. The failure to give cognizance to such acts must be punished and the responsible government officials must be hacked.

e) Surveillance over online activities of suspected persons- There must be stricter provisions under the law to punish individuals who are suspected of committing a terrorist attacks or individuals having links to deadliest or banned organizations. Their virtual activities must be monitored by the Government. However, measures may also be taken to ensure that such provisions should not be misused by the officials and the right to privacy of individuals should not be curtailed unnecessarily.

f) Modern tools and Weapons to Police Personnel- The law must provide for the better equipments and weapons to be conferred upon the police personnel. It has been observed that while at encounter, terrorists comes with modern weapons and police personnel are cursed to have possessed the same old weapons in combat. This trend should be discouraged and discontinued. Special bullet proof jackets must be provided to the police officers in order to deal with any kind of situations.

g) Special training Camps for police Officials- the law should also provide for the establishment of Special Training Camps for the police officer. Special training should be given to police officials in order to prepare them for any such combat against the terrorists.

h) Special Task Force in Every City- There should be special task force to deal with terrorist attacks. During the Mumbai terror attacks it has been observed that the National Security guard (NSG) took complete 9 hours to reach the scene of the crime and to deal with the terrorists. Thus, it is proposed that there should be Special task Force to be established in every city so that problems of terrorism can be tackled immediately right fourth.[539]

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[538] *Ibid.*

[539] *See*. '*THE SLEEPLESS BLOODIEST NIGHT OF MUMBAI*' at *Supra*, P- 158;

i) Special Cells for Captured Terrorists- There must be a special cell to be created for the terrorists who have been captured alive. This will benefit the investigation agencies to carry out their investigation independently.

j) Reforms in Immigration and Nationality Laws- The laws pertaining to immigration and nationality must be improved and the entrance of suspected persons must be avoided at any costs. The provisions relating to the issuance of visa and other conditions pertaining to it must be made stricter.

k) Increase in Defence Budget- The government must ensure raise in the defence budget to facilitate all equipments and latest weapons to the investigation and law enforcement authorities.

l) Recruitment to investigation agencies- the recruitment to the NIA or related investigation agencies must be made meticulously and officers whose track records remain impeccable should only be appointed to work for the agencies.

m) Separate Department for homeland Security- The government must ensure the establishment of a special department for homeland security much in the line of DHS in the United States.

n) Relief to Victims of Terrorism- There should be established a separate funds to be allotted to the victims of terrorism. As such at present there are no provisions for the same. A move towards the same would be a welcome step towards effectively combating the problem of terrorism.

o) Vigilance of Public Leaders- It has often been observed that many of the terrorists sought their inspiration to commit terrorist acts especially due to the public lectures and promotion by certain ideologues. The activities of such religious and political fanatics must closely be watched and in case of suspicion, their assets and property must be confiscated.

p) Unnecessary visits to Public Places- The government must closely monitors individuals those frequently visit public places with no clear motive or objectives. The activities of suspicious persons at airports, bus-stations, train –stations must be closely monitored.

q) Amelioration of Police-Public Relationship- Efforts must be made to instil more faith of public in the police establishment. Regular seminars, inclusion of police in societal affairs and inclusion of citizens in police vigilance officers may be some of the steps that may be taken in this regard.

r) Efforts to Eradicate Corruption- The efforts must be made by all to eradicate corruption at all levels. Though it seems to be a distant goal, still it is achievable and has the ability to resolve many problems.

s) Elimination of Arms Smugglings- Offences relating to arms and weapons smuggling must be dealt with effectively. Those public officers and police personnel involved in such gruesome acts must be tried and punished strictly.

t) Appointment of Special Officers in the Terrorist Affected Areas- There should be special investigation officers to be appointed in the terrorist affected areas to deal with the effective investigation of the case. Officers who found to be violating human rights must be tried and punished in strict manner.

u) The AFSPA Application and Removal- The Armed Forces Special Powers Act, 1958 is effective in many states. The members of the armed forces often are being accused of violating human rights of the individuals those living in the area. There should be a special review committee which shall review every such complaint and those members of armed forces found to be guilty must be tried and punished.

v) Urgent Solution of the J&K situation- Both India and Pakistan must try to resolve the Jammu & Kashmir conflict by negotiation and diplomatic dialogues. Political leaders must instil faith and good governance in the region.[540]

w) Change in the mindset- Albeit, there exists the dire need of an anti-terrorism law, but law is not always the solution. There must be a change in the attitude of people. The problem of terrorism must be sensitized among all groups and community.

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[540] *See*. Chapter-I, P-148-156;

5.4 PROPOSED DRAFT FOR ANTI-TERRORISM LEGISLATION

As a last resort to suggest amelioration in the anti-terrorism laws, the researcher proposes a Draft Legislation which could be apt for the Nation like India where in the previous past, such laws do not enjoy success due to the wide room given for the law enforcement authorities to use and implement as per their whims and fancies. As a result, these laws were grossly misused and were wrongly interpreted and implemented which contributed to their ultimate failure.

Thus, keeping in mind the various loopholes and learning from the previous experience, the researcher has proposed several new provisions which he hopes definitely would help the parties at stake and would carve a niche for the future course that needs to be adopted by the legislators while they make a new law on the subject of terrorism.

The researcher also lauds for the positive effect of the proposed legislation because of the particular fact that the draft legislations aims at striking a unique and never-before balance between the laws which strengthens national security at one hand and the human rights of individuals at the other.

Every effort has been taken to avoid any conflict of laws and after studying more than 50 legislations from USA, UK and India, some of the best provisions have also been cherry-picked by the researcher. The paramount controversial issues like confessions to be made before the Police Officers, the establishment of the Review Committee as per the directions accentuated by the apex court, the spread of terror related ideas and motivations by virtue of various online multi-media forums and necessary interception while walking the lanes of right to privacy have also been thoroughly covered under the draft legislations. As a special feature, the proposed draft legislation also includes a special provision to save people those who are drowning into the crimes of terrorism.

Finally, the researcher realizes the harsh fact that no legislation is perfect unless it is executed both in letter and spirit by all those involved to eradicate terrorism from its root. However, the researcher loudly hopes that the present draft legislation will be in a better position to serve the purpose and avoid any kind of conflict, abuse and the misuse.

[PROPOSED DRAFT FOR ANTI-TERRORISM LEGISLATION]

THE COMBATING TERRORISM (PREVENTION AND ADDITIONAL MEASURES) ACT, 2018

An Act to combat the menace of terrorism which has plagued the entire country by its ghostly presence and remains the ultimate foundation for violent acts, heavy bloodshed, unbearable sorrow and endless human sufferings.

An Act to uphold a unique balance by safeguarding several basic rights of accused suspected to have committed the offence of terrorism and steering the wheels of justice for the prosecution and the victims of such heinous crimes.

An Act to establish special designated courts and officers both at District, State and National Level.

An Act to save individuals from the scourge of terrorism and especially to prevent people being drown into the infamous blood-spattered reservoir of terrorism.

An Act to provide certain reliefs to the victims of terrorism who are often being neglected and forgotten by the Justice Delivery System.

BE IT enacted by Parliament in the Seventy First Year of the Republic of India as follows-

1. **Short title, its application, extent and commencement-**

(1) This Act may be called as the Combating Terrorism (Prevention and Additional Measures) Act, 2018. (To be refereed as the CTA, 2018).

(2) It extends to the whole of India.

(3) Notwithstanding anything contained in any other provisions of law, every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person who commits an offence beyond India shall be dealt with in the same manner as if such act had been committed in India.

(5) The provisions of this Act shall apply to-

(a) Citizens of India outside India

(b) Persons in the service of the Government, wherever they may be; and

(c) Persons on ships and aircrafts, registered in India, wherever they may be.

(6) The Act shall be deemed to have been commenced on January 1st, 2018 and shall remain in operation for five years unless revised and continued by the Central government on the recommendations of the Special Legislation Review Committee (SLRC) in this behalf.

(7) The expiry of this Act shall in no way hamper the on-going investigation or trial which remains under process. However, upon the expiry of the Act, the awarding of punishment to persons accused of any offence and the disposal of any property seized or forfeited under the Act shall remain subject to the discretion of the Court as to whether or not punishment or decision as to any such seizure or forfeiture should be awarded. The Court may use conscience to penalize a person as per the provisions of this Act or may be guided by the general existing provisions of law other than this Act, governing the matter.

2. **Definitions**- In this Act, unless the context otherwise requires –

(a) "**Code**" means the 'Code of Criminal Procedure, 1973 (2 of 1974).

(b) "**Terrorism**" means an act employing uncertain violence among the uncertain targets and enticing intensive fear in the masses in order to unduly manipulate the establishment so that political and religious goals are accomplished."

(c) "**Terrorist**" means and includes who commits the offence under Section 2 (b) and also includes such person or persons who indirectly involved with the aiding, abetting, financing or inciting the commission of terrorism as defined under the Act.

Explanation:

I. It also includes any person or persons who have secret ties with the proscribed organizations as defined and mentioned under schedules of the Unlawful Activities (Prevention) Act, 1967.

II. Proscribed Organization shall have the same meaning as it had been under the Unlawful Activities (Prevention) Act, 1967.

(d) "**Terrorist Publication**" means and includes the online and offline publication of the leaflets, brochures, information booklets, pictures, videos or any other possible form of communication through which the terrorism is being promoted, or such publications through which terrorist causes are advanced, their acts have been made sympathetic or depicted as heroic, whether or not any such publication is related to the Government of India.

(e) "**Designating Authority**" shall mean such officer of the Central Government not below the rank of Joint Secretary to the Government or such officer of the State Government not below the rank of Secretary to the Government, as the case may be, as may be specified by the central Government or the State Government, by a notification published in the official Gazette.

(f) "**Special Legislation Review Committee**" shall mean such committee which shall be entrusted with the duty to inspect the real and proper implementation and operation of this Act after every five years.

(g) "**Counselling Panel for Prevention of Terrorism**" means a local panel established with the sole purpose to prevent people from drowning into terrorism.

(h) "**Property**" means property and assets of every description, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible and deeds and instruments evidencing title to or interest in such property or assets and includes bank account.

(i) "**CTA Courts**" means special courts established under this Act.

(j) "**Public Prosecutor**" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under this Act and includes any person acting under the directions of the Public Prosecutor.

(k) "**electronic communication**" means any transmission of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include—

(i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit; or
(ii) any wire or oral communication; or
(iii) any communication made through a tone only paging device; or
(iv) any communication from a tracking device;

(l) "**intercept**" means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;

(m) "**oral communication**" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;

(n) "**wire communication**" means any aural transmission made in whole or part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of connection, between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication.

3. Punishment Prescribed –

(1) Whoever commits a terrorist act within the meaning of Section 2 (b) & (c), shall-

(a) If such act has resulted in the death of any person, be punishable with death or imprisonment of life and shall also be liable to fine.

(b) In any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) Whoever distributes, circulate or publishes online or offline or found to be in possession of the 'terrorist publication' shall be punishable with imprisonment for a term which shall not be less than 2 years and shall also be liable to fine.

4. Obligation to furnish information-

(1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority, or a bank, or a company, or a firm or any other organization, institution, establishment or any individual to furnish information in their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for or relevant to the purpose of this Act.

(2) Failure to furnish the information called for under sub-section (1) or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

5. Power to Search and Inspect Property-

(1) If the investigating officer or a police officer not below the rank of Superintendent of Police has reason to believe that some 'property' is being used or had been used for the commission of any offence under this Act, he may upon prior authorization in the form of a warrant, enter into, search and inspect any premises or property thereupon.

(2) The person whose property is being inspected is required to co-operate with the investigating officer and must provide all required assistance.

(3) Upon investigation of property by the investigating authority, if it is found that such property was indeed being used for any offences under the Act, the investigating officer shall have right to seize, forfeit or seal the property in question.

(4) The investigating officer may also bar the entry of any person or persons into the said premises for the purpose of the investigation.

(5) For the purpose of this Act, the Designating Authority shall have power as that of the Criminal Court established by virtue of the Code of Criminal Procedure, 1973.

6. The CTA Courts-

(1) The State Government may establish, by a notification in the official Gazette, a Special CTA Court which shall exclusively be empowered to function as per the objectives set out under this Act.

(2) The CTA Court must be consisting of at least Two District Judges who are well trained in the subject matter of terrorism and who understand the gravity and sensitivity of the matters in hand.

(3) The State Government may also establish, by a notification in the official Gazette, a special State CTA Court at the regional level which shall work as the appellate court in relations to the matters pertaining under this Act.

(4) The Central Government may, by a notification in the official Gazette, constitute a Special Bench of CTA Court which shall consist of at least Three Supreme Court Judges to review every order made by the District and the State CTA Courts. This Court shall function as the final judicial appellate body for those who have been aggrieved by the orders of District and the State CTA Courts

7. Jurisdiction of the CTA Courts-

Notwithstanding anything contained in the Code, every offence punishable under any provisions of this Act shall be tried by the Special CTA Court within whose local jurisdiction it was committed.

8. Powers of the CTA Court-

(1) When trying any offence, a CTA Court may also try ay other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the CTA Court may convict such person of such other offence and shall pass any sentence or award punishment authorized by this Act or, as the case may be, under such other law.

9. Power to direct samples, etc.-

(1) When a police officer investigating a case request the CTA Court in writing for obtaining samples of handwriting, finger-prints, foot-prints, photographs, blood, saliva, hair, semen, voice of any accused person, reasonably suspected to be involved in the commission of an offence under this Act, it shall be lawful for the Court to direct that such samples be given by the accused person to the police officer either through a Medical Practitioner or otherwise, as the case may be.

(2) If any accused person refuses to give samples as provided under sub-section (1), the Court shall draw adverse inference against the accused.

10. Public Prosecutors-

(1) For every Special Court, the Central Government or, as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors: Provided that the Central Government or, as the case may be, the State Government, may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years under the Union or a State, requiring special knowledge of law.

11. Procedures and Powers of the CTA Court-

(1) A CTA Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts.

(2) The CTA Court may try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the CTA Court that the nature of the case is such that it is undesirable to try it in a summary way, the CTA Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a CTA Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to rupees five lakh.

(3) Subject to the provisions of this Act, the District CTA Court shall have the power of a Sessions court, while the State CTA Court shall have all the powers of a High Court. The National CTA Court shall have all the powers of Supreme Court for the purpose of this Act.

12. Protection of witnesses.-

(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the CTA Court so desires.

(2) A CTA Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

13. Trial by CTA Courts to have precedence.-

The trial under this Act of any offence by a CTA Court shall have precedence over the trial of any other case against the accused in any other court (not being a CTA Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

14. Certain Confessions to Police Officers to be made admissible-

Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or the rules made there under.-Provided that along with the Police Officer, such confession must be made before at least two members of the Counselling Panel for Prevention of Terrorism.

15. Application for authorization of interception of wire, electronic or oral communication

A police officer not below the rank of Superintendent of Police supervising the investigation of any terrorist act under this Act may submit an application in writing to the Designating Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer when he believes that such interception may provide, or has provided evidence of any offence involving a terrorist act.

16. Decision by Designating Authority on application for interception

Upon such application, the Designating Authority may reject the application, or issue an order, as requested or as modified, authorising or approving interception of wire, electronic or oral communications, if the Designating Authority determines on the basis of the facts submitted by the applicant that there is a probable cause for belief that an individual is committing, has committed, or is about to commit, a particular offence described and made punishable under sections 3 and 4 of this Act, or there is a probable cause of belief that particular communications concerning that offence may be obtained through such interception, or there is probable cause of belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used or are about to be used, in connection with the commission of such offence, leased to, or are listed in, the name of or commonly used by such person.

17. Establishment of Special Legislation Review Committee-

(1) The Central Government shall, by a notification in the official Gazette, establish a 'Special Legislation Review Committee' which shall be entrusted with the task of reviewing this legislation after the gap of every five years.

(2) The Committee shall be consisting of at least five members and shall be presided over by a retired Judge of the Supreme Court. All other court members shall include at least two retired judges from the High Courts and at least two renowned ex-parliamentarians.

(3) The Committee shall prepare a comprehensive report highlighting the working of the Act and shall lay down its advantages and disadvantages.

(4) The Committee shall forward the report so made to the Government of India along with its own suggestions and recommendations.

(5) The report shall be laid upon each house of the Parliament and the Parliament solely shall have power to make decisions as to the continuity of the Act.

18. Establishment of "Counselling Panel for the Prevention of Terrorism-

(1) The Central Government or, as the case may be, the State Government shall establish a special "Counselling Panel for the Prevention of Terrorism".

(2) The Panel shall consists of at least 5 members including three retired judges of the High Court and two renowned sociologists who shall remain alive to the role to be played by the Panel.

(3) The Panel shall endeavour to work for the great cause and specifically to prevent people being drowned into terrorism.

(4) The Panel shall hold awareness activities at local level to make people understand the gruesome effects of terrorism which can be done by holding quarterly camps at different places.

(5) The Panel shall have power to recommend the CTA Courts the quantum of punishment which is supposed to be served by the designated accused if the Panel sees any chances of re-facilitation of the accused. However, no such recommendation shall be made if the nature of the offence is too heinous or such act has resulted in massive killings.

(6) The recommendations of the Panel shall in no way be mandatory for the CTA Courts to consider.

(7) The Panel shall publish annual reports and send the same to the Government for further consideration and amelioration of facilitation programmes by the Panel.

MISCELLANUOUS PROVISIONS

19. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act:

Provided that no suit, prosecution or other legal proceedings shall lie against any serving member or retired member of the armed forces or other para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

20. Provisions to Provide Relief to the Victims of Terrorism-

(1) The Central Government may create a special budget so as to provide financial and other reliefs to the victims of terrorism.

(2) The Central Government may establish a Relief Vigilance Committee which shall be responsible for the allotment of financial reliefs to the real victims of terrorism.

21. Composition and Functions of the Relief Vigilance Committee-

(1) The Relief Vigilance Committee shall be comprised of at least two retired judges from the High Courts.

(3) The Relief Vigilance committee shall identify the genuine victims who felled prey to the heinous acts of terrorism as defined under the Act.

(4) The Committee shall prepare a list of such victims and shall submit the same to the Central Government along with its own recommendations and the nature and details of financial assistance to be provided to victims.

(5) The Compensation or the relief so provided by the Committee may differ in nature from person to person depending upon each victim's physical, financial, and social loss.

(6) The decision of the Relief Vigilance Committee shall be final in this regard.

22. Re-facilitation of disadvantaged persons affected by terrorism-

(1) The Central Government may make special provisions to re-habilitate and re-facilitate those disadvantaged persons such as children, women and aged persons.

(2) The Central Government shall ensure that the children affected by the terrorist acts and who have no person to look after, solely remains responsibility of the State Government. The State Government is required to co-ordinate in this regard with the Central Government.

(3) The State Government may enrol such affected children in the special homes existing in the vicinity of the area where the child usually resides.

23. Savings

(1) Nothing in this Act shall affect the jurisdiction exercisable by or the procedure applicable to, any Court or other authority under any law relating to naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law, a CTA Court shall be deemed to be a Court of Ordinary criminal justice.

21. Repeal and saving.

(1) The Combating Terrorism (Prevention and Additional Measures) Ordinance, 2017 is hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

5.5 CONCLUDING REMARKS

The problem of terrorism can effectively be dealt with the enactment of a just and fair anti-terrorism legislation. However, a just and fair legislation requires support and political will from all corners of the country. The recent past several experiences of anti-terrorism laws teaches us a valuable lesson for the creating the future roadmap of the anti-terrorism law in India.

The success line of the anti-terrorism laws as prevalent in the countries like USA and UK can be extended to India. Apparently there remains a need to increase the financial budget so that the menace of terrorism can be tackled in efficiently way.

As said earlier, the law is not the only recourse to solve the problem of terrorism. There should be change in the mind-set of people. Innocent individuals should not be made subject to brutal indoctrination by the so-called protectors of several religions.

Education and precisely right education is needed to be spread and people must be made more aware of the menace pertaining to terrorism. Many young individuals are being misled by bribing them the dream of reaching to havens where they are destined to meet angels and will receive great reception. How can they be in haven after creating the hell on earth? These questions need to be answered by all those who are involved in the heinous crimes of terrorism.

Such types of indoctrination must be discouraged and citizens must be made more vigilant to the issues pertaining to terrorism.

BIBLIOGRAPHY

PRIMARY SOURCES

INDIA

I. The Anti-Hijacking Act, 1982
II. The Disturbed Areas (Special Courts) Act, 1976
III. The Arms Act, 1959
IV. The Atomic Energy Act, 1962
V. The Explosive Substances Act, 1908
VI. The Extradition Act, 1962
VII. The Maintenance of Internal Security Act, 1971
VIII. The National Investigation Act, 2008
IX. The National Security Act, 1980
X. The Prevention of Terrorism Act, 2002
XI. The Preventive Detention Act, 1950
XII. The SAARC Convention (Suppression of Terrorism Act, 1993
XIII. The Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982
XIV. The Terrorist Affected Areas (Special Courts) Act, 1984
XV. The Terrorists and Disruptive Activities Act, 1985 & 1987
XVI. The Unlawful Activities (Prevention) Act, 1967
XVII. The Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005

SECONDARY SOURCES

BOOKS

1. ALEX P. SCHMID AND ALBERT JONGMAN, 'POLITICAL TERRORISM: A NEW GUIDE TO ACTORS, AUTHORS, CONCEPTS, DATA BASES, THEORIES, AND LITERATURE', Transaction publishers (1988).;
2. ALEXANDER, YONAH, '*COMBATING TERRORISM: STRATEGIES OF TEN COUNTRIES*', University of Michigan Press (2002).
3. ALEXANDER, YONAH, '*INTERNATIONAL TERRORISM: NATIONAL, REGIONAL AND GLOBAL PERSPECTIVES'* NEW YORK: PRAEGER, (1976).
4. ALLEN BEVER, ' *FORGOTTEN JUSTICE: THE FORMS OF JUSTICE IN THE HISTORY OF LEGAL AND POLITICAL THEORY*', Oxford University Press, 2013
5. ANDREW J. DEW AND RICHARD SCHULTZ '*INSURGENTS, TERRORISTS, AND MILITIAS: THE WARRIORS OF CONTEMPORARY COMBAT*', Columbia University Press (Oct, 2009).
6. AUDREY KURTH CRONIN AND JAMES M. LUDES, EDS, 'ATTACKING TERRORISM: ELEMENTS OF A GRAND STRATEGY', WASHINGTON D.C: GEORGETOWN UNIVERSITY PRESS (2004);
7. B. SALERT, *'RVOLUTIONS AND REVOLUTIONARIES: FOUR THEORIES'*, New York: Elsevier, (1976).
8. BEN SAUL, '*DEFINING TERRORISM IN INTERNATIONAL LAW*', Oxford Monographs in International Law, Hardcover, (November, 2006).;
9. BRISSOT, '*A STANISLAS CLERMONT*', 12-13). GUINEFFEY, '*POLITIQUE DE LA TERREUR'*, 89;
10. BRUCE HOFFMAN, 'HOLY TERROR: THE IMPLICATIONS OF TERRORISM MOTIVATED BY A RELIGIOUS IMPERATIVE,' RAND PUBLICATION, 1993.
11. BRUCE HOFFMAN, '*INSIDE TERRORISM*', Columbia University Press, New York, (2006).
12. BUTLER WILLIAM E., '*THE NON- USE OF FORCE IN INTERNATIONAL LAW*', Kluwer Academic Publishers 1989.
13. C.G. RAGHVAN, "*INDIAN CONSTITUTION: TRENDS AND ISSUES*", Indian Law Institute (1978);
14. C.G. WEERAMANTRY, '*LAW IN CRISIS: BRIDGES OF UNDERSTANDING'*, Littlehampton Book Services Ltd, (1975).
15. C.M. JARIWALA, '*PREVENTIVE DETENTION IN INDIA: EXPERIENCES AND SOME SUGGESTED REFORMS*', in '*INDIAN CONSTITUTION: TRENDS AND ISSUES'* (DHAVAN, RAJEEV AND JACOB, ALICE eds.), Indian law Institute, New Delhi (1978). P-203-215.
16. CHALMER JOHNSON, '*REVOLUTIONARY CHANGE'*, Stanford University Press, (1982).
17. CHALMERS JOHNSON, 'BLOBACK: THE COST & CONSEQUENCES OF AMERICAN EMPIRE', NEW YORK: OWL BOOKS (2004);
18. CHARLES DE SECONDAT AND BARON DE MONTESQUIEU, '*THE SPIRIT OF LAWS (1748)*', (Trans. Thomas Nugent), Lonang Institute, (2005).
19. CHARLES KRAUTHAMMAR, 'THE UNIPOLAR MOMENT RE-VISITED', NATIONAL INTEREST (2003); ANDREW J. BACEVICH, 'AMERICAN EMPIRE: THE REALITIES AND CONSEQUENCES OF U.S. DIPLOMACY', CAMBRIDGE:HARVARD UNIVERSITY PRESS (2002);
20. CHARLES KUPCHAN, 'THE END OF AMERICAN ERA: U.S. FOREIGN POLICY AND THE GEO-POLITICS OF THE TWENTY FIRST CENTURY', NEW YORK:VINTAGE (2003);
21. CHARLES TILLY, *'THE POLITICS OF COLLECTIVE VIOLENCE'*. Cambridge University Press (2003).
22. CHRISTIAN WALTER, '*DEFINING TERRORISM IN NATIONAL AND INTERNATIONAL LAW*', to be published in: WALTER, CHRISTIAN/ VONEKY, SILJA/ ROBIN, WALKER/SCHORKOPF, FRANK (EDS.), '*TERRORISM AS A CHALLENGE FOR NATIONAL AND INTERNATIONAL LAW: SECURITY VERSUS LIBERTY?'* Berlin/Heidelberg (Spring. 2003).
23. CHRISTOPHER P. BANKS. '*PROTECTING (OR DESTROYING) FREEDOM THROUGH LAW: THE USA PATRIOT ACT'S CONSTITUTIONAL IMPLICATIONS*." in '*AMERICAN NATIONAL SECURITY AND CIVIL LIBERTIES IN AN ERA OF TERRORISM*', DAVID B. COHEN AND JOHN W. WELLS. New York: Palgrave MacMillan (2004).;
24. COLLIN J. BECK, '*RADICALS, REVOLUTIONARIES AND TERRORISTS*', John Wiley & Sons, (Aug, 2015).

25. DAVID E. APTER, '*POLITICAL VIOLENCE IN ANALYTICAL PERSPECTIVE IN THE LEGITIMATION OF VIOLENCE*', 1, 3 (Ed, 1997).
26. DAVID FRUM AND RICHARD PERLE, 'AN END TO EVIL: HOW TO WIN THE WAR ON TERROR, NEW YORK:RANDOM HOUSE (2003);
27. DAVID LIVINGSTONE, 'TERRORISM AND THE ILLUMINATI: A THREE THOUSAND YEAR HISTORY', BOOK SURGE LLC (2007)
28. DAVID RAPOPORT, 'THE FOUR WAVES OF MODERN TERRORISM', TERRORISM & POLITICAL ISLAM: ORIGINS, IDEIOLOGIES AND METHODS, (EDS. ERICH MARQUARDT & CHRISTOPHER HEFFELFINGER), 2ND ED, US MILITARY ACADEMY PRESS, WEST POINT NEW YORK
29. DEEPAK LAL, 'IN PRAISE OF EMPIRES: GLOBALIZATION AND ORDER', NEW YORK, PALGRACE MACMILLAN (2004);
30. DONATELLA DELLA PORTA, '*SOCIAL MOVEMENT STUDIES AND POLITICAL VIOLENCE'*, Department of Political Science, Aarhus University, Denmark (Sept, 2009).
31. EDWARD RHODES, 'THE IMPERIAL LOGIC OF BUSH'S LIBERAL AGENDA', SURVIVAL (SPRING, 2003)
32. F.M. KAMM, '*ETHICS FOR ENEMIES: TERROR, TORTURE, AND WAR*', 75 to 76 (2011).
33. GERARD CHALIAND AND ARNAUD BLIN, THE HISTORY OF TERRORISM, FROM ANTIQUITY TO AL QAEDA, 2007, UNIVERSITY OF CALIFORNIA PRESS, BERKELEY LOS ANGELES LONDON,
34. GERARD CHALIAND AND ARNAUD BLIN, THE HISTORY OF TERRORISM: FROM ANTIQUITY TO AL QAEDA,(EDWARD SCHNEIDER, KATHRYN PULVER AND JESSE BROWNER, TRANS., UNIVERSITY OF CALIFORNIA PRESS).1ST ED.2007.
35. GIL MARVEL P. TABUCANON, '*LEGAL PHILOSOPHY FOR FILIPINOS: A CASE STUDY APPROACH*', Rex Book Store, (2011).
36. GRANT WARDLAW, '*POLITICAL TERRORISM: THEORY, TACTICS, AND COUNTER-MEASURES'*, Cambridge University Press, 2nd Ed, (Reprint-2002).
37. H. MARCUSE, '*RAGIONE E RIVOLUZIONE: HEGEL E IL SORGERE DELLA 'TEORIA SOCIALE'*, Bologna: II Mulino (1965).
38. J. BOULDEN, '*TERRORISM IN THE OXFORD HANDBOOK ON THE UNITED NATIONS'*, 427-236, T.G.VEISS AND S.DAWS eds., (2007).
39. J. M. OLSON, '*THE LOGIC OF COLLECTIVE ACTION'*, New York: Schocken Books, (1971).
40. JAMES M. LUTZ AND BRENDA J. LUTZ, '*GLOBAL TERRORISM'* (London, Routledge. 2004)
41. JANE MAYER, 'THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS', NEW YORK: DOUBLEDAY PUBLISHERS (2008).
42. JOHN J. MERSHEIMER, 'THE TRAGEDY OF GREAT POWER POLITICS', NEW YORK: W.W. NORTON (2003);
43. JOHN LEWIS GADDIS, 'SURPRISE, SECURITY AND THE AMERICAN EXPERIENCE', CAMBRIDGE: HARVARD UNIVERSITY PRESS (2004);
44. JOHN RAWLS, '*FIFTY YEARS AFTER HIROSHIMA'* in Collected papers 568-569, (2001).
45. JOSEPH H. COMPOS LI, '*THE STATE AND TERRORISM: NATIONAL SECURITY AND MOBILIZATION OF POWER*', Oxford Routledge, London (Feb, 2016)
46. JOSEPH S. NYE JR, 'THE PARADOX OF AMERICAN POWER: WHY THE WORLD'S ONLY SUPERPOWER CAN'T GO IT ALONE', NEW YORK: OXFORD UNIVERSITY PRESS (2002);
47. K.M. MUNSHI, '*PILGRIMAGE TO FREEDOM: INDIAN CONSTITUTIONAL DOCUMENTS'*, Bharatiya Vidya Bhavan, Hardcover (eds. 2013).
48. LAQUEUR, WALTER, '*A HISTORY OF TERRORISM'*, Transaction Publishers, Expanded Ed., (2016).; LAQUEUR, WALTER, '*THE NEW TERRORISM: FANATICISM AND THE ARMS OF MASS DESTRUCTION*', Oxford University Press, London, (2000).;
49. LAQUEUR, WALTER, '*A HISTORY OF ZIONISM'*, Tauris Parke, (2003).;
50. LAQUEUR, WALTER, '*NO END TO WAR: TERRORISM IN THE TWENTY-FIRST CENTURY'*, Bloomsbury Academic, (2003).;

51. LAQUEUR, WALTER, *'THE AGE OF TERRORISM'* Boston: Little & Brown, 2nd Ed., P-143 (1987).
52. LAQUEUR, WALTER, *'VOICES OF TERROR: MANIFESTOS, WRITINGS, AND MANUALS OF AL-QAEDA, HAMAS, AND OTHER TERRORISTS FROM AROUND THE WORLD AND THROUGHOUT THE AGES'*, Reed Press, (2004).
53. LEONARD WEINBERG AND PAUL DAVIS, '*INTRODUCTION TO POLITICAL TERRORISM*', McGraw Hill, USA (1989).
54. LON FULLER, '*THE MORALITY OF LAW*', (1969).
55. *LORETTA NAPOLEONI, 'INSURGENT IRAQ; AL ZARQAWI AND THE NEW GENERATION'*, Seven Stories Press, New York (2005).
56. MARIA J. FUNES, (Ed), '*REGARDING TILLY: CONFLICT, POWER, AND COLLECTIVE ACTION*', UPA (Oct, 2016);
57. MARK BOWDEN, '*KILLING PABLO: THE HUNT FOR THE WORLD'S GREATEST OUTLAW*', 63-70, 188-200 (2001).
58. *MARTHA CRENSHAW 'EXPLAINING TERRORISM: CAUSES, PROCESSES AND CONSEQUENCES'*, London and New York: Routledge, (2011);
59. MARTHA CRENSHAW, *'EXPLAINING TERRORISM: CAUSES, PROCESSES AND CONSEQUENCES'*, Oxford Routledge, (Oct, 2010).
60. MICHAEL J. HOGAN, '*A CROSS OF IRON: HARRY S. TRUMAN AND THE ORIGINS OF THE NATIONAL SECURITY STATE, 1945-1954'*, Cambridge University Press (1998).
61. MICHAEL WEISS AND HASSAN HASSAN, '*ISIS: INSIDE THE ARMY OF TERROR'*, 1st Regan Arts Paperback Edition, New York (February 2015).
62. MICHAEL WEISS AND HASSAN HASSAN, '*ISIS: INSIDE THE ARMY OF TERROR'*, 1st Regan Arts Paperback Edition, New York (February 2015).
63. MICHEL FOUCAULT, '*POWER/KNOWLEDGE 18-20'*, Collin Gordon eds. Collin Gordon et al. Trans (1980).
64. Moorthy. P., '*Challenges of the Twenty First Century'*, Concept Publishing Company Pvt Ltd, first published in 2010.
65. NIALL FERGUSSON, 'COLOSSUS: THE PRICE OF AMERICA'S EMPIRE', NEW YORK, PENGUINE (2004);
66. NOAM CHOMSKY, '*INTERNATIONAL TERRORISM: IMAGE AND REALITY*', in ALEXANDER GEORGE (ed.), 'WESTERN STATE TERRORISM', Routledge, (December, 1991).
67. PATRICE GUENFFEY, '*LA POLITIQUE DE LA TERROR: ESSAI SUR LA VIOLENCE REVOLUTIONNAIRE- 1789-1794*', Paris: Fayard (2000)
68. PAUL J. SMITH, '*THE TERRORISM AHEAD: CONFRONTING TRANSNATIONAL VIOLENCE IN THE TWENTY FIRST CENTURY*', M.E Sharpe, (2007).
69. PAUL KENNEDY, EDS, 'GRAND STRATEGIES IN WAR AND PEACE' NEW HAVEN: YALE UNIVERSITY PRESS (1991);
70. PAUL WILKINSON, '*TERRORISM AND THE LIBERAL STATE*', New York University Press, (1986).
71. PAULINE MATARASSO, '*THE QUEST OF THE HOLY GRAIL 50'*, (TRANS.1969).
72. PETER CHALK, *'ENCYCLOPEDIA OF TERRORISM'*, ABC-CLIO, (2013).
73. PETER CHALK, '*WEST-EUROPEAN TERRORISM AND COUNTER-TERRORISM: THE EVOLVING DYNAMIC*', Palgrave Macmillan, (1996).
74. PHILLIP B. HEYMANN, 'TERRORISM: FREEDOM AND SECURITY: WINNING WITHOUT WAR', CAMBRIDGE:MIT PRESS (2003);
75. R. HIGGINS, '*THE GENERAL INTERNATIONAL LAW OF TERRORISM'*, In: R. HIGGINS/ M. FLORY, '*INTERNATIONAL LAW AND TERRORISM*', London, 13 (18) (1997).
76. R.W. MC COLL, 'THE ENCYCLOPEDIA OF WORLD GEOGRAPHY', VOL-I, INFOBASE PUBLISHING, (2014)
77. RAMCHANDRA B.G, '*THE RIGHT TO LIFE IN INTERNATIONAL LAW*', Martius Nijoff Publishers, 1985;
78. ROBERT J. ART, 'A GRAND STRATEGY FOR AMERICA', ITHACA: CORNELL UNIVERSITY PRESS (2003);

79. SCHMID, ALEX & JONGMAN, ALBERT (1988), '*POLITICAL TERRORISM: A NEW GUIDE TO ACTORS, AUTHORS, CONCEPTS, DATABASES, THEORIES AND LITERATURE'*, Amsterdam: North Holland, Transaction Books
80. Singh S.K., 'Terrorism*: A Global Phenomenon'*, Authors Press Publication, 1st Ed. 2000;
81. SLOAN, STEPHEN '*TERRORISM: THE PRESENT THREAT IN CONTEXT*', OXFORD: BERG PUBLISHERS (2006).
82. SLOAN, STEPHEN, '*BEATING INTERNATIONAL TERRORISM: AN ACTION STRATEGY FOR PRE-EMPTION AND PUNISHMENT*', Diane Publishing, (1992).;
83. STANISLAV ANDRESKI, '*THE USES OF COMPARATIVE SOCIOLOGY*' (1969)
84. STEPHEN D. BIDDLE, 'AMERICAN GRAND STRATEGY AFTER9/11:AN ASSESSMENT', ISBN1-58487-188-1,STRATEGIC STUDIES INSTITUTE, (APRIL, 2005);
85. STEPHEN D. BIDDLE, 'AMERICAN GRAND STRATEGY AFTER9/11:AN ASSESSMENT', ISBN1-58487-188-1,STRATEGIC STUDIES INSTITUTE, (APRIL, 2005);
86. SYED SALEEM SHAHZAD, '*INSIDE AL QAEDA AND THE TALIBAN: BEYOND BIN LADEN & 9/11'*, PLUTO PRESS, LONDON & PALGRAVE MACMILLAN , ED.1ST,(2011)
87. WILLIAM G. CUNNIGHAM JR, '*TERRORISM DEFINITIONS AND TYPOLOGIES'*, in '*TERRORISM: CONCEPTS, CAUSES AND CONFILCT RESOLUTION'*, the Defence Threat Reduction Agency, Virginia (January, 2003).
88. WILLIAM MALEY, '*THE AFGHANISTAN WARS"* (HAMPSHIRE, UK AND NEW YORK, PALGRAVE MACMILLAN, (2002);

ARTICLES

1. ALAN B. KRUEGER AND JITKA MALECKOVA, '*EDUCATION, POVERTY AND TERRORISM: IS THERE A CASUAL CONNECTION?*' Journal of Economic Perspectives, vol.17 No.4 (Fall, 2003).
2. ALAN GREENE, *'THE QUEST FOR A SATISFACTORY DEFINITION OF TERRORISM: R.v GUL'*, (2014) 77 (5) MLR 780-807.
3. ALAN RUBEL, '*PRIVACY AND THE USA PATRIOT ACT: THE VALUE OF RIGHTS AND AUTONOMY*', Law and Philosophy, Vol. 26. No.2, p-119-159 (March, 2007).
4. ALBERT J. BERGESEN AND OMAR LIZARDO, *'INTERNATIONAL TERRORISM AND THE WORLD SYSTEM'*, Sociological Theory, vol. 22, no.1, Theories of Terrorism: A Symposium (mar. 2004)
5. ALEX SCHMID, '*TERRORISM: THE DEFINITIONAL PROBLEM'*, 36 Case W. Res. J. Int'I L. 375 (2004).;

6. ALEX SCHMID, *'THE REVISED ACADEMICC CONSENSUS DEFINITION OF TERRORISM'*, Perspectives on Terrorism, Vol.6, No.2 (2012).;
7. ALEXANDER SPENCER, *'QUESTIONING THE CONCEPT OF 'NEW TERRORISM'* Peace, Conflict and Development, Issue 8. (January, 2006).;
8. ANDREA A. KOCHAN, 'THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996: HABEAS CORPUS REFORM?', 52 Wash. U. J. Urb. & Contemp. L. 399 (1997)
9. ANTHONY HYMAN, *'ARAB INVOLVEMENT IN THE AFGHAN WAR'*, THE BEIRUT REVIEW, 7 (1994).
10. ASTA MASKALIUNAITE, 'DEFFINING TERRORISM IN POLITICAL AND ACADEMIC DISCOURSE', Baltic Defense Review, Vol. 2, No.8 (2002).;
11. B. SAUL, *'THE DEFINITION OF TERRORISM IN UN SECURITY COUNCIL 1985-2004'*, 4 Chinese J. Int'L. 141 (2005);
12. BANDOPADHYAY, SUBHAYU, YOUNAS, JAVED, *'DOES DEMOCRACY REDUCE TERRORISM IN DEVELOPING NATIONS?*' Federal Reserve Bank of St. Louis Working papers 2009-023A
13. BARRY M SHAPIRO, *'LA POLITIQUE DE LA TERROR: ESSAI SUR LA VIOLENCE REVOLUTIONNAIRE- 1789-1794*'- A REVIEW', Journal of Interdisciplinary History, 31.4 (2001)
14. BAYMAN DANIEL, *'THE LOGIC OF ETHNIC TERRORISM'*, Studies in Conflict & Terrorism', Vol-21, Issue- 2, 1998.
15. BEN SAUL, *'ATTEMPTS TO DEFINE 'TERRORISM' IN INTERNATIONAL LAW'*, Netherlands International Law Review, LII:57-83, 2005.;
16. BEN SAUL, '*DEFINING TERRORISM IN INTERNATIONAL LAW*', Human Rights Law Review, Vol.7.Issu.3 (January, 2007)
17. BERYL A. HOWELL, '*SEVEN WEEKS: THE MAKING OF THE USA PATRIOT ACT'*, 72 Geo. Wash. L. Rev. 1145 (2004).;
18. BRENDA J. LUTS AND JAMES M. LUTZ, '*GLOBALIZATION AND TERRORISM IN THE MIDDLE EAST*', Perspectives on Terrorism, Vol. 9, Issue.5, October, 2005;
19. BRETT A. SHUMATE, '*FROM "SNEAK AND PEEK" TO "SNEAK AND STEAL": SECTION 213 OF THE USA PATRIOT ACT*', REGENT UNIVERSITY LAW REVIEW, Vol. 19. P-203-234, (2005);
20. BRETT A. SHUMATE,'*FROM "SNEAK AND PEEK" TO "SNEAK AND STEAL": SECTION 213 OF THE USA PATRIOT ACT*', REGENT UNIVERSITY LAW REVIEW, Vol. 19. P-203-234, (2005);

21. BRIAN JENKINGS, 'INTERNATIONAL TERRORISM; A NEW MODE OF CONFLICT' [Research Paper, California Seminar for Arms Control and Foreign Policy 48, 1974]
22. BRIAN M. JENKINS, '*THE STUDY OF TERRORISM: DEFINITIONAL PROBLEMS'*, the Rand Paper Series, (December, 1980)

23. CHARLES TILLY, '*TERROR, TERRORISM, TERRORISTS'*, Sociological Theory, Vol.22, No.1, 'Theories of Terrorism: A Symposium' (March, 2004) p-5-13
24. CHRISTINA PAXON, *'COMMENT ON ALAN KRUEGER AND JITKA MALECKOVA, "EDUCATION, POVERTY AND TERRORISM: IS THERE A CASUAL CONNECTION?*', Princeton University, (May 8, 2002).;
25. CRISTINE S. MARTINS, ESQ. AND SOPHIA J. MARTINS, ESQ., *'THE IMPACT OF THE USA PATRIOT ACT ON RECORDS MANAGEMENT'*, The Information Management Journal, (May/June 2005).;

26. DAVID C. RAPOPORT, *'FEAR AND TREMBLING: TERRORISM IN THREE RELIGIOUS TRADITIONS'*, the American Political Science Review, Vol. 78, No.3, (Sep, 1984),
27. DAVID L. MILBANK, '*INTERNNATIONAL AND TRANSNATIONAL TERRORISM: DIAGNOSIS AND PROGNOSIS'*, Central Intelligence Agency, (April, 1976).
28. DEIRDRE K. MULLIGAN, '*REASONABLE EXPECTATIONS IN ELECTRONIC COMMUNICATIONS: A CRITICAL PERSPECTIVE ON THE ELECTRONIC COMMUNICATIONS PRIVACY ACT'*, 72 Geo. Wash. L. Rev. 1557, 1577 (2004);
29. DEREK P. JINKS, '*THE ANATOMY OF AN INSTITUTIONALIZED EMERGENCY: PREVENTIVE DETENTION ANDPERSONAL LIBERTY IN INDIA*', 22 MICH. J. INT'L LAW 311. (2001).
30. DIMITRI SIMES, ' AMERICA'S IMPIRIAL DILEMMA', FOREIGN AFFAIRS, VOL-82, NO. 6, (NOVEMBER/DECEMBER, 2003);
31. ERIK MANNIK, '*TERRORISM: IT'S PAST, PRESENT & FUTURE PROSPECTS*', Kvuoa Toimetised Kaitsevae Uhendatud Oppeastused, (2009);
32. FERNANDO REINARES, '*WHO ARE TERRORISTS? ANALYZING CHANGES IN SOCIOLOGICALPROFILE AMONG MEMBERS OF ETA'* , Journal of Studies in Conflict & Terrorism, vol.27, Issue.6 (2004);
33. FRANCO FERRACUTI, *'A SOCIOPSYCHIATRIC INTERPRETATION OF TERRORISM'*, Annals of the American Academy of Political and Social Science, Vol. 643, International Terrorism, (Sep. 1982).
34. GRANT WARDLAW, '*LINKAGES BETWEEN ILLEGAL DRUGS TRAFFIC AND TERRORISM*', Conflict Quarterly, summer, 1998.;
35. Gregor Bruce , '*Definition of Terrorism – Social and Political Effects'*, Journal of Military and Veterans' Health, Volume 21 No. 2
36. GREGOR BRUCE, '*DEFINITION OF TERRORISM: SOCIAL AND POLITICAL EFFECTS*', Journal of Military and Veteran's Health, 'Vol. 21 No.2 (May, 2013)
37. GREGOR BRUCE,*'DEFINITION OF TERRORISM: SOCIAL AND POLITICAL EFFECTS*', JOURNAL OF MILITARY AND VETERANS' HEALTH, VOL. 21, NO.2, MAY, 2013 (P-27)
38. H.H.A. COOPER, '*EVALUATING THE TERRORIST THREAT: PRINCIPLES OF APPLIED RISK ASSESSMENT*', Clandestine Tactics and Technology Series [Gaithersburg, MD.; International Association of Chiefs of Police, 1974].
39. H.H.A. COOPER, '*TERRORISM: THE PROBLEM OF DEFINITIONS REVISITED'* 44 AM. BEHAV. SCIENTIST 881, 892 (2001).
40. HARMONIE TOROS, '*WE DON'T NEGOTIATE WITH TERORRIST!': LEGITIMACY AND COMPLEXITY IN TERRORIST CONFLICTS*', Sage Publications, Vol. 39 (4), 2008,
41. Hoffman Bruce, '*Holy Terror: the Implications of Terrorism Motivated By A Religious Imperative'*, Published by RAND, 1993.
42. J. BRUCE AMSTUTZ, 'AFGHANISTAN: THE FIRST FIVE YEARS OF SOVIET OCCUPATION', WASHINGTON D.C., NATIONAL DEFENSE UNIVERSITY. (1986).
43. J.C. DAVIES, *'TOWARDS A THEORY OF REVOLUTION'*, American Sociological Review, Vol.27, No.1 (Feb, 1962).
44. JACK P. GIBBS, '*CONCEPTUALIZATION OF TERRORISM*', American Sociological Review, 1989, Vol.54 (June: 329-340).
45. JACQUELINE S.HODGSON AND VICTOR TADROS, 'THE IMPOSSIBILITY OF DEFINING TERRORSIM', 16 New Crim. L. Rev. 494, Summer, 2013.
46. JEFF GOODWIN, '*A THEORY OF CATEGORICAL TERRORISM*', Social Forces, Vol.84.No.4, June, 2006;

47. JEFF GOODWIN, '*THE RELATIONAL APPROACH TO TERRORISM'*, Swiss Political Science Review, 15 (2): 387-394 (2009).
48. JEFFREY D. SIMON, *'MISUNDERSTANDING TERRORISM'*, Foreign Policy, No.67 (Summer, 1987),
49. JESSIE BLACKBOURN, FERGAL F. DAVIS AND NATASHA TAYLOR, '*ACADEMIC CONSENSUS AND LEGISLATIVE DEFINITIONS OF TERRORISM: APPLYING SCMID AND JONGMAN'*, Statute Law Review, Vol.34, Isse3, October 1, 2013.;
50. JOHN BOLENDER, '*ON TERRORISM: NOAM CHOMSKY INTERVIEWED BY JOHN BOLENDER'*, Jump Arts Journal, (January, 2004).
51. JOHN W. WHITEHEAD AND STEVEN H. ADEN, '*FORFEITING "ENDURING FREEDOM" FOR "HOMELAND SECURITY": A CONSTITUTIONAL ANALYSIS OF THE USA PATRIOT ACT AND THE JUSTICE DEPARTMENT'S ANTI-TERRORISM INITIATIVES'*, American UNIVERSITY LAW REVIEW, VOL. 51/ ISSUE 6, (2002).;
52. JOSHUA D. ZELMAN, '*RECENT DEVELOPMENTS IN INTERNATIONAL LAW: ANTI-TERRORISM LEGISLATION- PART ONE- AN OVERVIEW*', Journal of Transnational Law & Policy, Vol-11:1, (fall, 2001).
53. JUAN PRIETO-RODRÍGUEZ, '*QUANTIFYING FEAR: THE SOCIAL IMPACT OF TERRORISM* 'Journal of Policy Modeling Volume 31, Issue 5 September–October 2009,
54. KEIRAN HARDY AND GEORGE WILLIAMS, '*WHAT IS TERRORISM? ASSESSING DOMESTIC LEGAL DEFINITIONS*', 16 UCLA J. Int'I L. & Foreign Aff. 77
55. KEVIN M. MCCARTHY, '*THE ORIGIN OF ASSASIN'*, AMERICAN SPEECH, VOL. 48, NO. 1/2 (SPRING- SUMMER, 1973),
56. KIM LANE SCHEPPELE, '*THE EMPIRE OF SECURITY AND SECURITY OF EMPIRE'*, 27 Temp. Int'L. & Comp.L.J, 241.
57. LEONARD WEINBERG, AMI PEDAHZUR AND SIVAN HIRSCH-HOEFLER, *'THE CHALLENGE OF CONCEPTUALIZING TERRORISM'*, Terrorism and Political violence, 16-4, (2010).
58. LEONARD WEINBERG, AMI PEDAHZURAND SIVAN HIRSCH-HOEFLER,'*THE CHALLENGES OF CONCEPTUALIZING TERRORISM*' Terrorism and Political Violence, vol.16, no.4
59. M. ELIZABETH SMITH, '*THE PUBLIC'S NEED FOR DISCLOSURE V. THE INDIVIDUAL'S RIGHT TO FINANCIAL PRIVACY: AN INTRODUCTION TO THE FINANCIAL RIGHT TO PRIVACY ACT OF 1978'*, 32 Admin. L. Rev. 511, 529–33 (1980);
60. MacDonald, K. B. (1998). '*JEWISH INVOLVEMENT IN INFLUENCING UNITED STATES IMMIGRATION POLICY'*, 1881-1965: A Historical Review. *Population and Environment, 19*, 295-355
61. MANOJ MATE, *'THE ORIGINS OF DUE PROCESS IN INDIA: THE ROLE OF BORROWING IN PERSONAL LIBERTY AND PREVENTIVE DETENTION CASES'*, 28 BERKELEY J. INT'L Law. 216 (2010). at p-223.
62. MARC ROTENBERG, '*MODERN STUDIES IN PRIVACY LAW: FOREWORD: PRIVACY AND SECRECY AFTER SEPTEMBER 11'*, 86 Minn. L. Rev. 1115 (2002).;
63. MARISA LINTON, *'ROBESPIERRE AND THE TERROR'*, History Today, Vol. 56. (Issue, 08-08-2006);
64. MARTHA CRENSHAW, '*DECISIONS TO USE TERRORISM: PSYCHOLOGICAL CONSTRAINTS ON INSTRUMENTAL REASONING'*, in '*SOCIAL MOVEMENTS AND VIOLENCE: PARTICIPATION IN UNDERGROUND ORGANIZATIONS*', DONATELLA

DELLA PORTA (ed.), International Social Movement Research, Vol.4. P-29-42 Greenwich, CT: JAI Press INC, 1992.
65. MARTHA CRENSHAW, *'THE CAUSES OF TERRORISM'*, Comparative Politics, Vol.13.No.4 (July, 1981).
66. MARTIN SCOTT CATINO, 'TERRORISM: THE BASICS- BY JAMES LUTZ AND BRENDA LUTZ. (New York: Routledge, 2011)', Journal of Strategic Security, Vol.6.No.1, (spring, 2013);
67. MATTHEW ROBINSON, *'FREEDOM IN AN ERA OF TERROR: A CRITICAL ANALYSIS OF THE USA PATRIOT ACT'*, Justice Policy Journal, 'Vol.4. (Spring-2007);
68. MICHAEL JOHN GARCIA AND RUTH ELLEN WASEM, *'IMMIGRATION: TERRORIST GROUNDS FOR EXCLUSION AND REMOVAL OF ALIENS'*, Congressional Research Service, January 12, 2010,
69. NICHOLAS J. PERRY, *'THE NEMEROUS FEDERAL LEGAL DEFINITIONS OF TERRORISM: THE PROBLEM OF TOO MANY GRAILS'*, 30. J.LEGIS.249, (2004).
70. OMAR LIZARDO, '*DEFINING AND THEORIZING TERRORISM: A GLOBAL ACTOR-CENTERED APPROACH*', Journal of World System Research, Vol XIV. No.2 p-91 (2008).
71. ORIN S. KERR, '*INTERNET SURVEILLANCE LAW AFTER THE USA PATRIOT ACT: THE BIG BROTHER THAT ISN'T*', 97 NW. U. L. REV. 607, 625 N.75 (2003);
72. PATRICIA L. BELLIA, *'SURVEILLANCE LAW THROUGH CYBERLAW'S LENS'*, 72 GEO. WASH. L. REV. 1375, 1397–1403 (2004);
73. PETER CHALK, '*THE RESPONSE TO TERRORISM AS A THREAT TO LIBERAL DEMOCRACY*', Australian Journal of Politics and History, Vol.44. Issue.3, September, 1998.
74. PO JEN YAP, *'THE U.K. SUPREME COURT AT WAR'*, WASHINGTON INTERNATIONAL LAW JOURNAL, VOL. 24 NO. 2. (2015).
75. R.R. BAXTER, '*A SKEPTICAL LOOK AT THE CONCEPT OF TERRORISM*', Akron Law Review 7 (19973/73), 380.
76. RAJESH KUMAR, *'PREVENTIVE DETENTION AND THE RIGHT OF PERSONAL LIBERTY IN INDIA: A CRITICAL STUDY*', International Journal of Socio-Legal Analysis and Development', Vol. 3. Issue.1, p- 18-24.
77. RAPOPORT, DAVID C., *'THE GOVERNMENT IS UP IN THE AIR OVER COMBATING TERRORISM*', NATIONAL JOURNAL, 9, 1853-1856 (1977 NOV 26).
78. REUVEN YOUNG, '*DEFINING TERRORISM: THE EVOLUTION OF TERRORISM AS A LEGAL CONCEPT IN INTERNATIONAL LAW AND ITS INFLUENCE ON DEFINITIONS IN DOMESTIC LEGISLATION*", 29, B.C. INT'L & COMP. L. REV. 23.
79. RICHARD SCHULTZ, '*CONCEPTUALIZING POLITICAL TERRORISM: A TYPOLOGY*', Journal of International Affairs, Vol.32 No.1, (Spring/Summer, 1978) p-7-15.
80. ROBER J. LIEBER, 'RE-THINKING AMERICA'S GRAND STRATEGY', CHRONICLE OF HIGHER EDUCATION, (JUNE 4, 2004);
81. ROBI CHAKRAVORTY, *'TERRORISM: PAST, PRESENT AND FUTURE'*, Economic and Political Weekly, Vol. 29, No.36 (Sep 3, 1994)
82. S. SEN, R. DAS, R. GUPTA AND V. BHANDARI, '*ANTI-TERROR LAW IN INDIA: A STUDY OF STATUTES AND JUDGMENTS, 2001-2014'*, Vidhi Centre for Legal Policy, (2015).
83. SCHMID A, '*TERRORISM: DEFINITIONAL PROBLEM'*, Case Western Reserve Journal of International Law, 36:375, 2004
84. SHARON HARZENSKI, 'TERRORISM.A HISTORY: STAGE I,' J.TRANSTANTIONAL LAW AND POLICY, (VOL. 12 COL. 2), SPRING, (2003).'

85. SHARON HARZENSKI, '*TERRORISM: A HISTORY: STAGE ONE*', J.Transnational. Law & Policy, Vol.12:2 (spring, 2003).
86. SHIVANGI GANGWAR, '*DUE PROCESS V. PROCEDURE ESTABLISHED BY LAW: FRAMING AND WORKING THE INDIAN CONSTITUTION'*, CALQ, Vol. 1.3, (2013).
87. SIDNEY TARROW, 'WAR, STATES, AND CONTENTION: FROM TILLY TO THE WAR ON TERROR', Mobilization, an International Quarterly: March 2016, Vol.21, No.1
88. SOBEL RUSSELL S, ' *THE LEAGUE OF NATIONS COVENANT AND THE UNITED NATIONS CHARTER'* Constitutional Political Economy, Vol. 5, No. 2 1994
89. STEPHEN G. BROOKS AND WILLIAM C. WOHLFORTH, 'AMERICAN PRIMACY IN PERSPECTIVE', FORRIEGN AFFAIRS, VOL 81, NO.4 (2002);
90. SUDHA SETTY, '*WHAT'S IN A NAME: HOW NATIONS DEFINE TERRORISM TEN YEARS AFTER 9/11'*, U. Pa. J. Int'I L., Vol.33:1, (2011).
91. SUSAN N. HERMAN, *'THE USA PATRIOT ACT AND THE SUBMAJORITARIAN FOURTH AMENDMENT*', Harvard Civil Rights-Civil Liberties Law Review [Vol. 41], p-68-132;
92. SUSAN TIEFENBRUN, *'A SEMIOTIC APPROACH TO A LEGALDEFINITION OF TERRORISM'*, ILSA Journal of International and Comparative Law, Vol.9.357, (2003).
93. TED OLESON AND JAMES T. RICHARDSON, *'THE CONFLUENCE OF RESEARCH TRADITIONS ON TERRORISM AND RELIGION: A SOCIAL PSYCHOLOGICAL EXAMINATION'*, Psicologia Politics, No.34, 2007
94. TODD SANDLER, '*THE ANALYTICAL STUDY OF TERRORISM: TAKING STOCK'*, Journal of Peace Research, vol.51 (2), (2014)
95. URBAN A. JENNIFER, '*THE PROTOCOL TO AMEND THE CONVENTION ON OFFENCES & CERTAIN ACTS COMMITTED ON BOARD AIRCRAFT: A MISSED OPPORTUNITY OR A SUFFICIENT MODERNIZATION?*' Indiana Law Review, 2016 Vol 49 at pg 713
96. WALTER RUSSELL MEAD, '*POWER, TERROR, PEACE AND WAR: AMERICA'S GRAND STRATEGY IN A WORLD AT RISK'*, NEW YORK, KNOPF (2004);
97. WESLEY K. CLARK, 'WINNING MODERN WARS: IRAQ, TERRORISM AND THE AMERICAN EMPIRE', NEW YORK PUBLIC AFFAIRS (2003);
98. WILLIAM G. CUNNIGHAM JR., '*TERRORISM DEFINITIONS AND TYPOLOGIES'*, in: 'TERRORISM: CONCEPTS, CAUSES AND COFLICT RESOLUTION', the Defense Threat Reduction Agency, Virginia (January, 2003);
99. WILLIAM G. CUNNINGHAM, JR, '*TERRORISM: DEFINITIONS & TYPOLOGIES'*, in 'TERRORISM: CONCEPTS, CAUSES AND CONFLICT RESOLUTION', Rev.1, Defense Threat Reduction Agency, Virginia, (Jan-2003).
100. WILLIAM J. BRENNAN, JR., '*THE QUEST TO DEVELOP A JURISPRUDENCE OF CIVIL LIBERTIES IN TIMES OF SECURITY CRISES'*, 18 ISR. Y.B. HUM. RTS. 11, 12–13 (1988).
101. ZBIGNIEW BREZINSKI, '*THE CHOICE: THE GLOBAL DOMINATION OR GLOBAL LEADERSHIP'*, NEW YORK: BASIC BOOKS (2004).

NEWSPAPERS & MAGAZINES

I. Los Angeles Times

II. The Epoch Times
III. The Guardian
IV. THE HINDU
V. The Indian Express
VI. The New York Times
VII. The New Yorker
VIII. The Telegraph
IX. The Times of India

DICTIONARIES

I. A French dictionary (1798)
II. P. RAMANATHA AIYER, '*THE LAW LEXICON: THE ENCYCLOPAEDIC LAW DICTIONARY WITH LEGAL MAXIMS, LATIN TERMS, WORDS AND PHRASES'*, 2ND Ed, Wadhwa & Co, Nagpur (Reprint-2006)
III. SEAN K. ANDERSON AND STEPHEN SLOAN, '*HISTORICAL DICTIONARY OF TERRORISM*' The Scarecrow Press Inc. 3rd editions (2009)
IV. *WEBSTER'S NEW WORLD COLLEGE DICTIONARY'*, New Millennium- 4th Ed., Wiley Dreamtech India Pvt Ltd, (2004).

SPEECHES/ PUBLIC LECTURES

I. '*THE AMNESTY INTERNATIONAL ANNUAL LECTURE*' hosted by TCD, delivered by NOAM CHOMSKY at Shelbourne Hall,, the Royal Dublin Society (January 18, 2006).
II. AZIZ M. AHMADI, '*TERRORISM AND JUSTICE'*, Speech delivered during the National Convention on terrorism and Justice organized by the All India Milli Council at the Khalsa College Auditorium, New Delhi.
III. JUSTICE DR. M. RAMA JOIS, '*UNIFORM LAW REGULATING THE CONSTITUTION AND ORGANIZATION OF HIGH COURTS NECESSARY*', Tenth Durga Das Basu Memorial Lecture, [11th February 2017]
IV. S. LOUISE MITCHELL, '*THE IMPLICATIONS OF THE USA PATRIOT ACT ON FOREIGN BANKING INSTITUTIONS*', Speech Delivered at the National Anti Money

Laundering Training Seminar May 24, 2002 Kingstown, St. Vincent and the Grenadines;

V. Speech Delivered by the LORD CHANCELLOR VISCOUNT SANKEY in the Mansion House [05-07-1929]; *Also See*. The LORD THOMAS OF CWMGIEDD, '*BUILDING THE BEST COURT FORUM FOR COMMERCIAL DISPUTE RESOLUTION'*, Speech delivered at Wales Commercial Law Association, Cardiff [21-10-2016]