NATIONAL LAW SCHOOL
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Bangalore

HUMAN RIGHTS ABUSES GLOBALLY IN THE NAME OF COUNTER TERRORISM

Dissertation submitted in partial fulfilment of the requirement for the degree of master of laws under the guidance of Prof. H.K. Nagaraja

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DECLARATION

I Miss Denkila Bhutia do hereby declare that this dissertation "Human Rights Abuses Globally in the name of Counter- Terrorism" is the outcome of extensive research conducted by me under the guidance and esteemed supervision of Prof. H.K. Nagraj at the National Law School of Indian University, Bangalore. It is submitted in the partial fulfilment of requirement for the award of the Degree of Masters in law (LLM with Human Rights as area of specialization.

I also declare that this work is original except such help from such authorities as have been referred to at appropriate places, for which necessary acknowledgements have been made. I further declare that this work has not been submitted either in parts or in whole for an degree or diploma at any other university or institution.

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CERTIFICATE

This is to certify that this dissertation "Human Rights Abuses Globally in the name of Counter- Terrorism" submitted by Miss Denkila Bhutia for the degree of Masters of law (LLM with human rights specialization) of National Law School of India University, Bangalore is the product of bonafide research carried out under my guidance and supervision. This dissertation or any part of thereof has not been submitted elsewhere for any other degrees.

30.05.2008

Prof. H.K. Nagaraja

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ABBREVIATION

- UN – United Nations
- ILC – International Law Commission
- IHL – International Humanitarian Law
- UNSC – United Nations Security Council
- CTC – Counter Terrorism Committee
- UDHR – Universal Declaration Of Human Rights
- ICCPR – International Convention on Civil and Political Rights
- FBI – Federal Bureau of Investigation
- FISA – Foreign Intelligence Surveillance Act
- AEDPA – Anti Terrorism and Effective Death Penalty Act
- USA Patriot – Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act
- CIA – Central Intelligence Agency
- SPA – Special Powers Act
- PTA – Prevention of Terrorism Act
- TADA- Terrorist and Disruptive Act
- POTA – Prevention of Terrorism Act
- NHRC – National Human Rights Commission

HUMAN RIGHTS ABUSES GLOBALLY IN THE NAME OF COUNTER TERRORISM

CHAPTER- I

1.1 INTRODUCTION

The term **terrorism** is used to refer to acts of violence, or the threat of violence carried out for political motives by organizations/individuals that are not recognized as organs of the legitimate state within a given territory nor officially at war with that territory. "**Terrorist attacks**" are usually characterized as "**indiscriminate,**" "**targeting of civilians,**" or executed "**with disregard for human life.**" The term "terrorism" is often used to assert that the political violence of an enemy is immoral, wanton, and unjustified. The words "terrorism" and "terror" originally referred to methods employed by factions and regimes to control populations through violent reprisals and fear.

Responding to the threat of terrorism is a most significant issue for the international community. One of the most crucial challenges facing the international community nowadays is assuring respect for human rights in the context of the struggle to defeat or to counter terrorism[1]. Terrorism, as we all know, is not a new phenomenon, in the sense that the terrorists and the terrorist acts can be traced far back into recorded history. However, since 11th September 2001, terrorism has become an almost household word, a spectacle played out before a worldwide audience, as violent images are beamed into our homes by the mass media. Its consequences are being publicized widely, in an excruciating detail, and public support for a 'world safe from terrorism' remains steadfast. Never before has there been such a wide degree of interest in terrorism, which has become in our times one of the most pressing political and legal problems, nationally and internationally.[2]

Moreover, since 11th September 2001, responses to terrorism have themselves been dramatic, and often undertaken with a sense of panic and emergency. There still exists, in fact, a 'close

[1] ***Counter-terrorism*** refers to the practices, tactics, and strategies that governments, militaries, and other groups adopt in order to fight terrorism. Counter-terrorism is not specific to any one field or organization; rather, it involves entities from all levels of society.

[2] Giuseppe Nesi , International Cooperation in Counter terrorism-The United Nations and Regional Organisations in the fight against terrorism, Ashgate Publishing Ltd, 2006. pp- 45-47

to panic' reaction in much of the political and legal activity relating to terrorism and, of course equally importantly, on the part of many of the world's people. And 'close to panic' reactions can have serious implications for international law and human rights law.

Thus, ours is a time of heated debate over terrorism, human rights and counter-terrorism, a time of serious concern over these issues. It is a time marked by a general feeling of increasing urgency regarding not only the manifestations of terrorism, but regarding also the adequacy and appropriateness of the responses to it, and the conformity of national and international measures adopted and/or applied while countering terrorism with international law, human rights and humanitarian law norms.

To put it also in other words, nowadays the discussion of terrorism and of the ethical and legal problems of counter-terrorism makes the headlines. In fact, the subject of terrorism and its human rights dimensions and parameters have become a global concern. This was not at all the case before 11th September 2001 and its sequelae- that is, the ensuing 'global war on terrorism,' the significant unintended consequences to human rights, and the risk of damage to the cause of justice and the rule of law as a result of the adoption or implementation of anti- terrorist legislations and policies-along with the continuing failure to resolve some 'hot spots' still fuelling the debate of 'terrorists versus freedom fighters'.[3]

1.2. TERRORISM – GLOBAL PHENOMENA

Terrorism is the use of violence, or the threat of violence, to create a climate of fear in a given population. Terrorist violence targets ethnic or religious groups, governments, political parties, corporations, and media enterprises. Organisations that engage in acts of terror are almost always small in size and limited in resources compared to the populations and institutions they oppose. Through publicity and fear generated by their violence, they seek to magnify their influence and power to effect political change on either a local or an international scale.[4]

Terrorism is a method where by an organised group or party seeks to achieve its avowed aims chiefly through the systematic use of violence. It is an organised system of intimidation in broader sense violent behaviour design to generate fear for political purposes.

Factors Responsible

[3] Ibid

[4] Ashok Kumar, Terrorism and New World Order, Anmol Publications Pvt ltd, (2002) pp- 1-2

- **Social factors**- as social traditions, caste and class ego, inequality and religion-based social stratification.
- **Religious Factors**- religious norms, secular values, narrow and dogmatic religious values use of religion for political gain and communal ideology.
- **Political Factors**-Religion-based politics, religion-dominated political organisations canvassing in election based on religion considerations, political interference and political justification of communal violence and failure of political leadership.
- **Psychological Factors**-Social prejudices, stereotypical attitudes, distrust, hostility and apathy against another community, rumor, fear psyche.
- **Administrative Factors**-Lack of coordination between the police personnel units, ill equipped and ill trained police personnel.
- **Historical Factors**-Damage to religious institution proselytisation efforts, divide and rule policy of colonial rulers, partition trauma, past communal riot, old disputes on land, temples and mosques.
- **Local Factors**-Religious processions, slogan raising rumours, land disputes, local antisocial elements and group rivalries.[5]

1.3. BRIEF HISTORY OF TERRORISM

To study the history of terrorism is to study the history of human civilization. From the murder of Julius Caesar in 44 B.C. to the atrocious airplane attacks of September 11, 2001, terrorists have been the cause of many of the monumental events of human experience. *Terrorism has been part of the history of virtually every country in the world, and its causes have varied widely over time and place.*

Over the past two centuries terrorism has been used for various reasons to achieve various goals. The historical development of terrorism shows that it is a tool of change.

Pre-Modern Use of Terrorism-

Terrorism is nothing new in the Middle East and its use is not new to Jews or Muslims. Jewish Zealots used terrorism to resist the Romans and Muslims used terrorism to resist each other (Shi'ites vs Sunni) and against the crusades. Terror during this period was used to kill religious enemies. From the beginning terrorism and religion were companions. The concept

[5] Ibid

of Suicide Martyrdom, dying in the service of God - dying while killing the enemies of God - dates back more than a thousand years ago. From the earliest days, terrorism encompassed the idea of dying in the service of God as a divine duty which would be rewarded in the afterlife. Terrorism against an enemy was a religious act which was considered a good and worthy act.[6]

The French Revolution's Reign of Terror (1793 - 1794) Modern terrorism began with the Reign of Terror by Maximilien Robespierre and the Jacobin Party. Robespierre brought to terrorism the concept that terrorism has virtue in that it can be a tool to bring about "legitimate" governmental ends. He used terror systematically to suppress opposition to the government. Robespierre introduced Government-sponsored terrorism: the use of terror to maintain power and suppress rivals. Before his reign was over hundreds of people met their end with the sound of the guillotine.

Anarchists (1890 - 1910) Anarchists were very active during the late 19th and early 20th century. Russian anarchists sought to overthrow the Russian Czar Alexander II by assassination and eventually succeeded in 1881. The Anarchists believed that killing the Czar and other kings and nobles of Europe would bring down governments. To this end the anarchist introduced to the development of terrorism, Individual terrorism. Individual terrorism is the use of selective terror against an individual or group in order to bring down a government. The use of terror was selective because targets were selected based on their position within the governmental system. Terrorist acts were limited to ensure that innocent bystanders were not hurt. This concept of limited collateral damage to innocents, not targeting innocents, did not survive the second half of the 20th century. Anarchists also introduced the observation that terrorism has a communicative effect. When a bomb explodes, society asks why. The need to know why an act was committed provides the perpetrators of the terrorist act a stage to which an audience is ready to listen. Thus, the concept of propaganda by deeds was added to the development of modern terrorism. Terrorism was a tool of communication. Between 1890 and 1908 anarchists were responsible for killing the kings and queens of Russia, Austria Hungry, Italy and Portugal. Anarchists were also active in the U.S. between 1890 and 1910 setting off bombs on Wall Street. The

[6] History of terrorism: More than 200 years of development, available at http://cjc.delaware.gov/terrorism/history.shtml (Accessed on 24th March 2008)

two most famous acts by anarchists were the assassinations of President McKinley (1901) and Archduke Ferdinand (1914) which resulted in the Great War.[7]

The Soviet Revolution (1917) Lenin, followed by Stalin, expanded the idea of government-sponsored terrorism as a tool to maintain governmental control. Both used terror against an entire class of people within society (as supposed to use against one's enemies), systematically. Terror was used to control the entire society in order to build society. Fear was used as a motivational factor for governmental operations and public compliance with government. Terror was used as a way to organize and control a society.

The Irish Rebellion (1919 - 1921) The Irish War of 1919 brought three concepts to the development of terrorism (1) selective terrorism, (2) sustained terror over time and (3) cell operations. The goal of the war was to gain Irish independence from England. Led by Michael Collins, terrorism was applied to representatives of England (police, soldiers, judges, government officials, etc.) in an effort to make the cost of continued occupation too high to maintain. Thus to terrorism was added the concept of selective terrorism, acts of terror against representatives of government to force their departure from an area. A tactic that has been adopted and used in the West Bank and the Gaza Strip since 1967 with the loss of one key concept, the selective aspect. Today's terrorism involves attacks on civilians and non-governmental officials. Also added to the development of the use of terrorism is the concept that to make a change in a society, the acts of terror must be sustained over a long period of time. The sustained terror will, over time, break down the will of the targeted government and they will eventually seek to an accommodation.[8]

The Irish war also provided the concept of cell operation to terrorism. Cell operation decentralizes the implementation of terrorist acts and prevents the discovery and destruction of the terrorist organization. Each cell has a specific goal or objective. Each cell only knows its members and its specific task. Thus the capture of one cell does not provide avenues to other terrorists. Terrorist groups like Al-Qaeda operated with this decentralized design to implement the attack on September 11th. Cells in Europe, the Middle East and the U.S. had specific objectives (transfer funds, learn to fly planes, create false documents, etc.). It has been estimated that $500,000 was spend to implement the attacks of September 11th with

[7] Ibid
[8] For details see, http://cjc.delaware.gov/terrorism/history.shtml (Accessed on 24th March 2008)

cells operating in Europe and the Middle East providing organization, operation and financial assistance to the main cell that carried out the attack.[9]

Terrorism Since II World war

By contrast, the preponderance of non-state groups in the terrorism that emerged in the wake of World War II is less debatable. The immediate focus for such activity mainly shifted from Europe itself to that continent's various colonies. Across the Middle East Asia and Africa, nascent nationalist movements resisted European attempts to resume colonial business as usual after the defeat of the Axis powers. That the colonialists had been so recently expelled from or subjugated in their overseas empires by the Japanese provided psychological succor to such indigenous uprisings by dispelling the myth of European invincibility.

Often, these nationalist and anti-colonial groups conducted guerilla warfare, which differed from terrorism mainly in that it tended towards larger bodies of 'irregulars' operating along more military lines than their terrorist cousins, and often in the open from a defined geographical area over which they held sway. Such was the case in China and Indochina, where such forces conducted insurgencies against the Kuomintang regime and the French colonial government respectively. Elsewhere, such as with the fight against French rule in Algeria, these campaigns were fought in both rural and urban areas and by terrorist and guerilla means.[10]

Still other such struggles like those in Kenya, Malaysia, Cyprus and Palestine (all involving the British who, along with the French, bore the brunt of this new wave of terrorism – a corollary of their large pre-war empires) were fought by groups who can more readily be described as terrorist. These groups quickly learned to exploit the burgeoning globalization of the world's media. Moreover, in some cases (such as in Algeria, Cyprus, Kenya and Israel) terrorism arguably helped such organizations in the successful realization of their goals. As such these nationalist and anti-colonial groups are of note in any wider understanding of terrorism.

[9] Ibid
[10] Centre for Defence Information, 'A Brief History of Terrorism' available at http://www.cdi.org/friendlyversion/printversion.cfm?documentID=1502, accessed on 26th march 2008

Through the 1960s and 1970s, the numbers of those groups that might be described as terrorist swelled to include not only nationalists, but those motivated by ethnic and ideological considerations. The former included groups such as the Palestinian Liberation Organization (and its many affiliates), the Basque ETA, and the Provisional Irish Republican Army, while the latter comprised organizations such as the Red Army Faction (in what was then West Germany) and the Italian Red Brigades. As with the emergence of modern terrorism almost a century earlier, the United States was not immune from this latest wave, although there the identity-crisis-driven motivations of the white middle-class Weathermen starkly contrasted with the ghetto-bred malcontent of the Black Panther movement.

Like their anti-colonialist predecessors of the immediate post-war era, many of the terrorist groups of this period readily appreciated and adopted methods that would allow them to publicize their goals and accomplishments internationally. Forerunners in this were the Palestinian groups who pioneered the hijacking of a chief symbol and means of the new age of globalization – the jet airliner – as a mode of operation and publicity. One such group, Black September, staged what was (until the attacks on America of Sept. 11, 2001) perhaps the greatest terrorist publicity coup then seen, with the seizure and murder of 11 Israeli athletes at the 1972 Olympic Games. Such incidents resulted in the Palestinian groups providing the inspiration (and in some cases mentorship and training) for many of the new generation of terrorists organizations.

Many of these organizations have today declined or ceased to exist altogether, while others, such as the Palestinian, Northern Irish and Spanish Basque groups, motivated by more enduring causes, remain active today – although some now have made moves towards political rather than terrorist methods. Meanwhile, by the mid-1980s, state-sponsored terrorism re-emerged - the catalyst for the series of attacks against American and other Western targets in the Middle East. Countries such as Iran, Iraq, Libya and Syria came to the fore as the principle such sponsors of terrorism. Falling into a related category were those countries, such as North Korea, who directly participated in coverts acts of what could be described as terrorism.

Such state-sponsored terrorism remains a concern of the international community today (especially its Western constituents), although it has been somewhat overshadowed in recent times by the re-emergence of the religiously inspired terrorist. The latest manifestation of this trend began in 1979, when the revolution that transformed Iran into an Islamic republic led it to use and support terrorism as a means of propagating its ideals beyond its own border. Before long, the trend had spread beyond Iran to places as far a field as Japan and the United

States, and beyond Islam to ever major world religion as well as many minor cults. From the Sarin attack on the Tokyo subway by the Aum Shinrikyo in 1995 to the Oklahoma bombing the same year, religion was again added to the complex mix of motivations that led to acts of terrorism. The Al Qaeda attacks of Sept. 11, 2001, brought home to the world and most particularly the United States, just how dangerous this latest mutation of terrorism is.[11]

Contemporary Terrorism

Today, terrorism influences events on the international stage to a degree hitherto unachieved. Largely, this is due to the attacks of September 2001. Since then, in the United States at least, terrorism has largely been equated to the threat posed by Al Qaeda - a threat inflamed not only by the spectacular and deadly nature of the Sept. 11 attacks themselves, but by the fear that future strikes might be even more deadly and employ weapons of mass destruction.[12]

Whatever global threat may be posed by Al Qaeda and its franchisees, the U.S. view of terrorism nonetheless remains, to a degree, largely ego-centric – despite the current administration's rhetoric concerning a so-called "*Global War Against Terrorism.*" This is far from unique. Despite the implications that al Qaeda actually intends to wage a global insurgency, the citizens of countries such as Colombia or Northern Ireland (to name but two of those long faced with terrorism) are likely more preoccupied with when and where the next FARC or Real Irish Republican Army attack will occur rather than where the next al Qaeda strike will fall.

As such considerations indicate, terrorism goes beyond Al Qaeda, which it not only predates but will also outlive. Given this, if terrorism is to be countered most effectively, any understanding of it must go beyond the threat currently posed by that particular organization. Without such a broad-based approach, not only will terrorism be unsolvable but it also risks becoming unmanageable.

[11] Ibid
[12] For details see http://www.cdi.org/friendlyversion/printversion.cfm?documentID=1502, accessed on 26th march 2008.

1.4. THE TYPES AND CAUSES OF TERRORISM

Terrorist groups develop ideologies or belief systems to advance their aims and objectives. Secular and religious ideologies are designed to politicize, radicalize, and mobilize the actual and potential followers of terrorist groups. Terrorist groups seek to advance their objectives by conducting a terrorist campaign within an ideological framework. Although aims differ according to the ideological orientations of each group, their objectives are to gain recognition at local, national, and international levels; intimidate and coerce both the target population and the government; and provoke the government to overreact so as to generate greater public support. Three principal strands have generated the ideological fuel required to spawn and sustain terrorist campaigns around the world.[13]

Ideological Terrorism

Marxism, Leninism, and Maoism provide the ideological fuel for left-wing terrorist groups to advance their aims and objectives. They seek to overthrow existing regimes and establish communist and socialist states. Most of the groups driven by left-wing ideologies-the Communist Combatant Cells (CCC) of Belgium, the Red Army Faction (RAF) of Germany, the Red Brigades (RB) of Italy, Action Direct (AD) of France-disintegrated at the end of the cold war and ended with the death of the Soviet empire. A few left-wing groups survived in the poorer regions of the world. They include FARC in Columbia, the Tupac Amaru Revolutionary Movement (MRTA) In Latin America, the Sendero Luminoso (Shining Path) in Latin America, the New Peoples Army (NPA) in the Philippines, and the People's War Group (PWG) in Andhra Pradesh, India. Of these groups, FARC, The Nepal Maoists, and the NPA pose a severe national security threat to Columbia, Nepal, and the Philippines. The left-wing groups still active in Europe are the Revolutionary Organisation 17 November and the Revolutionary People's Liberation party (DHKP-C) in Turkey.

Groups driven by right-wing ideologies include the Ku Klux Klan, Aryan Nations (Church of Christian Aryan Nations, Church of Jesus Christ Christian), The Aryan Liberation Front, the Aryan Brotherhood, the Arizona Patriots, the American Nazi Party (National Socialist Party, United Racist Front), and the United Self-Defense Forces of Coulmbia (AUC). A right-wing group bombed the Alfred P. Murray Federal Building in

[13] Rohan Gunaratna & Graerne C.S..Steven, Counter Terrorism, (2004) pp- 8-10

Oklahoma City on April 19, 1995. Overall, groups driven by right-wing ideologies pose a low threat compared to other categories of terrorism. In contrast to the left-wing groups, the bulk of the right-wing groups are located in North America and in Western Europe. Most right-wing groups are neo-Nazi, neofascist, anti-Semitic, and racist groups dominated by skinheads, attacking immigrants and refugees, mostly of Asian and Middle Eastern origin.

Ethno nationalist Terrorism

The first wave of ethno nationalist campaigns was by national liberation movements directed against colonial rulers. They included the Irgun and Lehi opposing the British rule in Palestine in the 1940s and the French rule in Algeria in the 1950s. Contemporary groups driven by ethno nationalism can be divided into three subcategories- groups fighting for autonomy, for unification, or for reunification. The Al Aqsa Martyrs Brigade, Jammu & Kashmir Liberation Front (JKLF), and the Liberation Tigers of Tamil Eelam are fighting for independence from Israel, India, and Sri Lanka, respectively, and are motivated by Palestinian, Kashmiri, and Tamil nationalism. Two other groups, Continuity and the Real IRA, are fighting for unification or reunification with the Republic of Ireland. The PKK is fighting for linguistic and cultural autonomy for the Kurds in southern Turkey. In comparison to other categories, ethno nationalist conflicts produce the largest number of fatalities and casualties, internally displaced persons and refugee flows, and the biggest human rights violations. Groups that have adopted virulent ethno nationalist ideologies pose a significant threat to their opposition ethnic communities and governments.

Politico-Religious Terrorism

Groups driven by religiosity include those from the Christian, Jewish, Sikh, Hindu, Buddhist, and Islamic faiths. They include the Army of God in the United States; Kach and Kahne Chai of Israel; Babbar Khalsa International of Punjab, India; Aum Shinrikyo (recently named Aleph) of Japan; the Islamic Resistance Movement (Hamas); the Palestinian Islamic Jihad (PIJ); and the Armed Islamic Group of Algeria, Aum, and Apocalyptic group, aimed to take over Japan and then the world until its leader Soko Asahara was arrested after a deadly sarin attack in the Tokyo subway in 1995. In contrast to other Islamist groups campaigning within their territories, Al Qaeda and Lebanese Hezbollah (to a lesser extent) have a global or a universalistic Islamic agenda. To justify violence, politically motivated religious leaders

propagate corrupt versions of religious texts, often misinterpreting and misrepresenting the great religions.

Of the religious category of groups, Islamists, or groups motivated by radical Islamic ideology, are predominantly the most violent. This is mainly because most religious terrorists often believe they are supported by God, or they support from religion. Groups often use religious clerics to interpret religion to the aims of the groups, justifying the leadership and causing anyone who questions the leadership and causing anyone who questions the leadership or groups to appear as "apostates" or "unbelievers", those who would question God and not carry out his bidding. Two pivotal events in 1979- the Islamic Revolution in Iran and the Soviet intervention in Afghanistan-led to the increase in the number of groups driven by Islamism. By holding on to U.S. hostages for 444 days, the Islamic Republic of Iran in 1979 defied the United States. The anti Soviet multinational Afghan mujahedin defeated the Soviet Army in 1979, after which the Islamists turned their energies toward building a capability to defeat the remaining super power- the United States- along with its allies and its friends in the Muslim world. With martyrdom becoming widespread and popular among Islamist groups throughout the 1980s and the 1990s, the scale of violence unleashed by Islamist groups has surpassed that of secular ethno nationalist and left wing and right wing groups. For instance, the Palestinian Liberation Organisation (PLO), popular Front for the Liberation of Palestine, Abu Nidal Organisation killed far fewer people than their Islamist counterparts-Hamas and PIJ.[14]

1.5. DEFINING TERRORISM

On numerous occasions since the 1920s, the international community has attempted to arrive at a generic definition of terrorism for the purposes of prohibition and/or criminalization, suggesting that it attaches considerable importance to definition. The variety and extent of attempts to generically define terrorism have rarely been considered holistically, unlike the well-known anti-terrorism treaties, or even the lesser known regional treaties. None of the sectoral treaties defines specifically 'terrorist' offences. Instead, many of the treaties require states to prohibit and punish in domestic law certain physical acts- such as hostage taking or hijacking- without requiring, as an element of the offence, proof of a

[14] Ibid

political motive or cause behind the act, or an intention to coerce, intimidate or terrorize certain targets. The substantive provisions of these treaties never refer to the terms terrorism or terrorist.

Despite the long-lasting presence of terrorism in domestic and international life, however, there is currently no comprehensive and concise universally accepted legal definition of the term. In its popular understanding the term '**terrorism**' *tends to refer to an act that is wrong, evil, illegitimate, illegal, and a crime.* The term has come to be used to describe a wide range of violent and sometimes not-so violent, conduct.

Acts characterized as terrorist in nature can occur both in conflict and peace-time. They may constitute crimes in domestic and international law, and they are motivated by a complex matrix of reasons and ideals. Their characterization can also depend upon the person or institution using the label and may even change over time.

The United Nations Terrorism Prevention Branch describes terrorism as a unique form of crime. Terrorist acts, it says, often contain elements of warfare, politics and propaganda. It continues, stating that:[15]

For security reasons and due to lack of popular support, terrorist organisations are usually small, making detection and infiltration difficult. Although the goals of terrorists are sometimes shared by wider constituencies, their methods are generally abhorred. The failure of the international community to achieve consensus on a global definition of terrorism has been criticized by many.

Twelve universal conventions related to terrorism have been adopted since the 1970s, the conventions, however, deal with specific forms of terrorist conduct and are thereby precise in nature and not of general application. Furthermore, they are not a solution in themselves, since treaties are only binding upon States parties.[16] Nor does the United Nations Charter contain a definition of the term. Likewise, the Rome Statute of the International Criminal Court does not include terrorism as one of the international crimes within the Court's jurisdiction.[17]

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[15] United Nations Office on Drugs and Crime, "UN Action Against Terrorism", <www.odccp.org/terrorism.html> (accessed on 28th March 2008).

[16] By application of the legal principle *pacta tertii nec nocent nec prosunt* (treaties are not binding upon States unless their consent to be bound has been signified) – as reflected within article 34 of the Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

[17] *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).

Perhaps most surprising is the fact that Security Council resolution 1373 (2001), which imposes various obligations concerning counter-terrorism upon member States of the United Nations, does not define the term.[18]

1.6. Attempts to Define Terrorism

1937 LEAGUE OF NATION CONVENTION

Looking into the history to suppress terrorism, the most relevant anti-terrorism precedent is the Geneva Convention on the Prevention and Punishment of terrorism, which was adopted on 16th November 1937, on the initiative of the League of Nations, the predecessor of the United Nations. . **Article 1, paragraph 2**, of the convention gave a general definition of **'acts of terrorism'** as *'criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons, or the general public'*. This definition is not very explicit, as the text refers only to *"criminal acts"* and does not specify which acts are illegal in the context of terrorism. Several of the provisions of this convention sought to prohibit activities which could hardly be described as 'terrorism'. **The 1937 Convention never entered into force,** partly as a result of the outbreak only two years after its adoption, of the Second World War. Although, it undoubtedly served as a model for later conventions dealing with the prevention and suppression of terrorism. [19]

[18] Having said this, the lack of definition was most likely due to the fact that there is a lack of consensus on just what amounts to terrorism. In a desire to issue a forceful, and at the same time early, resolution in the wake of September 11 it is likely that the Council saw use of the term, without definition, as the only viable option in the short term. The problem with this approach is that it has left the question of defining the term with individual member States, leading to inconsistent definitions and, arguably, a weak rather than forceful resolution.

[19] Giuseppe Nesi, 'International cooperation in counter terrorism', Ashgate, pp-3-4

1954 ILC DRAFT CODE

The international law commission considered terrorism when drafting its *1954 Draft Code of Offences against the Peace and Security of Mankind* (Part-1).[20] Although the 1954 ILC Draft Code was never formally adopted by the General Assembly or in treaty form, it provides an insight into mid-20the century thinking about terrorism in international law. Terrorism was explicitly linked to the concept of aggression. **Article 2(6) defines an offence 'against the peace and security of mankind'** of the

undertaking or encouragement by the authorities of a state of terrorist activities in another state, or the toleration by the authorities of a state of organised activities calculated to carry out terrorist acts in another state.'

Under **Article 1**, offences in the Code '*are crimes under international law, for which the responsible individuals shall be punished*'. The offence only covers conduct by those acting for the state, and not the activities of non-state actors, despite an early 1950 draft provision covering acts of private persons. Further, it covers state toleration of terrorist activities where those activities are sufficiently 'organised' to affect peace (such as acts of political directed against another state), thus excluding acts of single persons without any organised connection. Further, arguments to include private terrorism with international effects were not accepted, the requirement being that acts be directed against another state.[21]

1972 US DRAFT CONVENTION

In response to terrorist attacks on Israeli athletes at the Munich Olympics in September 1972 and other terrorist acts,[22] the US presented a *Draft Convention for the Prevention and Punishment of Certain Acts of International Terrorism* to the General Assembly in late September 1972. *The proposed offences were not designated as 'terrorist', but as*

[20] 1954 ILC Draft Code of Offences against the Peace and Security of Mankind (Part I), in ILC 6th Session Report (3 June- 28 July 1954), UN Doc. A/2693, as requested by UNGA Res. 177 (II) (1947).
[21] Ben Saul, Attempts to define "Terrorism" in International Law, available at http://journals.cambridge.org/download.php?file=%2FNLR%2FNLR52_01%2FS0165070X05000574a.pdf&code=552023b27567f301968140bc4db80943, Accessed on 4th April 2008.

[22] In particular, the killing of 26 persons at Lod Airport in Israel and a shooting at the apartment of Soviet diplomat at the UN in NY: J. Murphy, 'United Nations Proposals on the Control and Repression of Terrorism', in Bassiouni, ed., op. cit. n. 7, p. 493 at p.496.

offences of 'international significance', although the title of the Convention signalled its intention to address terrorist crimes.

The US Draft Convention was limited to international rather than domestic acts of terrorism, excluding most acts by self- determination movements. It was also designed to focus on individual terrorist acts committed by, or against, 'a member of the Armed Forces of a State in the course of military hostilities',[23] and applicable International Humanitarian Law (IHL) treaties would take precedence in case of a conflict.[24] The US Draft Convention further stated that it does not 'make an offence of any act which is permissible under' IHL, nor does it deprive any person of prisoner of war status if entitled to such status' in IHL[25].

As a result, a prohibited act committed against a military member in peacetime may amount to terrorism. Secondly, a prohibited act committed by a military member in peacetime may amount to terrorism, so admitting the punishment of 'state terrorism'. Acts committed by non-state forces in the course of military hostilities are not privileged by exclusion from the Convention, so guerrilla, national liberation or self-determination forces may be punished as terrorists in some circumstances. Since the Convention was proposed in 1972, its exclusionary provisions in relation to IHL did not refer to the recognition extended to non-state forces in the 1977 Protocols. The affirmation of the entitlement to prisoner of war (POW) status signals that the US did not intend to create any exceptional category of 'terrorist' in IHL, and the ordinary liability of POWs for war crimes would still apply.

Despite these limitations, the US Draft Convention envisaged broad liability, since the concept of intending to damage the 'interests' of a state is ambiguous and open-ended. There need only be an intention to damage; no actual damage is required. The idea of 'damage' is not limited by any minimum degree of seriousness or severity. States have any number of 'interests' of varying importance and there is no attempt to circumscribe the types of interests which deserve special protection through criminalization. There is similarity no gradation of the concept of 'concessions' in terms of their political significance. There were, however, no terrorist offences against property stipulated by the Convention, which focused on threats to human life, and few states other than Israel expressed support for protecting property.

[23] 1972 US Draft Convention, Art. 1 ©.

[24] Ibid., Art. 13.

[25] Ibid., Art. 13 (a)-(b)

There was little support for the US initiative in a General Assembly dead-locked by Cold War politics and the ideological divide between developed and developing states, particularly over self-determination. The US sought to convene a conference to adopt the treaty, but was opposed by Arab and African states, and China, which believed that it was an attempt to criminalize self-determination movements. General Assembly Resolution 3034 (XXVII) (1972) initiated a study of the causes of terrorism but did not pursue criminal law or treaty measures. An Italian compromise to both study the causes and request the ILC to prepare a draft treaty was rejected. The timing of the US proposal ensured its defeat, given the 'heated atmosphere engendered by the Munich killings and by the charges and counter charges passing between Israel and the Arab States'.

1991 AND 1996 ILC DRAFT CODE OF CRIMES

After the postponement of 1954, the ILC resumed consideration of the Draft Code in 1982. Following nine reports by a Special Rapporteur between 1983 and 1991, the ILC adopted a first reading of a Draft Code in 1991. Article 24 of the 1991, the ILC Draft Code, based on **Art 2 (6) of the 1954 Draft Code**, proposed an offence where a state agent or representative commits or orders the following:

'undertaking, organising, assisting, financing, encouraging or tolerating acts against another state directed at persons or property and of such a nature as to create a state of terror in the minds of public figures, groups of persons or the general public.'[26]

Compared with the 1954 draft, this provision partially incorporates the 1937 League definition; added the notions of 'organising', 'assisting' and 'financing'; and included an express reference to acts against property. Some ILC members objected that the definition was tautological and that it would be better to refer to 'a state of fear' rather than a 'state of terror'. The difficulty of proving subjective fear was also raised.[27]

[26] Emphasis added. Draft Art. 16(1)of 1990 is similar: ILC Yearbook (1990) p. 336.
[27] For details see http://journals.cambridge.org/download.php?file=%2FNLR%2FNLR52_01%2FS0165070X05000574a.pdf&code=552023b27567f301968140bc4db80943, Accessed on 4th April 2008.

1998 DRAFT ROME STATUTE

While the 1996 ILC Draft Code was not adopted as a treaty, the General Assembly drew it to the attention of the Preparatory Committee on the Establishment of an International Criminal Court.[28] *Ultimately, Article 5 of the 1998 Draft Rome Statute, presented to the 1998 Rome Diplomatic Conference,*[29] *included 'crimes of terrorism' comprising three distinct offences.*

This **first offence** resembles the 1991 ILC Draft Code and was not limited to armed conflict (as in the 1996 ILC Draft Code). It also shares elements of the 1937 League definition and a 1994 General Assembly working definition. The **second offence** comprised any offence in six sectoral treaties.[30] The **third offence** involved 'the use of firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or groups or persons or populations or serious damage to property'.

Terrorism was not included in the 1998 Rome Statute as adopted. A conference resolution 'regretted' that despite widespread international condemnation of terrorism, no generally acceptable definition... could be agreed upon'. Terrorism was not included for a variety of reasons: its legal novelty and lack of prior definition; disagreement about national liberation violence; and a fear that it would politicize the ICC. In addition, the Rome conference responded to terrorism in a different sense. In Article **7(2) (a) of the Rome Statute,** crimes against humanity require 'multiple commission of acts...pursuant to or in furtherance of a state or organisational policy to commit such attack'.

1996- DRAFT NUCLEAR TERRORISM CONVENTION

Between 1997 and 2000 an Ad Hoc Committee established by the General Assembly in 1996[31] successfully drafted the 1997 Terrorist Bombings Convention and the 1999 Terrorist Financing Convention. The General Assembly also tasked the committee with drafting a

[28] UNGA Res. 51/160 (1996).
[29] 1998 Draft Rome Statute, Art. 5, in ICC Prep Com Report, UN Diplomatic Conference of Plenipotentiaries on an ICC, Rome, 15 June- 17 July 1998. UN Doc. A/Conf. 183/2/Add.1 (14 April 1998), p.2.
[30] 1971 Montreal Convention; 1970 Hague Convention; 1973 Protected Persons Convention; 1979 Hostages Convention; 1988 Rome Convention and 1988 Rome Protocol.
[31] UNGA Res. 51/210 (1996), para. 9.

treaty to suppress nuclear terrorism, based on a draft text submitted by Russia in 1997,[32] as subsequently revised.[33] The draft text was influenced by the 1980 Vienna Convention and the 1997 Terrorist Bombings Convention. Despite annual discussions, by the end of 2004, agreement had still not been reached on the draft and little progress was made after 1998.

As it stands, the draft Preamble expresses the Convention's rationale, stating that 'acts of nuclear terrorism may result in the gravest consequences and may pose a threat to international peace and security' and that 'existing multilateral legal provisions do not adequately address those attacks'. *The Convention aims to fill lacunae left by 1980 Vienna Convention, by covering a wider range of 'targets, forms and acts of nuclear terrorism'.*[34]

Draft Article 2 (1) establishes objective offences where a person unlawfully and intentionally possesses or uses radioactive material or devices with the intent to cause death or serious bodily injury, or to cause substantial damage or to enjoyment of property or the environment. It creates the further offences of using radio active material or devices, or using or damaging a nuclear facility,[35] with the intent to compel a natural or legal person, an international organisation or a state to do or refrain from doing an act.[36] States must legislate to punish these acts, "in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons".

By 2003, the principal unresolved issue was the treaty's scope of application. **Draft Article 4** proposes to exclude the 'activities of armed forces during an armed conflict' which are governed by IHL. It further excludes the 'activities' of state military forces 'in the exercise of their official duties, in as much as they are governed by other rules of international law'.[37] Although an identical provision was adopted in the 1997 Terrorist Bombings Convention,[38] some states wanted the Draft Nuclear Terrorism Convention to apply to the activities of state armed forces, and/or state-sponsored nuclear terrorism. This position is understandable given that states are the primary possessors of nuclear material. Some felt that the 1997 provision was ambiguous, while others believed it should take into account the contested legality of the use of nuclear weapons in armed conflict.

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[32] UNGAOR (53rd Session), Ad Hoc Committee Report (1998), Suppl. 37 (A/53/37), p. 6; UNGAOR (52nd Session), Ad Hoc Committee Report (1997), Suppl. 37 (A/52/37), p.1.
[33] UNGA (53rd Session) (6th Committee), Measures to Eliminate International Terrorism: Working Group Report, 22 Oct 1998, UN Doc. A/C.6/53/L.4, annex I, pp. 4-15.
[34] H. Corell, 'The International Instruments against Terrorism', Paper at Symposium on combating International Terrorism: The contribution of the UN, Vienna, 3-4 June 2002, p. 12.
[35] 'In a manner which releases or risks the release of radioactive material'.
[36] Ancillary offences are found in Draft Nuclear Terrorism Convention, Arts. 2(2) (a)-(b), 3, 4 (a) (c).
[37] Draft Nuclear Terrorism Convention, Art. 4.
[38] 1997 Terrorist Bombings Convention, Art. 19.

The repeated and industrious attempts by the international community to generically define terrorism over the past indicate the normative importance of generic definition to the international community. In contrast to the objective enumeration of offences in sectoral anti terrorism treaties, generic definition can capture, and condemn, the motive elements which distinguish terrorism from ordinary crime. Reference to political motives helps to conceptually distinguish international terrorism from transnational organised crime, which is motivated by 'financial or material benefit' rather than political aims. Generic definition avoids the rigidity of enumerative definitions, which may not cover ever-changing terrorist methods.

The principal disadvantage of generic definition is the difficulty and subjectivity of proving motive elements, such as an aim to intimidate or compel, or a political motive. Generic definitions are wider and more ambiguous than enumerative ones, although all definitions generalise, and the problem is lessened by combining generic and enumerative features in a single definition. Combined definitions are narrower than enumerative ones-since listed offences only amount to terrorism when they also satisfy a motive element-and are the most likely type of definition to satisfy the principle of legality, or specificity, in criminal offences.

RESEARCH METHODOLOGY

AIM

The researcher has attempted to gain an understanding of International terrorism. The researcher mainly focuses on the measures of counter terrorism. The researcher has focused on the various anti-terrorist measures adopted by the United Nations and counterterrorism measures undertaken by some countries. The researcher has discussed the legal framework for combating terrorism with special reference to India, as it is one of the states which have been affected by terrorist activities since long, and it has a long history of legislation applicable to emergency situations like terrorism. The researcher has focused on the impact of counter terrorist measures on the promotion and protection of human rights.

SCOPE

The main scope of this paper is to look into the compatibility of counterterrorism measures with human rights obligations. The researcher makes an effort to study various attempts to define terrorism from time to time. An evaluation and focus on counter terrorism measures and human rights standard and study on the compatibility between counter terrorism measures and human rights standards will also be addressed.

METHOD OF ANALYSES

The methodology sought to be adopted for the purpose of this paper is descriptive and analytical .Various aspects have been looked into and a lot of study has been put up before preparing the research paper.

SOURCES OF DATA

The researcher has relied on the secondary data collection obtained from books obtained from the library. A lot of online journals and articles have been referred to for the latest developments and trends. The research was undertaken in the National law school Library. International and national documents have also been referred to.

RESEARCH QUESTION:

1. How has terrorism been defined? Is there any need for a proper definition of terrorism?
2. What are the measures adopted by the United Nations in order to combat terrorism?
3. Whether the counter terrorism measures undermine the international human rights law?
4. Can "war on terror" be reconciled without forfeiting the core standards of human rights?
5. What are the anti terrorist measures adopted by India? To what extent India has been successful to combat terrorism?

MODE OF CITATION

A uniform mode of citation has been conformed to throughout the course of the research paper.

HYPOTHESIS

Terrorism attacks the values that lie at the heart of the Charter of the United Nations; respect for human rights; the rule of law that protect civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Acts of terrorism are antithetical to human rights values. Combating terrorism through human rights standards can be possible only when the states show full respect towards the human rights standards; otherwise any action taken by states to combat terrorism devoid of human rights norms would aggravate the problem of terrorism rather than suppress it. Therefore, the question of compatibility of

counter terrorism measures with human rights standards needs to be addressed when the whole world is involved some way or the other in the war against terrorism.

CHAPTERIZATION:-

The project shall consist of five chapters. The first chapter apart from the introduction shall deal with the history of terrorism, types and causes of terrorism. The chapter shall also deal with the various attempt made from time to time in order to define terrorism.

The second chapter shall deal with the various international conventions which is applicable to the prevention and suppression of terrorism. The chapter shall also include other anti-terrorist instruments and pronouncement apart from the various conventions on terrorism. It shall also explain about the Counter- Terrorism Committee and Security Council Resolution 1373 (2001) and also regional instruments on terrorism.

The third chapter shall deal with the measures undertaken by countries like United States and United Kingdom towards combating terrorism. It shall also describe the plethora of Indian legislation to meet with the emergency situations as well as specific anti- terrorism laws with reference to relevant cases.

The fourth chapter shall critically evaluate the counter terrorism measures, on the promotion and protection of human rights. It shall also look into how that human rights promotion have hindered by a variety of negative developments.

Lastly, the final chapter provides the concluding part of the research. It summarises the study with a few recommendations drawn from the observations made in the previous chapters with regard to reconciling war on terror without forfeiting the core human rights standards.

CHAPTER- II

2.1 THE INTERNATIONAL LEGAL REGIME APPLICABLE TO THE PREVENTION AND SUPPRESSION OF TERRORISM

It is well known that a major contribution of the United Nations system to the fight against terrorism has been the adoption of a series of relevant conventions, numbering twelve to date.[39] The twelve existing universal conventions on terrorism are not of a comprehensive nature and are aimed at preventing and suppressing the commitment of specific acts of a grave nature. Historically, the universal conventions emerged in response to new forms of terrorism, *such as hijacking, hostage taking, safety of maritime navigation and platforms, threats linked with nuclear material or explosives, public bombings and the financing of terrorism.*

There is an obligation frequently imposed on Contracting States to make such offences punishable by severe penalties, namely, treaty law establishing the extra severity of terrorist acts. Most of them listing offences also include the well- known principle of *aut dedere aut iudicare*[40]. Hence, the treaties provide a significant extension of State jurisdiction. From these

[39] 1963 Convention on Offences and Certain other Acts Committed on Board Aircraft (herein "Tokyo Convention"); 1970 convention for the Suppression of Unlawful Seizure of Aircraft (herein "Hague Convention"); 1971 convention for the Suppression of Unlawful Acts against the safety of Civil Aviation (hereinafter "Montreal convention"); 1973 convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (herein after "Convention on Internationally Protected Persons"); 1979 International convention against the Taking of Hostages (hereinafter "Hostages convention"); 1979 Convention on the Physical Protection of Nuclear Material (hereinafter "Vienna Convention"); 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; 1988 convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter "Rome Convention"); 1988 Protocol for the Suppression of Unlawful Acts against the Safety of fixed Platforms Located on the Continental Shelf; 1991 convention on the Making of Plastic Explosives for the Purpose of Detection; 1997 International convention for the Suppression of Terrorist Bombings (herein "Terrorist Bombings convention"); and 1999 International convention for the Suppression of the Financing of Terrorism (herinafter "Financing of Terrorism convention"). For the text of these instruments, see United Nations, International Instruments related to the Prevention and Suppression of International Terrorism (New York, 2001).

[40] This means that each country has an obligation to prosecute the author of an international crime - thus being part of the international imperative rules of law (*ius cogens* principle) - or to deliver him to another country or body of international law.(http://justact.info/content.asp?tid=2&id=149)

treaties it is possible to list a number of offences that can be legally considered as terrorism, although this list is certainly not exhaustive when it comes to the concept of terrorism.[41]
First of all, civil aviation has been a continuous target for terrorists and this has lead to the elaboration of four universal treaties: the 1963 Tokyo *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, the 1970 Hague *Convention for the Suppression of Unlawful Seizure of Aircraft*, the 1971 Montreal *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, and the 1988 Montreal *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*. As in the case with many of the earlier instruments these conventions do not employ the term "terrorism", but they are nevertheless acknowledged as being interrelated with various aspects of the problem of international terrorism.[42]

The acts to be recognized, as within the concept of terrorism, are the acts that represent risks for the safety of aircrafts, like sabotage, violence on board the aircraft or "hijacking". According to the *Convention for the Suppression of Unlawful Seizure of Aircraft*, the offence of "hijacking" is performed by any person on board an aircraft in flight who "unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act" or "is an accomplice of a person who performs or attempts to perform any such act".[43] Moreover, acts of violence at airports can also amount to terrorism if they are to cause serious injury or death. This is also the case for attacks on facilities of an airport serving civil aviation or aircraft not in service located thereon or disrupting the services of the airport. None of these treaties are applicable to aircrafts of military, police or customs use. Furthermore, pursuant to the 1973 New York *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, the concept of terrorism includes attacks on the person or liberty of an internationally protected person and also attacks on the official premises,

[41] Fighting Terrorism and Respecting Human Rights. A case study of International Human Rights Jurisprudence, Available at http://www.jur.lu.se/Internet/english/essay/Masterth.nsf/0/480C6ED6A9867466C1256C940058B339/$File/xsmall.pdf?OpenElement., Accessed on 5th April 2008

[42] These Conventions, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the 1980 Convention on the Physical Protection of Nuclear Material do not refer directly to the term terrorism but are recognized by different instruments as being related to various aspects of the problem of international terrorism, such as in the 1994 Declaration on Measures to *Eliminate International Terrorism*'s Preamble.

[43] Convention for the Suppression of Unlawful Seizure of Aircraft, Art.1.

accommodation or means of transportation of such a person. Also, this convention is the first of the universal treaties on terrorism to refer to the maintenance of international peace.

The first of the twelve treaties to use the term "international terrorism" was *the 1979* New York *International Convention against the Taking of Hostages.* In the **Preamble, paragraph 5** stresses that all acts of taking of hostages are to be considered as manifestations of international terrorism. This could seem to encompass all acts of hostage-taking offences under international humanitarian law; however **Article 12** provides that this convention will not be applicable to acts of hostage-taking committed in armed conflict under the Geneva Conventions of 1949 and the Protocols of 1977. Under this treaty, hostage-taking is defined as any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to force a third party, namely a State, an international organization, a natural or judicial person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage.[44]

The attempt to commit such an act or the participation, as an accomplice of anyone who commits or attempts to commit an act of hostage taking will also constitute an offence under this convention.[45] Notwithstanding, this treaty is only applicable to hostage-taking situations that are of an international character.[46]

Several unauthorized acts related to the use, transport or storage of nuclear material could be classified as terrorism.[47]

The *1980 Vienna Convention on the Physical Protection of Nuclear Material* has two primary objectives. The **first objective** is to establish levels of physical protection required to be applied to nuclear material used only for peaceful purposes while in international transport. The peaceful purposes aspect results in the exclusion of nuclear material of military use and the non-application of this treaty to international humanitarian law. The **second objective** is the provision of measures against unlawful acts with respect to such material while in international nuclear transport, also in domestic use, storage and transport.

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[44] Art.1(1) International Convention against the Taking of Hostages, Art.1(1).

[45] Ibid Art 1(2).

[46] *Ibid.* Art.13 that is when the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State,

[47] *Convention on the Physical Protection of Nuclear Material*, Art.7, which includes: the manipulation without lawful authority that is likely to cause death or serious injury or damage to property; the theft or robbery of nuclear material; a threat to use nuclear material to cause death or serious injury or damage to property; a threat of theft or robbery of nuclear material in order to compel a natural or legal person, international organization or State to do or refrain from doing any act

The safety of maritime navigation and fixed platforms on the Continental Shelf against terrorist acts was an international concern that lead to the *1988 Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* and *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.*

Both treaties include a list of offences that can be considered as terrorism, such as, unlawful and intentional acts that endangers the safe navigation of ships or the safety of the fixed platform such as threats, violence, attacks, and the placing of dangerous devices.[48] Notwithstanding, warships, ships owned or operated by States when being used as a naval auxiliary or for customs or police purposes, or a ship withdrawn from navigation or laid up, are out of the scope of application of the first Convention.[49]

The *1991* Montreal *Convention on the Marking of Plastic Explosives for the Purpose of Detection* mirrors advances in international law in stating in its preamble that States are conscious of the implications of acts of terrorism for international security. The third and fourth paragraphs of this Preamble stress the fact that plastic explosives have been used for terrorist acts and that the marking of such explosives for the purpose of detection would contribute to the prevention of terrorism. This Convention does not establish any offence of a terrorist nature, but is meant strictly to facilitate the prevention of terrorism. States Parties are required to prohibit and prevent the manufacture of unmarked explosives in their territories, as well as the movement into or out of their territories of unmarked explosives.[50]

Furthermore, States must exercise strict and effective control over the possession of any existing stocks of unmarked explosives.[51] On the 15TH of December 1997, the General Assembly of the United Nations adopted the *International Convention for the Suppression of Terrorist Bombings*. The main offence to be considered a "terrorist act" from the scope of this Convention is the unlawful and intentional delivery, placing, discharging or detonating of an explosive or other lethal device in, into or against a place of public use, a State or government

[48] Art.3 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

[49] Ibid. Art.2, and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Art.2(1).

[50] Convention on the Marking of Plastic Explosives for the Purpose of Detection, Art.II and III.

[51] Ibid. Art. IV.

facility, a public transportation system or an infrastructure facility.[52] In any case, the act or acts must have been committed in conjunction with either of the following legal conditions:

a) The intent to cause death or serious bodily injury; or

b) The intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss. Also considered an offence under this treaty, the attempt to commit such an act, the participation as an accomplice in the act or the attempt, and the organization or direction of others to commit the act or attempt to commit it.[53]

Moreover, it is an offence to contribute in any other way to the commission of the act or the attempt to commit it by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.[54] Furthermore, there is a requirement for States Parties to make the offences punishable in respect of their grave nature and to make them criminal.[55] Such criminal acts shall be under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.[56] This Convention does not apply to situations without an international character.[57] Additionally, it excludes activities of armed and military forces of States, which are governed by international humanitarian law.[58]

The General Assembly of the United Nations adopted, the 9TH of December 1999, the *International Convention for the Suppression of the Financing of Terrorism.* Under this treaty, an offence results from the action of any person, who by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or with the knowledge that they are to be used, in full or in part, in order to carry out one of the following acts.[59] The first act is an offence under the treaties listed in the annex of this Convention.[60] The second one is legally very interesting. Although this

[52] International Convention for the Suppression of Terrorist Bombings, Art.2(1).
[53] Ibid. Art. 2(2), 3(a) and (b).
[54] Ibid. Art 2(3)c)
[55] Ibid Art 4
[56] Ibid Art 5
[57] Ibid Art 3
[58] Ibid Art. 19 and last para of the Preamble
[59] International Convention for the Suppression of the Financing of terrorism, Art.2(1).
[60] Includes all the previous universal treaties on terrorism, except the 1963 Tokyo Convention and the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection

Convention does not provide for a definition of terrorism, **Article 2(1) b)** refers to "*any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act*". Once again, as mentioned previously, those acts are to be made criminal and punishable by appropriate penalties considering their grave nature.[61]

They are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.[62] None of the offences in this Convention are to be considered as fiscal or political offences.[63]

2.2 *Other anti- terrorist instruments and pronouncements*

Turning to other texts adopted by the United Nations regarding anti-terrorist measures, one finds numerous references to the need to respect international human rights standards. Not all can be cited here, but two instruments deserve special mention, as they were the first tangible results of the above described new spirit of cooperation that emerged in the early 1990s in the United Nations on the issue of terrorism. These preceded the adoption of the Terrorist Bombings and Financing of Terrorism conventions. They are the **1994 Declaration on Measures to Eliminate International Terrorism[64] and the 1996 Supplementary Declaration** thereto[65].

The 1994 *Declaration on Measures to Eliminate International Terrorism's* Preamble raises the concern over intolerance and extremism as causes of terrorism. It also stresses the involvement of States in terrorist activities and recalls all the above-mentioned universal instruments adopted before 1994 as related to various aspects of terrorism. Moreover, this Declaration affirms that all acts, methods or practices of terrorism, are criminal and unjustifiable, wherever and by whoever committed, including those that jeopardize the friendly relations among States and peoples.[66]

Those acts constitute a grave violation of the purposes and principles of the United Nations and they aim at the destruction of human rights, fundamental freedoms and the democratic

[61] International Convention for the Suppression of the Financing of Terrorism, Art.4.
[62] Ibid Art. 6
[63] Ibid Arts. 13 & 14
[64] See Annex VIII: United Nations General Assembly Res. 49/60 of 9 December 1994.
[65] See Annex IX: United Nations General Assembly Res. 51/210 of 17 December 1996.
[66] 1994 Declaration on Measures to Eliminate International Terrorism, Art.1.

basis of society.[67] **The 1994 Declaration does not define terrorism,** but it does stress that "*criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable*".[68]

As for the *1996 Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism*, it mainly adds provisions with reference to international refugee law; calling for States to make sure the asylum-seeker did not participate in terrorist acts before granting them refugee status. In doing so, they are required to conform to international human rights standards.[69] **Article 5** of the Supplement concerns the cooperation of States in preventing, combating and eliminating terrorism, which has to be done in conformity with international human rights standards. Under **Article 6**, terrorism should not be regarded as a political offence for extradition purposes.[70]

2.3 Responses to 9/11: Balancing between Counter- Terrorism and Human Rights

Response at the international level

[THE COUNTER- TERRORISM COMMITTEE AND SECURITY COUNCIL RESOLUTION 1373 (2001)]

In the context of international relations and diplomacy, the response following September 11 by member states at the United Nations was swift and immediate. The Security Council passed **Resolution 1373** mandating member states to adopt specific measures aimed at individuals and entities considered supportive of or involved in terrorism in "all its forms and manifestations".[71] *On 28 September 2001, the United Nations Security Council (UNSC) adopted Resolution 1373 (the Resolution).*[72] *The resolution also created a new entity called*

[67] Ibid Art. 2.
[68] Ibid Art. 3.
[69] 1996 Declaration to the 1994 Declaration on Measures to Eliminate International Terrorism, Arts.3 and 4.

[70] For details see http://www.jur.lu.se/Internet/english/essay/Masterth.nsf/0/480C6ED6A9867466C1256C940058B339/$File/xsmall.pdf?OpenElement., Accessed on 5th April 2008

[71] Security Council Resolution 1373 on international cooperation to combat threats to international peace and security caused by terrorists acts adopted on 28 September 2001. S/RES/1373(2001) found at www.un.org/terrorism/sc.htm, Accessed on 10th April 2008.

[72] Walter Gehr; The counter terrorism committee and Security council resolution 1373 (2001), pp- 41-43

the ***Counter Terrorism Committee*** *of the Security Council which oversees the implementation of Resolution 1373.* Member states had to report to this Committee within 90 days on measures they have adopted. Also fairly immediate was the mounting tension between combating terrorism from a security point of view and respect for human rights. *Resolution 1373 makes no positive reference to member states' obligations to respect human rights.* The Counter Terrorism Committee's guidance to states did not indicate that they should comply with the human rights standards nor advise them how to do so. The request of the United Nations Office of the High Commissioner for Human Rights for the appointment of a human rights expert to the Committee was not followed.

The balance between security concerns and respect for human rights not only appeared but in reality shifted heavily to the security side during the first few months after September 11. This is reflected in the Counter Terrorism Committee's policy on human rights expressed by the Chairman in January 2002 where he noted that monitoring performance against human rights conventions is outside the scope of the Committee's mandate.[73] However, perhaps surprisingly in the opinion of many observers and activists, the response from the various United Nations human rights bodies and mechanisms is having an impact on the mainstream response to international terrorism. **In January 2003, a new Security Council Resolution 1456** stressed that *"States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law"*. However, while the Counter- Terrorism Committee recognises that counter-terrorism measures have to be taken without undue damage to civil liberties, the Chairman of the Committee reminded everyone that monitoring this was not the Committee's responsibility.[74]

The General Assembly adopted a new resolution in November 2002 entitled *"protecting human rights and fundamental freedoms while countering terrorism"*.[75]

In emphasising the need for states to comply with their legal obligations under international humanitarian law, refugee law and human rights, it asked the High Commissioner for Human Rights to monitor the protection of human rights in the fight against terrorism and to make

[73] S/PV. 4453, United Nations Security Council fifty-seventh year, 4453rd meeting (18 Jan. 2002), available at www.un.org/Docs/sc/committees/1373/human rights.html.

[74] Human Rights Watch Report, supra note 4. On March 6, 2003 during a special meeting of the Counter terrorism Committee, Chairman Ambassador Greenstock stated that Counter-terrorism measures had to be taken "without undue damage" to civil liberties. But he also reminded those gathered that while the Committee not ask states to do anything incompatible with their human rights obligations, monitoring such obligations was not the responsibility of the Committee. The Documents from the March 6, 2003 Special Meeting can be found atwww.un.org/Docs/sc/committees/1373/human rights.html.

[75] General Assembly Reolution 57/219 of 18 Dec. 2002, A/RES/57/219 (2002) .

recommendations to governments and United Nations bodies. In response, the High Commissioner for Human Rights has produced a set of guidelines highlighting human rights obligations that should be actively considered by the Counter- Terrorism Committee when reviewing country reports. While the United Nations Commission for human rights did not take up the issue of terrorism and human rights at its 58th session in 2002, some said due to strong opposition by the United States, it has done so in 2003 restoring credibility in the United Nations system.

Of particular note are the discussions of the special procedure mechanisms of the Commission on Human Rights, such as thematic rapporteurs and independent experts, which have resulted in joint statements being issued in which they remind states of their obligations under international law to uphold human rights and fundamental freedoms. They express concern over the adoption of anti-terrorist and national security legislation and other measures that might infringe upon the environment of human rights. In their June 2003 statement they express alarm at the growing threats against human rights, particularly the multiplication of policies, legislations and practices increasingly being adopted by many countries in the name of the fight against terrorism, which are having a negative affect on the enjoyment of all human rights.

A number of United Nations human rights treaty bodies and special procedure mechanisms continue to monitor the impact of counter-terrorism measures on human rights. These *include the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, and the Special Rapporteur on terrorism and human rights*, to name a few. A group of international non-governmental organisations have launched a joint declaration calling on the United Nations to establish a United Nations mechanism to monitor the impact on human rights in the fight against terrorism.[76] They are concerned that there is no universal and comprehensive United Nations mechanism or system to monitor the compatibility of domestic counter-terrorism measures with international norms and human rights.[77]

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[76] Joint Declaration on the need for an International Mechanism to Monitor Human Rights and Counter terrorism found at www.icj.org/IMG/pdf/CT_Declaration_ENG_logos-2.pdf

[77] Counter- Terrorism Measures and the Impact on International Human Rights Standards in the Field of Criminal Justice, Available at http://www.icclr.law.ubc.ca/Publications/Reports/Counter%20terrorism%20measures.pdf, Accessed on 7th May 2008.

2.4. Responses at the regional levels

A number of regional and other inter governmental organisations have taken initiatives in the context of international campaign against terrorism. There are seven relevant conventions on terrorism emanating from regional organizations, namely: the 1971 *OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance*, the 1977 *European Convention on the Suppression of Terrorism*, the 1987 *SAARC Regional Convention on Suppression of Terrorism*, the 1988 *Arab Convention on the Suppression of Terrorism*, the 1999 *Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism*, the 1999 *Convention of the Organisation of the Islamic Conference on Combating International Terrorism* and the 1999 *OAU Convention on the Prevention and Combating of Terrorism* , 14 July 1999.

It is recognised that states have been responding to terrorism in their domestic regimes for years. Many countries have laws which allow authorities to investigate terrorism and prosecute those who engage in various specific acts generally associated with terrorism, including hijacking, murder and sabotage. However, since September 11 and the passing of resolution 1373, there has been a proliferation of counter-terrorism legislation, policies and measures being promulgated and enforced in many states. Frequently, initiatives taken by states to respond to terrorist activities have been in the field of criminal justice. In many countries, there were strong views that existing laws used to investigate and prosecute terrorism were not sufficient. This included the conviction that there was a need to focus on "preventing" terrorist acts from happening in the first place. Serious concerns were expressed whether counter-terrorism measures were adequate to deter and prevent terrorist activity; to prevent such horrific acts as those of as September 11. These preventative measures are meant to compliment existing laws that allow for investigation and prosecution of terrorism after it already occurred. States have attempted to adopt existing law enforcement mechanisms but more and more have developed new mechanisms to investigate, suppress and punish terrorism on a domestic level and internationally.[78]

[78] Anja Seiber-Fohr "The Relevance of International Human Rights Standards for Prosecuting Terrorists" found at http://edoc.mpil.de/conference-on-terrorism/index.cfm.

The first striking difference between the regional and the universal conventions is that, with the exception of the 1977 European Convention, all of the regional conventions on terrorism have established a definition of terrorism or at least a list of offences to be regarded explicitly as terrorism. Furthermore, some of the conventions go further than the universal treaties by explicitly prohibiting State terrorism or State sponsored terrorism.[79]

[79] See Arab Convention on the Suppression of Terrorism, Art.3; Convention of the Organisation of the Islamic Conference on Combating International Terrorism, Art.3; OAU Convention on the Prevention and Combating of Terrorism, Art.4.

CHAPTER - III

3.1. COMBATING TERRORISM: STRATEGIES ADOPTED BY SOME COUNTRIES

Human rights are the first casualty of unconventional war. Even in liberal democracies, perceptions of national insecurity can rapidly destroy citizen support for the international law and democratic values, such as the rule of law and tolerance. Political leaders and defence establishments arrogate the rights to determine national interest and security threat, undermining democratic checks and balances and creating a politics of fear. When terrorist violence is framed as a war-an uncontrollable, external, absolute threat to existence and identity-it disrupts the democratic functioning and global ties of target societies. Terrorism has succeeded in destroying democracy when a national security state, without the knowledge or consent of its citizens, tortures and kills detainees, runs secret prisons, kidnaps foreign nationals and deports them to third countries to be abused, imprisons asylum seekers, spies on its citizens, and impedes freedoms of movement, association, and expression on the basis of religion and national origin.[80] For the purpose of this discussion, examples of counter-terrorism measures are mainly taken from the initiatives taken by the United States; United Kingdom and India which has been discussed below.

3.2.United States

Terrorism has preoccupied all U.S. administrations since the 1970s, when international terrorists began major assaults on American interests. These attacks were directed mostly by Arab-Israeli conflict or were carried out by various radical, Marxist, and revolutionary groups that were challenging American influence and power. Before then, terrorism was not viewed as a significant threat, and occasional terrorist acts against Americans were dealt with on an ad hoc basis. In the 1970s, terrorists began a wave of assassinations, hostage taking, aircraft hijackings, and bombings directed against U.S. interests. Washington began to view international terrorism as a national security problem that required a more forceful, effective

[80] Alison Brysk, Human Rights and National Security, Available at http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1009&context=gaia/gaia_books, Accessed on 26th April 2008

response. Today as the threats of nuclear and major conventional war have waned, there is an even sharper focus on terrorism. U.S. policy-makers and the public rank international terrorism high among global threats to the United States. Domestic Terrorism has also become a major concern since the bombing of the Alfred P. Murrah Federal Building in Oklahoma City in 1995.[81]

LEGISLATION

A complex array of statutes governed U.S. counterterrorist policy. Notably, through the 1970s and 1980s, Congress enacted a series of acts which strengthened the ability of federal agencies to fight terrorism. In the 1974, Congress passed the Anti hijacking Act and the Air Transportation Security Act which gave the FAA authority over aircraft terrorism. In 1984, Congress passed the Act to Combat International Terrorism, giving the Department of Justice and the Federal Bureau of Investigation (FBI) more direct authority to investigate and prosecute those who commit crimes against Americans aboard. In addition, the Omnibus Anti-terrorism Act of 1986 made terrorist acts against Americans abroad a federal crime, permitting arrest overseas for trail in U.S. courts.[82]

Congress also passed several acts which were designed to deal with the problem of state sponsored terrorism. In 1979, Congress passed an amendment to the Export Administration Act, which called for the Secretary of state to designate states that consistently support terrorism. This law, combined with others, allowed the U.S. to impose sanctions against "state sponsors" of terrorism. The Anti-terrorism and Arms Export Amendments Act of 1989 prohibited arms exports to states designated as state sponsors of terrorism. States designated as state sponsors of terrorism include Libya, Iraq, Iran, Syria, North Korea, and Cuba.

With regards to investigation of terrorist organisations domestically, the Foreign Intelligence Surveillance Act (FISA), allows investigators to seek warrants from a secret FISA court when the purpose of the warrant is to gather foreign intelligence.

Unlike criminal warrants, which were governed by standards promulgated in the Omnibus Crime Control Act of 1968, FISA warrants can be issued without probable cause of a crime as long as the government can show probable cause that the primary purpose of the warrant is

[81] Combating Terrorism, Strategies of Ten Countries, Ed. Yohah Alexander, pp- 23-25

[82] Arunabha Bhoumik, Democratic Responses to Terrorism: A Comparitive Study of the United States, Israel and India, Available at Available at http://law.bepress.com/cgi/viewcontent.cgi?article=1709&context=expresso, Accessed on 29th April 2008

to gather intelligence against a foreign power including foreign terrorist organisations. Since its inception in 1978, court has issued more than 10,000 FISA warrants, and denied only one.

After the Oklahoma City bombing, Congress passed the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA). The Act has several provisions not directly related to counterterrorism policy, including provisions amending habeas corpus procedures generally. With respect to counterterrorist efforts, AEDPA first had several provisions which were designated to discourage state support of terrorist groups. **For example,** the statute establishes jurisdiction in U.S. courts for civil suits against state which sponsor terrorism by creating an exception to the general rule of sovereign immunity. In addition, the Act prohibits military and other assistance to state sponsors of terrorism. **Second**, the Act requires the Secretary of state to designate certain groups as "Foreign Terrorist Organisations" (FTOs). Among other things, such a designation allowed the government to freeze the assets of such organisations, and criminalised support to such organisations. **Third**, the act provided for a procedure for removal, exclusion, and denial of asylum to alien terrorists. **Finally**, the act contained significant criminal provisions related to counter terrorist efforts. These included the prohibition on providing assistance to FTOs, engaging in financial transactions with state sponsors of terrorism, criminal sanctions related to developing biological weapons and plastics explosives, and a range of enhanced penalties related to acts of or conspiracies to engage in terrorism.[83]

POST-SEPTEMBER 11 DEVELOPMENTS

September 11 changed counterterrorist policies in many countries, and no where is this more apparent than in the United States. The scale of the attacks was without precedent in the realm of sub-state terrorists, and occurred on American soil. In short, the United States entered a crisis mode, which in some ways that it has yet to come out of. Congress enacted several pieces of legislation in the months following the attacks. These included: *the Aviation and Transportation Security Act; the Bioterrorism Response Act of 2001; the Enhanced Border Security and Visa Entry Reform Act of 2002; the Terrorist Bombings Convention Implementation Act of 2001; and Victims of Terrorism Relief Act of 2001. The most important piece of legislation, however, was the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot).*

[83] Ibid

Due to a fear of further attacks, the bill was considered on an accelerated timetable, by passing both the committee process and floor debate, and was ultimately passed by wide margins (357-66 in the House and 98-1 in the Senate).

The USA Patriot Act permits a vast array of methods to gather information on individuals within the United States through enhanced intelligence surveillance procedures, limited judicial oversight of telephone and internet surveillance, and the ability of law enforcement to delay notice of search warrants.[84]

There can be no mistake as to which American communities were targeted with the passage of the USA Patriot Act of 2001. The disclaimer offered by both branches of Congress and the President in Section 102 clearly directs the stipulation of the Act at the Arab and South Asian Americans communities. The first constitutional rights of Arab and South Asian Americans assailed by the passage of the Patriot Act were those of free speech and association, protected by the First Amendment of the U.S. Constitution. These fundamental rights also encoded in the Universal Declaration of Human Rights (UDHR), are only to be limited in American law by 'narrowly tailored' efforts that serve a compelling state interest. Capitalising on the fear that engulfed the nation, the Bush administration succeeded in undermining these hard fought freedoms by inserting sections 411 and 215 into the Patriot Act. Section 411 of the Patriot Act amends the Immigration and Nationality Act to prohibit the entry into the United States of any non-citizen who represents or is a member of a 'political, social, or other similar group whose public endorsement of acts undermines United States efforts to reduce or eliminate terrorist activity. Freedom of speech and association is limited by Section 411 because, as stipulated, members of 'suspect' organisations will not be allowed admission into the country.

In passing the Patriot Act, both Bush and Central Intelligence Agency (CIA) hoped to ease restrictions that prevented the tracking down of suspected terrorist abroad by amending sections of the Foreign Intelligence Surveillance Act of 1978 (FISA). The FISA was initially passed by the Congress and signed into law by President Carter in 1978 in hopes of regulating the methods used by the CIA and FBI in gathering intelligence and monitoring suspected terrorists. Specifically, the FISA allowed wiretapping of citizens as well as resident aliens in the United States in foreign intelligence investigations upon the showing of probable cause that the target was a 'foreign power' or an 'agent of a foreign power'. The federal government passed this Act primarily to prevent gross violations of the Fourth Amendment

[84] Jennifer C. Evans, "Hijackings Civil Liberties: The USA Patriot Act of 2001" in Loyola University of Chicago law journal, Vol. 33, (Summer 2002), pp- 962-963

rights of American citizens. The Fourth Amendment guarantees 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures' by the CIA and FBI. The FISA required that all requests for the surveillance of American citizens pass through a special eleven judge panel appointed by the Chief Justice of the United States Supreme Court. This panel it was hoped will help to assure that any and all warrants that were of a constitutionally 'questionable' nature would get a thorough review by federal judges before they were granted to the CIA and/ or FBI. However, the Patriot Act succeeded in eroding many of the Fourth Amendment legal protections that all American citizens (not just Arab and South Arab Americans) thought had been fortified with the passage of the FISA in 1978.

The FISA did not work well with respect to terrorists who did not work for the foreign government, who often financed their operations with criminal activities, and who began to target American interests. It was more difficult to determine if such terrorist were 'agents of a foreign power,' and it was difficult for the government to keep appropriate types of investigators involved in the operation. In short, the federal government thought that the stipulations of FISA requiring that citizens be 'agents of a foreign power' in order for a warrant to be approved were not stringent enough to deal with the existing terrorist threat that faced the nation, due to the facts that agents of Al-Qaida were not legally considered 'of a foreign power' (power being construed as a sovereign nation). The Patriot Act was passed to help the CIA and FBI address this concern by conducting an overhaul of the FISA. Section 218 of the Patriot Act softened the FISA requirement that "foreign intelligence" be "the purpose" of the investigation, requiring only that it be a "significant purpose". This seemingly minor change to the FISA by the Patriot Act legally gave the federal authorities (specifically the FBI and CIA) the power to pursue 'suspect' American citizens and non citizens alike indicted on warrants that only tangentially touched on national security. Undoubtedly, most of these 'suspect' citizens were of Arab and South American descent.

The most invasive of the Patriot Act's subversions of the Fourth Amendment occurs in section 213, which allows what has come to be known as 'sneak and peak' warrants. The notice of the execution of a warrant (commonly referred to as the 'knock and announce' policy) has long been held to be an important component of the reasonableness of a search. The Supreme Court has ruled that evidence obtained in illegal searches and seizures can be rendered constitutionally defective if police officers enter without prior announcement. However, the Patriot Act directly attacks this constitutional protection by allowing the CIA or FBI to delay the notification 'may have an adverse result.' The exceedingly broad nature of

this clause in section 213 leaves a frightening amount of discretion to federal authorities under which they can conceivably test the boundaries of the Patriot Act at the expense of suspected terrorists, most of whom are undoubtedly Arab and South Asian Americans. In short, many of the legal boundaries of the Fourth Amendment protections that have evolved over the past several decades are now put into question with the passage of the Patriot Act. The FISA and the Wiretap Act of 1968 have been amended to broaden the scope of warrants and allow for expanded intelligence techniques by the CIA and FBI, while section 213 directly curtails the privacy rights of Americans by calling into question the traditional 'knock and announce' search and seizure policy.

The Fifth Amendment of the United States guarantees that 'no person shall be.. deprived of life, liberty, or property, without due process of law.' The legalist nature of the United States and other liberal democracies holds this right to due process of the law sacred to the civil liberties of citizens. Nevertheless, in the name of national security, the Patriot Act proceeded to threaten many of the protections of Arab and South Asian Americans secured by the Fifth Amendment through the enactment of sections 412 and 106.

Two of the most basic civil rights provided by the Sixth Amendment to the U.S. Constitution are the rights to legal counsel and the confidentiality of any and all communications between legal representatives and their client. The action taken by the Bush Administration (specially by Attorney General John Ashcroft) after the passage of the Patriot Act have served to undermine these civil liberties, and these actions have been focused on the members of the Arab and South Asian American communities.[85]

With the original USA Patriot Act set to expire on December 31, 2005, a debate regarding the effectiveness of the legislation currently rages. The efficacy of the counter-terrorist response in the United States has, due to the relative newness of these domestic attacks, been largely untested.

3.3. United Kingdom

The pattern for anti terrorist legislation in the United Kingdom and Ireland was set in the late nineteenth century and early twentieth century. The Explosive Substances Act 1883 was introduced in the wake of Fenian and anarchists bombings in London in the 1870s. Many

[85] Vijay Sekhon, "The Civil Rights of "others": Antiterrorism, The Patriot Act, and Arab and South Asian American Rights in Post 9/11 American Society", in Texas Forum on civil liberties and civil rights, Vol. 8, (2003) pp-117-148.

terrorist offences today are still prosecuted under that Act. At the same rime, Westminster introduced the Criminal Law and Procedure (Ireland) Act 1887, which outlawed "unlawful associations"-precursor of the regime of "proscription" which first appeared in the 1974 Prevention of Terrorism Act and remains an integral part of current anti-terrorist legislation.[86]

After partition in 1922 and the creation of two parliaments for Ireland, anti terrorist legislation in the north became a matter for the Minister of Home Affairs for Northern Ireland (MHA). The genesis of much of the anti terrorist legislation we see today can be found in the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 (SPA), and associated Regulations. Until the early 1970s, anti terrorist legislation (although it was not called that at this time) was a matter for Ireland alone, not for the mainland United Kingdom. Initially, the SPA was expressed to be an emergency measure in the force for one year. In a pattern we see repeated until the turn of the century, following five years of civil war in Ireland after the Easter Uprising, the SPA was re-enacted in each successive year, and was made permanent in 1933. SPA Regulations granted extraordinary powers of stop, search, arrest and detention to the MHA and the police under his command. Most controversially, detention without trail, or "internment", was also introduced by the SPA Regulations. Internment was used regularly in Ireland from 1920-1960. However, it was the internments of 1971-and in particular, the detention without trail of 342 members of the nationalist community on a single day in August that brought the attention of the world to the use of special powers in Northern Ireland.[87]

The first round of internments received widespread condemnation, based as they were on inaccurate RUC intelligence, which lead to the detention of many members of the nationalist community who had no connection with the IRA at all. In response, the Westminster introduced limited procedural safeguards which provided a measure of judicial oversight in the Detention of Terrorists (Northern Ireland) Order 1972 (DTO).

Under the DTO, and following the re-introduction of direct rule in March 1972, the Secretary of state for Northern Ireland could order detention without trail for 28 days using an interim custody order.[88]

The UK government recognised that internment violated Art 5 of the European Convention for the protection of human rights and fundamental freedom (the European Convention) and

[86] Ben Brandon, Terrorism, Human Rights and the Rule of Law: 120 years of the UK's Legal Response to Terrorism, Criminal Law Review, July, 2004.
[87] Ibid
[88] The Secretary of state could order such detention, where it appeared to him that: 'a person is suspected of having been concerned in the commission or attempted commission of any act of terrorism, or in the direction, organisation or training of persons for the purpose of terrorism'.

decided to derogate from it, notifying the European Commission of human rights and its decision on August 20, 1971. The decision to derogate was challenged at the European Court of Human Rights in 1977 **in *Ireland v. United Kingdom*[89]**. The court declared that the wide margin of appreciation should apply "both on the question of the presence of an emergency [threatening the life of the nation] and on the nature and scope of the derogations necessary to avert it, and ruled in favour of the United Kingdom.

Internment was never introduced on the mainland. It was phased out in the Northern Ireland by December 1975, after a labour victory in the general election on the mainland. Emergency or special powers were not considered necessary on the mainland until a series of Acts of Parliament loosely described as the Prevention of Terrorism Acts (PTA) were introduced as the violence and disorder in Ireland spread across the Irish Sea to London and other English cities in the mid-1970s.

The first PTA, the Prevention of Terrorism (Temporary Provisions) Act 1974 was rushed through Parliament in 48 hours, shortly after the notorious bombings of two pubs in Birmingham on November 21, 1974, which killed 22 people and injured 183. Twenty people had already died and 180 had been injured in21 previous IRA attacks in the mainland United Kingdom that year.

The 1974 PTA contained a sunset clause and was subject to renewal every six months so that the need for the continued use of special powers could be monitored. However, like the Special Powers Act before it, what was initially viewed as a temporary emergency response to terrorist activity on the mainland because a more or less permanent shroud of security measures. The 1974 PTA Act was renewed in successive years until 1976, where it was re-enacted with certain amendments, including a revised sunset clause. Under s. 17 of the 1976 PTA, the special powers were subject to parliamentary renewal every 12 months. The 1976 Act was renewed annually until 1984, when it was re-enacted with certain amendments. It was replaced with the PTA 1989, and the Northern Ireland (Emergency Provisions) Act 1996 (EPA).

[89] Ireland v. United Kingdom (1979-1980) 2 E.H.R.R. 25.

TERRORISM ACT 2000 and the ANTI-TERRORISM, CRIME and SECURITY ACT, 2001

The Terrorism Act (TA) 2000 reforms and extends existing counter terrorist legislation, and places it largely on a permanent basis. The TA Act is in certain respects, the direct descendent of decades of counter terrorist laws in the United Kingdom and Northern Ireland. The TA 2000 also contains a number of innovative measures alongside more familiar provisions. The power of the Secretary of the state to proscribe or outlaw organisations is retained, albeit with a new oversight and review mechanism, again influenced by the United Kingdom's obligations under the European Convention. The principal innovation is the new definition of terrorism contained in the TA 2000, which is quite different from the old PTAs definition. The new definition is international in inspiration and effect. It is similar to definition of terrorism that has emerged from lawmakers in other developed states and international instruments.

Jurisdiction for terrorist offences in previous PTAs was territorial. In the new Act, the English courts have jurisdiction to try terrorist offences which are said to have occurred outside the United Kingdom. The extension of jurisdiction to a near universal model is also consistent with the United Kingdom's international obligations under a number of anti-terrorism treaties to which it is party.

Apart from Prevention of Terrorism Act 2000, the other important anti-terrorist legislation of the United Kingdom is the ***Anti-Terrorism Crime and Security Act 2001***. It is a long and complicated Act. It is highly controversial for two principal reasons namely:

- Firstly, it contains severe anti-terrorist powers which may be disproportionate to the actual threat facing the United Kingdom.
- Secondly, it contains many provisions that increase the general powers of the police and other state agencies but with no restraint that such increased powers are confined to anti-terrorism activities. It was as if the immediate emergency was used to push through a major expansion of powers which would not otherwise have been acceptable to Parliament.

The most recent criticism has concerned the Prevention of Terrorism Act 2005, a response to the increased threat of Islamic terrorism. This Act allows the house arrest of terrorist

suspects where there is insufficient evidence to bring them to trail, involving the derogation of human rights law. This aspect of the Prevention of Terrorism Act was introduced because the detention without trail of nine foreigners at HM Prison Belmarsh under Part IV of the Anti-terrorism, Crime and Security Act2001 was held to be unlawful under human rights legislation.[90]

3.3 INDIA

India's decades-long struggle to combat politicized violence has created what one observer has termed a "chronic crisis of national security" that has become part of the very "essence of [India's] being."[91]

Thousands have been killed and injured in this violence, whether terrorist, insurgent, or communal, and in the subsequent responses of security forces. Terrorism, in particular, has affected India more than most countries. By some accounts, India has faced more significant terrorist incidents than any other country in recent years, and as the attacks on the Mumbai commuter rail system, Hyderabad attack etc make clear, the threat of terrorism persists.

Like other countries, India has responded by enacting special anti terrorism laws, part of a broader array of emergency and security laws that periodically have been enacted in India since the British colonial period. Most recently, in the aftermath of the terrorist attacks of September 11, 2001, and the attacks soon thereafter on the Jammu & Kashmir Assembly and the Indian Parliament buildings, India enacted the sweeping Prevention of Terrorism Act of 2002. POTA incorporated many of the provisions found in an earlier law, the Terrorist and Disruptive Activities (Prevention) Act of 1985, which remained in effect until 1995. While POTA was prospectively repealed in 2004, cases pending at the time of repeal have proceeded, and the government has preserved some of POTA's key provisions by re-enacting them as amendments to the Unlawful Activities (Prevention) Act of 1967.[92]

As human rights advocates have recognised, it is vital for governments to protect their citizens from terrorism, which endangers liberty in self-evident ways. At the same time,

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[90] Human rights in the United Kingdom, Wikipedia, available at : http://en.wikipedia.org/wiki/Human_rights_in_the_United_Kingdom (accessed on 2nd May 2008)

[91] K.P.S. Gill, The Imperatives of National Security Legislation in India, SEMINAR, Apr. 2002, at 14, 14

[92] Anil Kalhan, Gerald Conroy, Mamta Kaushal, Sam Scott Miller & Jed S. Rakoff, 'COLONIAL CONTINUITIES: HUMAN RIGHTS, TERRORISM, AND SECURITY LAWS IN INDIA', Available att http://www.abcny.org/pdf/ABCNY_India_Report.pdf, Accessed on 4th May 2008.

democratic societies committed to the rule of law must resist the pressures to "give short shrift" to fundamental rights in the name of fighting terrorism, and the sweeping antiterrorism initiatives of many countries raise serious human rights issues.[93] In the United States, advocates have expressed concern that since 2001, the government has selectively targeted individuals (and especially recent immigrants) of Arab, Muslim and South Asian descent, essentially using race, religion, and national origin as "pro[ies] for evidence of dangerousness." In India, similar concerns have been raised that extraordinary laws such as TADA and POTA have been used to target political opponents, human rights defenders, religious minorities, Dalits (so-called "untouchables") and other "lower caste" individuals, tribal communities, the landless, and other poor and disadvantaged people.[94]

Protection of human rights-including freedom from arbitrary arrest and detention, freedom from torture or cruel, inhuman, or degrading treatment, freedom of religion, freedom of speech and association, and the right to a fair criminal trail-certainly *constitutes a moral and legal imperative. In the words of the Supreme Court of India, "if the law enforcing authority becomes a law breaker, it breeds contempt for law, it invites every man to become a law unto himself and ultimately it invites anarchy."*[95] In the United States, the September 11 Commission has echoed this concern, noting that "if our liberties are curtailed, we lose the values that we are struggling to defend."

But frequently neglected is that attention to human rights in the struggle against terrorism is also a crucial strategic imperative. As the Supreme Court of India has recognised, "*terrorism often thrives where human rights are violated," and "the lack of hope for justice provides breeding grounds for terrorism.*"[96] Since terrorists often self-consciously seek government and its citizens –or between ethnic, racial, or religious communities-adhering to human rights obligations when combating terrorism helps to ensure that advocates of violence do not win sympathy from the ranks of those harmed and alienated by the state. Alienated communities are also less likely to cooperate with law enforcement, depriving the police of information and resources that can be used to combat terrorism. This strategic

[93] Hamdi v. Rumsfeld, 542 U.S. 507, 532 (2004)

[94] And in both countries, these present-day concerns are shaped by the memories of past abuses. In the United States, for example, the internment of Japanese Americans during World War II and the tactics undertaken during the McCarthy era give us pause about deferring too readily to the executive's representations concerning security. In India, human rights concerns arising from security and emergency laws date back to the British colonial era, and these concerns have persisited in the years since independence.

[95] Kartar Singh v. State of Punjab, (1994) 2 S.C.C.R. 375.1994 Indlaw SC 525

[96] People's Union for civil liberties v. Union of India, A.I.R. 2004 S.C. 465, 467.

imperative demands caution before concluding that new, ever –tougher laws are always the most effective means of curbing terrorism.

As the Indian experience demonstrates, special antiterrorism laws have not always proven effective in preventing serious acts of terrorism. Indeed, the train blasts in Mumbai took place in a state, Maharashtra, that itself already has had a comprehensive antiterrorism law in place for several years. Even at a purely strategic level, therefore, any effective effort to combat the extraordinary complex problem of terrorism requires attention to a complex range of factors, not least of which includes vigilant protection of human rights.

3.1 International Human Rights Norms and Indian Domestic Law

India has long recognized the importance of ensuring its own compliance with the international human rights obligations. While international treaties do not automatically become part of domestic law upon ratification,[97] the Constitution provides, as a Directive Principle of State policy that the govt shall endeavour foster respect for international law and treaty obligations in the dealings of organized people with one another, and also authorizes the central government to enact legislation implementing its international law obligations without regard to the ordinary division of central and state government powers.[98] The Supreme Court of India has frequently emphasized that constitutional and statutory provisions should be interpreted in light of India's international law obligations and has looked for guidance when interpreting the Constitution's fundamental rights provisions to the UDHR, which was adopted while the Constitution was being drafted. India also is bound by customary international law norms, to the extent it has not persistently objected to those norms, and is absolutely bound by norms that have attained the status of jus cogens.

In 1993, India established the National Human Rights Commission, an independent government commission whose mandate is to protect and promote international human rights norms. The NHRC is empowered to receive and investigate individual complaints of human rights violations, initiate such investigations on its own, monitor and make non-binding recommendations to the government on domestic implementation of international human rights norms, and promote public awareness of human rights standards. To conduct these activities, the NHRC has the powers of a civil court, including the ability to compel appearance of witnesses, examine witnesses under oath, compel discovery and production of

[97] E.g. State of Madras v. G.G. Menon. A.I.R. 1954 S.C. 517.
[98] Indian Constitution. Arts. 51(c), 253.

documents, and order production of records from courts and government agencies. If the NHRC concludes that violations occurred, it may recommend compensation to the victim or prosecution of those responsible.

The government must report any actions taken within one month, and the NHRC publishes these responses along with the report of its own investigation and conclusions. The NHRC only may investigate alleged violations within the previous year and may not investigate allegations against the armed forces.[99]

3.2 INTERNATIONAL LAW

India is a party or signatory to several international instruments protecting individuals from arbitrary or improper treatment under antiterrorism and other security laws, including the International Covenant on Civil and Political Rights,[100] the International Convention on the Prevention and Punishment of the Crime of Genocide,[101] and the International Convention on the Elimination of All Forms of Racial Discrimination,[102] and the four Geneva Conventions.[103] As a U.N. member state, India is bound the U.N. Charter, which pledges member states to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and by the Universal Declaration of Human Rights, which protects the rights to liberty freedom of expression and opinion, peaceful assembly, an effective remedy for acts violating fundamental rights, and a fair and public hearing by an independent and impartial tribunal.[104]

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[99] Supra note 123.

[100] International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (ratified by India April 10, 1979)

[101] International Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S 277 (ratified by India August 27, 1959)

[102] International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S 195 (ratified by India Dec. 3rd 1968)

[103] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31 (ratified by India Nov. 9, 1950); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85 (ratified by India Nov. 9, 1950); Geneva Convention Relative to Treatment of Prisoners of War, opened for signature Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287 (ratified by India Nov. 9 , 1950)

[104] U.N. Charter arts. 1(3), 55-56; Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3rd Session, Pt. I, Resolutions, at 71, U.N. Doc. A/810, arts. 19, 21 (Dec. 10, 1948).

Several non-binding sources of law further clarify the principles underlying these binding international obligations.

The ICCPR protects the rights to life, liberty and security of the person, and freedom from arbitrary arrest or detention. To ensure freedom from arbitrary detention, the ICCPR guarantees the right of any arrested or detained individual to have a court promptly decide the lawfulness of detention and to be released if detention is not lawful. Individuals charged with criminal offences must be presumed innocent until proven guilty, tried without undue delay, and not compelled to confess their guilt. Criminal offences must be defined with sufficient precision to prevent arbitrary enforcement, and no one may be criminally punished for conduct not proscribed at the time committed. The ICCPR also protects freedom of opinion, expression, peaceful assembly, and association.

Finally, when rights are violated, the ICCPR requires the availability of effective remedies, regardless of whether the individuals who committed the violations acted in an official capacity. Effective remedies require more than just monetary compensation, but instead might also need to involve restoration of residence, property, family life and employment; physical and psychological rehabilitation; prosecution of those responsible; official acknowledgement and apology; and guarantees of non-repetition. States may derogate from some human rights guarantees under limited circumstances, and the threat of terrorism may, potentially, constitute a public emergency authorizing derogation. However, derogation must be strictly required by the exigencies of the situation, not inconsistent with other obligations under international law, and not discriminatory on the basis of race, color, sex, language, religion or social origin. Derogation also must be tailored to the particular circumstances and limited in duration. Procedurally, a state party must immediately notify other state parties through the U.N. Secretary General of the specific provisions from which it has derogated and the reasons for derogation.

India has never purported to derogate from any of the ICCPR's provisions, and many of the ICCPR's provisions are non derogable under any circumstances. The ICCPR explicitly provides that the rights to life, freedom from torture or cruel, inhuman, or degrading treatment, freedom from prosecution under retroactive legislation, and freedom of thought conscience, and religion are non derogable. In addition, the Human Rights Committee has identified other non derogable standards. Under the Committee's guidelines, all persons deprived of liberty must be treated with respect for their dignity; hostage-taking, abduction,

and unacknowledged detention are prohibited; persons belonging to minority groups must be protected; and no declaration of a state of emergency . . . may be invoked as justification for a State party to engage itself . . . in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.

India has not signed the Optional Protocol to the ICCPR, which permits individuals to bring complaints of violations before the Human Rights Committee.[105] While India signed the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997, it has not ratified CAT or taken steps to ensure that its domestic legislation complies with CAT's requirements. However, the prohibition against torture and cruel, inhuman, or degrading treatment also is found in the ICCPR and is widely regarded as a customary international law norm and a jus cogens norm from which no derogation is permitted.[106]

Anti- Terrorism laws in India and their Implementation:

India has had and continues to have a veritable spectrum of draconian laws that are supposedly aimed at stopping terrorism but are used effectively by state agents to abuse human rights. While these laws are implemented all over India, they have the most deplorable effects on the human rights of minorities, vulnerable communities in areas where people have opposed these laws.

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[105] Optional Protocol to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302 (entered into force March 23, 1976)

[106] ICCPR, supra note 80, art. 7; Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, entered into force Jan. 27, 1980, art. 53, 1155 U.N.T.S. 331, available at http://www.un.org/law/ilc/texts/treaties.htm (jus cogens norm is one accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character); PETER MALANCZUK, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 39-48 (7th rev ed. 1997) (customary international law norms are evidenced by practices that states generally recognize as obligatory and that substantial number of states follow in uniform and consistent fashion).

NATIONAL SECURITY ACT, 1980 (NSA)

The NSA Act is the first legislation to fight against organised terrorism which is recognised today all over the world. The Act was enacted as a successor to the Maintenance of Internal Security Act, 1971 (MISA) after that the law had been discredited and subsequently repealed in the after math of the 1975-77 state of emergency. Under the Act, both the Central and the state governments could order the detention of any person up to one year if it was satisfied that such detention was necessary to prevent him from acting 'in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India.'[107] The Act also allowed both the central and state governments to detain any person '*with a view to preventing him from acting in any manner prejudicial to the security of the state or to the maintenance of public order.. or to the maintenance of supplies and services essential to the community.*'[108] The latter power of detention could be exercised by a district magistrate or a commissioner of police within the limits of his local area. Where the power of detention was utilized by or on behalf of a state government, it was obliged to report that fact to the central government within seven days. Where exercised by a district magistrate or commissioner of police, he was under an obligation to report that fact to the relevant state government immediately, and if the detention is not approved by the government within 12 days, it would cease to be valid.[109]

The Act requires the grounds of detention to be communicated to detainees within five days, but this period was extendable to 10 days where they were 'exceptional circumstances', the existence of which were to be recorded in writing by the authority.[110]All the cases of detention were to be referred to a three member Advisory Board, consisting of High Court judges or persons qualified to be appointed as High Court judges, within three weeks from the date of detention. The Advisory Boards were required to consider the materials placed before the, including the order of detention, the grounds of detention and submit a report to the government within seven weeks from the date of detention expressing its opinion as to whether or not there was sufficient cause for the detention.[111]The government was obliged to act on the report of the Advisory Boards, and release the detainee if a Board had found that

[107] Section 3(1) (a)
[108] Section 3(2)
[109] Section 3(4)
[110] Section 8(1)
[111] Section 11. The Advisory Boards were also given powers to hear the detainee in person in cases where that was considered essential or where the detainee has expressed a desire to be heard. But the detainee could not claim a right to legal representation in such hearings.

there was in sufficient cause for his detention. All proceedings and report of the Advisory Boards were to remain confidential. **The NSA, 1980 was amended in 1984** to make its provisions harsher in their application to the state of Punjab and the Union Territory of Chandigarh.

First, the maximum period for which a person could be held under the Act was increased from one year to two years. **Secondly**, the period which the state government had to approve a detention made by a district magistrate or commissioner of police was extended from 12 days to 15 days. **Thirdly**, the government was allowed to dispense with the requirement of consulting the Advisory Boards in certain cases. **Fourthly**, even when the Advisory Board had to be consulted, the period within which a case had to be referred was extended from three months to four months and two weeks; and the Boards were given up to five months and three weeks to submit their report to the government.[112] This is followed by another amendment which states that where one or more of several grounds of detention had been struck down by a court of law, the order of detention would still remain valid. This change was applied retrospectively and was made to circumvent the long standing view taken by the courts that, where even one of many grounds in an order of detention had been found to be bad in law, the whole order was vitiated and had to be set aside. This amendment also provided that the expiry or revocation of an order of detention would not bar the passing of a new order, even if no fresh facts had arisen to justify such an order.[113] Yet another amendment, introduced in 1987,[114] further relaxed the requirement of consultation with Advisory Boards in respect of detainees in Punjab and Chandigarh.

This amendment added a new ground under which the government could detain any person for up to six months without referring his case to an Advisory Board, namely, that the order of detention had been issued to prevent him 'from interfering with the efforts of the government in coping with terrorist and disruptive activities.[115] This amendment also extended the period allowed to the government to furnish the grounds of detention, from ten to fifteen days.

[112] Section 11(1) National Security (Amendment) Act, 1984
[113] Section 14(2), National Security (Second Amendment) Act, 1984
[114] National Security (Amendment) Act, 1987
[115] Section 14-A (1)(i)

Between 1980 and 1994 alone, 16,000 detentions were reported to have been carried out nationwide.[116] There were frequent reports that the Act was misused to arrest and detain non-violent opponents of the government. The Act has been used not only in areas of armed conflict, but also in other peaceful states, usually to detain criminals. This was despite an assurance given by the government of India to the United Nations Working Group on Enforced or Involuntary Disappearances in 1997 that the Act had only been implemented in 'periods of crisis in order to protect the citizens against terrorism.'[117]

TERRORIST AFFECTED AREAS (SPECIAL COURTS) ACTS, 1984

This legislation relating to suppression of terrorism was passed after the Indian army's raid on the Golden temple in Amritsar. It was first invoked in July, 1984 to declare the whole of the state of Punjab a 'terrorist affected area.' The statement of objects and reasons attached to the Bill stated that the law and order situation in certain parts of the country had been disturbed due to criminal activities of terrorists. They had been indulging in wanton killings of innocent persons, looting of properties, disrupting lines of communication and committing other heinous crimes, which had made the life of the people in the affected area extremely difficult and had threatened the security and territorial integrity of the country. In this situation, proper and fair conduct of criminal trails had become very difficult. Therefore, a need was felt, in the public interest, to establish special courts for speedy and fair trail of offences.

The Terrorist Affected Areas (Special Courts) Act, 1984 was the first Act to define 'terrorism'. The definition was kept elastic on purpose, so that it could be narrowed or broadened to suit the political requirements of the government.[118] Under this Act, ' a terrorist affected area' was defined as an area declared by the central government, where the scale and manner of terrorist activity was serious enough to make it expedient for the government to seek recourse to the measures contained in the Act.[119] The central government was empowered to establish a special court for each such area for speedy trail of scheduled offences committed in such areas. The Act required all the proceedings in special court to be

[116] Country Report on Human Rights Practices for 1994, as cited in Venkat Iyer, States of Emergency, (New Delhi: Butterworths, India, 2000)
[117] Report of the Working Group on Enforced or Involuntary Disapperances, U.N. Doc. E/CN.4/1997/34 at 36, as cited in supra note 79.
[118] Dr Surat Singh & Hem Raj Singh, Law Relating to Prevention of Terrorism, (Delhi: Universal Law Publishing co. Pvt. Ltd, 2003)
[119] Section 2(1) read with Section 3

conducted in camera, except on the application of the public prosecutor. The court could keep the identity and address of a witness secret. The Act also modified the application of certain provisions of the Code of Criminal Procedure.

It made every scheduled offence 'cognizable' offence, for which a police officer would be able to arrest anyone without warrant. It extended the maximum period for which a person could be kept in police custody pending investigations from 15 days to 30 days and in judicial custody thereafter from 90 days to one year. It authorised executive magistrates to examine and remand suspects and to record confessions and statements. These functions are normally performed by legally trained judicial magistrates who are independent of the executive.

It took away the power of the Court of Session and the High court to grant anticipatory bail to anyone who apprehended arrest on the accusation of having committed an offence under the Act. The Act was amended in 1985 to provide for the abolition of special courts in areas which have ceased to be 'terrorist affected' areas and where no cases are pending before such courts. This amendment also reduced the number of scheduled offences and confined it to offences relating to 'waging war' against the government of India, and hijacking.[120]

An example of indiscriminate application of the Act often cited by human rights monitors, concerns the case of over 300 Sikhs who were arrested in June 1984 within the precincts of the Golden Temple and later charged with 'waging war' under this Act, despite the fact that most of them were reportedly on the temple premises for innocuous reasons. They were held in conditions of considerable hardship: initially they were denied visits by their relatives; even after this practise was held unlawful by the court, a number of impediments were placed on contracts between the prisoners and their visitors. Some of the detainees were reported to have developed signs of insanity during detention, far from providing them with the necessary medical help, the jail authorities moved them to solitary cells. They were detained for long five years and were eventually released without trail. None of them received any compensation for their prolonged unjustified detention. All the special courts established under the Act in Punjab were abolished in September 1985, following the enactment of another law, the Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA), which also provided for the trail of terrorist suspects in special courts with abridged procedures. Severe violation of human rights was reported during the period of 1985 to 1995 when TADA was in force. It was used on a large scale all over India, both in insurgency affected areas such as North-Eastern states, Punjab and Kashmir.

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[120] Section 15-A, The Terrorist Affected Areas (Special Courts)(Amendment) Act, 1985.

The Terrorist and Disruptive Activities (Prevention) Act

This Act was first enacted in 1985 to deal with the growing problem of terrorist violence, especially in the state of Punjab. In the statement of object and reasons, it was stated that terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. The terrorists had expanded their activities to other parts of the country. In planting of explosive devices in the mind of citizens and to disrupt communal peace and harmony was clearly discernible. This new and overt phase of terrorism required to be taken serious note of and dealt with effectively and expeditiously. This led to the enactment of the Act.

TADA, 1985 created two new offences, namely, "terrorist act" and "disruptive activities". Noticeably, in the offence of "terrorist act" the offender would have to be imputed with "intent to overawe the government" or "to strike terror in the people" or "to alienate any section of the people" or "to adversely affect the harmony amongst different sections o the people". The "disruptive activities", in order to attract the penal clause, were required to be such as to be intended to disrupt "the sovereignty and territorial integrity of India" or to bring about, amongst others the "secession of any part of India from the Union".

TADA 1985 established a system of special courts ("Designated Courts") and placed restriction on the grant of bail unless the Court recorded the existence of "reasonable grounds for believing" that the accused was "not guilty". The police were given enhanced powers of detention of suspects; provision was made for protection of witnesses and at the same time it was provided that trials under the law shall be speedy by being accorded "precedence" over other cases.

TADA 1985 had been enacted with intended life span only of two years in the fond hope that the hazard would fade out. But it was not to be. The Legislature thus renewed the law in the form of 'Terrorist and Disruptive Activities (Prevention) Act, 1987' (commonly known as 'TADA 1987'). Since the activities of terrorist violence, in the meantime, had continued unabated and rather had spread its tentacles to other parts of the country, and with addition of new and disturbing dimensions in the form of International involvement and use by terrorist groups ("inspired from abroad") of sophisticated weaponry and professional training, TADA1987 sought to strengthen the mechanism that had been provided in TADA 1985. TADA 1987 was initially enacted for limited period. But its life was extended from time to time, finally in 1993 so as to make it valid till 1995.

The main features of TADA 1987, thus amended from time to time, included certain other related offences being properly defined (e.g. harboring or concealing terrorists; for being a member of terrorist gang or terrorist organization; for holding of property derived as a result of terrorist acts etc.). TADA 1987 provided for a new offence of "possession" in "notified area" of unauthorized arms (mainly "prohibited arms and ammunition") or bombs etc. It also provided for enhanced penalty for certain specified offences with arms, ammunition etc., if committed "with intent to aid any terrorist or disruptionist".

TADA 1987 also relied upon the system of 'Designated Courts', specially constituted to deal with such crimes. It gave enhanced powers to the investigating police officers in the matter of seizure of property regarding which there was "reason to believe" to have been derived as a result of terrorist acts, besides provision for attachment and forfeiture of such property. It extended the possible period of detention of a suspect in police custody pending investigation. It made a significant departure from the general law by rendering admissible confession made before a police officer not below the rank of Superintendent of Police. The legislature introduced a safeguard against abuse of powers given by TADA 1987 to the executive by creating a bar against registration of "First Information Report" (FIR), the starting point of criminal justice apparatus, except after "prior approval of the District Superintendent of Police"

TADA 1987 gave rise to protests by human rights groups questioning the validity of the law on various grounds, mainly that it encroached on certain fundamental rights of the persons arrested and it being an unnecessary departure from the general law arming the executive (police) with unbridled and oppressive powers, without sufficient accountability.

Human rights advocates sharply criticized the antiterrorism practises of the central and state governments in Punjab and elsewhere throughout the late 1980s and early 1990s. In Punjab, much of this criticism focused on the practices of the police, paramilitary, and armed forces, drawing attention to the many thousands of civilian deaths and extensive evidence that the security forces engaged in arbitrary arrests and detentions, extortion, torture, extrajudicial killings, and thousands of disappearances. As in other parts of India, extrajudicial killings in Punjab frequently took the form of false encounters, a longstanding, well-documented practice by which the police simply execute someone extra judicially and then falsely claim that the killing took place in response to an attack.

However, laws such as TADA also have been a focal point of these criticisms, since they purported to provide both the legal and symbolic authority for many of these rights violations. Critics frequently noted the facial inconsistency of many of TADA's provisions with human rights norms under international law and the Constitution. Considerable evidence suggests that in its application, TADA's sweeping powers were predominantly used not to prosecute and punish actual terrorists, but rather as a tool that enabled pervasive use of preventive detention and a variety of abuses by the police, including extortion and torture. In Punjab, advocates extensively documented evidence that thousands of individuals, virtually all of them Sikh, had been arbitrarily arrested under TADA and detained for prolonged periods without being told the charges against them. The availability of TADA's provisions as a means of coercion also helped facilitate many of the other well-documented human rights violations by the police. Frequently, the Punjab police would eschew use of the ordinary criminal laws when TADA's more powerful provisions also were available.[121]

But human rights violations associated with TADA were not limited to Punjab. To the contrary, police often committed similar abuses even in states that lacked the acknowledged problem of political violence found in Punjab. **For example**, of the 67,507 individuals detained under TADA as of August 1994, 19,263 of them were in Gujarat – even more than in Punjab and in a state without any significant terrorism problem. As in Punjab, advocates presented considerable evidence that in other states TADA was similarly used to facilitate extortion, illegal arrests and detentions, torture, and other human rights violations. While the precise contours of this pattern varied from state to state, depending on the local social and political context, TADA's provisions consistently were used in an arbitrary and discriminatory manner to target political opponents, religious minorities, or Dalits and other lower caste groups, or to prosecute ordinary criminal offences with no connection to terrorism.

Statistics documenting detention and conviction rates under TADA provided further evidence suggesting the law's misuse. While precise numbers have varied, the overall picture

[121] In fact, the use of TADA as a substitute for ordinary criminal law become so widespread that the Punjab government eventually directed local officials explicitly not to use TADA when regular criminal law provisions might apply. SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, ALTERNATE REPORT AND COMMENTARY TO THE U.N. HUMAN RIGHTS COMMITTEE ON INDIA'S 3RD PERIODIC REPORT UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
(1997), http://www.hrdc.net/sahrdc/resources/alternate_report.htm

is clear and consistent: large numbers of individuals were detained under TADA, but only a miniscule fraction of them were ultimately convicted of anything. Statistics reported by the government in October 1993 showed that only 0.81 percent of the 52,268 individual detained under TADA since its enactment had been convicted. In Punjab, the conviction rate was even lower: only 0.37 percent of the 14,557 individuals detained under TADA in Punjab had been convicted. In August 1994 the Minister of State for Home Affairs reported that of the 67, 059 individuals reported to have been detained under TADA since its enactment only 8,000 individuals had been tried, of whom 725 individuals were convicted. Other government statistics suggested that by mid-1994, 76,036 individuals had been detained under TADA, of whom only one percent had been convicted. For individuals arrested under ordinary criminal laws, by contrast, the conviction rate in 1991 was 47.8 percent.[122]

PREVENTION OF TERRORISM ACT, 2002 (POTA)

The scourge of terrorism would not end. It only went on to rise in a more and more sinister manner in course of time with such events coming to a head in the form of attack on Indian Parliament on 13th December 2001. The legislature recognized the fact that terrorist groups and organizations, having a close inter-linkage with organized crime and having acquired global dimensions, taking advantage of modern means of communication and technology and using high-tech facilities, were able to strike and create terror among people "at will" even while the "existing criminal justice system" was not designed to deal with such types of heinous crimes.

The Prevention of Terrorism Act, 2002 (commonly called as 'POTA') was enacted to make provisions "for the prevention of" and "for dealing with" terrorist activities, in the face of multifarious challenges in the management of internal security of the country and an upsurge or intensification of "cross-border terrorist activities and insurgent groups". [123]

POTA was a measure introduced by the State to adopt twin-legged strategy, one dealing with the terrorism as a crime, and the other for steps that could be termed as

[122] MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2004, at 192 (2005), http://ncrb.nic.in/crime2004/home.htm

[123] Y.K. Sabharwal (Former Chief Justice), Meeting the challenge of Terrorism- Indian Model (Experiments in India), Available athttp://supremecourtofindia.nic.in/new_links/Terrorism%20paper.doc.Accessed on 6th May 2008

preventive in nature. Learning from past experience in the enforcement of special anti-terrorism legislation adopted earlier in the country, and conscious of the fact that the extra-ordinary nature of the powers and procedure provided by this new special law were prone to abuse for ulterior purposes by law enforcing agencies and pressure groups, the Legislature declared its intent to prevent such misuse by referring to the fact that "sufficient safeguards" were being engrafted in the law.[124]

POTA would confer special powers of arrest or detention of suspected terrorists, of seizure and forfeiture of terrorist property, for prohibiting and penalizing terrorist funding, the interception of communication amongst suspects and for dealing with terrorist organizations by, *inter alia*, making their membership an offence. POTA contained revised form of definition of the offence of "terrorist act"[125] requiring, as the first and foremost ingredient, the "intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people".

While reintroducing the related offences of conspiracy, abetment, harboring etc., POTA also provided for the offence of "possession" in "notified areas" of unauthorized arms (mainly "prohibited arms and ammunition") or bombs etc and retained enhanced penalty for certain offences under Arms Act, Explosives Act etc., if committed "with intent to aid any terrorist". POTA also gave enhanced powers to investigating police officers in the matter of seizure & attachment of property regarding which there was "reason to believe" to be "proceeds of terrorism", giving the power to order "forfeiture". It permitted police custody

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[124] Objects & Reasons of POTA

[125] Section 3 POTA:

Punishment for terrorist acts.—(1) Whoever,—

(*a*) 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 defence 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 such person in order to compel the Government or any other person to do or abstain from doing any act;

(*b*) 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.

Explanation.—For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism

for a period double than that permissible under the general law and would also moot setting up of Special Courts for trial of offences under the Act. The stringent bail provisions were reintroduced.

The law under POTA would also permit use of confession made before the police officer rather than a judicial authority. It is significant to note that the safeguards in such regard, which had been introduced by the Supreme Court through the judgment in **Kartar Singh**, now found adoption by the legislature as statutory requirements[126].

POTA also provided for measures to deal with organization declared by the executive to be "terrorist organization" making membership of, support to, or activities connected therewith penal offences. It also made elaborate provisions for interception of communication, authorization for and control/use of intercepted communication.

Besides introduction of statutory safeguards for abuse of power relatable to confession before the police, POTA also provided for speedy trials[127], and introduced the concept of quasi judicial review[128] of the State action vis-à-vis organizations declared to be terrorist organizations besides review[129] of arrest or prosecution of a person for offences under POTA, thus again respecting the view of the judiciary for need for adequate safeguards against abuse of powers by the executive, as declared in **Kartar Singh**. It bears special mention here that the Central Government put the mechanism to use by constituting a Review Committee, under the chairmanship of a former Chief Justice of High Court, and thereby giving to it a High-power status, calling it upon not only to "entertain complaints or grievances" with regard to the "enforcement of" POTA and accordingly "give its findings" but also for making suggestions "for removing the shortcomings, if any, in (its) implementation" and measures "to ensure" that provisions of POTA were "invoked for combating terrorism only".

It may be added that POTA also came with a 'sunset clause' for expiry at the end of three years but came to be repealed ahead of its time with effect from 21st September 2004.

[126] Section 32 POTA
[127] Section 31 POTA
[128] Section 19 POTA
[129] Section 60 POTA

UNLAWFUL ACTIVITIES PREVENTION (AMENDMENT) ACT, 2004 (UAPO)

The most recent development in the field of combating terrorism in India is the promulgation of the Unlawful Activities Prevention (Amendment) Ordinance, 2004, an amendment of the already existing Unlawful Activities Prevention (Amendment) Act, 1967. It seeks to establish the normal due process of the Criminal Procedure Code, 1973, in matters of arrest, bail, confession and burden of proof. The Ordinance provides that those arrested are to be brought before a magistrate within 24 hours; confessions are no longer admissible before police officers; bail need not be defined for the first three months; the presumption of innocence leaving the burden of proof on the prosecution has been resorted. However, there are inevitable problems regarding the definition of terrorism. Definitions have been made too wide to convert public order threats into terrorist activities. Despite some redeeming features, the ordinance is an untidy reproduction of parts of POTA, 'POTA permitted the admissibility of taped information. Under UAPO, information collected is now admissible as evidence though it is made available to the accused before trail. This is worse then POTA. The vexed question of making stray information from pre-authorised tapes admissible in evidence is yet another area that needs public and parliamentary scrutiny.[130] Hasty ordinances repealing POTA and simultaneously enacting amendments to the Unlawful Activities Prevention Act (UAPA) were promulgated, followed by subsequent legislation to translate these ordinances in to law.[131]

The result is that no aspect of the impugned clauses that have been included in the amended UAPA been objectively evaluated. Among the clauses that have suffered from this arbitrary legislative impulse has been excluded terrorism related clauses in the amended UAPA.

ARMED FORCES (SPECIAL POWERS) ACT, 1958

The object of this Act was to enable certain special powers to be conferred upon members of the armed forces in the disturbed areas in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. The Act came into existence in response to the insurgency conditions existing in the north eastern states of India. It was

[130] Rajiv Dhavan, Terrorism by Ordinance, published in the Hindu dated 1st October 2004
[131] The Prevention of Terrorism (Repeal) Ordinance, 2004 and the Unlawful Activities Prevention (Amendment) Ordinance, 2004 were promulgated on September 21, 2004, Bills of the same name were passed by the House and converted to Acts.

confined to Assam and Manipur originally. The Act was amended twice in 1972 and 1986 to make it applicable to Arunachal Pradesh, Mizoram, Nagaland and Tripura as well. This act allows the governor of the state or administrator of a union territory or the central government to declare that the state or union territory (or part of it) to be a 'disturbed area' if, in their opinion, it is in such 'disturbed or dangerous condition that the use of armed forces in the aid of civil power is necessary.[132] The Act casts a duty on the members of the armed forces exercising arrest powers under it to hand over any arrested person to the officer-in-charge of the nearest police station with the least possible delay, together with the report of the circumstances leading to the arrest.[133] No prosecution, suit or other legal proceedings may be brought against anyone in respect of anything done or purported to be done in exercise of the powers conferred by the Act, except with the prior permission of the Central Government.[134]

The Armed Forces (Punjab & Chandigarh) Special Powers Act, 1983, additionally, allows members of the armed forces to stop, search and seize any vehicle or vessel suspected to be carrying proclaimed offenders or any one who has committed a cognizable offence, or against whom a reasonable suspicion exists that he has committed. Similarly the Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 confers identical powers to prevent activities involving terrorist acts directed against over awing the lawfully established government or striking terror in the people or alienating any section of the people or adversely affecting the harmony existing among different sections of the society. This legislation was accompanied by other acts such as Assam Disturbed Areas Act of 1955, Punjab Disturbed Areas Act of 1983 etc. Under this acts, any magistrate or police officer not below the rank of sub-inspector may exercise powers which members of the armed forces may exercise under the Armed Forces (Special Powers) Act, 1958. Both acts confer immunity from prosecution for any action taken in exercise of the powers contained therein.[135]

This Act was used widely in the north-eastern states. The whole of the state of Assam was declared a 'disturbed area' by the central government in November, 1990. Similarly, other states were also declared as disturbed areas from time to time. During the operation of the armed forces, there have been wide spread allegations of extra judicial execution, rape,

[132] Section 3, the only other circumstances under which the armed forces may be requisitioned in aid of the civil power is provided for in Ss. 130 & 131 of the Code of Criminal Procedure, 1973.
[133] Section 5.
[134] Section 6
[135] Section 6, Assam Disturbed Areas Act, 1955 & Section 6 Punjab Disturbed Areas Act, 1983.

torture, disappearances, harassment and other abuses committed by the members of the armed forces acting under the protection of the Act in different parts of the country.

Amnesty International and other human rights monitors have reported hundreds of cases of encounter, deaths, rapes, disappearances and systematic torture committed by soldiers in Punjab, Kashmir and Assam in recent years. Most recently the consequence of the continuance of the Act has paralysed the whole scenario in Manipur due to the protest from all sections of the society, as a result of which the government is considering to review the controversial Act and replace it with a "more humane law".[136] It has been demanded that along with the POTA, Armed Forces (Special Powers) Act should also be repealed immediately and cases instituted under them and allegations of misuse should be enquired into by review committees within a specified period and innocent people should be provided relief and compensation by the government and those found guilty of misuse should be punished.[137]

India's antiterrorism laws raise significant human rights concerns. **The Committee on International Human Rights of the Association of the Bar of New York** carried out a study on security laws in India. It noted that while periodic efforts have been made to limit the use of these laws the overall effect since independence has been to maintain the pattern established by the British, which blurred the lines between these categories by periodically seeking to extend the extraordinary powers initially exercised during periods of emergency into non emergency periods. The net result of this pattern has been a tendency to institutionalize or routinize the use of extraordinary powers during non emergency periods. *The study adds that Indian antiterrorism laws raise the following concerns:*

• Overly broad and ambiguous definitions of terrorism that fail to satisfy the principle of legality;

• Pre trial investigation and detention procedures which infringe upon due process, personal liberty, and limits on the length of pre trial detention;

[136] U.C.Jha, Armed Forces (Special Powers)Act, the Hindu, 19th November, 2004.

[137] Impact of Anti-Terrorism Laws on the enjoyment of Human Rights in India, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/LIB_IND_UPR_S1_2008_Liberation_uprsubmission.pdf . (Accessed on 5th May 2008).

• Special courts and procedural rules infringe upon judicial independence and right to a fair trial;

• Provisions that require courts to draw adverse inferences against the accused in a manner that infringes upon the presumption of innocence;

• Lack of sufficient oversight of police and prosecutorial decision making to prevent arbitrary, discriminatory and disuniform application; and

• Broad immunities from prosecution for government officials.

Antiterrorism laws have been instituted by India and implemented in an extremely harsh manner. According to the Association of the Bar of New York's Committee on International Human Rights, enforcement of these laws has varied widely from state to state, facilitating arbitrary and selective enforcement on the basis of religion, caste, and tribal status; violations of protected speech and associational activities; prosecution of ordinary crimes as terrorism related offences; and severe police misconduct and abuse, including torture, in most states, prolonged detention without charge or trial appears to have been the norm, rather than the limited exception.[138]

[138] Ibid

CHAPTER- IV

4.1. THE IMPACT OF COUNTER TERROR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (CRITICAL APPRAISAL)

Since 9/11, states—including democratic states—have adopted counter-terrorist measures that seriously curtail fundamental and inviolable human rights.

Human Rights activists in many parts of the world share a rising sense of alarm about the new challenges of promoting human rights in the context of heightened global concern about the threat of terrorism. The continued protection of freedom from torture, the right to fair trial, freedom of expression, freedom of assembly, and so on, are believed to aid terrorist organizations to achieve their objectives to destruct free and democratic societies, and to destroy human rights and the rule of law. More disturbingly, rights like these are felt to debilitate states from fighting terrorism effectively.[139]

About a year after the adoption of Security Council resolution 1373(2001), the Secretary General reported that several human rights had come under significant pressure in many parts of the world as a result of national counter-terrorism measures in particular, the rights of terrorist suspects. Among them is respect for the principle of legality, conditions of treatment in pre-trial detention, freedom from torture, fair trial rights and due process guarantees[140]. Several statements of the U.N. Human Rights Committee support this conclusion. In particular, the committee has expressed concerns about domestic legal definitions of terrorism that are framed so broadly so as to violate the principle of legality. Furthermore, several pre-trial detentions of terrorist suspects violate their right to freedom from torture and ill- treatment, the right to be informed promptly of the reasons for arrest and the existence of any charges against them, and the prohibition against prolonged pre-trial detention. The use

[139] Jessica Almqvist, "Rethinking Security & Human Rights in the Struggle against Terrorism, Paper presented at the ESIL Forum in the workshop on 'Human Rights under Threat' on 27 May 2005.

[140] Report of the Secretary-General: Protection of human rights and fundamental freedoms while countering terrorism, 8 Aug. 2003 (A/58/266), pp. 12-13. The report was drafted in response to U.N.G.A. Res. 57/219 of 18 Dec. 2002 in which the General Assembly requested the Secretary- General to 'submit a report on the implementation of the present resolution to the Commission on Human Rights at its fifty-ninth session and to the General Assembly at its fifty-eighth session'.

of military and other special courts to prosecute terrorism-related offences have led to violations of fair trial rights, including the presumption of innocence as well as other fundamental requirements inherent in the principle of legality and the rule of law. Additionally, the committee has expressed concerns about 'targeted killings' of those suspected of acts of terrorism. Also the special procedures of the U.N. Human Rights Commission have addressed human rights abuses of terrorist suspects. Both the Special Rapporteur on the question of torture and the Working Group on Arbitrary Detention are deeply troubled by the practice in some states of holding terrorist suspects in incommunicado detention, prohibiting contacts with family members, counsel and other outside assistance for certain periods of time. It is particularly startled by the 'arbitrary character of detention in several countries where inquiries into terrorist are being conducted.[141]

Everywhere human rights activists are wrestling with a sea change in what might be called the presumptive norm in international affairs that prior to September 11, 2001, saw adherence to international human rights standards is routinely challenged and questioned in word and deed by governments of all kinds, democratic and undemocratic alike.

Too many governments are declaring that it is acceptable to violate human rights in the war against terrorism. **For example**, the Indonesian President, Megawati Sukarnopurti, instructed soldiers that they "*should not be afraid of abusing human rights in Aceh,*"[142] where the army was engaged in a long running counterinsurgency campaign that has been recast as part of the global war against terrorism.

New legislation, policies, and practises have proliferated in the name of increased security, some of them inimical to human rights and to the long-term fight against terrorism. *Human rights and humanitarian norms, an important bulwark against terrorism, have been relegated to secondary importance.*[143]

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[141] Ibid

[142] Ngo Coalition for human rights in Aceh, *Aceh: perjuangan sipil versus Representative Negara, 2002.*

[143] Neil hicks, Director of international programs, Human rights first paper prepared for "Human rights in an age of terrorism" a conference at the University of Connecticut, Sep. 9-11, 2004. available at http://www.humanrights.uconn.edu/conf2004.htm. Accessed on 10th May 2008.

4.2. Human rights promotion has been impeded by a variety of negative developments:

Undermining Legal Protections

Governments have, in many cases, invoked the war against terrorism in implementing policies and practises at the national level that side-step due process of law and set aside fundamental human rights guarantees. These affect basic freedoms for all but often have a particular impact on human rights defenders-in some cases leading to threats to their lives and liberty and in all cases constraining their ability to protect the right of others.

Counter terrorism measures have been used as a justification for non compliance with international human rights standards-and domestic law-by a wide variety of governments. **For example**, Former President of Georgia, Eduard Shevardnadze stated in December 2002, after coming under criticism for colluding with Russia in the violation of the human rights of Chechens, that "international human rights commitments might become pale in comparison with the importance of the anti-terrorist campaign".[144]

Simultaneously, the efforts of human rights defenders have been denigrated as being supportive of terrorism and insufficiently attentive to the imperatives of national security threats. **For example**, in Colombia, the government of President Alvaro Uribe, which came to power in May 2002, has stated that its struggle against guerrilla forces is "*working to the same ends*" as the U.S led global war on terrorism. It has stepped up its military campaign against insurgents and has frequently accused human rights defenders of "*serving terrorism and hiding in a cowardly manner behind the human rights flag.*"

The intensification of civil conflicts

The context of global war against terrorism has intensified extreme nationalist and sectarian sentiment in many countries, building added pressures to curtail protections, particularly of minority communities, on grounds of national security. The often-long standing tensions between governments and their opponents, particularly in situations involving violent separatist or nationalist movements, have been augmented by the new emphasis given to combating international terrorism. Violence has intensified in the Philippines, Russia, China and India, and minority Muslim communities have suffered disproportionately from violence

[144] International Helsinki Federation for Human Rights, "Violations of the Rights of Chechens in Georgia, December 23, 2002.

and deprivations of rights that have been justified by governments as legitimate response to the threat of terrorism.

Other long-standing internal conflicts, that are not influenced by religious sectarianism, in countries like Columbia, Indonesia, and Nepal, have also been recast as fronts in the war against terrorism since September 2001. Mainstream politicians and media in countries like Israel and Russia discuss positions previously considered extreme and unreasonable, like population transfers of minority ethnic and religious groups. With public fear heightened by political leaders emphasizing national vulnerabilities, it becomes increasingly difficult for activists to promote human rights agenda.

The example of Thailand is particularly striking. For decades Thailand has distinguished itself from other countries in Asia by the ability of those in power to find peaceful solutions to problems that in other countries have provoked full-fledged civil wars.[145] On April 28, 2004, the Thai security forces massacred 107 young Muslims armed with only machetes thereby inflaming and injecting an unprecedented level of violence into the troubled relations between the government and the small Muslim minority in southern Thailand. The government claimed a victory against terrorists and Muslim opposition groups issued violent threats of revenge attacks against Thai civilians and tourists.

The negative example of U.S. policy

The U.S. response to the 9/11 attacks lead the Bush administration to take such measures which according to their own understanding was required and legitimized to protect the security of the American people. The very same day of the terrorist attacks against the World Trade Center and the Pentagon, Bush declared that the United States was 'in war'. The most drastic public measures adopted since then are the military interventions in Afghanistan and Iraq. By now, there is clear evidence, including shocking photographs, the U.S. counter-terrorist measures amount to serious human rights violations.

There was a pronounced shift in the global discourse about human rights after September 2001. It was a shift brought about because of the perception that when challenged by the threat of terrorism, the most powerful country in the world violated human rights in the name of upholding national security.

[145] Satya sagar, "The War on Terror Comes to Thailand." Just commentary, Vol 4, No. 6 international Movement for a Just World, Malaysia, June 2004

Since September 11, 2001, the international community's progress toward protecting human rights for all has suffered a setback-not least because the leaders of the United States government itself appear to have lost confidence in the very framework of law the United States has been so instrumental in developing.

The relationship between the U.S. government and the people it serves has dramatically changed; this "new normal" of U.S. governance is defined by the loss of particular freedoms for some, and worse, a detachment from the rule of law as a whole. The undermining of U.S. compliance with fundamental human rights standards has serious implications for human rights norms in scores of other countries. The consequences of changing U.S. policy have been more serious where partner governments, confident that they are needed for the global "war against terrorism", feel new liberty to violate human rights.

There is a widespread belief among human rights activists in many parts of the world that U.S. disregard for international human rights principles has set a negative global pattern. The arguments for this view are compelling. The views and actions of the United States carry great influence in all parts of the world. Moreover, the United States has been a leading member of the contemporary international human rights system from its inception in 1948. Since the presidency of Jimmy Carter in 1976, human rights have played an increasingly prominent part in U.S. foreign policy under both Democratic and Republican administrations. Therefore, it is only natural that governments around the world should look closely at U.S. practise and rhetoric as a guide to their own compliance with international standards.

This is not to say that the United States is responsible for human rights violations committed by other governments. It is not. Each government is obliged to abide by the international human rights treaties it has ratified. Human rights violations were widespread prior to September 11, 2001, and they continued to be so afterwards, often for many of the same reasons.

For decades the United States has been a leading voice for human rights around the world and a lynchpin of the international system of human rights protection. This multilateral system functions imperfectly without U.S. participation and leadership. At the present time, there is a case to be made that the U.S. is pulling in the opposite direction, undermining the multilateral system for human rights promotion and protection that has been painstakingly constructed over more than 50 years.

The idea of human rights and security being antithetical-a reversal of the logic of the drafters of the Universal Declaration of Human Rights, and a consequence of short memories

and political opportunism-or linked in negative correlation, is profoundly damaging to the work of human rights defenders. Within such an intellectual construct those promoting human rights are characterised as obstacles to security, if not supporters of terrorism.

Perhaps the greatest damage done to the international human rights system, with human rights defenders on the frontline has been the erosion of state compliance with international human rights standards as the presumptive international norm. The pretext of counterterrorism has sparked a race to the bottom in state's observance of international human rights. The adoption by the United Nations General Assembly of the Declaration on Human Rights Defenders in 1998 was an important indication of this growing international consensus. The Declaration codified the right to promote and protect human rights as a normative standard.

Weakening the international standards and mechanisms for human rights promotion and protection, or shaking the international consensus on human rights, has no connection to implementing effective policies against terrorism. Building conditions within states where human rights defenders operate freely helps to create an environment where terrorism does not prevail. All governments should reaffirm their commitment to support the essential work of human rights defenders.

There are perhaps reasons to be hopeful that the international mood among nations on the need to satisfy both rights and security concerns in counterterrorism policy has subtly shifted in the past year. Today some governments and many civil society organisations are increasingly emphasizing the need to more scrupulously protect human rights in times of crisis and not least in the fight against terrorism.

Respect for human rights, democracy, and the rule of law is an essential antidote to the conditions which give rise to terrorism. In contrast, the abuse of basic rights in the course of efforts to combat terrorism can ultimately be self-defeating-blurring the distinction between those who stand for the rule of law and those who defy it.

CHAPTER- V

CONCLUSION

Common wisdom in some circles has it that in fighting terrorism, security and human rights are inevitably opposed – a zero sum game in which one must be sacrificed to advance the other. Embracing this understanding, many of those leading the campaign against terrorism have been reluctant to allow human rights standards to constrain their efforts. However, that approach is dangerously short-sighted and counterproductive. It undermines the U.N.-created standards that outlaw terrorism, fosters the repressive conditions that give rise to terrorist violence, and breeds resentment that discourages international cooperation and facilitates terrorist recruitment. Fighting terrorism while ignoring human rights is not only wrong; it is self-defeating.

Despite the superabundance of instruments and mechanisms, both at the international and regional level, defenders of human rights observe with great concern the many methodical attempts in recent years to eliminate human rights protection. Among these attempts is the systematic effort to undermine the United Nations by various means.

The situation has deteriorated alarmingly since the deplorable and tragic terrorist attacks of 11th September in the United States. Terrorism appears stronger, more destructive and more harrowing than ever. But it also has become the occasion for the adoption of so-called "anti-terrorist" measures, some of which clearly violate human rights. Suddenly, democratic values and humanistic achievements have become seriously threatened in the name of national security. The sacrifice of civil liberties, and even more so, the waging of pre emptive wars, are used as anti-terrorist measures.

Some countries have passed laws that abolish basic human rights; including habeas corpus and the right to a fair trial, or which simply transgress human rights that are considered as non-derogable, such as prohibition of torture and cruel or degrading treatment or punishment[146]. This has happened despite UN resolutions and the reports of UN experts and texts adopted at the regional level designed to ensure that anti terrorist policy should respect

[146] Ngos are very concerned about torture methods used against suspects and detainees as part of the war against terrorism. See, Amnesty International Report 2003 at 265(USA Report) and Human Rights News of 11th March 2003, www.hrw.org/press/22001/11/TortureQand A.HTM.

human rights and the principle of proportionality between the immediate danger to be addressed and any adverse effects of measures taken to that end.

All human rights defenders cannot fail to worry seriously about these developments, which threaten to embroil human kind in a new world war on a much wider scale than the two previous ones, since the powerful of this Earth have heralded the new dogma of "pre emptive wars" against more than fifty countries which have blacklisted.

This war moreover, could eventually use the most destructive means at their disposal beyond conventional weapons. One may recall the words of President Bush: "There's no telling how many wars it will take to secure freedom in the homeland"[147].

There is an additional problem. By violating human rights, in disregard of the principle of proportionality, under the justification of the fight against terrorism, are we not re-igniting terrorism itself? Recent events seem to prove this point. History calls urgently for conformation that human rights commitments undertaken by states were and still are sincere.

In this connection, we realise that although the states engage themselves on a multilateral level and declare the need to respect human rights standards, several issues arise in practice with regard to the application of national measures.

The many governments around the world who have seized on their own "war against terrorism" to violate basic rights shows how dangerously that resentment has harmed the campaign against terrorism in several distinct ways:-

First, this violation of human rights undermines the very international standards that explain why terrorism is wrong. Given the horrors of terrorism, it is too easy to forget that many people accept terrorism as sometimes necessary to advance a given political agenda. That acceptance is reflected in the failure of the international community, despite decades of efforts, to arrive at an agreed definition of terrorism. In the absence of that definition, international human rights and humanitarian law provides the clearest norms for explaining that deliberate attacks on civilians are always unlawful, whether in times of peace or war, and regardless of the political cause. To flout that law in the name of fighting terrorism is thus to weaken the only existing standards that might convince people that terrorism is always wrong.

Put another way, terrorists believe that the ends justify the means, that their political or social vision justifies the deliberate taking of civilian lives in violation of the most basic human

[147] August 5, 2002, remarks by President Bush at a republican fundraiser.

rights norms. To fight terrorism without regard to the constraints of human rights is to endorse that warped logic.

Second, neglecting human rights helps to create the political and social conditions that give rise to terrorism. There is obviously no single recipe for generating terrorists and much debate about the key ingredients that when added to extremist ideology creates a violent mix. Some point to poverty, and certainly economic grievances play a role.

Others point to failed states, and certainly the existence of lawless terrain is useful for facilitating meetings and establishing training facilities. But the key ingredient is often political repression – the absence of avenues for peaceful political change. That is, terrorists do not seem to be the poorest of the poor; many are well educated and come from reasonably affluent backgrounds. And helpful as lawless enclaves are for training purposes, terrorists have proven capable of hatching plots in the midst of advanced modern societies. Rather, what most terrorists seem to have in common is a political or social goal that they are unable to advance through an open political system. Most people, when faced with this predicament, will simply return home in frustration and, at least temporarily, abandon their political or social quest. But some minority of them will become open to recruitment by the terrorists.

An effective counterterrorism strategy will confront this political frustration by encouraging open political cultures where grievances can be pursued peacefully. Such a strategy would promote healthy civil societies and accountable governments, complete with an independent press, unfettered political parties, a range of citizens organizations, and periodic, competitive elections – in short, a political culture built on respect for a broad range of human rights. By contrast, when human rights are ignored or suppressed in the name of fighting terrorism, it leads to authoritarian governments and stultified civil society – the political environment that is most likely to give rise to terrorist violence.

Accepting authoritarianism in the name of short-term assistance in fighting terrorism, as the global counterterrorism effort seems to be doing, is thus likely to be profoundly

Counter productive over the long run.

Third, ignoring human rights as part of the fight against terrorism is likely to breed resentment that undermines international cooperation. The people whose cooperation is most important to defeat terrorism are the people who live in countries that are generating terrorists. They are needed to report suspicious activities and to dissuade would-be terrorists from embarking on a path of violence. Yet these individuals are also the most likely to identify with the victims of a counterterrorism strategy that ignores human rights. When they see their compatriots detained in violation of the Geneva Conventions at Guantánamo,

subjected to "stress and duress" interrogation techniques at Bagram air base in Afghanistan, or mistreated by an authoritarian government whose repression is overlooked or even encouraged in the name of fighting terrorism, they are less likely to lend their support to the counterterrorism effort. Again, the advantage of ignoring human rights proves short-lived.

Finally, that same resentment facilitates terrorist recruitment. As in the case of those unable to pursue grievances through an open political system, most of those who resent counterterrorism efforts waged in violation of human rights will grudgingly swallow their resentment and do nothing more. But of greatest concern are the relative handful of people whose resentment will open them to recruitment by the terrorists – the "swing vote." Presumably, this swing votes represents a small percentage of the public, but even a small percentage when spread over a large population can yield substantial numbers.

And it takes very few confirmed terrorists to wreak large-scale death and destruction.

Winning the hearts and minds of this swing vote is essential to the success of the counterterrorism effort. But that requires taking the moral high ground. It requires a counterterrorist strategy that scrupulously and transparently respects international standards. And it requires a positive vision of societies built around democracy, human rights, and the rule of law – something that people can be *for* – to accompany the important but partial vision of being *against* terrorism. The global counterterrorism effort as waged so far has certainly had its successes in detaining particular terrorists.

But the continuing proliferation of terrorist groups suggests that this success may be superficial – that the abusive methods often used to crack down on terrorists are also generating new terrorists. To ensure that each terrorist arrested is not replaced by one or more new recruits, the counterterrorism effort should see human rights not as inconvenient obstacles but as essential partners that are integral to the defeat of terrorism.

Terrorism regardless of motivation has to be condemned and countered but this has to be done taking *"all necessary measures in accordance with the relevant provisions of international standards of human rights to prevent, combat and eliminate terrorism, whenever and by who ever committed"*. This has to be achieved within the framework of rule of law. The security for the security of our land, and the fight against terrorism, are patriotic duties and the integrity of the state must be preserved and the terrorism- the sworn enemy of civil society- which respects neither life, nor law nor any human rights, must be suppressed. It must be remembered that there is clear and emphatic relationship between national security and the security and integrity of the individuals who comprise the state. Between them, there is a symbiosis and no antagonism. The nation has no meaning without its people.

Often doubt is raised about the possible conflict between respect for human rights and combating terrorism. There is really no such conflict. International human right law is a part of human rights law applicable even in armed conflict. There is a growing convergence between the two since the object of both is the same and that is to respect human dignity and abjure needless violence. The fundamental concepts of laws of war are based on the balance between military necessity and humanity which includes proportionality of the force used. Military necessity does not admit of cruelty or wounding in fight except or of torture to extract confessions. Geneva Conventions are for humane treatment even of the Prisoners of Wars. How a party to conflict is to behave in relation to people at its mercy is governed by humanitarian laws. If humane considerations prevail even in armed conflict with an enemy, the treatment of persons dealt with in low intensity conflict cannot be harsher because they are often not even enemies of the nation. The whole regimen of Hague laws and Geneva laws covers the field and there is growing convergence between them. No person who supports human rights can support terrorism which is a grave violation of human rights. There is no conflict between respect for human rights and combating terrorism.

Suggestions

To conclude, the following are a few suggestions and recommendations which may be taken into consideration towards an effective counterterrorism strategy in conformity with the existing human rights standards.

- Lack of proper definition of terrorism has become a major obstacle to meaningful international counter measures. Without a clear definition, the international community is hard pressed to combat a problem, which it cannot identify with an assurance. There is high probability that fight against terrorism will always suffer from 'cultural relativism'. The free world must understand that cultural relativism applied to terrorism irrespective of their goals will lead only to more aggravated form of terrorism. Therefore, a proper definition of terrorism will help in combating terrorism without mush controversy.
- Terrorism has to be fought according to the rule of law, and combating terrorism must be legal.
- There is a need for all countries to identify the acts, which define terrorism so as to facilitate in the arrest and deportation of criminals involved in cross border terrorism.

- Human rights and security are in no way, trade off factors as often alleged by many states. Infact, no one can succeed in securing a state and defeating terrorism, unless greater attention is paid to human rights with the understanding that human rights is actually a tool that needs to be deployed in fighting terrorism rather than an obstacle to efforts to defeat terrorism. Above all, any attempt to overlook human rights standards is devastating for efforts to fight terrorism.
- Terrorism as well as counter terrorism measures can be seen as falling under the mandate of every mechanism and procedure of the U.N. human rights organs and bodies, and various human rights treaty bodies. All these mechanisms and procedures of human rights should incorporate the issue of terrorism and human rights into their work.
- For a better understanding of terrorism and to deal with, in a better way, examination of the root causes of terrorism and review of strategies to reduce or prevent terrorism in all its manifestations are to be taken by some U.N. official or body.
- Extradition, an important counter terrorism measure and a key feature of most international and regional treaties relating to terrorism, is problematic for a number of reasons:

a. conflicts in the internal law of the state parties;
b. potential political abuses of extradition in relation to asylum law.
c. Uneven compliance with human rights or humanitarian law norms and standards between states involved (e.g. death penalty issues and the like).

Therefore state parties to international and regional instruments relating to terrorism should undertake thorough review barriers to the effective implementation of extradition provisions.

- International community should undertake efforts to incorporate directly state terrorism into the jurisdiction of international or regional tribunals, and all states should review national practises, and ways should be developed to ensure modification of those measures and practises that effectively result in impunity for terrorist acts and barriers for victims seeking remedies.
- There is a need for adoption of a method and mechanism for effective periodic review of national counterterrorism measures and practises, and ways should be developed to ensure modification of those measures and practises that violate human rights and humanitarian law norms.

- Use of terror in any type of armed conflict violates humanitarian law. As an effort to reinstate appropriate application of humanitarian law and to keep the efforts to combat terrorism focused on actual terrorism, the international community, in any review of situations in which armed violence is occurring, should pay strict attention to humanitarian law rules. The international community should consider review of these situations on a periodic basis.
- Bringing violators to justice for acts of terrorism, whether state or non state actors, is essential to maintain the integrity of human rights and humanitarian law to deter and prevent terrorism and to provide remedies for victims.
- International community must de-link any automatic designation of criminal groups as terrorist and the acts they engage in as terrorist acts. States must make certain that their national counter terrorism legislation defines terrorist groups and terrorist acts with sufficient clarity so that there is clear distinction between the two. National and international authorities should also ensure that there is no undue investigative or prosecutorial advantage in criminal cases due to improper confusion with terrorist cases.
- Counter- terrorism committee should fully incorporate human rights and humanitarian law obligations into its directives and that due attention should be paid to the principles of self determination of states and the sovereign equality of states.
- The international community should identify a method and mechanism to draw up guidelines for counterterrorism measures and these guidelines should take into account determination of actual or perceived threat, the degree to which the threat constitutes a threat to the existence of the state, the degree to which responses to the acts or risks of acts meet strict exigency requirements, the time frame for derogations, and any, reporting and periodic review of any derogation.

ANNEXURE

USA PATRIOT ACT

The **USA PATRIOT Act**, commonly known as the 'Patriot' act, is an Act of Congress that United States President George W. Bush signed into law on October 26, 2001. The acronym stands for "**U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism Act of 2001" (Public Law Pub.L. 107-56).

The act expands the authority of US law enforcement agencies for the stated purpose of fighting terrorism in the United States and abroad. Among its provisions, the Act increases the ability of law enforcement agencies to search telephone, e-mail communications, medical, financial and other records; eases restrictions on foreign intelligence gathering within the United States; expands the Secretary of the Treasury's authority to regulate financial transactions, particularly those involving foreign individuals and entities; and enhances the discretion of law enforcement and immigration authorities in detaining and deporting immigrants suspected of terrorism-related acts. The act also expands the definition of terrorism to include domestic terrorism, thus enlarging the number of activities to which the USA Patriot Act's expanded law enforcement powers can be applied.

The Act was passed by wide margins in both houses of Congress and was supported by members of both the Republican and Democratic parties. Despite widespread congressional support, it has been criticized for weakening protections of civil liberties. In particular, opponents of the law have criticized its authorization of indefinite detentions of immigrants; searches through which law enforcement officers search a home or business without the owner's or the occupant's permission or knowledge; the expanded use of National Security Letters, which allows the FBI to search telephone, email and financial records without a court order; and the expanded access of law enforcement agencies to business records, including library and financial records. Since its passage, several legal challenges have been brought against the act, and Federal courts have ruled that a number of provisions are unconstitutional.

Many of the act's provisions were to sunset beginning December 31, 2005, approximately 4 years after its passage. In the months preceding the sunset date, supporters of the act pushed to make its sunsetting provisions permanent, while critics sought to revise various sections to enhance civil liberty protections. In July 2005, the U.S. Senate passed a reauthorization bill with substantial changes to several sections of the act, while the House reauthorization bill kept most of the act's original language. The two bills were then reconciled in a conference committee that was criticized by Senators from both the Republican and Democratic parties for ignoring civil liberty concerns.[1] The bill, which removed most of the changes from the Senate version, passed Congress on March 2, 2006 and was signed into law by President George W. Bush on March 9, 2006.

TERRORISM ACT 2000 (UNITED KINGDOM)

The **Terrorism Act 2000** is a current United Kingdom Act of Parliament, described as "an Act to make provision about terrorism; and to make temporary provision for Northern Ireland about the prosecution and punishment of certain offences, the preservation of peace and the maintenance of order."

It supersedes and repeals the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1996.

Up to early 2004 around 500 people are believed to have been arrested under the Act; seven people had been charged. By October 2005 these figures had risen to 750 arrested with 22 convictions; the then current Home Secretary, Charles Clarke, said "the statistics illustrate the difficulty of getting evidence to bring prosecution"

Figures released by the Home Office on March 5th 2007 show that 1,126 people were arrested under the Act between September 11th 2001 and December 31st 2006. Of the total 1,166 people arrested under the Act or during related police investigations, only 221 were charged with terrorism offences, and only 40 convicted.

Section 1. -
(1) In this Act "terrorism" means the use or threat of action where-
(a) the action falls within subsection (2),
(b) the use or threat is designed to influence the government [or an international governmental organisation] or to intimidate the public or a section of the public, and
(c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
(2) Action falls within this subsection if it-
(a) involves serious violence against a person,
(b) involves serious damage to property,
(c) endangers a person's life, other than that of the person committing the action,
(d) creates a serious risk to the health or safety of the public or a section of the public, or
(e) is designed seriously to interfere with or seriously to disrupt an electronic system.
(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

Abuses of the Terrorism Act 2000

The laws have been criticised for allowing excessive police powers leaving scope for abuse. There have been various cases in which the laws have been used in scenarios criticised for being unrelated to fighting terrorism. Critics allege there is systematic abuse of the act against protesters.[1]

Sally Cameron was arrested under the Terrorism Act and held for four hours for walking along a cycle path in Dundee. She said: "I've been walking to work every morning for months and months to keep fit. One day, I was told by a guard on the gate that I couldn't use the route any more because it was solely a cycle path and he said, if I was caught doing it again, I'd be arrested...The next thing I knew, the harbour master had driven up behind me with a megaphone, saying, 'You're trespassing, please turn back'. It was totally ridiculous. I started laughing and kept on walking. Cyclists going past were also laughing...But then two police cars roared up beside me and cut me off, like a scene from Starsky and Hutch, and officers told me I was being arrested under the Terrorism Act. The harbour master was waffling on and (saying that), because of September 11, I would be arrested and charged."

An 11-year-old girl, was required to empty her pockets, before being handed a notification slip under the Act.In July, a cricketer on his way to a match was stopped at King's Cross station in London under Section 44 powers and questioned over his possession of a bat

THE PREVENTION OF TERRORISM ACT, 2002

Act No. 15 of 2002

An Act to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. Short title, application, commencement, duration and savings.-

(1) This Act may be called the Prevention of Terrorism Act, 2002.

(2) It extends to the whole of India.

(3) 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 which is punishable under this Act shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(5) The provisions of this Act apply also 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) 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.

2. **Definitions**.-

(1) In this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(b) "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 or, as the case may be, the State Government, by a notification published in the Official Gazette;

(c) "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;

(d) "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;

(e) "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;

(f) "Special Court" means a Special Court constituted under section 23;

(g) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly;

(h) "State Government", in relation to a Union territory, means the Administrator thereof;

(i) 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.

(2) 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.

CHAPTER II

Punishment for, and measures for dealing with, terrorist activities

3. Punishment for terrorist acts.-

(1) Whoever,—

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

(b) 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.

Explanation.—For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism.

(2) Whoever commits a terrorist act, shall,—

(a) 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;

(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.

(3) 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.

(4) 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.

(5) Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Explanation.—For the purposes of this sub-section, "terrorist organisation" means an organisation which is concerned with or involved in terrorism.

(6) Whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

(7) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

4. Possession of certain unauthorized arms, etc.-

Where any person is in unauthorised possession of any—

(a) arms or ammunition specified in columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, in a notified area,

(b) bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not, he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force, and be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Explanation.—In this section, "notified area" means such area as the State Government may, by notification in the Official Gazette, specify.

5. Enhanced penalties.-

(1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosives Act, 1884 (4 of 1884), the Explosive Substances Act, 1908 (6 of 1908), the Inflammable Substances Act, 1952 (20 of 1952) or the Arms Act, 1959 (54 of 1959), he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

6. Holding of proceeds of terrorism illegal.-

(1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

7. **Powers of investigating officers and appeal against order of Designated Authority.-**

(1) If an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.

(2) For the removal of doubts, it is hereby provided that where an organisation is declared as a terrorist organisation under this Act and the investigating officer has reason to believe that any person has custody of any property which is being used or is intended to be used for the purpose of such terrorist organisation, he may, by an order in writing, seize or attach such property.

(3) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(4) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued:

Provided that an opportunity of making a representation by the person whose property is being attached shall be given.

(5) In the case of immovable 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.

(6) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism;

(b) it forms the whole or part of the resources of an organisation declared as terrorist organisation under this Act:

Provided that the cash seized under this sub-section by the investigating officer shall be released not later than the period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, "cash" means—

(a) coins and notes in any currency;

(b) postal orders;

(c) traveller's cheques;

(d) banker's drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(7) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the Special Court and the Special Court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

8. Forfeiture of proceeds of terrorism.-

Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the Special Court is satisfied in this regard under sub-section (7) of section 7, it may order forfeiture of such 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.

9. Issue of show cause notice before forfeiture of proceeds of terrorism.-

(1) No order forfeiting any proceeds of terrorism shall be made under section 8 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the Special Court to make an order in respect of property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central or State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Special Court.

10. **Appeal.-**

(1) 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.

(2) Where an order under section 8 is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Act, the person against whom an order of forfeiture has been made under section 8 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

11. **Order of forfeiture not to interfere with other punishments.-**

The order of forfeiture made under this Act by the Special Court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.

12. **Claims by third party.-**

(1) Where any claim is preferred, or any objection is made to the seizure of any property under section 7 on the ground that such property is not liable to seizure, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) In case claimant or objector establishes that the property specified in the notice issued under section 9 is not liable to be forfeited under the Act, the said notice shall be withdrawn or modified accordingly.

13. **Powers of Designated Authority.-**

The Designated Authority, acting under the provisions of this Act, shall have all the powers of a civil court required for making a full and fair enquiry into the matter before it.

14. **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 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.

(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 three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.

15. **Certain transfers to be null and void.-**

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.

16. **Forfeiture of property of certain persons.-**

(1) 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.

(2) Where a person has been convicted of any offence punishable under this Act, the Special 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 Central Government or the State Government, as the case may be, free from all encumbrances.

17. **Company to transfer shares to Government.-**

Where any shares in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Act, then, the company shall, on receipt of the order of the Special Court, notwithstanding anything contained in the Companies Act, 1956

(1 of 1956), or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such shares.

CHAPTER III

Terrorist organisations

18. **Declaration of an organization as a terrorist organization.-**

(1) For the purposes of this Act, an organisation is a terrorist organisation if—

(a) it is listed in the Schedule, or

(b) it operates under the same name as an organisation listed in that Schedule.

(2) The Central Government may by order, in the Official Gazette,—

(a) add an organisation to the Schedule;

(b) remove an organisation from that Schedule;

(c) amend that Schedule in some other way.

(3) The Central Government may exercise its power under clause (a) of sub-section (2) in respect of an organisation only if it believes that it is involved in terrorism.

(4) For the purposes of sub-section (3), an organisation shall be deemed to be involved in terrorism if it—

(a) commits or participates in acts of terrorism,

(b) prepares for terrorism,

(c) promotes or encourages terrorism, or

(d) is otherwise involved in terrorism.

19. Denotification of a terrorist organization.-

(1) An application may be made to the Central Government for the exercise of its power under clause (b) of sub-section (2) of section 18 to remove an organisation from the Schedule.

(2) An application may be made by—

(a) the organisation, or

(b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may make rules to prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been refused, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 60 within one month from the date of receipt of the order by the applicant.

(5) The Review Committee may allow an application for review against refusal to remove an organisation from the Schedule, if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order under this sub-section.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the list in the Schedule.

20. **Offence relating to membership of a terrorist organization**.-

(1) 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—

(a) 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

(b) 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.

(2) 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.

21. Offence relating to support given to a terrorist organization.-

(1) A person commits an offence if—

(a) he invites support for a terrorist organisation, and

(b) the support is not, or is not restricted to, the provision of money or other property within the meaning of section 22.

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is—

(a) to support a terrorist organisation, or

(b) to further the activities of a terrorist organisation, or

(c) to be addressed by a person who belongs or professes to belong to a terrorist organisation.

(3) A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organisation or to further its activities.

(4) 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.

Explanation.—For the purposes of this section, the expression "meeting" means a meeting of three or more persons whether or not the public are admitted.

22. **Fund raising for a terrorist organization to be an offence.-**

(1) A person commits an offence if he—

(a) invites another to provide money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(2) A person commits an offence if he—

(a) receives money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

(3) A person commits an offence if he—

(a) provides money or other property, and

(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(4) In this section, a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

(5) A person guilty of an offence under this section shall be liable on conviction, to imprisonment for a term not exceeding fourteen years or with fine or with both.

CHAPTER IV

Special Courts

23. **Special Courts.-**

(1) The Central Government or a State Government may, by notification in the Official Gazette, 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.

(2) Where a notification constituting a Special Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section (1), and a notification constituting a Special Court for the same area or areas or for the same case or class or group of cases has also been issued by the State Government under that sub-section, the Special Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Special Court by the State Government, shall have, and the Special Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases and all cases pending before any Special Court constituted by the State Government shall stand transferred to the Special Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

(4) A Special Court shall be presided over by a judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction of a Special Court.

(6) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment, by a person appointed as a judge or an additional judge of a Special Court, of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such judge or additional judge.

(8) Where any additional judge or additional judges is or are appointed in a Special Court, the judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among all judges including himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

24. **Place of sitting.-**

A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting:

Provided that nothing in this section shall be construed to change the place of sitting of a Special Court constituted by a State Government to any place outside that State.

25. **Jurisdiction of Special Courts.-**

(1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act shall be triable only by the Special Court within whose local jurisdiction it was committed or, as the case may be, by the Special Court constituted for trying such offence under section 23.

(2) If, having regard to the exigencies of the situation prevailing in a State,—

(a) it is not possible to have a fair, impartial or speedy trial; or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and a judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice,

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India, be supported by an affidavit or affirmation.

26. **Power of Special Courts with respect to other offences.-**

(1) When trying any offence, 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.

(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 Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or such rule or, as the case may be, under such other law.

27. **Power to direct for samples, etc.-**

(1) 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.

(2) If any accused person refuses to give samples as provided in sub-section (1), the Court shall draw adverse inference against the accused.

28. **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.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

29. **Procedure and powers of Special Courts.-**

(1) Subject to the provisions of section 50, a Special 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) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, 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 Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special 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 Special 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 other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under section 25 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) Notwithstanding anything contained in the Code, but subject to the provisions of section 299 of the Code, a Special Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

30. 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 Special Court so desires.

(2) A Special 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.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its 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 address of the witnesses are not disclosed;

(d) a decision 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.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

31. **Trial by Special Courts to have precedence.-**

The trial under this Act of any offence by a Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special 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.

32. **Certain confessions made to police officers to be taken into consideration.-**

(1) 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 thereunder.

(2) A police officer shall, before recording any confession made by a person under sub-section (1), explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:

Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession.

(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it.

(4) The person from whom a confession has been recorded under sub-section (1), shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty-eight hours.

(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, if any, made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody.

33. **Power to transfer cases to regular courts.-**

Where, after taking cognizance of any offence, 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.

34. **Appeal.-**

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

Explanation.—For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

35. **Transitional provisions and transfer of pending proceedings.-**

(1) The jurisdiction conferred by this Act on a Special Court, shall, until a Special Court is constituted under section 23, in the case of any offence punishable under this Act, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed and it shall have all the powers and follow the procedure provided under this Chapter.

(2) On and from the date when the Special Court is constituted under section 23, every trial under the provisions of this Act, which would have been required to be held before the Special Court, shall stand transferred to that Court on the date on which it is constituted.

CHAPTER V

Interception of communication in certain cases

36. **Definitions.-**

In this Chapter, unless the context otherwise requires,—

(a) "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;

(b) "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;

(c) "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;

(d) "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.

37. **Appointment of Competent Authority.-**

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.

38. Application for authorization of interception of wire, electronic or oral communication.-

(1) 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.

(2) Each application shall include the following information:—

(a) the identity of the investigating officer making the application, and the head of the department authorising the application;

(b) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including—

(i) details as to the offence of terrorist act that has been, is being, or is about to be committed;

(ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communications sought to be intercepted; and

(iv) the identity of the person, if known, committing the terrorist act whose communications are to be intercepted;

(c) a statement of the period of time for which the interception is required to be maintained, if the nature of the enquiry is such that the authorisation of interception should not automatically terminate after the described type of communication has been first obtained;

(d) a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter; and

(e) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

39. **Decision by Competent Authority on application for interception**

(1) Upon such application, the Competent 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 Competent Authority determines on the basis of the facts submitted by the applicant that—

(a) 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;

(b) there is a probable cause of belief that particular communications concerning that offence may be obtained through such interception;

(c) 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.

(2) Each order by the Competent Authority authorising or approving the interception of any wire, electronic or oral communication under this section shall specify—

(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;

(d) the identity of the agency authorised to intercept the communications, and the person authorising the application; and

(e) the period of time during which such interception is authorised, including a statement as to whether or not the interception shall automatically terminate after the described communication has been first obtained.

40. **Submission of order of interception to Review Committee.**

(1) 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 alongwith 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.

(2) An order authorising the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian or person is providing to the person whose communications are to be intercepted.

41. **Duration of an order of inception, etc.**

(1) No order issued under this section may authorise or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorisation, nor in any event longer than sixty days and such sixty days period shall begin on the day immediately preceding the day on which the investigating officer first begins to conduct an interception under the order or ten days after order is issued whichever is earlier.

(2) The extension of an order may be granted, but only upon an application for an extension made in accordance with sub-section (1) of section 38 and the Competent Authority making the findings required by sub-section (1) of section 39, and the period of such extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for longer than sixty days at a time.

(3) Every order and extension thereof shall contain a provision that the authorisation to intercept shall be executed as soon as practicable and shall be conducted in such manner as to minimise the interception of communications not otherwise subject to interception under this section and shall terminate upon attainment of the authorised objective, or in any event on the expiry of the period of said order or extension thereof.

42. **Authority competent to carry out interception.**

(1) An interception under this Chapter may be conducted in whole or in part by a public servant, acting under the supervision of the investigating officer authorised to conduct the interception.

(2) Whenever an order authorising an interception is issued pursuant to this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorised objective and the need for continued interception and such report shall be made at such intervals as the Competent Authority may require.

43. **Interception of communication in emergency.**

(1) Notwithstanding anything contained in any other provision of this Chapter, an officer not below the rank of Additional Director General of Police or a police officer of equivalent rank who reasonably determines that—

(a) an emergency situation exists that involves—

(i) immediate danger of death or serious physical injury to any person; or

(ii) conspiratorial activities threatening the security or interest of the State; or

(iii) conspiratorial activities, characteristic of a terrorist act, that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorising such interception can, with due diligence, be obtained; and

(b) there are grounds on which an order should be issued under this section to authorise such interception,

may authorise, in writing, the investigating officer to intercept such wire, electronic or oral communication, if an application for an order approving the interception is made in accordance with the provisions of sub-sections (1) and (2) of section 38 within forty-eight hours after the interception has occurred, or begins to occur.

(2) In the absence of an order approving the interception made under sub-section (1), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, whichever is earlier; and in the event of an application for permitting interception being rejected under sub-section (1) of section 39 or an application under sub-section (1) of this section for approval being rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

44. **Protection of information collected.**

(1) The contents of any wire, electronic or oral communication intercepted by any means authorised by this Chapter shall, as far as possible, be recorded on tape or wire or other comparable device and shall be done in such manner as to protect the recording from editing or other alterations.

(2) Immediately upon the expiration of the period of order, or extension thereof, such recording shall be made available to the Competent Authority issuing such order and shall be sealed under his directions and kept in the custody of such person or authority as the Competent Authority orders, and such recordings shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(3) Applications made and orders issued under this Chapter shall be sealed by the Competent Authority and custody of the applications and orders shall be kept in such manner as the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

45. **Admissibility of evidence collected through the interception of communications.**

Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this Chapter shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that, the contents of any wire, electronic or oral communication intercepted pursuant to this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved not less than ten days before trial, hearing or proceeding:

Provided further that, the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

46. **Review of authorization order.**

(1) The Review Committee constituted by the Central Government or the State Government, as the case may be, shall review every order passed by the Competent Authority under section 39.

(2) Every order passed by the Competent Authority under section 39, or disapproved by the officer under section 43, shall be placed before the Review Committee, which shall be considered by the Review Committee within ten days after its receipt, to decide whether the order was necessary, reasonable and justified.

(3) The Review Committee, after examining the entire record and holding such enquiry, if any, deemed necessary may, by order in writing, either approve the order passed by the Competent Authority or may issue order disapproving the same.

(4) On issue of an order of disapproval by the Review Committee, the interception, if any, already commenced shall be forthwith discontinued and the intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as evidence in any case and shall be directed to be destroyed.

47. **Interception and disclosure of wire, electronic or oral communications prohibited.**

Except as otherwise specifically provided in section 39, any police officer who—

(a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;

(b) intentionally uses, endeavours to use, or procures any other person to use or endeavours to use any electronic, mechanical or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication;

(c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter;

(d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this Chapter;

(e) intentionally discloses, or endeavours to disclose, to any other unauthorised person the contents of any wire, electronic or oral communication, intercepted by means authorised by section 39;

(f) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of rejection by the Competent Authority under this Chapter;

(g) intentionally continues the interception of wire, electronic or oral communication after the issue of an order of disapproval by the Review Committee under sub-section (3) of section 46,

shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine up to rupees fifty thousand.

48. **Annual report of interceptions.**

(1) The Central Government and the State Government, as the case may be, shall cause an annual report to be prepared giving a full account of—

(a) the number of applications for authorisation of interceptions received by the Competent Authority from the Police Department in which prosecutions have been launched;

(b) the number of such applications permitted or rejected;

(c) the number of interceptions carried out in emergency situations and the number of approvals granted or rejected in such matters;

(d) the number of prosecutions launched based on such interceptions and convictions resulting from such interceptions, along with an explanatory memorandum giving general assessment of the utility and importance of the interceptions authorised.

(2) An annual report shall be laid by the State Government before the State Legislature within three months of the completion of every calendar year:

Provided that, if the State Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the State or to the prevention or detection of any terrorist act, the State Government may exclude such matter from being included in such annual report.

(3) An annual report shall be laid by the Central Government before each House of Parliament within three months of the completion of every calendar year:

Provided that, if the Central Government is of the opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the country or to the prevention or detection of any terrorist act, the Central Government may exclude such matter from being included in such annual report.

CHAPTER VI

Miscellaneous

49. **Modified application of certain provisions of the Code.**

(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days", respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person from judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.".

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Sections 366, 367 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court subject to the modification that the reference to "Court of Session", wherever occurring therein, shall be construed as the reference to "Special Court".

(5) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(6) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard.

(7) Where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Act or any rule made thereunder shall be released on bail until the Court is satisfied that there are grounds for believing that he is not guilty of committing such offence:

Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-section (6) of this section shall apply.

(8) The restrictions on granting of bail specified in sub-sections (6) and (7) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(9) Notwithstanding anything contained in sub-sections (6), (7) and (8), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

50. **Cognizance of offences.**

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.

51. **Officers competent to investigate offences under this Act.**

Notwithstanding anything contained in the Code, no police officer,—

(a) in the case of the Delhi Special Police Establishment, below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any other case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under this Act.

52. **Arrest.**

(1) Where a police officer arrests a person, he shall prepare a custody memo of the person arrested.

(2) The person arrested shall be informed of his right to consult a legal practitioner as soon as he is brought to the police station.

(3) Whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or in his absence to a relative of such person by telegram, telephone or by any other means and this fact shall be recorded by the police officer under the signature of the person arrested.

(4) The person arrested shall be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person:

Provided that nothing in this sub-section shall entitle the legal practitioner to remain present throughout the period of interrogation.

53. **Presumption as to offences under section 3.**

(1) In a prosecution for an offence under sub-section (1) of section 3, if it is proved—

(a) that the arms or explosives or any other substances specified in section 4 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that the finger-prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Special Court shall draw adverse inference against the accused.

(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused.

54. **Bar of jurisdiction of courts, etc.**

No civil court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sections 19 and 40 of the Act.

55. **Saving.**

(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 the 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 as is referred to in sub-section (1), a Special Court shall be deemed to be a court of ordinary criminal justice.

56. **Overriding effect.**

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.

57. **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.

58. **Punishment and compensation for malicious action.**

(1) 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.

(2) 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.

59. **Impounding passport and arms licence of person chargesheeted under the Act.**

Notwithstanding anything contained in any other law for the time being in force, 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.

60. **Review Committees.**

(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees for the purposes of this Act.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government, or as the case may be, the State Government, so however, that the concurrence of the Chief Justice of the High Court shall be obtained in the case of a sitting Judge:

Provided that in the case of a Union territory, the appointment of a person who is a Judge of the High Court of a State shall be made as a Chairperson with the concurrence of the Chief Justice of the concerned High Court.

61. **Power of High Courts to make rules.**

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.

62. **Power to make rules.**

(1) Without prejudice to the powers of the High Courts to make rules under section 61, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) 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 such areas;

(b) the entry into, and search of—

(i) any vehicle, vessel or aircraft; or

(ii) any place, whatsoever,

Reasonably suspected of being used for committing the offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence;

(c) conferring powers upon—

(i) the Central Government;

(ii) a State Government;

(iii) an Administrator of a Union territory under article 239 of the Constitution;

(iv) an officer of the Central Government not lower in rank than that of a Joint Secretary; or

(v) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or deal with terrorist acts;

(d) the arrest and trial of persons contravening any of the rules or any order made thereunder;

(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to one year or fine or both;

(f) providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority;

(g) determination of the price of the forfeited property under sub-section (2) of section 10;

(h) the procedure of making application under sub-section (3) of section 19; and

(i) the qualifications of the members of the Review Committee under sub-section (2) of section 60.

63. Orders and rules to be laid before Houses of Parliament.

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.

64. **Repeal and saving.**

(1) The Prevention of Terrorism (Second) Ordinance, 2001 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

TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

CHAPTER I

PRELIMINARY

1. **Short title, extent, application, commencement, duration and savings.** -

(1) This Act may be called the Terrorist and Disruptive Activities (Prevention) Act, 1987.

(2) It extends to the whole of India, and it applies also, -

a. to citizens of India outside India;

b. to persons in the service of the Government, wherever they may be; and

c. to persons on ships and aircraft registered in India, wherever they may be.

(3) Sections 5, 15, 21 and 22 shall come into force at once and the remaining provisions of this Act shall be deemed to have come into force on the 24th day of May, 1987.

(4) It shall remain in force for a period of 2[eight years] from the 24th day of May, 1987, 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 any rule made thereunder or any order made under any such rule, or
b. any right, privilege, obligation or liability acquired accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or
c. any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, 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.

2. **Definitions** – (1) In this Act, unless the context otherwise requires, -

(a) "*abet*", with its grammatical variations and cognate expressions, includes, -

i. the communication or association with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists;
ii. 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;

iii. the rendering of any assistance, whether financial or otherwise, the terrorists or disruptionists;

(b) "*Code*" means the Code of Criminal Procedure 1973 (2 of 1974);

(c) "*Designated Court*" means a Designated Court constituted under Section 9;

(d) "*Disruptive activity*" has the meaning assigned to it in Section 4, and the expression "disruptionist" shall be construed accordingly;

(e) "*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;

(f) "*notified area*" means such area as the State Government may, by notification in the official Gazette, specify;

(g) "*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;

3[(gg) "*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;]

(h) "*terrorist act*" has the meaning assigned to it in sub-section (1) of Section 3, and the expression "terrorist" shall be construed accordingly;

(i) words and expressions used but not defined in this Act and defined in the Code shall have the meaning respectively assigned to them in the Code.

(2) 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.

PART II

PUNISHMENTS FOR, AND MEASURES FOR COPING WITH, TERRORIST AND DISRUPTIVE ACTIVITIES

3. **Punishment for terrorist acts.** – (1) 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.

(2) Whoever commits a terrorist act, shall, -

(i) 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;

(ii) 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.

(3) 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.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist 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.

4[(5) Any person who is a member of a terrorists gang or a terrorist organisation, which is involved in terrorist acts, 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.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds 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.]

4. Punishment for disruptive activities. - (1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity 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.

(2) 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.

(3) Without prejudice to the generality of the provisions of sub-section(2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which -

a. advocates, advises, suggests or incites; or
b. predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advice, suggest or prompt,

the killing or the destruction of any person bound by oath under the constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any disruptiionist shall be punishable with imprisonment for a term which shall not be less than five years but which may be extend to imprisonment for life and shall also be liable to fine.

2. Habeas Corpus – In habeas corpus proceedings if the detention is legal at the time of the disposal of the petition the Court cannot order release of the person detained by issuing a writ of habeas corpus. Therefore, the legality or otherwise of the detention shall also be considered on the date of final disposal of the petition. *Bacha Bora v. State of Assam*, 1991 Cr LJ 2782 (Gau).

5. Possession of certain unauthorised arms, etc. in specified areas – Where any person is 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 unauthorisedly 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.

6. Enhanced penalties – (1) If any person with intend to aid any terrorist or disruptionist, contravenes any provision of, or any rule made under the Arms Act, 1959, the Explosives Act, 1884, the Explosives Substances Act, 1908 or the Inflammable Substances Act, 1952, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, 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) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provision of sub-section (1) shall, in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" shall be construed as a reference to "imprisonment for ten years".

7. Conferment of powers – (1) Notwithstanding anything contained the Code or in any other provision of this Act, the Central Government may, if it considers it necessary or expedient so to do, –

a. for the prevention of, and for coping with, any offence under Section 3 or Seciton 4; or

b. for any case or class or group of cases under Section 3 or Section 4;

in any State or part thereof, confer, by notification in the official Gazette, on any officer of the Central Government, powers exercisable by a police officer under the Code in such State or part thereof or, as the case may be, for such case or class or group of cases and in particular, the powers of arrest, investigation and prosecution of persons before any Court.

(2) All officers of police and all officers of Government are hereby required and empowered to assist the officer of the Central Government referred to in sub-section (1), in the execution of the provisions of this Act or any rule or order made thereunder.

(3) The provisions of the Code shall, so far as may be and subject to such modifications made in this Act, apply to the exercise of the powers by an officer under sub-section (1).

5[**7-A. Powers of investigating officers** – If an officer investigating an offence committed under this Act has reason to believe that any property in relation to which an investigation is being conducted is a property derived or obtained from the commission of any terrorist act and includes proceeds of terrorism he shall, with the approval of the Superintendent of Police, make an order seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Court and a copy of such order shall be served on the persons concerned :

Provided that the investigating officer shall duly inform the Designated Court within forty-eight hours of the attachment of such property and the said Court shall either confirm or revoke the order of attachment so issued.]

8. Forfeiture of property of certain persons – (1) Where a person has been convicted to any offence punishable under this Act or any rule made thereunder, 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.

(2) Where any person is accused of any offence under this Act or any rule made thereunder, it shall be open to the Designated Court trying him to pass an order that all or any properties, movable or immovable or both belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to Government free from all encumbrances.

(3) (a) If upon a report in writing made by a police officer or an officer referred to in sub-section (1) of Section 7, any Designated Court has reason to believe that any person, who has committed an offence punishable under this Act or any rule made thereunder, has absconded or is concealing himself so that he may not be apprehended, such court may, notwithstanding anything contained in Section 82 of the Code, publish a written proclamation requiring him to

appear at a specified place and at a specified time not less than fifteen days but not more than thirty days from the date of publication of such proclamation.

(b) The Designated Court issuing a proclamation under Clause (a) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person, and thereupon the provisions of Sections 83 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.

(c) If, within six months from the date of the attachment, any person, whose property is, or has been, at the disposal of the Government under sub-section(2) of Section 85 of the code, appears voluntarily or is apprehended and brought before the Designated Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the time specified therein, such property or, if the same has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

(4) Where any shares in a company stand forfeited to the Government under this sub-section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association the company, forthwith register the Government as the transferee of such shares.

PART III

DESIGNATED COURTS

9. Designated Courts – (1) The Central Government or a State Government may, by notification in the official Gazette, constitute one or more Designated Courts for such area or areas, or for such case or class or group of cases as may be specified in the notification.

(2) Where a notification constituting a Designated Court for any area or areas or for any case or class or group of cases is issued by the Central Government under sub-section (1), and a notification constituting a Designated Court for the same area or areas or for the same case or class or group of cases has also been issued by a State Government under that sub-section, the Designated Court constituted by the Central Government, whether the notification constituting such Court is issued before or after the issue of the notification constituting the Designated Court by the State Government, shall have, and the Designated Court constituted by the State Government shall not have, jurisdiction to try any offence committed in that area or areas or, as the case may be, the case or class or group of cases, and all cases pending before any Designated Court constituted by the State Government shall stand transferred to the Designated Court constituted by the Central Government.

(3) Where any question arises as to the jurisdiction of any Designated Court, it shall be referred to the Central Government whose decision thereon shall be final.

(4) A Designated Court shall be presided over by a Judge to be appointed by the Central Government or, as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(5) The Central Government or, as the case may be, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court additional Judges to exercise jurisdiction in a Designated Court.

(6) A person shall not be qualified for appointment as a Judge or an additional Judge of a Designated Court unless he is, immediately before such appointment a Sessions Judge or an additional Sessions Judge in any State.

(7) For the removal of doubts, it is hereby provided that the attainment by a person appointed a judge or an Additional Judge of a Designated Court of the age of superannuation under the rules applicable to him in the service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(8) Where any Additional Judge or Additional Judges is or are appointed in a Designated Court, the Judge of the Designated Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Designated Court among himself and the additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge.

10. Place of sitting – A Designated Court may, on its own motion or on an application made by the Public Prosecutor, and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than its ordinary place of sitting :

Provided that nothing in this section shall be construed to change the place of sitting of a Designated Court constituted by a State Government to any place outside that State.

11. Jurisdiction of Designated Courts. – (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed or, as the case may be, by the Designated Court constituted for trying such offence under sub-section (1) of Section 9.

(2) If, having regard to the exigencies of the situation prevailing in a State, the Central Government is of the opinion that, -

(a) the situation prevailing in such State is not conducive to a fair, impartial or speedy trial, or

(b) it is not likely to be feasible without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge of the Designated Court or any of them, or

(c) it is not otherwise in the interests of justice,

It may, with the concurrence of the Chief Justice of India (such occurrence to be obtained on a motion moved in that behalf by the Attorney-General), transfer any case pending before a Designated Court in that State to any other Designated Court within that State or in any other State.

(3) Where the whole or any part of the area within the local limits of the jurisdiction of a Designated Court has been declared to be, or forms part of, any area which has been declared to be a disturbed area under any enactment for the time being in force making provision for the suppression of disorder and restoration and maintenance of public order, and the Central Government is of opinion that the situation prevailing in the State is not conducive to fair, impartial or speedy trial within the State, of offences under this Act or the rules made thereunder which such Designated Court is competent to try, the Central Government may, with the concurrence of the Chief Justice of India, specify, by notification in the official Gazette, in relation to such Court (hereafter in this sub-section referred to as the local Court) a Designated Court outside the State (hereinafter in this section referred to as the specified court), and thereupon, -

a. it shall not be competent at any time during the period of operation of such notification, for such local court to exercise any jurisdiction in respect of, or try, any offence under this Act or the rules made thereunder;
b. the jurisdiction which would have been, but for the issue of such notification, exercisable by such local court in respect of such offences committed during the period of operation of such notification shall be exercisable by the specified court;
c. all cases relating to such offences pending immediately before the date of issue of such notification before such local court shall stand transferred on that date to the specified court;
d. all cases taken cognizance of by, or transferred to, the specified court under Clause *(b)* or Clause *(c)* shall be dealt with and tried in accordance with this Act (whether during the period of operation of such notification or thereafter) as if such offences had been committed within the local limits of the jurisdiction of the specified court or, as the case may be, transferred for trial to it under sub-section (2).

Explanation 1.- A notification under this sub-section in relation to any local court shall cease to operate on the date on which the whole or, as the case may be, the aforementioned part of the area within the local limits of its jurisdiction, ceases to be a disturbed area.

Explanation 2.- For the purposes of this section, "Attorney-General" means the Attorney-General of India or, in his absence, the Solicitor-General of India or, in the absence of both, one of the Additional Solicitors-General of India.

12. Power of Designated Courts with respect to other offences.- (1) When trying any offence, a Designated 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.

(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 any rule made thereunder or under any other law, a the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

13. Public Prosecutors - (1) For every Designated 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.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause *(u)* of Section 2 of the Code and the provisions of the Code shall have effect accordingly.

14. Procedure and powers of Designated Courts.- A Designated Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Designated Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Designated Court may, notwithstanding anything contained in sub-section (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Section 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 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.

(3) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Designated Court under sub-section (2) of Section 11 shall be dealt with as if such case had been transferred under Section 406 of the Code to such Designated Court.

(5) Nothwithstanding anything contained in the Code, a Designated Court may, if it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.

15. Certain confessions made to police officers to be taken into consideration.- (1) Nothwithstanding anything in the Code or in the Indian Evidence Act, 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 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 6[or co-accused, abettor or conspirator] for an offence under this Act or rules made thereunder:

7 [Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused].

(2) The police officer shall, before recording any confession under sub-section (1), 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.

16. Protection of witnesses.- 8[(1) Nothwithstanding anything contained in the Code, the proceedings under this Act may be held in *camera* if the Designated Court so desires.]

(2) A Designated Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of any witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), 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.

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

17. Trial by Designated Courts to have precedence- The trial under this Act of any offence by a Designated Court shall have precedence over the trial of any other case against the accused in any other court (not being a Designated 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.

18. Power to transfer cases to regular courts- Where, after taking cognizance of any offence, a Designated Court is of 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.

19. Appeal- (1) Nothwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Designated Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment; sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

PART IV

MISCELLANEOUS

20. Modified application of certain provisions of the Code.- (1) Nothwithstanding anything contained in the Code or any other law, every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 21 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modification that the reference to "the State Government" therein shall be construed as a reference to "the Central Government or the State Government".

(3) Section 164 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder, subject to the modification that the reference in subsection (1) thereof to "Metropolitan Magistrate or Judicial Magistrate" shall be construed as a reference to "Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate or Special Executive Magistrate.

(4) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that,-

a. the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to Judicial Magistrate or Executive Magistrate or Special Executive Magistrate;

b. the reference in sub-section (2) thereof to "fifteen days," "ninety days" and "sixty days," wherever they occur, shall be construed as references to "sixty days."[9][one hundred and eighty days] and [8][one hundred and eighty days], respectively; and

(bb)sub-section (2-A) thereof shall be deemed to have been omitted.

10[(bbb) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:-

> "Provided further that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Designated Court shall extend the said period up to one year, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.]

(5) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that -

a. the reference in sub-section(1) thereof –

i. to "the State Government" shall be construed as a reference to "the Central Government or the State Government";
ii. to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; or

b. the reference in sub-section (2) thereof, to "State Government" shall be construed as a reference to "Central Government or the State Government, as the case may be".

(6) Sections 366 to 371 and Section 392 of the Code shall apply in relation to a case involving an offence triable by a Designated Court subject to the modifications that the references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Designated Court" and "Supreme Court", respectively.

(7) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this act or any rule made thereunder.

(8) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless, –

a. the Public Prosecutor has been given an opportunity to oppose the application for such release, and
b. where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(9) The limitations on granting of bail specified in sub-section (8) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

11[**20-A. Cognizance of offence** – (1) Notwithstanding, anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police.]

21. Presumption as to offences under Section 3 – (1) In a prosecution for an offence under sub-section (1) of Section 3, if it is proved –

a. that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of similar nature, were used in the commission of such offence; or
b. that by the evidence of an expert the fingerprints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence.
c. [12][* * *]
d. [12][* * *]

(2) In a prosecution for an offence under sub-section 3 of Section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence under that section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section.

22. Identification of accused – Where a person has been declared a proclaimed offender in terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of a test identification parade.

23. Saving – (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 the 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 as is referred to in sub-section (1), a Designated Court shall be deemed to be a Court of ordinary criminal justice.

24. Saving as to orders – Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

25. Overriding effect – The provisions of this Act or any rule made thereunder or any order made under any such rule 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.

26. Protection of action taken under this Act – No suit, prosecution or other legal proceeding shall lie against the Central Government or State Government or any other authority on whom powers have been conferred under this Act or any rules made thereunder, for anything which is in good faith done or purported to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule.

27. Power of the Supreme Court to make rules – The Supreme Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the provisions of this Act relating to Designated Court.

28. Power to make rules – (1) Without prejudice to the powers of the Supreme Court to make rules under Section 27, the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:

(a) 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.
(b) The entry into, and search of, -
(i) any vehicle, vessel or aircraft; or
(ii) any place, whatsoever,

reasonably suspected of being used for committing the offence referred to in Section 3 or Section 4 or for manufacturing or storing anything for the commission of any such offence.

(c)Conferring powers upon, –
(i) the Central Government;
(ii) a State Government;

(iii) an Administrator of a Union Territory under Article 239 of the Constitution;
(iv) an officer of the Central Government not lower in rank than of a Joint Secretary; or
(v) an officer of a State Government not lower in rank than that of a District Magistrate,

to make general or special orders to prevent or cope with terrorist acts or disruptive activities;

(d) the arrest and trial of persons contravening any of the rules or any order made thereunder;
(e) the punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule or order made thereunder with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;
(f) Providing for the seizure and detention of any property in respect of which such contravention, attempt or abetment as is referred to in Clause (e) has been committed and for the adjudication of such seizure and detention, whether by any court or by any other authority.

29. Rules to be laid before Houses of Parliament – 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 rule or both Houses agree that the rule should not be made, the rule shall thereafter have affect 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 rule.

30. Repeal and Saving - (1) The Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) is hereby repealed.

(2) Notwithstanding such repeal, 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

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