



EIGHTH REPORT



SECOND ADMINISTRATIVE REFORMS COMMISSION



COMBATTING TERRORISM

PROTECTING BY RIGHTEOUSNESS

JUNE 2008

GOVERNMENT OF INDIA

SECOND ADMINISTRATIVE REFORMS COMMISSION

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PREFACE

In his First Pillar Edict, Emperor Ashoka, stated: *“This world and the other are hard to gain without great love of Righteousness, great self-examination, great obedience, great circumspection, great effort . . . For this is my rule, to govern by Righteousness, to administer by Righteousness, to please my subjects by Righteousness, and to protect them by Righteousness.”*

In his *Tractatus Politicus*, (The Political Treatise) Spinoza said:

“The last end of the state is not to dominate men, nor to restrain them by fear; rather it is so to free each man from fear that he may live and act with full security and without injury to himself or his neighbour. The end of the state, I repeat, is not to make rational beings into brute beasts and machines. It is to enable their bodies and their minds to function safely. It is to lead men to live by, and to exercise, a free reason; that they may not waste their strength in hatred, anger and guile, nor act unfairly toward one another. Thus the end of the state is really liberty”.

This is the Eighth Report of the Second Administrative Reforms Commission (ARC) which deals with the menace of terrorism and how India’s legal and administrative framework can be refurbished to tackle it.

The nature of terrorism today is shifting from “traditional international terrorism of the late 20th century into a new form of transnational non-state warfare.” An arc of extremism now extends across the Middle East and touches countries far outside that region including India. To defeat it, an alliance of moderation has to be carved out, one that points to visions for the future in which Hindu, Muslim, Jew and Christian; Arab and Western; wealthy and developing nations can make progress in peace and harmony. We will not be able to win the battle against global extremism unless we can win it at the level of values as much as force and unless we can show that we are fair, even-handed and just in our application of those values to the world.

This is a completely unconventional type of war. Several attacks in India, 9/11 in the US, 7/7 in the UK, 11/3 in Madrid, the countless terrorist attacks in countries as disparate as Indonesia or Algeria, what is now happening in Afghanistan and in Indonesia, the continuing conflict in Lebanon and Palestine, these are all symptoms of this disease. The underlying causes have to be confronted at the level of ideologies and values. What are the values that will govern the future of the world? Are they those of tolerance, freedom, respect for difference and diversity or those of reaction, division and hatred? This unconventional war can not be won in a conventional way. It can only be won by showing that our values are stronger, better and more just, more fair and more humane than the alternative.

Another disturbing trend is that the so-called war against terror is seen as a war against Islam. This is unjustified and terrible for the Muslims as they now face religious discrimination along with being socially underprivileged.

The Koran is very clear: 'let there be no compulsion in religion'. Nothing could be more explicit than this. So, the whole mythology about the spread of Islam through the sword is baseless. There is no Koranic sanctity for spreading faith with the sword.

Dr. Manmohan Singh, our Prime Minister said:

"Democracies provide legitimate means for expressing dissent. They provide the right to engage in political activity, and must continue to do so. However, for this very reason, they cannot afford to be soft on terror. Terrorism exploits the freedom our open societies provide to destroy our freedoms".

The spectre of international terrorism is one such phenomenon evolving out of the churning that has accompanied globalization process. We must fight terrorism wherever it exists, because terrorism anywhere threatens democracy everywhere.

Whatever the outward manifestation at any one time, anywhere in the world; - this is a global fight about values, about modernization, both within religions and outside. It is about whether our value system can be shown to be sufficiently robust, fair, principled and appealing so that it beats those of the extremists. Extremism's whole strategy is based on perceived sense of grievance that can be invladed to motivate people to fight against each other. Our response has to be a set of values strong enough to unite rather than divide people.

Sheikh Muslihu-ud-Din, better known as Saadi, thirteenth century poet of Shiraz said,

*"A spring at its source can be turned with a twig,
But when grown into a river, not even an
Elephant can cross it"*

The human psyche will have to be evolved continuously to ensure that value systems based on humanity and tolerance prevail over extremism.

The story of the Parsees' assimilation in India shows that people of different identities, languages, cultures and religions can assimilate into an inclusive society and culture. The Parsees on migrating to India from Iran wanted refuge from the local ruler to live in India. The ruler was reluctant and wanted to convey to them that he had no place for them. He gave the Parsees a glass of milk filled to the brim. The Parsees understood the meaning, that there was no place for them in his Kingdom as symbolized by the glass that was full. But the leader of the Parsees took some sugar and gradually dissolved it into the milk, without causing it to overflow, a lesson for our intolerant times.

This is why everything we do to prevent and punish acts of terror must flow from the basic premise that these not only take away innocent lives, but also divide our society, create mistrust among people and leave scars that can take decades to heal. In that respect, terrorism is worse than an act of war against the nation, because terror acts are executed by stealth making no distinctions between civilians and military between men, women and children, old and young, rich and poor.

In our anti-terror strategy, if we take the human being as the focus of our collective work, we will be able to do the right thing. But if we begin from abstract ideologies and impersonal categories that divide society along various boundaries based on religion, language region etc. we may end up fighting each other and doing each other harm.

The Brahmanda Purana evaluates Sanatana Dharma:

“The roots of Sanatana Dharma are stated to be in being free from malice and greediness; observance of austerity, compassion for all creatures, self-control, chastity, truth, tenderness, forgiveness, and fortitude”.

The Gandhian perspective is really more about pure ethics and spirituality than about religion in a narrow sense of the term. It transcended religion because of its undogmatic universalism and its ultimate liberating potential even in the mundane world. But he did not decry religion, because he was convinced with its powerful potential to inspire and sustain moral conduct.

Non-violence (*ahimsa*) of Hinduism in Gandhian perspective was not just a negative concept of avoiding violence; in fact, it required its practitioner to be socially engaged, proactively kind and caring. An important aspect of the Gandhian perspective thus is its emphasis.

Gandhiji derived inspiration for selfless service as much from Christianity and Islam, as from Hinduism and Jainism. He found in this the very core of religion and true spirituality. Indian religions, including Hinduism, have a long tradition of, and scriptural backing to, selfless service to others, including even animals, which Gandhi rediscovered.

In these days of competitive identity politics, we need to remember the address of Jawaharlal Nehru to the AICC Session in 1961 when he said ‘that communalism of the majority is far more dangerous than, the communalism of the minority.’ Not condoning the latter he stated, ‘the communalism of a majority community is apt to be taken for nationalism’.

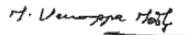
In particular when politics intrudes into and takes over religion, violence seems to follow. Innocent people are slaughtered in the name of God. But if we turn things the other way

around, and start with the human being, we will be able to do what is right and good.

As this Report shows, Government reacts to events but there is no long term vision or planning to tackle terrorism. The intelligence network and policing capacity at both Union and State levels need to be significantly improved to meet the challenges posed by terrorism.

In this Report on Terrorism, the Commission has dealt with the two major aspects of the country's counter terrorism framework viz., the legislative mechanism and the administrative framework; and made detailed recommendations on how these can be upgraded, strengthened, reformed and restructured in order to fight terrorism in an effective manner.

It is our sincere hope that this Report will help the Government to take steps to fight the menace of terrorism in an effective manner without losing sight of our values as a secular, democratic and peace loving nation.



Date : 07.06.2008

(M Veerappa Moily)

Place : Delhi

Chairman

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

Resolution

New Delhi, the 31st August, 2005

No. K-11022/9/2004-RC. — The President is pleased to set up a Commission of Inquiry to be called the Second Administrative Reforms Commission (ARC) to prepare a detailed blueprint for revamping the public administration system.

2. The Commission will consist of the following :
- (i) Shri Veerappa Moily - Chairperson
 - (ii) Shri V. Ramachandran - Member
 - (iii) Dr. A.P. Mukherjee - Member
 - (iv) Dr. A.H. Kalro - Member
 - (v) Dr. Jayaprakash Narayan - Member*
 - (vi) Smt. Vineeta Rai - Member-Secretary
3. The Commission will suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government.

The Commission will, inter alia, consider the following :

- (i) Organisational structure of the Government of India
- (ii) Ethics in governance
- (iii) Refurbishing of Personnel Administration
- (iv) Strengthening of Financial Management Systems
- (v) Steps to ensure effective administration at the State level
- (vi) Steps to ensure effective District Administration
- (vii) Local Self-Government/Panchayati Raj Institutions
- (viii) Social Capital, Trust and Participative public service delivery
- (ix) Citizen-centric administration
- (x) Promoting e-governance
- (xi) Issues of Federal Polity
- (xii) Crisis Management
- (xiii) Public Order

Some of the issues to be examined under each head are given in the Terms of Reference attached as a Schedule to this Resolution.

4. The Commission may exclude from its purview the detailed examination of administration of Defence, Railways, External Affairs, Security and Intelligence, as also subjects such as Centre-State relations, judicial reforms etc. which are already being examined by other bodies. The Commission will, however, be free to take the problems of these sectors into account in recommending re-organisation of the machinery of the Government or of any of its service agencies.

5. The Commission will give due consideration to the need for consultation with the State Governments.

6. The Commission will devise its own procedures (including for consultations with the State Government as may be considered appropriate by the Commission), and may appoint committees, consultants/advisers to assist it. The Commission may take into account the existing material and reports available on the subject and consider building upon the same rather than attempting to address all the issues ab initio.

7. The Ministries and Departments of the Government of India will furnish such information and documents and provide other assistance as may be required by the Commission. The Government of India trusts that the State Governments and all others concerned will extend their fullest cooperation and assistance to the Commission.

8. The Commission will furnish its report(s) to the Ministry of Personnel, Public Grievances & Pensions, Government of India, within one year of its constitution.

Sd/-

(P.I. Suvrathan)

Additional Secretary to Government of India

*Dr. Jayaprakash Narayan – Member, resigned with effect from 1st September, 2007 (Resolution No. K.11022/26/207-AR, dated 17th August, 2007).

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

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RESOLUTION

New Delhi, the 24th July, 2006

No. K-11022/9/2004-RC (Vol.II) – The President is pleased to extend the term of the second Administrative Reforms Commission by one year upto 31.8.2007 for submission of its Reports to the Government.

Sd/-
(Rahul Sarin)
Additional Secretary to the Government of India

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

RESOLUTION

New Delhi, the 17 July, 2007

No.K-11022/26/2007-AR – The President is pleased to extend the term of the second Administrative Reforms Commission (ARC) by seven months upto 31.3.2008 for submission of its Reports to the Government.

Sd/-
(Shashi Kant Sharma)
Additional Secretary to the Government of India

Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Administrative Reforms and Public Grievances

RESOLUTION

New Delhi, the 14 February, 2008

No.K-11022/26/2007-AR – The President is pleased to extend the term of the second Administrative Reforms Commission (ARC) by six months upto 30.9.2008 for submission of its Reports to the Government.

Sd/-

(Dhruv Vijai Singh)

Additional Secretary to the Government of India

ORGANISATION

Second Administrative Reforms Commission

1. Shri M. Veerappa Moily, Chairman
2. Shri V. Ramachandran, Member
3. Dr. A.P. Mukherjee, Member
4. Dr. A.H. Kalro, Member
5. Smt. Vineeta Rai, Member Secretary

Officers of the Commission

1. Shri A.B. Prasad, Joint Secretary
2. Shri P.S. Kharola, Joint Secretary
3. Shri R.K. Singh, PS to Chairman
4. Smt. Ruchika Choudhary Govil, Director*
5. Shri Sanjeev Kumar, Director
6. Shri Shahi Sanjay Kumar, Deputy Secretary

* This post of Director was temporarily transferred from the Department of Personnel & Training for the period 04.02.2008 to 08.10.2008.

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LIST OF ABBREVIATIONS

AICCCR	All India Co-ordination Committee of Communist Revolutionaries
CIA	Central Intelligence Agency
COFEPOSA	The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act
CPI	Communist Party of India
CPI (ML)	Communist Party of India (Marxist-Leninist)
CPM	Communist Party of India (Marxist)
Cr.PC	Criminal Procedure Code
DCSINT	Deputy Chief of Staff for Intelligence
DoS	Denial of Service
EPRLF	Eelam People's Revolutionary Liberation Front
FBI	Federal Bureau of Investigation
HEU	Highly Enriched Uranium
HUJI	Harkat-ul-Jehad-al-Islami
HUM	Harkat-ul-Mujahideen
IB	Intelligence Bureau
IED	Improvised Explosive Device
IMU	Islamic Movement of Uzbekistan
IPKF	Indian Peace Keeping Force
IRA	Irish Republican Army
ISI	Inter-Services Intelligence
IT	Information Technology
J&K	Jammu & Kashmir
JeM	Jaish-e-Mohammed
JKIF	Jammu & Kashmir Islamic Front
KKK	Ku Klux Klan

LeT	Laskar-e-Tayyaba
LOC	Line of Control
LTTE	Liberation Tigers of Tamil Eelam
LWE	Left Wing Extremism
MCC	Maoist Communist Centre
MLA	Member of Legislative Assembly
MOS	Minister of State
MP	Member of Parliament
NATO	North Atlantic Treaty Organisation
NBC	Nuclear Biological and Chemical
NHRC	National Human Rights Commission
POK	Pakistan Occupied Kashmir
POTA	Prevention of Terrorism Act
PWG	People's War Group
RAW	Research and Analysis Wing
SIMI	Students' Islamic Movement of India
SVPNPA	Sardar Vallabhbhai Patel National Police Academy
TADA	Terrorist and Disruptive Activities (Prevention) Act
UK	United Kingdom
ULPA	Unlawful Activities (Prevention) Act
ULPAA	Unlawful Activities (Prevention) Amendment Act
UN	United Nations
US	United States
USA	United States of America
USSR	Union of Soviet Socialist Republics
WMD	Weapons of Mass Destruction

INTRODUCTION

1.1 In its Third Report, on “Crisis Management”, the Commission had stated that crisis situations caused by hostile elements like terrorists and extremists involving taking of hostages, hijacking of airplanes or severely disrupting public order and administration would be dealt with in its subsequent reports.

1.2 In its Fifth Report, on “Public Order”, the Commission observed that in view of the growing incidence of terrorist violence in the country there is an emerging consensus in India that a strong legal framework should be created to deal with terrorism. The Commission pointed out that there is a *“felt need to strengthen the hands of security forces in the fight against terrorism even as human rights and constitutional values are protected”*¹. Accordingly, the Commission had decided that it would deal with issues pertaining to terrorism in a separate report particularly since terrorism today has transcended pure crisis management or public order issues and is enmeshed in an intricate web of organized crime, illegal financial transfers and trafficking in arms and drugs, which poses a grave threat to national security. The existence of sleeper cells, the spread of modern communications and the increasing use of modern weapons, technology and tactics have enabled the merchants of terror to spread their tentacles far and wide subjecting the entire country to their nefarious designs. A multi-cultural, liberal and democratic country like India, given its geopolitical situation, is particularly vulnerable to acts of terror with statistics showing that Indians have suffered the maximum casualties at the hands of terrorists. The menace of terrorism is thus an unprecedented threat which requires extraordinary and multi-pronged action by all organs of government and society.

1.3 This Report on capacity building to combat terrorism has been prepared accordingly and comprises seven chapters:

- Chapter 1 : Introduction
- Chapter 2 : Terrorism - Types, Genesis and Definition
- Chapter 3 : Terrorism in India
- Chapter 4 : Dealing with Terrorism: Legal Framework
- Chapter 5 : Measures against Financing of Terrorism

¹Paragraph 2.2.2.6 of the Fifth Report.

Chapter 6 : Institutional and Administrative Measures

Chapter 7 : Civil Society, Media and Citizens

1.4 The Commission has benefited greatly from interactions with a large number of experts both within the Government and outside while preparing this Report. The Commission is grateful to Hon'ble Mr Justice R.C. Lahoti, former Chief Justice of India, for his valuable suggestions. A workshop was organised jointly with Sardar Vallabhbhai Patel National Police Academy, Hyderabad on 'Public Order', and one working group examined the measures to deal with terrorism (Annexure-I). The Commission discussed issues related to terrorism with the State Governments during its visit to the States. The Commission is grateful for the considerable assistance provided by Shri P.K.H. Tharakan, former Secretary (R&AW) who worked as Advisor with the Commission and prepared a well researched paper. The Commission is grateful to Shri P.C. Haldar, Director, IB; Shri Vijay Shanker, Director, CBI; and Shri K.T.S. Tulsi, eminent advocate for valuable inputs. The Commission is also grateful to Shri Shastri Ramachandran, Associate Editor, The Tribune for his contribution on the 'Role of Media in dealing with terrorism'.

TERRORISM – TYPES, GENESIS AND DEFINITION

2.1 History

2.1.1 Terrorism is as old as the Roman Empire and it existed in some form or the other, be it the Zealots in Judea or the Assassins in the 11th to 13th century with religion being a strong motivating factor behind terrorist activities until the French Revolution. In fact, the term “terrorism” originated from the Reign of Terror (Regime de la Terreur) of 1793-94.

2.1.2 Following the Second World War, there was a shift in the nature and locale of terrorist activities around the world. The focus of terrorist activities shifted from Europe to the Middle East, Africa and Asia with the emergence of various nationalistic and anti-colonial groups in these regions, notably in Israel, Kenya, Cyprus, Algeria, Palestine and Malaya. The first major act of terror, considered as the most deadly and spectacular terrorist operation till then, was carried out by the Jewish Irgun (then led by Menachem Begin) when the King David Hotel in Jerusalem was bombed in July 1946, killing nearly a hundred people.

2.1.3 Left wing extremism, based on their belief that terrorism is the only strategy of revolutionary movement for the weak in the Third World (e.g. in Malaysia, Vietnam etc.), surfaced in Europe and elsewhere as well, especially since the late 1950s. The Red Army Faction in West Germany (also known as the Baader-Meinhof Group), the Red Army Faction of Japan, the Weathermen and Black Panthers in the USA, the Tupamaros of Uruguay and several other left-extremist terrorist groups sprang up during the 1960s in different parts of the world, including Naxalites and Maoists in India.

2.1.4 The Irish Republican Army/IRA, traced its origin to the period around 1919-21. Its later incarnation, known as the Provisional Irish Republican Army was formed in 1969 and has carried out extensive terrorist attacks not only in Northern Ireland but in England as well. A historic peace settlement was arrived at through the Good Friday Agreement of 1998 between the contending Irish groups and the UK Government.

2.1.5 International terrorism today is marked by the large number of transnational terrorist groups, mostly motivated by the Islamist fundamentalist ideology with Osama bin Laden's Al-Qaeda at the forefront, and the Taliban in Afghanistan as its close ally. The rapid rise

of the Taliban during the anti-Soviet militant movement was made possible largely because of extensive patronage by USA's CIA and Pakistan's ISI, with billions of dollars in cash and in kind having been poured into the region via Pakistan. For a few years in the recent past, it looked as though the Taliban was effectively decimated in the wake of the 'war against terror' waged in Afghanistan by the USA in collaboration with its allies. But during the past couple of years' the Taliban appears to be fast regaining their lost ground. This is already having serious security implications not only in Afghanistan but also in Pakistan and India.

2.2 Types of Terrorism

2.2.1 Terrorists are motivated by different goals and objectives. Depending on the objectives of the group/groups, the nature of terrorism also differs. The major types of terrorist operations commonly identified globally include:

2.2.2 Ethno-Nationalist Terrorism

Terrorism motivated by ethno-nationalist and separatist aspirations became prominent only after the Second World War and dominated the terrorist agenda around the world for more than 50 years until religious terrorism came to occupy the centre stage. Ethnic terrorism can be defined, according to Daniel Byman², as deliberate violence by a subnational ethnic group to advance its cause. Such violence usually focuses either on the creation of a separate State or on the elevation of the status of one ethnic group over others. Tamil Nationalist groups in Sri Lanka and insurgent groups in North East India are examples of ethno-nationalist terrorist activities.

2.2.3 Religious Terrorism

Present-day terrorist activities around the world are motivated largely by religious imperatives. According to Hoffman³, the practitioners of terrorism motivated either in whole or in part by a religious imperative consider violence as a divine duty or a sacramental act. It embraces different means of legitimisation and justification compared to other terrorist groups, and these distinguishing factors make religious terrorism more destructive in nature.

2.2.4 Ideology Oriented Terrorism

Any ideology can be used to support the use of violence and terrorism. Ideology oriented terrorism is generally classified into two: Left-wing and Right-wing terrorism.

- (a) *Left-wing Terrorism*-Violence against the ruling elite mostly by the peasant class motivated by what are called leftist ideologies have occurred time and again in history.

²Source: Refer to Annexure II of this Report where the readings and general references are provided separately.

³Source: Refer to Annexure II of this Report.

However, the ideological basis for the left and subsequent violent movements was provided by the writings of Marx and Engels. This was supported by the writings and speeches of later communists like Lenin and Mao Tse-tung (Mao Zedong). Leftist ideologies believe that all the existing social relations and state structures in the capitalist society are exploitative in character and a revolutionary change through violent means is essential. Examples of leftist ideologies that have resorted to the use of terror are numerous. These include; the Red Army Faction or Baader Meinhof Gang in the former West Germany, the Red Brigades in Italy, the 17 November Movement in Greece, the Shining Path of Peru, Peoples Revolutionary Army and the Motoneros of Argentina. The Maoist groups in India and Nepal are the most easily identifiable groups closer home.

(b) *Right-wing Terrorism*- Right-wing groups generally seek to maintain the status-quo or to return to some past situation that they feel should have been conserved. Sometimes, groups espousing rightist ideologies might assume ethnic/racist character too. They may force the government to acquire a territory or to intervene to protect the rights of an 'oppressed' minority in a neighboring country (i.e : the Nazi Party in Germany). Violence against migrant communities also comes under this category of terrorist violence. It is to be noted here that religion can play a supportive role to rightist violence. Examples of these are: Nazism in Germany, Fascists in Italy, white supremacy movements in the US known as Ku Klux Klan (KKK), the Green Jackets of Denmark in the 1980s etc.

2.2.5 State-sponsored Terrorism

2.2.5.1 State-sponsored terrorism or warfare by proxy is as old as the history of military conflict. Walter Laqueur notes that such established practices existed in ancient times; in the Oriental empires, in Rome and Byzantium, in Asia and Europe.⁴ However, state-sponsored terrorism on a massive scale reappeared in international politics in the 1960s and 1970s, and today along with religious terrorism, state-sponsored terrorism has considerably altered the nature of terrorist activities around the world.

2.2.5.2 In recent times, some countries have embraced terrorism as a deliberate instrument of foreign policy. One distinction of state sponsored terrorism from other forms of terrorist activity is that it is initiated to obtain certain clearly defined foreign policy objectives rather than grabbing media attention or targeting the potential audience. Given this character, it operates under fewer constraints and causes greater casualty on the target (Hoffman, 1998). In a cost-benefit analysis, state-sponsored terrorism is the most effective means of terrorism from the perspective of the perpetrator.

⁴Source: Refer to Annexure II of this Report.

2.2.5.3 State-sponsored terrorism was widely employed in Central Asia in the nineteenth century. Russians supported their fellow Slavs in the Balkans. Bulgaria used the Macedonian revolutionary terrorists against Yugoslavia after World War I. The Western powers under the auspices of the US supported all kinds of nationalist and anti-communist rebels throughout the Cold War. The Soviet Union was no different in its operations during this period. Countries like Iran, Iraq, Sudan, Libya North Korea have been engaged in sponsorship of political violence of different nature in their 'enemy' countries. India has been facing this problem from Pakistan since Independence.

2.2.6 Narco-terrorism

2.2.6.1 Narco-terrorism is an interesting concept, which can fall in the category of either 'Types of Terrorism' or 'Means of Terrorism', depending on how it is defined. The term was first used in 1983 by the former President of Peru, Belaunde Terry to describe campaigns by drug traffickers using terrorist methods such as the use of car bombs, assassinations and kidnapping against the anti-narcotics police in Colombia and Peru. Though initially used in the context of drug trafficking related terrorism in South America, the term has come to be associated with terrorist groups and activities around the world and more so in the Central and South-East Asia. Narco-terrorism has been defined by the Canadian Security Intelligence Service as 'the attempt by narcotics traffickers to influence the policies of the Government by systematic threat or use by violence'. However, it is also possible to view narco-terrorism as a means of terrorism or at any rate as a means of funding terrorism. As the term itself suggests, narco-terrorism combines two criminal activities; drug trafficking and terrorist violence. Narco-terrorism is motivated mainly by economic reasons as it helps the terrorist organizations raise huge sums of money with minimum cost for their activities. Thus the political, ideological, religious and the ethno-nationalist motives generally associated with terrorism are secondary to the economic gains associated with it.

2.2.6.2 In a survey conducted by the United Nations, links between drug traffickers and terrorist groups were observed in 19 out of 38 countries. These countries include Algeria, Colombia, Comoros, Ecuador, Germany, Guernsey, India, Italy, Japan, Kenya, Kyrgyzstan, Lithuania, Mauritius, Saudi Arabia, Turkey, the United Kingdom, the United States of America, Uzbekistan and Yemen. Major terrorist groups operating on these lines in these countries are: Al Qaeda, the Colombia-based AUC (United Defences of Columbia), ELN (National Liberation Army), Colombia, and FARC (Revolutionary Armed Forces of Colombia), the tri-border Islamic Group in Argentina, Paraguay and Brazil, the Shining Path in Peru, the PKK (Kurdistan Workers Party) in Turkey, IMU (Islamic Movement of Uzbekistan) in Uzbekistan, the Islamic Jihad in Palestine, Hizballah in Lebanon, and the RIRA (Real Irish Republican Army) in Northern Ireland⁶. Islamist terrorist groups in India

supported by the Pakistan ISI are reported to be active in drug trafficking along the Kashmir Valley and also in other parts of the country.

2.3 Definition of Terrorism

2.3.1 There are two reasons why it is important to define the word ‘terrorism’. Firstly, its definition is one way of understanding the problem. But more importantly, in the context of this Report, which deals with the governance aspects of combatting terrorism, a workable or working definition would be required with a view to have special laws for tackling terrorism within the country and to get terrorists extradited from abroad.

2.3.2 It is somewhat surprising that despite terrorism being recognised as a global phenomenon, attempts in the past for arriving at an internationally accepted definition of terrorism have proved futile. According to some observers, this ambivalence is primarily due to two reasons : firstly, a ‘terrorist’ in one country may be viewed as a ‘freedom fighter’ in another; secondly, it is known that some States resort to or encourage various kinds of criminal acts, clandestinely, through their own agencies or hired agents to subvert or to otherwise destabilize another lawfully established government or in extreme cases get important political or governmental personalities of another State assassinated. History is replete with instances of acts of this nature. Hence, there is an obvious lack of political will, if not resistance to any universally acceptable definition of terrorism.

2.3.3 While Member-States of the United Nations have not arrived at a consensus regarding the definition of terrorism; the UN’s ‘academic consensus definition’ given by Alex P. Schmid is perhaps the most widely accepted one. According to him, “*terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat and violence-based communication processes between terrorist (organization), (impaired) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought*”.⁶ The short legal definition proposed by Schmid to the United Nations Crime Branch (1992) is that Act of Terrorism = Peacetime Equivalent of War Crime.⁷ This, as discussed in the following chapters, is a significant definition with implications for an anti-terrorism strategy.

2.3.4 Schmid himself had, however, wondered - after listing out 109 different definitions of ‘terrorism’ in his monumental survey, ‘Political Terrorism: A Research Guide’ - whether that

⁶Source: Schmid, Jongman et al. *Political terrorism: a new guide to actors, authors, concepts, data bases, theories and, literature*; 1988; quoted in entry on ‘Alex P. Schmid’: http://en.wikipedia.org/wiki/Alex_P_Schmid

⁷Source: quoted in entry on ‘Alex P. Schmid’: http://en.wikipedia.org/wiki/Definition_of_terrorism

list contained all the elements necessary for a good definition. However, some illustrative definitions are produced below, which would contribute to an understanding of the issues involved in terrorism.

League of Nations Convention (1937): describes terrorism as “all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public”. .

Article 2(1) of the UN General Assembly’s Draft Comprehensive Convention on International Terrorism (fifty-fifth session, 2000) provides that;

(1) Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this Article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing an act.

The General Assembly Resolution 51/210 contained a provision describing terrorism. It maintained 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, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them”. On March 17, 2005 a UN panel described terrorism as any act “intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act”.

The European Union uses a definition of terrorism for legal/official purposes which is set out in Article 1 of its Framework Decision on Combating Terrorism (2002). This provides that terrorist offences are certain criminal offences set out in a list comprised largely of serious offences against persons and property which, “given their nature or context, may seriously damage a country or an international organisation where committed with the aim of: seriously intimidating a population or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional,

economic or social structures of a country or an international organisation.”

2.3.5 In the USA, there are three different sets of the definition of terrorism. The US Department of Defence defines it as *“the unlawful use of - or threatened use of - force or violence against individuals or property to coerce or intimidate governments or societies, often to achieve political, religious or ideological objectives”*. The US State Department uses the definition of terrorism contained in Title 22 of the United States Code, Section 2656F (d), i.e. *“premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents”*. The US Federal Bureau of Investigation defines terrorism as the unlawful use of force or violence against persons or property or segment thereof in furtherance of political or social objectives. It is apparent that each of the above three definitions reflects the priorities and particular interests of the specific agencies.

2.3.6 By distinguishing terrorists/terrorism from other types of criminals and other forms of crime, Bruce Hoffmann⁸ argues that terrorism is

- ineluctably political in its aims and motives
- violent - or, equally important, threatens violence
- designed to have far-reaching psychological repercussions beyond the immediate victim or target
- conducted by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia) and
- perpetrated by a sub-national group or non-state entity.

2.3.7 By and large, these factors cover the relevant aspects of terrorism which are necessary for understanding the phenomenon of terrorism. However, for formulating a definition of terrorism which could be used for legal purposes, it is necessary to look at the constructs adopted by various other States.

2.3.8 The definition of terrorism proposed by the Secretary General of the UN in September 2005 was accepted by France. According to him, terrorism is *“any act meant to injure or kill the civilians and the non-combatants, in order to intimidate a population, a government, or an organization and incite them to commit an act against the perpetrators or on the contrary stop them from doing so”*.

2.3.9 The Canadian Anti-Terrorism Act defines terrorist activity in its *Criminal Code* as *“an action that takes place either within or outside of Canada that is taken for political, religious or ideological*

⁸Source: Refer to Annexure II of this Report.

purposes and intimidates the public concerning its security, or compels a government to do something, by intentionally killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people or by seriously interfering with or disrupting an essential service, facility or system."

2.3.10 According to the UK Terrorism Act, 2000, terrorism means the use or threat of action where the use or threat is designed to influence the government or to intimidate the public or a section of the public and is made for the purpose of advancing a political, religious or ideological cause, and that; (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.

2.3.11 The Australian Anti Terrorism Act 2005 uses the definition given in the *Criminal Code* of the country. It defines terrorism as an "action or threat of action that (a) causes serious harm that is physical harm to a person, (b) causes serious damage to property, (c) causes a person's death, (d) endangers a person's life, other than the life of the person taking the action, (e) creates a serious risk to the health or safety of the public or a section of the public, (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to an information system or a telecommunications system or a financial system or a system used for the delivery of essential government services or a system used for, or by, an essential public utility or a system used for, or by, a transport system. The action or the threat of action is made with the intention of advancing a political, religious or ideological cause and is made with the intention of coercing, or influencing by intimidation, the government of the Commonwealth or a state, Territory or foreign country, or of part of a state, Territory or foreign country; or intimidating the public or a section of the public".

2.4 Position in India

2.4.1 Terrorism as an offence does not figure in the Indian Penal Code of 1860 as amended from time to time. In India, the first special law which attempted to define terrorism was the Terrorist and Disruptive Activities (Prevention) Act, 1987, which was followed by the Prevention of Terrorism Act, 2002 (POTA). With the repeal of the latter in 2004, the Unlawful Activities (Prevention) Act, 1967 was amended to include the definition of a 'terrorist act'.

2.4.2 (The) Terrorist and Disruptive Activities (Prevention) Act, 1987 mentions that "*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."

2.4.3 According to the Prevention of Terrorism Act, 2002, a terrorist is whosoever "(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". Further, according to POTA, a terrorist act also includes the act of raising funds intended for the purpose of terrorism.

2.4.4 The Unlawful Activities (Prevention) Act, 1967, which was amended in 2004, defines a 'terrorist act' thus –"*whosoever, 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 in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances, (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or 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 in India or in any foreign country 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*

in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act”.

2.4.5 From the above, it is evident that while the laws of some countries (e.g. the USA, Canada, the UK and Australia) speak of the intention behind the terrorist act being for the purpose of advancing a ‘political, religious or ideological cause’, the Indian laws have avoided any such intention or purpose being incorporated to define or describe a terrorist act. The definition of terrorism is an important aspect of the legal framework to deal with terrorism. The efficacy of the existing definition of terrorism is examined in detail in the Chapter, Dealing with Terrorism: Legal Framework.

2.5 Means of Terrorism

2.5.1 The traditional tactics used by terrorists are attacks on persons and property using weapons, bombs, IEDs, grenades, landmines etc, apart from hostage-taking, hijacking and forcible take-over of buildings, especially Government/public buildings. These could be classified as conventional means of terrorism. In addition, there is increasing resort to suicide attacks and kidnapping. Besides, there are looming threats of terrorists acquiring Weapons of Mass Destruction (nuclear, chemical or biological) and of cyber terrorism as well as environmental terrorism.

2.5.1.1 *Environmental Terrorism:* While eco-terrorism is in protest against the destruction of the natural environment, environmental terrorism is the premeditated damage caused to the natural world for example during the Gulf War of 1991 when Saddam Hussein ordered the detonation of more than 1000 oil wells which engulfed Kuwait in smoke.

2.5.1.2 *Weapons of Mass Destruction:* Weapons of Mass Destruction (WMD) are weapons that can inflict heavy and indiscriminate damage on a given target. Nuclear, chemical and biological weapons are the commonly identified weapons of mass destruction. Although the term WMD has been in use for a long time, the possibility of acquisition of such weapons by terrorist organizations, the perceived Iraqi possession of it and the US led war on Iraq brought WMD into focus. The NATO Glossary of Terms and Definitions defines WMD as a weapon that is capable of a high order of destruction and of being used in such a manner as to destroy people, infrastructure, or other resources on a large scale. Most of these definitions consider WMD as nuclear, biological and chemical weapons (NBC).

2.5.1.3 *Chemical Weapons:* A chemical attack could be the release of toxic gas caused by attacking an industrial facility, or releasing a chemical that has been stolen from its legitimate

users to inflict heavy damage on the enemy (Archer, 2005). Chemical weapons are different from conventional weapons or nuclear weapons as the destructive effect of chemical weapons are not primarily due to any explosive force. According to the Chemical Weapons Convention signed in 1993, any toxic chemical, regardless of its origin, is considered as a chemical weapon if it is used for purposes that are prohibited. Toxins such as ricin, botulinum toxin, nerve agents, lewisite, sarin etc are examples to this. Aum Shinrikyo's attack with Sarin in a Tokyo subway is the most notable example of a chemical weapons' attack in recent times. Very recently, Al-Qaeda claims to have acquired chemical weapons that can cause serious damage to its potential enemies.

2.5.1.4 Nuclear weapons: It is argued that the engineering skills and equipment needed to build the simplest form of nuclear weapon, a “gun” style bomb using highly enriched uranium (HEU) – are not particularly complex; any well organized group can develop such a weapon. However, what makes it difficult for terrorist organizations and non-State actors is the non-availability and the complicated process and the cost involved in enriching uranium. Although, there are no accounts of terrorist attacks using nuclear weapons, there are clear indications that from the late 1990s onwards, Al-Qaeda has constantly been trying to acquire it with the help of different State agencies⁹.

2.5.1.5 Biological Weapons:

2.5.1.5.1 Bio-terrorism is a relatively new form of terrorist activity that has emerged as a result of the advancements in biotechnology being accessible to terrorist groups. The American Center for Disease Control and Prevention, (CDC) defines bio-terrorism attack as “the deliberate release of viruses, bacteria, or other germs (agents) used to cause illness or death in people, animals, or plants”. These natural agents are changed to “increase their ability to cause disease, make them resistant to current medicines, or to increase their ability to be spread into the environment.” These spread through air, water or food. Terrorists use biological agents “because they can be extremely difficult to detect and do not cause illness for several hours to several days.”

2.5.1.5.2 History of Bio-terrorism: There is historical evidence that some form of bio-terrorism was resorted to by the ancient civilizations (Greeks, Romans and Persians) by polluting the drinking water to cause serious harm to their enemies. The bio-terrorism tactics today are, however, much more sinister and include biological weapons using germs to spread life-threatening diseases among the targeted groups. The idea and concept of biological weapons got greater attention in the late 19th and 20th century¹⁰.

2.5.1.5.3 During the First World War, Germany is believed to have used biological agents

⁹Archer, 2005 (refer to Annexure II of this Report)

¹⁰Kietmann and Ruoff 2001 (refer to Annexure II of this Report)

such as *Bacillus anthracis* and *Burkholderia mallei* mainly against the livestock and military personnel of their enemies. France and Germany, in the 1930s, introduced disease causing potato beetle to degrade the food crops of enemies' civilian population. Many countries engaged in serious research to develop biological warfare agents and defence mechanisms in the post-World War I period (Nath, 2004). While countries like Japan, USSR, US and UK were the frontrunners, several other countries made covert attempts to develop biological weapons. During the conflicts arising from Cold War in several countries it was alleged that chemical and biological weapons were widely used. This was reported during the Yemen War (1963-67), the Vietnam War (1959-1975), the Iran-Iraq War during the 1980s and the Gulf War of 1990-91. Soviets and the Mujahideen groups are alleged to have employed biological agents during the Afghan crisis and the Communists were accused of using them in Laos and Cambodia.

2.5.1.6 *Cyber-terrorism*

2.5.1.6.1 The term 'cyber-terrorism' is of very recent origin in comparison to other forms of terrorist activities. Although different scholars and agencies have tried to define the term, a commonly accepted definition is yet to evolve. Dorothy Denning's testimony before the Special Oversight Panel on Terrorism has been a major reference point on the subject. In her words, cyber-terrorism is the convergence of terrorism and cyberspace. It is generally understood to mean unlawful attacks and threats of attacks against computers, networks, and the information stored therein when done to intimidate or coerce a government or its people in furtherance of political or social objectives.

2.5.1.6.2 According to the Federal Bureau of Investigation (FBI), cyber-terrorism is a criminal act perpetrated by the use of computers and telecommunications capabilities, resulting in violence, destruction and/or disruption of services to create fear by causing confusion and uncertainty within a given population, with the goal of influencing governments or people to conform to a particular political, social, or ideological agenda.

2.5.1.6.3 Rod Stark defines cyber-terrorism as 'the purposeful or threatened use of politically, socially, economically or religiously motivated cyber warfare or cyber-targeted violence, conducted by a non-state or state-sponsored group for the purposes of creating fear, anxiety, and panic in the target population, and the disruption of military and civilian assets.' Thus, cyber-terrorism is the most advanced means of terrorist strategy developed with the advancement in information and communication technologies that enables terrorists to carry out their operations with minimum physical threat to themselves.

2.5.1.6.4 Peter Flemming and Michael Stohi identify two components of cyber-terrorism¹¹:

- *Computer technology as a facilitator of terrorism:* It is used for political propaganda, terrorist recruitment and financing, intra and inter-group communication and coordination, intelligence gathering etc. This enables the terrorist groups to maintain anonymity in routine activities and tactical operations, and also carry out their operations in a cost-effective manner.
- *Computer technology as a specific component of terrorist weapons or targets:* This includes computer technology based attacks or threats on public utilities and transportation, commercial institutions and transnational corporations, individuals, political or ethnic groups, security forces, nation-states or for that matter any 'perceived enemy'.

2.5.1.6.5 The US Army Training and Doctrine Command, DCSINT Handbook 1.02, *Cyber-Operations and Cyber-Terrorism* points out the outcome of cyber attacks in four categories:

- *Loss of Integrity-* unauthorized changes made to the data or IT system can result in inaccuracy, fraud or erroneous decisions that bring the integrity of the system under suspicion.
- *Loss of Availability-* An attack on a mission-critical IT system makes it unavailable to the end users.
- *Loss of Confidentiality-* The consequences of unauthorized disclosure of information ranges from loss of public confidence to national security threats.
- *Physical Destruction-* Ability to create actual physical harm or destruction through the use of IT systems.

2.5.1.6.6 *Incidents of Cyber Attacks:* In 1998, Sri Lankan embassies were swamped with e-mail bombs by ethnic Tamil militants. This is believed to be the first cyber-terror attack in the world. Prichard and MacDonald list out a number of recent cyberterrorism incidents. During the Kosovo conflict in 1999, a number of websites run by NATO were subjected to different types of cyber attacks. It is also believed that Russian, Chinese and Serbian hackers tried to deface the NATO and especially US websites during the conflict. In October 2000, some Israeli youngsters launched DoS (Denial of Service) attacks against the computers maintained by the terrorist groups in Palestine, and this was reciprocated by attacks on websites belonging to the Israeli Parliament, Defence Forces, the Foreign Ministry and the Bank of Israel. In 2001, Chinese and American groups engaged in a series of cyber attacks against each other. Both China and America accused each other of sanctioning these attacks which led to a series of diplomatic rows. The reported cyber attacks emanating from China are nowadays posing a major threat.

2.5.1.7 *Suicide Terrorism*

2.5.1.7.1 The most ominous aspect of the emerging terrorist tactics is suicide terrorism. The first manifestation of this tactic in recent times took place when US Marine barracks in Beirut were attacked by a vehicle-borne suicide bomber in 1984. It was not long before the LTTE started resorting to the same tactic. An LTTE cadre drove a truck filled with explosives into the Sri Lankan Army camp at Nelliady in Jaffna on July 5, 1987 marking the beginning of LTTE's suicide bombing campaigns. Thereafter, the Deputy Defence Minister of Sri Lanka Ranjan Wijeratne was assassinated in 1990 by LTTE terrorists in a suicide mission. The assassination of Shri Rajiv Gandhi took place on May 21, 1991 which brought into focus the capability and ruthless brutality of LTTE in suicide terrorism. Since then, there have been several instances of suicide attacks by the LTTE, the most notable of which was the killing of the Sri Lankan President Premadasa in 1993.

2.5.1.7.2 Jehadi terrorists took to suicide terrorism in the 1990's. In Kashmir, the first suicide attack by the *Fedayeen* was on July, 13 1991 on a Border Security Force Post. The attack on the J&K Legislative Assembly complex in October 2001 was also a suicide attack in which the driver of the explosive-laden vehicle which rammed through the gate was killed. Since then, the *Fedayeen* had been involved in attacking the Indian Parliament in 2001 nearly leading to a face-off between India and Pakistan, in storming the Akshardham Temple in Gujarat in 2002, and in an abortive attempt at Ayodhya in July 2005. There have been numerous other *Fedayeen*, attacks within Jammu & Kashmir, mostly on the premises of the Police and Security Forces.

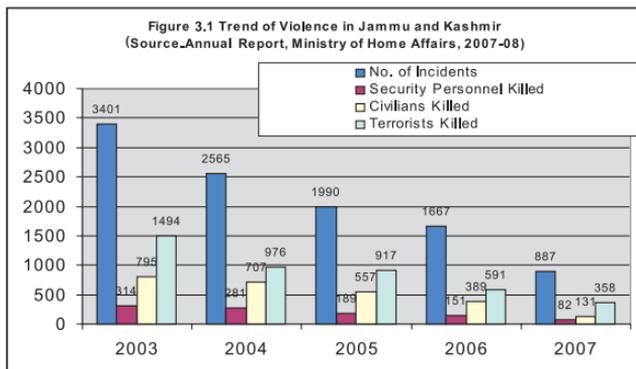
2.5.1.7.3 It is important to note that the term '*Fedayeen*' does not exactly mean a suicide terrorist in the sense that his death is not vital or inevitable for the success of the mission he undertakes. However, in many of these operations, the *Fedayeen* have taken on the Armed Forces against almost impossible odds knowing fully well that they had little chance of retuning alive. A majority of the *Fedayeen* who have operated in Jammu & Kashmir have been Pakistanis several of whom had fought in Afghanistan against the Soviets in the 1980's. Many Kashmiris argue that the reason why very few local people volunteer for suicide attacks is because of the Sufi Islamic traditions of this region which embody peace and tolerance.

2.5.1.7.4 There have been only three acts of suicide terrorism in the hinterland of India outside Jammu & Kashmir in recent times. The first two were the Rajiv Gandhi and Beant Singh assassinations. The third one took place outside the Special Task Force Office in Hyderabad in 2005.

2.5.1.7.5 In our neighbourhood, the LTTE has consistently been able to find large numbers of volunteers from amongst Sri Lankan Tamils to carry out suicide missions. Among the concepts that have been popularized and used by the LTTE are stories from Silappadikaram, a stirring tale of the woman warrior *Kannagi*, a tale, which as Prof. Basham says, “has a grim force and splendour un-paralleled elsewhere in Indian literature”.¹²

3.1 Jammu & Kashmir

3.1.1 The roots of insurgency in Jammu & Kashmir can be traced to the later part of the 1940s when Pakistan attacked India with a view to capture Jammu & Kashmir. Ever since there has been a section of population which believes in secession from India. These groups aided and abetted from across the border have often indulged in insurgent activities. Following the 1971 India-Pakistan war there was a lull in the secessionist activities. However, the eighties witnessed large scale infiltration across the border and a sudden increase in insurgency. Innocent persons, were targeted and forced to flee from the State. The decade of the 1990s saw large scale deployment of security forces in the State. An idea about the extent of violence can be had from Figure 3.1



3.1.2 The rise of Islamist fundamentalism and emergence of Al-Qaeda has added another dimension to the insurgency in Jammu & Kashmir. From India's point of view, the real threat vis-à-vis Islamist fundamentalism emanates not so much from the Al-Qaeda and the Taliban per se but from their regional affiliates who, though sharing the former's philosophy and

outlook, have by now developed separate networks capable of undertaking jihadi onslaughts on their own. Thus, the Pakistan-based terrorist organisation called Laskar-e-Tayyaba (LeT) is known to have developed cells not only in India but also in about 18 countries, including the USA, the UK, France, Singapore and Australia.

3.1.3 Other affiliates of Al-Qaeda which continue to pose a serious threat to peace and security in India are the Jaish-e-Mohammed (JeM), HUM, HUJI and Al-Badr. It may be mentioned that JeM was formed by Masood Azhar, a former senior leader of Harkat-ul-Ansar who was released and handed over by India to the Taliban at Kandahar (Afghanistan) in exchange of the IC-814 hijacking hostages. JeM's declared objective is to unite Kashmir with Pakistan. JeM cadres are known to have been involved in several suicide attacks in Jammu & Kashmir including the one on Jammu & Kashmir Legislative Assembly in October 2001, the attack on Indian Parliament in December 2001 besides a few other terrorist attacks inside India during 2005-06. Despite the fact that this organisation was believed to have been implicated in two attacks on President Musharraf and was banned in Pakistan in 2002, it continues to operate fairly openly in parts of Pakistan.

3.1.4 The nature of terrorist threat in Jammu & Kashmir has changed in some ways. Suicide terrorism has made its presence felt in the State just as the Jammu region has also become a special target for attacks in the last few years. The Annual Report of the Ministry of Home Affairs for 2006-07 shows that there has been a change in the violence profile after April 2006 with soft targets like minority groups, tourists and migrant labourers - all innocent citizens - being targeted by the militants, with grenade attacks having increased by 49% over the previous year. The threat from the terrorist groups may also be said to have increased with the formation of United Jihad Council, an umbrella organisation of 14 militant groups led by the Hizbul Mujahideen along with the Lashkar-e-Tayyaba and the Jaish-e-Mohammed acquiring the most modern and sophisticated weapons and known support from international terrorist groups.

3.1.5 Government of India has been endeavouring to tackle the problems of the troubled State through a multi-pronged strategy with a holistic approach calculated to address areas of concern on the political, security, developmental and administrative fronts. On the political aspect, primacy has been given to political dialogue with emphasis on political-democratic processes and emphasis on the rule of law. In specific terms, the following steps may be mentioned¹³ :

- (a) emphasis on comprehensive confidence building measures not only within Jammu & Kashmir but also with Pakistan;

¹³Source: Annual Report, 2006-07; Ministry of Home Affairs; <http://www.mha.nic.in/pdfs/ar0607-Eng.pdf>

- (b) facilitating people-to-people contact between residents of Jammu & Kashmir and those of POK;
- (c) initiatives taken to reunite separated families from both sides of the border by opening the Srinagar-Muzaffarabad and Poonch-Rawalakot bus services;
- (d) considerable relaxation in movements across the LOC in the immediate aftermath of the devastating earthquake in the POK region; and
- (e) Government of India initiative in holding periodic dialogues with groups representing different shades of opinion, including the separatists.

3.1.6 Of the internal security related measures, mention may be made of¹⁴ -

- (a) revitalising the Unified Command mechanism (introduced first during 1997) under the chairmanship of the State's Chief Minister and having senior representatives of the Army, Central Police Organisations stationed in the State and senior officers of the State's civil and police administration;
- (b) banning nine terrorist organisations reported to be operating in Jammu & Kashmir under the Unlawful Activities (Prevention) Act, 2004 including JeM, LeT, HM and HuM;
- (c) setting up Village Defence Committees and appointment of Special Police Officers in selected areas after careful screening; and
- (d) providing for reimbursement of the State's security related expenditure.

3.1.7 On the developmental front, the main initiative has been the Prime Minister's Reconstruction Plan for Jammu & Kashmir, as announced in November 2004, with an outlay of a substantial amount of Rs.24,000 crores¹⁵.

3.1.8 On the administrative front, the following steps deserve mention :

- (a) relief measures for victims of militancy;
- (b) encouraging and facilitating return of Kashmiri migrants; and
- (c) special facilities and concessions provided to Central Government employees posted in the Kashmir valley.

¹⁴Source: ibid

¹⁵ 1 Crore = 10 million

3.1.9 India has been fighting the menace of cross-border terrorism in the State of Jammu & Kashmir for over 16 years. More than 13,000 civilians and 4,000 men of Security Forces (SFs) have lost their lives. The security situation in the State has evolved positively since 1989 on account of the sincere efforts of the SFs and institutions of governance and above all, the people's yearning for peace and normalcy¹⁶. The efforts of the Union Government and the State Government and especially those of the security forces have helped in controlling the militant activities. The successful conduct of general elections as well as elections to local bodies are a positive indicator of the people's faith in the Indian democracy. Another positive development has been the increasing influx of tourists in the valley.

3.2 North Eastern States

3.2.1 The States in India's North East region have a long history of conflict and violence among the tribal groups within the same State, and also neighbouring States. A major part of the geographical area of this region was initially within the ambit of the State of Assam but the manifestation of ethno-nationalism quite often expressed through violence, led to the formation of some of the present States through various stages of evolution during the post-Independence period.

Table 3.1: Security Situation during the Years 2003-07 (North East)

Head	2003	2004	2005	2006	2007
Incidents	1332	1234	1332	1366	1489
Extremists arrested/ killed/surrendered	2192	2797	2459	3231	2875
SFs killed	90	110	70	76	79
Civilians killed	494	414	393	309	498

Source: Annual Report 2007-08; Ministry of Home Affairs

3.2.2 Although the founding fathers who framed the Indian Constitution had taken into account the special nature of the problems in this region and had provided for innovative models of Autonomous Councils and other measures, the complex pattern of conflicts in the North-Eastern States still continues. As a result, there have been serious impediments to the economic progress as well as other developmental activities in the region much to the detriment of the people living in these areas. The Commission has dealt with the problems of this region, including aspects of terrorism, in its Report on 'Capacity Building for Conflict Resolution'.

¹⁶Annual Report 2006-07, Ministry of Home Affairs; Government of India.

3.2.3 Illegal Immigration in the North East*

3.3 Punjab

3.3.1 The quest for a separate Sikh identity manifested itself, after Partition, in their demand for a separate State in India. Even after the formation of a separate State of Punjab, some related issues remained unresolved pertaining inter-alia to their demand for Chandigarh as the State capital, sharing of river waters etc. The situation was further aggravated when terrorist elements demanded secession in the form of 'Khalistan'. While terrorism was quelled, a determined effort was launched, soon after the elections in December 1984, to find an enduring basis for the resolution of the conflict which was inextricably enmeshed with violence in Punjab and its spin-off effects in other parts of the country. The Rajiv Gandhi-Longowal Accord in July 1985 brought this turbulence to a temporary end. With Sant Longowal's assassination a month later and the implementation of the Accord running into rough weather over the question of Chandigarh as a part of Punjab and the sharing of river waters, there was a renewal of violence. Finally, the conflict was resolved by the Government following a policy which was based on four parameters: security action to contain and eliminate terrorism; sub-terranean contacts with militants to persuade them to give up violence and come to the negotiating table; over-the-table discussions with dissident elements who were prepared to eschew violence and accept the basic tenets of the Constitution in exchange for full integration into the country's democratic process, and sensitivity to religious, cultural and ethnic sentiments of the affected population.¹⁷ There are isolated embers even now and the problem mainly emanates from sections living abroad.

3.4 Ideology-oriented Terrorism : Left-Wing Extremism (LWE)

3.4.1 Left-wing extremists in India, as elsewhere, are known for resorting to violence in pursuance of their ideology of peoples' revolutionary movement. In West Bengal, this movement was started in 1967 by an extremists' break-away faction of the CPM. This extremist faction had a fairly good following among the tea garden labourers besides the peasantry of the area. Being convinced that the objective condition was ripe in India, this faction commenced its so-called agrarian revolution from 3rd March, 1967, the very next day of the formation of the United Front Government in West Bengal. The initial outburst was followed by groups occupying vacant lands in parts of Naxalbari, Khoribari and Phansidewa police station areas of Siliguri sub-division on the plea that such lands were in excess of the permissible ceiling on land holdings or that these were supposed to have vested

in the Government which the latter never cared to distribute among landless and marginal farmers as provided for in the West Bengal Estate Acquisition Act of 1953 and other allied laws.

3.4.2 Exercising utmost restraint, the local police and administration did not pursue a grossly punitive and retaliatory path but sought to arrange redressal by the Government of the long-standing grievances, especially in respect of the hapless and poor tea garden labourers and landless or marginal farmers. As a result, the extremist faction could not mobilise these people for further organised militant activities. The police leadership was convinced that if police operations are properly planned and timed, 'the fly-swatters would be more appropriate and effective than sledge-hammers'. This should be an important lesson one can ill afford to ignore in the handling of the current spate of Naxalite/Maoist militancy in different parts of India.

3.4.3 The first flush of the Left Extremist movement in the Naxalbari region was effectively controlled without much bloodshed and within a relatively short span of time. The highlights of subsequent developments of this movement, known since then as the Naxalite movement and its later reincarnation as the Maoist movement since 2004, may be briefly summarised as below:

- May, 1968 : Formation of the All India Co-ordination Committee of Communist Revolutionaries (AICCCR) to carry forward the militant movement in different parts of India.
- 22 April, 1969: Formation of a new Marxist-Leninist party to be known as the CPI (ML), which was formally announced in a rally at Calcutta on 1 May, 1969.
- Overt acts of violence in the name of 'annihilation of class enemies' started surfacing thereafter in parts of different States led by the CPI-ML leaders and their cadres in West Bengal, Andhra Pradesh, Kerala, Bihar, UP besides Orissa, Madhya Pradesh and Punjab.
- From about May 1971, inner-party contradictions within the CPI-ML had started and the authority of the leadership of the extremist faction was being questioned, if not openly opposed for fear of liquidation by party cadres themselves. When the leaders of the extremist faction were known to be supportive of Pakistan during the Bangladesh liberation struggle of 1970-71, the defiance against Charu Majumdar gathered momentum. This culminated in his arrest from a hideout in Calcutta on 16 July, 1972.

3.4.4 Various splinter groups of Naxalites started resurfacing in various parts of India during the early 1980s. Thus, the Naxalites of Andhra Pradesh regrouped as the CPI-ML (Peoples' War Group/ PWG); likewise the Bihar Naxalites rechristened themselves as the Maoist Communist Centre (MCC). Of all the newly organised Naxalite groups, the CPI-ML (PWG) turned out to be the most active not only in Andhra Pradesh but also in Orissa, in the tribal belt (Bastar-Dandakaranya) of Madhya Pradesh (now mostly in the State of Chhattisgarh) and Maharashtra, causing considerable violence in these States.

3.4.5 The PWG in Andhra Pradesh succeeded in mobilising a fairly large section of the rural population in the outlying districts and also in the urban areas of some other districts. The PWG also succeeded in enlisting the support of a vocal section of the civil society. In addition, some of its programmes could create a climate of wide public support. Thus, the leaders openly started holding 'Praja Courts' (peoples' courts) in which complaints against land-owners, money-lenders and even against Government officials were being entertained and 'swift justice' meted out. Even elected representatives like MLAs and sarpanches were being given 'directives' by such courts, which were generally obeyed because they were scared of retaliatory actions by the cadres of the PWG. In other words, for quite sometime the people in these areas of PWG influence could witness the utter lack of good and effective administration. At the same time, reckless and indiscriminate actions of the PWG squads (*'dalams'*) in the shape of forcible collection of funds from land-owners, businessmen and others alienated a section of the people who started mounting pressure on the State Government for firm action against the PWG.

3.4.6 This was followed by strong police actions which led to killings by both police and the Maoists. This had another consequence which the Maoists had not anticipated. Police operations created a sense of insecurity among sections of the Maoist cadres which prompted them to resort to brutal murders and tortures of villagers on the slightest suspicion of being police informers. This created further alienation among the local villagers when they saw that those who claimed to be their saviours could be so ruthless and indiscriminate in their conduct.

3.4.7 Thus, at a later stage, when the State Government commenced large-scale police operations, spearheaded by the specially-trained police units called Greyhounds, it did not take long for the latter to score spectacular victories against Maoist bases, obviously with substantial support from the villages which were earlier considered to be their strong base areas, especially in the Nallamala forest and its adjoining areas. This forced the Andhra Maoists to vacate these areas and get dispersed in adjacent pockets in the Dandakaranya belt of Chhattisgarh and in some of the adjacent districts of Orissa.

3.4.8 Meanwhile the Maoists developed some expertise in the use of landmines and IEDs which caused very significant casualties among police and other security personnel operating in Chhattisgarh. Another significant development in this State has been the creation of resistance groups from amongst the tribal people known as the Salwa Judum.

3.4.9 The Bihar Naxalites, namely the Maoist Communist Centre/MCC, found that their greatest adversary was not so much the administration and the police but the armed gangs (*senas*) of the landlord class - the Ranbir Sena, the Bhumihar Sena et al. There were quite a few massacres of the Dalits who formed the backbone of the MCC and this led to a series of revenge killings by MCC cadres and retaliatory killings by the landlord *senas*. In other words, instead of assuming the characteristics of class struggle as propagated by Maoist ideologues, the skirmishes took the shape of caste warfare. With the creation of Jharkhand with the tribal majority districts of erstwhile Bihar, the Maoists naturally emerged as a strong ally of the exploited tribal poor. Some of the tribal leaders who had 'prospered' during the past decades as ministers, MLAs, MPs and also as political leaders or otherwise through dubious means as perceived by the common people are also becoming targets of Maoist violence.

3.4.10 In West Bengal, the Naxalites seem to be repeating some of their tactics of the 1969-72 period of attacks on their political opponents in addition to the police. Thus they have started targeting specific CPM party functionaries at local levels where such local leaders were mobilising support against the Naxalites. Their targets are not confined to the known Naxalite affected districts of West Midnapore, Purulia and Bankura only. During 2005-08 so far, a number of CPM party functionaries have been attacked and killed in the districts of Nadia, Burdwan, Birbhum, Murshidabad etc. where the Naxalites were known for their presence during the 1970s. It shows that they have been regrouping in some of their earlier areas of influence of the 1969-72 phase. This trend is likely to extend to some other areas also. It is hoped that the state administration in general and the police and the intelligence apparatus in particular are alive to this new development and would be in a position to counter the menace without further delay.

3.4.11 It appears now that, barring a few splinter groups; Naxalites have largely completed their process of merger and consolidation with the formation of the CPI (Maoist) on 21 September 2004. This was followed by their increasing militarisation and simultaneous acquisition of sophisticated firearms and ammunitions. Their arsenal now boasts of self-loading rifles (SLRs), AK series of rifles and INSAS rifles. It is believed that currently the Maoists have also gained access to the technology of fabricating rockets and rocket launchers.

3.4.12 The threat from the Maoists has increased on account of their developing expertise in fabricating and detonating Improvised Explosive Devices (IEDs). Unlike in J&K where landmines are detonated with remote-controlled device, the Naxalites so far have been using wire-controlled detonations which cannot be neutralised electronically. The lethality of the Naxalites' attack on the security forces and the resultant enormity of the fatalities were demonstrated in the 3 September 2005 attack on a Mine-protected Vehicle in Dantewada district of Chhattisgarh, killing 24 policemen (CRPF). On 5 January 2005, the police chief of Munger district (Bihar) KC Surendra Babu was killed in an IED attack. The police chief of Prakasam district (Andhra Pradesh) survived an IED attack in April 2005. The former Chief Minister of Andhra Pradesh (Chandrababu Naidu) had a providential escape from an IED attack while he was on his way to Tirupati. Likewise, another former Chief Minister of Andhra Pradesh (Janardhan Reddy) also narrowly escaped from an IED attack on 7 September 2007. All these incidents show that the IEDs have come to be used by the Naxalites for well-planned attacks on even high-security personalities apart from other targets like police stations and police vehicles. On a rough estimate, the Naxalites have so far been causing nearly 100 landmine explosions every year with considerable loss of lives of security personnel of state and central police, quite a disturbing phenomenon.

3.4.13 A further heightening of the Naxalites' militarisation phase was witnessed in the following incidents, among others:

- On 6 February 2004, a few hundred Naxalites laid seige to the district headquarters town of Koraput (Orissa), brought it to a complete halt for a few hours, attacked the district headquarters complex, made an abortive attempt to storm the jail, but successfully raided the district police armoury, looting all the 500 weapons and several thousand rounds of ammunition.
- On 13th November, 2005, there was a massive, well organized and audacious Naxalite onslaughts on a number of government buildings in Jehanabad (Bihar) known as the 'Jehanabad (Bihar) Raid' or 'Operation Jail Break'. During these raids, lasting for several hours at night, the extremists conducted highly synchronised attacks on the district jail, district court, police lines, police quarters, district armoury and police stations - all of which went unchallenged. The miscreants looted several hundred rifles and a huge quantity of ammunitions. The focal point of the raid was, however, the district jail from which they could take out not only their top leader Ajay Kanu but also set free 341 other prisoners, including many of their cadres. The rebels also abducted a number of their class enemies belonging to the

Ranvir Sena, at least nine of whom were later executed. It is reported that nearly 1000 persons were mobilised for this spectacular operation, the hard core being armed party cadres and aided by a large number of, what they call, the 'peoples' militia'.

- 11 November 2006: Armed Naxalites and members of their peoples' militia numbering a few hundred raided the Home Guards Training Centre in Giridih (Jharkhand), looted 185 rifles and 25,000 rounds of ammunition.
- 15 March 2007: 55 policemen were killed in Rani Bodli (Chhattisgarh)
- 7 July 2007: 24 policemen were slaughtered in the forests of Dantewada district (Chhattisgarh).
- 16 December 2007: A well-planned jail break was organised by the Maoist inmates who were lodged in the district jail of Dantewada (Chhattisgarh) in which almost all the prisoners were set free, including many of their party cadres. This operation too went unchallenged in spite of the fact that Dantewada district had been known to be the most Naxalite affected in Chhattisgarh.

All the above onslaughts, in addition to several others in some States, bring to the fore the urgent need for considerable capacity-building among the police and other security forces (State and Central) in the areas of training, leadership planning of counter-terror operations as a part of a comprehensive policy, including reform and development.

3.5 Terrorism Based on Religious Fundamentalism

3.5.1 There have been several terrorist incidents in India which were motivated by religious fundamentalism. Some of these activities overlap with political ambitions – like separatist elements in Jammu & Kashmir. Some of these incidents have been aided and abetted by external forces inimical to India. The ISI launched an initiative in 1991, even before the Babri Masjid demolition to forge an alliance between Khalistani terrorism that prevailed in Punjab and the terrorist groups in Jammu & Kashmir. However, the initiative did not yield results because the key figures were arrested soon after their arrival in India. Thereafter, in January, 1994, Mohammed Masood Azhar Alvi arrived in India with the task of working out the reconciliation of the cadre of Harkat Mujahiddin and Harkat-ul Jihad Islami whose parent organizations had merged to form the Harkat-ul-Ansar. His organisation's main objective was to liberate Kashmir from Indian rule and to establish Islamic rule in Kashmir. He also interacted extensively with the leading figures of the Deoband Ulema.

Table 3.4: State-wise Number of Incidents and Casualties during the Period 2003-07 (Naxalism related Violence)

State	2003		2004		2005		2006		2007	
	Incidents	Casualties								
Andhra Pradesh	577	140	310	74	535	208	183	47	138	45
Bihar	250	128	323	171	186	96	107	45	135	67
Chhattisgarh	256	74	352	83	385	168	715	388	582	369
Jharkhand	342	117	379	169	312	119	310	124	482	157
Madhya Pradesh	13	1	13	4	20	3	6	1	9	2
Maharashtra	75	31	84	15	94	53	98	42	94	25
Orissa	49	15	35	8	42	14	44	9	67	17
Uttar Pradesh	13	8	15	26	10	1	11	5	9	3
West Bengal	6	1	11	15	14	7	23	17	32	6
Kerala	12	-	5	-	-	-	2	-	8	-
Karnataka	4	-	6	1	8	8	10	-	7	5
Haryana	-	-	-	-	2	-	-	-	1	-
Tamil Nadu	-	-	-	-	-	-	-	-	1	-
Total	1597	515	1533	566	1608	677	1509	678	1565	696

Source: Annual Report 2007-08, Ministry of Home Affairs.

3.5.2 The next initiative in Islamist terrorism by the Pakistani Intelligence was the setting up of the Jammu & Kashmir Islamic Front. Its task was to work together with the mafia figures who had executed the Mumbai serial bombing of 1993. JKIF was responsible for the Lajpat Nagar blasts in New Delhi in 1996. However, the case was quickly detected and the accused arrested.

3.5.3 In 2001, several Islamic terrorist attacks took place in New Delhi, the most important being the attack on the Parliament House in December 2001. The attack on Akshardham temple and the killing of Haren Pandya, the former Home Minister of Gujarat State, were the major operations of Islamist terrorists in 2002 and 2003. In July 2005, there was an attack at Ayodhya which the Security Forces succeeded in repulsing. This was followed by the Sarojini Nagar market blast in November, at New Delhi. The heinous serial bomb blasts in Mumbai took place in July 2006. A suicide attack (in which only the Bangladeshi suicide killer died) near the Office of the Commissioner of Police, Hyderabad; an attack on the Indian Institute of Science in Bangalore in which an eminent scientist was killed and the Aurangabad arms seizure case were the other major terrorist incidents of 2006. The latest in the spate of such terrorist attacks has been the serial bomb blasts in Jaipur on 13th May, 2008 in which a number of innocent lives were lost.

3.5.4 It is important to take a look at the role played by the Students' Islamic Movement of India (SIMI) in the promotion of Islamist extremism in India. Funded generously by various Islamist charities, but particularly the World Assembly of Muslim Youth with its headquarters in Riyadh, SIMI spread its activities to various States in India. SIMI cadres were linked to the abduction of five foreign nationals who were rescued from Saharanpur in 1994. (One of the accused in this case was the British national Syed Mohammed Omar Sheikh, who was later released in exchange for the IC-814 hostages. He is currently in prison in Pakistan for his role in the killing of the American journalist, Daniel Pearl). SIMI's then President CAM Basheer, hailing from Kerala, was the first Indian Muslim known to have gone to Pakistan for arms training. SIMI was banned by the Government of India under the Unlawful Activities (Prevention) Act, 1967, in September, 2001.

3.6 Emerging Threats

3.6.1 While terrorism was largely a local phenomenon until recently, in today's world terrorist networks have taken advantage of the communications revolution to develop transnational links, making terrorism a global threat. Thus, Al Qaeda is a global terror network which is a loose federation of terror-cells spread across the world but operating autonomously with very little operational linkages among them other than adherence to a particular form of

extremist ideology. Another feature of the spread of terrorism is the ability of many terrorist outfits to cooperate with each other and build operational links in the form of supply of arms, logistical and even operational support without necessarily sharing ideological bonds. Such networks are also able to obtain support from organized crime outfits to further their destructive objective.

3.6.2 The impact of modern technology, particularly communication technology combined with increasing globalization, rapidly increasing trade in goods and services as well as faster movement of people across borders means that terrorism in the 21st century has acquired newer and deadlier dimensions. The accessibility to material and technology that have much greater destructive potential compared to the past also magnifies the nature of the threat posed by terrorism. The existence of a large migrant population and porous borders in an increasingly multi-cultural world means that sleeper cells spawned through propagation of terrorist ideology, often by using the internet, can become the fifth column threatening the national fabric of democratic countries. Integration of national economies, banking and financial systems coupled with faster movement of money across national borders also make it easier to fund terrorist activities around the globe.

3.7 Strategy to Counter Terrorism

3.7.1 A Multi-pronged Approach

3.7.1.1 A strategy for fighting terror in India has to be evolved in the overall context of a national security strategy. National security, in its broadest sense, means security of life and property of every citizen in the country, as well as the common wealth of the nation, which belongs to all. The objective of the national security strategy has to be the creation and maintenance of a security environment which would enable the nation to provide opportunities to all individuals to develop to their fullest potential. Much of the discourse on national security strategy has been based on the premise that national security can be achieved by ensuring protection of life and property for all. However, it needs to be clearly understood that socio-economic development and providing a secure environment have to go hand-in-hand as one cannot survive without the other.

3.7.1.2 Our national security strategy needs to be built round the concept that nothing must impede our drive towards the goal of eradicating poverty and raising everyone in the country above the poverty line. Any threat which could slow down this process has to be considered a threat to national security. Among other causes, such threats could emanate from war, terrorism, organized crime, shortage of energy, shortage of water and food, internal conflict which may be armed or not or from natural or man-made disasters.

3.7.1.3 To tackle the menace of terrorism, a multi-pronged approach is needed. In this context, socio-economic development is a priority so that vulnerable sections of society do not fall prey to the propaganda of terrorists promising them wealth and equity; and the administration, particularly the service delivery mechanisms need to be responsive to the legitimate and long standing grievances of people so that these are redressed promptly and cannot be exploited by terrorist groups. Strong measures are required to deal with criminal elements but with respect for human rights. To ensure this, the law enforcement agencies have to be supported with an appropriate legal framework, adequate training infrastructure, equipment and intelligence.

Box 3.1: Balancing Counter-Terrorism Efforts and Human Rights

As members of the legal fraternity the questions that beg to be addressed by us revolve around the conflict, consequential to counter-terrorism efforts, between human rights and the concerns for defence of the State of which we are part. The conflict stems from the necessity felt for entrusting the law-enforcement agencies with extraordinary powers to meet what is genuinely perceived as an extraordinary situation. The irony is that the first and foremost impact of such measures is felt by law-abiding citizens on account of inroads they make into individual liberties. Civilized people do not expect their governments to enact laws that turn into mere "scarecrow" for the "birds of prey" to use as their "perch", as Shakespeare would put it. In this scenario, the role and attitude of the judicial apparatus assumes great importance, in which context we have certain responsibilities.

Former Chief Justice of India H'bl Mr. Justice Mr. Y K Sabharwal; http://www.supremecourtindia.nic.in/new_links/Terrorism%20paper.pdf.

3.7.2 Dealing with the menace of terrorism would require a comprehensive strategy in which different stakeholders – the Government, political parties, security agencies, civil society and media – would have an important role to play. This strategy should amalgamate political, social, economic, administrative, police and other measures. The necessary elements of such a strategy are listed below:

Political consensus: Political parties must arrive at a national consensus on the need for the broad contours of such a planned strategy. Based on this national strategy, each of the States and Union Territories should draw up its respective regional strategies, along with the required tactical components for the implementation of the strategy. Just as the Union Government should have intensive interactions with the States and Union Territories while drawing up the national strategy, the latter would be required to do their part in close consultation with the nodal ministry of the Government of India (possibly the Home Ministry). While attempting such a national consensus on an issue of considerable criticality for the nation's security, integrity and developmental thrusts for the most backward regions, it deserves to be borne in mind that the people of our country have a right to expect that our national as well as regional parties will rise above their sectarian and petty electoral compulsions.

Good governance and socio-economic development: This would necessitate high priority being given to development work and its actual implementation on the ground for which a clean, corruption-free and accountable administration at all levels is an imperative necessity.

Respect for rule of law: Governmental agencies must not be allowed to transgress law even in dealing with critical situations caused by insurgency or terrorism. If an extraordinary situation cannot be dealt with by the existing laws, new laws may be enacted so that law enforcement agencies are not provoked or tempted to resort to extra-legal or illegal methods. Police and all other governmental forces must adhere to some basic codes of conduct.

Countering the subversive activities of terrorists: Government must give priority to defeating political subversions (e.g. by terrorists and Maoists). The emphasis should be on civil as opposed to military measures to counter terrorism and insurgency. Psychological ‘warfare’ or management of information services and the media, in conjunction with the intelligence wing of the police, can play an important role in achieving this objective.

Providing the appropriate legal framework: Terrorism is an extraordinary crime. The ordinary laws of the land may not be adequate to book a terrorist. This may require special laws and effective enforcement mechanisms, but with sufficient safeguards to prevent its misuse.

Building capacity: The capacity building exercise should extend to the intelligence gathering machinery, security agencies, civil administration and the society at large. As was highlighted in the Report on Crisis Management, the strategy should encompass preventive, mitigation, relief and rehabilitative measures.

Box 3.2: Development and Extremism

In many ways, development and internal security are two sides of the same coin. Each is critically dependent on the other. Often, the lack of development and the lack of any prospects for improving one's lot provide a fertile ground for extremist ideologies to flourish. A large proportion of the recruits to extremist groups come from deprived or marginalized backgrounds or from regions which somehow seem disaffected by the vibrant growth in many other parts of the country. I had mentioned yesterday that I am concerned about the unevenness of our development process and the various development divides that are opening up in the country – the inter-regional divide, the rural-urban divide and the inter-sectoral divide. These divides and disparities lead to disaffection, large-scale migration, and also to discord. I notice that in many cases, internal security problems arise out of the uneven development and we also need to address this issue if we are to make any long-term headway in combating extremist ideologies and extremist elements.

Prime Minister Dr. Manmohan Singh's speech at the Chief Ministers' Conference on Internal Security; December 20, 2007; New Delhi. Source: <http://www.pmindia.nic.in/speeches.htm>

3.7.3 If the above basic counter-measure principles are built into the national strategy, the end results will be¹⁸ - Government = legality + construction + results

Terrorists/insurgents = illegality + destruction + promises.

3.7.4 The Commission would like to reiterate that any form of extremism with faith in a dogma ending in violence has the potential of escalating from hate campaign, violent hooliganism and murders of perceived enemies to terrorist activities affecting national security and citizens at large. While the Commission in this Report has dealt with some forms of extremism which have degenerated into terrorism, it needs to be highlighted that it is necessary to deal with all forms of extremism in their early stages through measures of conflict resolution accompanied by firm action against hate campaigns and local violence in order to prevent their escalation.

Box 3.3: Global Counter-Terrorism Strategy adopted by the UN General Assembly in September, 2006

The United Nations Global Counter-Terrorism Strategy was adopted by Member States on 8 September 2006. The strategy, in the form of a resolution and an annexed Plan of action, is a unique global instrument that will enhance national, regional and international efforts to counter terrorism. This is the first time that all Member States have agreed to a common strategic approach to fight terrorism, not only sending a clear message that terrorism is unacceptable in all its forms and manifestation but also resolving to take practical steps individually and collectively to prevent and combat it. Those practical steps include a wide array of measures ranging from strengthening state capacity to counter terrorist threats to better coordinating United Nations system's counter-terrorism activities. The adoption of the strategy fulfils the commitment made by world leaders at the 2005 September Summit and builds on many of the elements proposed by the Secretary-General in his 2 May 2006 report, entitled 'Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy'.

The plan of action includes the following four measures:

- i. Measures to address the conditions conducive to the spread of terrorism, including but not limited to prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization, and lack of good governance.
- ii. Measures to prevent and combat terrorism, in particular by denying terrorists access to the means to carry out their attacks, to their targets and to the desired impact of their attacks.
- iii. Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard.
- iv. Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism, reaffirming that the promotion and protection of human rights for all and the rule of law is essential to all components of the strategy, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism.

Source: Adapted from <http://www.un.org/terrorism/strategy-counter-terrorism.shtml> (extracted on 29.05.2008)

¹⁸*Defeating Communist Insurgency* by Sir Robert Thompson, 1967, based on his comparative analysis of the British handling of the Malaya insurgency (1948-1960) where he was an officer of the Government of Malaya and the South Vietnamese and American practices in their dealing with the Vietnamese insurgency where he was the head of the British Advisory Mission (1961-1965).

4.1 The Legal Framework

4.1.1 The Laws to Deal with Terrorism

4.1.1.1 With the spurt in terrorism in recent years, many countries have enacted appropriate and stringent anti-terrorism laws. India too has had various enactments for dealing with terrorism in the past – (i) The Terrorist and Disruptive Activities (Prevention) Act, 1987 (allowed to lapse in 1995), and (ii) The Prevention of Terrorism Act, 2002 (repealed in 2004), Unlawful Activities (Prevention) Act, 1967 {as amended by the Unlawful Activities (Prevention) Amendment Act, 2004} and the National Security Act, 1980. However, some of these legislations were allowed to lapse/repealed as it was contended that the powers conferred on the law enforcement agencies had the potential, and in fact, had been misused. The Law Commission in its 173rd Report (2000) examined this issue and highlighted the need for a law to deal firmly and effectively with terrorists. It also drafted “The Prevention of Terrorist Activities Bill”. The constitutional validity of anti-terrorism laws has also been upheld by the Supreme Court. Many have urged that a strong legal framework needs to be created to deal with terrorism. Clearly, there is a felt need to strengthen the hands of security forces in the fight against terror, even as human rights and constitutional values are protected. The legislative measures adopted in India are dealt with briefly in the following paragraphs.

4.1.2 The National Security Act, 1980

4.1.2.1 The National Security Act, 1980 empowers the Union Government or the State Governments to detain a person 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, or with respect to any foreigner with a view to regulating his continued presence in India. Such preventive detention can also be made with a view to preventing a person from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community. The Act also constitutes Advisory Boards which have to approve any such detention.

4.1.3 The Terrorist and Disruptive Activities (Prevention) Act, 1985 and 1987

4.1.3.1 The Terrorist and Disruptive Activities (Prevention) Act, 1985, was enacted in May 1985, in the background of escalation of terrorist activities in some parts of the country. It was expected then that it would be possible to control this menace within a period of two years and, therefore, the life of the said Act was restricted to a period of two years. However, it was subsequently realised that on account of various factors, what were stray incidents in the beginning, had become a continuing menace especially in States like Punjab and it was not only necessary to continue the said law but also strengthen it further. The aforesaid Act of 1985 was due to expire on 23rd May, 1987. Since both Houses of Parliament were not in session and it was necessary to take immediate action, the President promulgated the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) on the 23rd May, which came into force with effect from the 24th May, 1987. Subsequent to the promulgation of the Ordinance, it was felt that its provisions needed further strengthening in order to cope up with the menace of terrorism and the Terrorist and Disruptive Activities (Prevention) Act, 1987 (commonly known as TADA) was enacted.

4.1.3.2 TADA, 1985 created two new offences, namely, “*terrorist act*” and “*disruptive activities*”. To try these offences, TADA, 1985 established a system of special courts (“Designated Courts”). The Law placed restrictions on the grant of bail by stipulating that unless the Court recorded the existence of “*reasonable grounds for believing*” that the accused was “*not guilty*”, bail should not be given. The police were given enhanced powers for detention of suspects; provision was made for protection of witnesses and at the same time it was provided that trials under the law should be accorded precedence over other cases. TADA, 1987 strengthened the mechanism that had been provided in TADA, 1985. In the new law, certain offences were re-defined (e.g. harbouring or concealing terrorists; being a member of a terrorist gang or terrorist organization; holding of property derived as a result of terrorist acts etc.). It provided for a new offence of “possession of unauthorized arms in notified areas”. It also provided for enhanced penalty for certain specified offences. The police officers were given more powers in the matter of seizure of property regarding which it was believed that it had been derived as a result of terrorist acts, besides provision for attachment and forfeiture of such property was also made. It extended the possible period of detention of a suspect in police custody pending investigation. It made confession before a police officer admissible. Executive Magistrates were granted powers under Section 167 CrPC. As a safeguard against abuse of powers given by TADA, 1987, it was stipulated that the “First Information Report” (FIR) cannot be registered except after “prior approval of the District Superintendent of Police”. The Courts were empowered to make certain presumptions (Section 21).

4.1.3.3 The constitutional validity of TADA, 1987 was challenged before the Supreme Court in Kartar Singh vs State of Punjab [(1994) 3 SCC 569: AIR 1995 SCC 1726]. A Constitution

Bench of the Supreme Court upheld the law but asked the Government to provide certain safeguards with a view to prevent any possible misuse of the stringent provisions of TADA, 1987. The provision regarding the admissibility of evidence adduced before police officers was tempered and it was laid down that immediately after any such admission the accused should be produced before a Judicial Magistrate. The Supreme Court also directed the Government to constitute Review Committees for periodical “scrutiny” of the cases registered and also to review the prevailing situation in the areas notified as ones affected by terrorist activities.

4.1.3.4 The validity of TADA, 1987 was extended in 1989, 1991 and 1993¹⁹. However, after a series of complaints about its abuse, TADA, 1987, was allowed to lapse in 1995. Subsequently, the country witnessed several terrorist incidents –including hijacking of the Indian Airlines flight IC-814 to Kandahar in 1999 and the assault on Parliament on December 13, 2001. As a consequence, the Prevention of Terrorism Act, 2002 came into force.

4.1.4 Prevention of Terrorism Act, 2002

4.1.4.1 The Statement of Objects and Reasons of the Act stated:

“The country faces multifarious challenges in the management of its internal security. There is an upsurge of terrorist activities, intensification of cross-border terrorist activities and insurgent groups in different parts of the country. Very often, organized crime and terrorist activities are closely inter-linked. Terrorism has now acquired global dimensions and has become a challenge for the entire world. The reach and methods adopted by terrorist groups and organisations take advantage of modern means of communication and technology using high-tech facilities available in the form of communication systems, transport, sophisticated arms and various other means. This has enabled them to strike and create terror among people at will. The existing criminal justice system is not designed to deal with the types of heinous crimes with which the proposed law deals with.

In view of the situation, as stated above, it was felt necessary to enact a legislation for the prevention of, and for dealing with terrorists’ activities. However, sufficient safeguards are sought to be provided in the proposed law to prevent the possibility of its misuse. Parliament was not in session and the circumstances existed which rendered it necessary for the President to promulgate the Prevention of Terrorism Ordinance, 2001 on 24th October, 2001. During the Winter Session of Parliament in December, 2001, steps were taken for the introduction of the Prevention of Terrorism Bill, 2001 in the Lok Sabha. However, the Bill could not be introduced and considered in the Lok Sabha as Parliament adjourned sine die on 19th December, 2001. The terrorist attack on Parliament House on 13th December, 2001 and the prevailing circumstances rendered it necessary for the President to promulgate the Prevention of Terrorism (Second) Ordinance, 2001 on 30th

December, 2001 with a view to give continuity to the Prevention of Terrorism Ordinance, 2001 promulgated on 24th October, 2001.

The Prevention of Terrorism Bill, 2002 seeks to replace the Prevention of Terrorism (Second Ordinance, 2001".

4.1.4.2 The salient features of the Prevention of Terrorism Act, 2002 (POTA) were:

- a. *Definition of 'Terrorist act':* The part of the definition stipulating the *mens rea* was amended. As per the new definition the offence of terrorist act required, 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." Raising funds for the purpose of terrorism was included in the definition.
- b. *Arrest Provisions:* Although an arrested person was permitted to meet a legal practitioner during the course of interrogation, the legal practitioner was not entitled to remain present throughout the period of interrogation (Section 52).
- c. *Seizure and Forfeiture of Proceeds of Terrorism:* The officer investigating an offence under POTA could order seizure or attachment of property if he had reason to believe that the property represents proceeds of terrorism. The Special Court could also order forfeiture of such property if it was satisfied that such property constituted proceeds of terrorism (Sections 6 to 17).
- d. *Interception of Communication:* The Act provided for interception of wire, electronic or oral communication at the request of the investigating officers after being authorized by the competent authority. This could be done if it was believed that such interception might provide or had provided evidence of any offence involving a terrorist act (Sections 36 to 48).
- e. *Unauthorised Possession of Firearms:* If any person was in unauthorized possession of certain arms or ammunition specified in the Arms Rules, 1962 in a notified area, or, explosive substances and lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not, he would be guilty of committing a terrorist act (Section 4).
- f. *Enhanced powers to Investigating Officers:* Apart from the power to make an order regarding seizing of property representing proceeds of terrorism and interception of certain communications as mentioned in item (c), police officers not below the rank of a Superintendent of Police could also record the confessions of a person

either in writing or on any mechanical or electronic device, which were admissible in the trial for any offence under the Act (Section 32). The safeguards introduced by the Supreme Court Judgement in 'Kartar Singh case' were incorporated in the law.

- g. *Increased Period of Police Custody:* Although Section 167 of the CrPC was applicable, the reference to 'fifteen days', 'ninety days', and 'sixty days', as mentioned therein with regard to police custody was replaced by a reference to 30 days, 90 days and 90 days respectively. The period of custody could be extended by the Special Court upto 180 days [Section 49(2)].
- h. *Constitution of Special Courts:* The Act provided for constitution of one or more special courts for notified areas or group of cases by the Union Government or the State Government both for trial of cases under the Act (Sections 23 to 35).
- i. *Chapter on Dealing with Terrorist Organizations:* A separate chapter to deal with terrorist organizations was included. The Schedule to the Act gave a list of terrorist organizations. The Union Government was authorized to add or remove an organization from the Schedule or amend the Schedule. The activities which made an organization a terrorist organization were also listed (Sections 18 to 22).
- j. *Constitution of Review Committee:* The Central and State Governments were to constitute one or more Review Committees for the purposes of the Act (Section 60).

Box 4.1: Findings of POTA Review Committee in a Case

'After appreciating the evidence made available to us and considering the respective arguments of the learned counsel of the accused persons and the learned Special Public Prosecutor, this Committee is of the considered view that this incident had taken place on the date, time and place as alleged by the prosecution but certainly not as a part of conspiracy envisaged under the provisions of POTA. This Committee, therefore, is of the view that the accused persons may be tried under the provisions of IPC, Indian Railways Act, Prevention of Damages of Public Property Act, Bombay Police Act etc., but not under the provisions of Prevention of Terrorism Act,(POTA) 2002.'

Source: The Committee reviewed the case case bearing FIR No. 09/02 Godhra Railway Police Station in terms of the POTA Repeal Act, 2004 and decided on 16.5.2005; source: <http://mha.nic.in/press-release/pr210605.pdf>

4.1.4.3 The Constitutional validity of POTA was challenged in the case, People's Union for Civil Liberties vs Union of India, on the ground that the law violated basic human rights.

The Supreme Court upheld the Constitutional validity of the law while stipulating some restrictions on the arbitrary use of certain powers.

4.1.4.4 Government repealed POTA as it felt that its provisions were misused by some State Governments and also that the Act had failed to serve its intended purpose. This was done through the Prevention of Terrorism (Repeal) Act, 2004. After repeal of POTA, 2002, some provisions to deal with terrorism were incorporated in the Unlawful Activities (Prevention) Act, 1967 as amended by the Unlawful Activities (Prevention) Amendment Act, 2004.

4.1.5 The Unlawful Activities (Prevention) Act, 1967

4.1.5.1 This law was enacted to provide for more effective prevention of certain unlawful activities of individuals and associations and for matters connected with it. It empowered appropriate authorities to declare any association as 'unlawful' if it is carrying out 'unlawful activities'. This law was comprehensively amended by the Unlawful Activities (Prevention) Amendment Act, 2004 to deal with terrorist activities. Like POTA, it defines a 'terrorist act' and also defines a "terrorist organisation" as an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed. It further provides a mechanism for forfeiture of the proceeds of terrorism apart from providing stringent punishments for terrorism related offences.

4.1.5.2 Thus, at present the only Union Legislation dealing specifically with terrorism is the Unlawful Activities (Prevention) Act, 1967 (ULPA) as amended by the Unlawful Activities Prevention (Amendment) Act, 2004. Although ULPA incorporates provisions regarding seizure and forfeiture of property, enhanced punishments and listing of terrorist organizations, it does not provide for special courts or enhanced powers of investigation and provisions regarding confessions made before police officers.

4.1.6 Need for a Comprehensive Anti Terrorist Legislation

4.1.6.1 It needs to be mentioned here that the Law Commission of India, in its 173rd Report on Prevention of Terrorism Bill, 2000, had recommended a separate legislation to deal with the menace of terrorism. The draft bill as recommended by the Law Commission of India included provisions such as definition of terrorist acts, enhanced punishment for such acts, possession of certain unauthorized arms, special powers of investigating officers regarding seizure and attachment of property representing proceeds of terrorism, constitution of special courts, protection of witnesses, confessions made to police officers to be taken into consideration, enhanced police custody, constitution of review committees, protection of action taken in good faith etc.

4.1.6.2 The need for a comprehensive anti-terrorism legislation cannot be better illustrated than by the judgement of the Apex Court in the Rajiv Gandhi assassination case [State vs. Nalini and ors. (1999) 5 SCC 253]. While the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 have generally been decried as being harsh, none of these could be applied to the perpetrators of the act as the Apex Court held that neither was it a terrorist act u/s 3(1) nor were the activities of the perpetrators 'disruptive' u/s 4 of the TADA Act. The relevant paras of the landmark judgement are reproduced below:

“61. From the aforesaid circumstances it is difficult for us to conclude that the conspirators intended, at any time, to overawe the Government of India as by law established.

62. Nor can we hold that the conspirators ever entertained an intention to strike terror in people or any section thereof. The mere fact that their action resulted in the killing of 18 persons which would have struck great terror in the people of India has been projected as evidence that they intended to strike terror in people. We have no doubt that the aftermath of the carnage at Sriperumpudur had bubbled up waves of shock and terror throughout India. But there is absolutely no evidence that any one of the conspirators ever desired the death of any Indian other than Rajiv Gandhi. Among the series of confessions made by a record number of accused in any single case, as in this case, not even one of them has stated that anybody had the desire or intention to murder one more person along with Rajiv Gandhi except perhaps the murderer herself. Of course they should have anticipated that in such a dastardly action more lives would be vulnerable to peril. But that is a different matter and we cannot attribute an intention of the conspirators to kill anyone other than Rajiv Gandhi and the contemporaneous destruction of the killer also.

63. Alternatively, even if Sivarasan and the top brass of LTTE knew that there was likelihood of more casualties that cannot be equated to a situation that they did it with an intention to strike terror in any section of the people.

64. In view of the paucity of materials to prove that the conspirators intended to overawe the Government of India or to strike terror in the people of India we are unable to sustain the conviction of offences under Section 3 of TADA.

...

69. If there is any evidence, in this case, to show that any such preceding act was perpetrated by any of the appellants towards killing of any police officer who was killed at the place of occurrence it would, no doubt, amount to disruptive activity. But there is no such evidence that any such activity was done for the purpose of killing any police personnel.

70. However, there is plethora of evidence for establishing that all such preceding activities were done by many among the accused arrayed, for killing Rajiv Gandhi. But unfortunately Rajiv Gandhi was not then “a person bound by oath under the Constitution to uphold the sovereignty

and integrity of India". Even the Lok Sabha stood dissolved months prior to this incident and hence it cannot be found that he was under an oath as a Member of Parliament.

...

74. *We are, therefore, unable to sustain the conviction of appellants for offences under Section 3 or 4 of TADA.*

...

555. *In the present case applying the principles set out above on the interpretation of Section 3(1) and analyses of this subsection of the TADA we do not find any difficulty in concluding that evidence does not reflect that any of the accused entertained any such intention or had any of the motive to overawe the Government or to strike terror among people. No doubt evidence is there that the absconding accused Prabbakaran, supreme leader of LITE had personal animosity against Rajiv Gandhi and LTTE cadre developed hatred towards Rajiv Gandhi, who was identified with the atrocities allegedly committed by IPKF in Sri Lanka. There was no conspiracy to the indiscriminate killing of persons. There is no evidence directly or circumstantially that Rajiv Gandhi was killed with the intention contemplated under Section 3(1) of TADA. State of Tamil Nadu was notified under TADA on 23.6.1991 and LTTE were declared an unlawful association on 14.5.1992 under the provisions of the Unlawful Activity (Prevention) Act, 1957. Apart from killing of Rajiv Gandhi no other terrorist act has been alleged in the State of Tamil Nadu. Charge may be there but there is no evidence to support the charge. Mr. Natarajan said that prosecution might refer to the killing of Padmanabhan in Tamil Nadu, leader of EPRLF, which fact finds mention in the confession statement of Santban (A-2). But then he said it was not a terrorist act. It was killing of a rival Sri Lankan and in any case killing of Padmanabhan is not a charge in the case before this Court. Mr. Altaf Ahmad said that when he earlier mentioned the killing of Padmanabhan, it was only to show that LTTE was an organization which brook no opposition and anyone opposing its objective was eliminated. Mr. Natarajan said it was the case of the prosecution itself that Prabbakaran had personal animosity against Rajiv Gandhi developed over a period of time and had motive to kill him."*

4.1.6.3 Thus, even a specific law to fight against terrorism proved to be ineffective in a case which involved a former Prime Minister of the country. While the audacity and designs of various terrorist organizations actively engaged in terrorist activities inside the country (and also outside) have been on the increase, the anti-terrorist legislations have not kept pace with these developments. On the other hand, several countries are now increasingly aware of the dangers of not having specific legislation to counter terrorism and specific incidents of terrorist acts. This has galvanised them to pass stringent and effective laws. Thus, a number of countries now have legislations which are comprehensive and effective in dealing with various facets of terrorist activities including provisions regarding counter-terrorist measures along with

procedures and mechanism for speedy criminal justice. Thus, the United States have armed themselves with the Uniting and Strengthening America by Providing Appropriate Tools for Interpreting and Obstructing Terrorism Act (USA PATRIOT ACT), 2001 which was further amended in March, 2006 by integrating the Financial Ant-Terrorism Act. The British Parliament has also passed a Terrorism Act in March, 2006. The Australian Anti-Terrorism Act, 2005 and the Canadian Anti-Terrorism Act, 2001 are other such examples. It needs to be appreciated that terrorism is a global phenomenon. The case of India cannot be seen in isolation. Hence, there have to be certain common elements in laws dealing with terrorism internationally.

4.1.6.4 This issue was discussed at the National Workshop organised by the Commission and the Sardar Vallabhbhai Patel National Police Academy, Hyderabad with various experts, police officials, administrators and civil rights activists. It was noted that the country has suffered huge losses of civilians as well as police and army personnel, besides colossal damage to private and public property, in terrorist incidents, including the assassination of a serving Prime Minister, a former Prime Minister, several political leaders, including a Chief Minister, besides thousands of innocent civilians and security personnel. In the State of Jammu & Kashmir alone, it has been reported that during the period from 1988 to 2001, more than 30,000 people were killed, including about 11,000 civilians, due to terrorist violence. Terrorism and low intensity warfare have imposed new challenges on law enforcement that we are yet to accommodate even at the conceptual level.

4.1.6.5 The Law Commission, while examining the Prevention of Terrorism Bill, 2000 (173rd Report), observed as follows:

Law Commission is of the opinion that a legislation to fight terrorism is today a necessity in India. It is not as if the enactment of such a legislation would by itself subdue terrorism. It may, however, arm the State to fight terrorism more effectively. There is a good amount of substance in the submission that the Indian Penal Code (IPC) was not designed to fight or to check organised crime of the nature we are faced with now. Here is a case of organised groups or gangs trained, inspired and supported by fundamentalists and anti-Indian elements trying to destabilise the country who make no secret of their intentions. The act of terrorism by its very nature generates terror and a psychosis of fear among the populace. Because of the terror and the fear, people are rendered sullen. They become helpless spectators of the atrocities committed before their eyes. They are afraid of contacting the Police authorities about any information they may have about terrorist activities much less to cooperate with the Police in dealing with terrorists. It is difficult to get any witnesses because people are afraid of their own safety and safety of their families. It is well known that during the worst days in Punjab, even the judges and prosecutors were gripped with such fear and terror that they were not prepared to try or prosecute the cases against the terrorists. That is also

stated to be the position today in J&K and this is one reason which is contributing to the enormous delay in going on with the trials against the terrorists. In such a situation, insisting upon independent evidence or applying the normal peace-time standards of criminal prosecution, may be impracticable. It is necessary to have a special law to deal with a special situation. An extraordinary situation calls for an extraordinary law, designed to meet and check such extraordinary situation. It is one thing to say that we must create and provide internal structures and safeguards against possible abuse and misuse of the Act and altogether a different thing to say that because the law is liable to be misused, we should not have such an Act at all. The Supreme Court has repeatedly held that mere possibility of abuse cannot be a ground for denying the vesting of powers or for declaring a statute unconstitutional. In State of Rajasthan v. Union of India (1978 1 SCR p.1), the Supreme Court observed "it must be remembered that merely because power may sometimes be abused, it is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief" (at page 77). Similarly, in Collector of Customs v. Natbella Sampathu Chetty (AIR 1962 SC 316), the Court observed, "The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity". In Kesavananda Bharati v. State of Kerala (1973 Supp SCR p.1), Khanna J. observed as follows at page 755: "In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error. Constitutional law like other mortal contrivances has to take some chances. Opportunity must be allowed for vindicating reasonable belief by experience." To the same effect are observations of Krishna Iyer J. in T.N. Education Department v. State of Tamilnadu (1980 1 SCR 1026 at 1031) and Commissioner H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (AIR 1954 SC 282). All these decisions were referred to and followed by a recent nine-Judge Constitution Bench in Mafatlal Industries v. Union of India {1997 (5) SCC 536}.

4.1.6.6 A comparative analysis of the provisions of the anti-terrorism laws in India is given in Annexure IV(1), and a comparison of certain provisions of anti terrorism laws in some other countries is at Annexure IV(2). From these it is evident that most countries have been adopting tough anti-terrorism measures whereas the provisions of similar laws have been diluted in India over a period of time.

4.1.6.7 There can be no doubt that there is serious threat to the security of the country from terrorists who are highly organized, motivated and possessing links with international terrorist groups or organizations. The existing penal laws in India were not enacted to deal with this situation and there is ample evidence to indicate that terrorists have been able to escape the law either by exploiting the loopholes in the ordinary law and/or by intimidating witnesses to subvert justice. The Commission has, therefore, carefully considered how this situation can be best tackled. There is definitely a need to have stringent provisions to deal with

terrorists. The Commission also recognizes that there could be a propensity to abuse such provisions. However, when faced with the need to protect national security and integrity, there is ample justification for having strong anti-terrorism provisions in the law. In fact, many western countries with strong traditions of democracy and civil liberty have enacted such legislations to deal with the threat of terrorism and their laws contain provisions pertaining to constitution of special fast track courts, making release on bail extremely difficult for the accused, enhanced penalties cutting the source of funding for terror activities etc. The Commission is of the view that while terrorism is indeed an extraordinary threat which requires special legal provisions to deal with it, there is also need to provide sufficient safeguards to prevent its misuse.

4.1.6.8 After the repeal of POTA, as mentioned earlier, a number of provisions from that Act have now been incorporated in the Unlawful Activities Prevention Act either in toto or in a modified form. The Commission has examined whether the Unlawful Activities Prevention Act is the appropriate legislation to incorporate provisions to combat terrorism. After due consideration, the Commission is of the view that instead of the Unlawful Activities Prevention Act, it would be more appropriate if a new chapter on terrorism is made a part of the National Security Act, 1980. A prime consideration which weighed with the Commission in making this recommendation is that the Unlawful Activities Prevention Act deals primarily with the effective prevention of certain unlawful activities of individuals and associations and connected matters, whereas the National Security Act deals with prevention of those activities which are prejudicial to national security and integrity and also contains provisions for preventive detention which do not find place in normal laws. Terrorism as has been stated earlier in this Report is much more ominous than a mere unlawful activity: it is a grave threat to national security and integrity. The National Security Act is therefore more relevant for incorporating provisions to deal with terrorism. It was for the same reason that the Commission in its first report on 'Right to Information' had recommended that provisions of the Official Secrets Act dealing with official secrecy required in the interest of national security and integrity, be included in the National Security Act. The Commission has also examined the adequacy of the existing legal provisions to deal with terrorism in the subsequent paragraphs of this chapter.

4.1.6.9 Recommendation

- a. A comprehensive and effective legal framework to deal with all aspects of terrorism needs to be enacted. The law should have adequate safeguards to prevent its misuse. The legal provisions to deal with terrorism could be incorporated in a separate chapter in the National Security Act, 1980.

4.2 Definition of Terrorism

4.2.1 Although TADA, 1987 did not define the term 'terrorism', it defined a 'terrorist act' as follows:

“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”

4.2.2 The Law Commission (173rd Report), examined this definition and suggested certain changes. It proposed inclusion of sabotage of computer systems and other equipment used for the defence of India or used by any other agency of Government of India. It also recommended that memberships of banned organizations, raising funds for or fostering activities of banned organization should be construed to be a 'terrorist act'. The following definition of terrorism was recommended:

“3. (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 fire arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or 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 causes damage to 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 or voluntarily does an act aiding or promoting in any manner the objects of such an association and is either in possession of any unlicensed firearm, 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.”

4.2.3 The definition adopted in the Prevention of Terrorism Act, 2002 was as follows:

“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 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.”

Thus, a major change in the definition of ‘terrorist act’ was the substitution of ‘with intent to overawe the government’ with the phrase “with intent to threaten the unity, integrity, security or sovereignty of India’. With this amendment the definition of ‘terrorist act’ became more precise. Another major change in the definition of ‘terrorist act’ was clause 3 (1) b which stipulated that being a member of an ‘unlawful association’ or promoting any such association and possessing substances capable of causing mass destruction and committing any act resulting in loss of human life or grievous injury, would also amount to a ‘terrorist act’.

4.2.4 After the repeal of POTA, 2002, part (a) of the above mentioned definition was adopted in the Unlawful Activities (Prevention) Amendment Act, 2004 -Section 15:

Section 15: Terrorist Act -Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign

country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or 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 in India or in any foreign country 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 in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

4.2.5 The definition of 'terrorist act' was scrutinized and upheld by the Supreme Court (in the Kartar Singh case). However, as mentioned earlier in paragraph 4.1.6.2, in the Rajiv Gandhi assassination case, the Apex Court had come to the conclusion that this was not a terrorist act and the accused were sentenced for murder under section 302 read with section 120B IPC. The Supreme Court stated:

552. Under Section 3 of TADA in order there is a terrorist act three essential conditions must be present and these are contained in Sub-section (1) of Section 3 - (1) criminal activity must be committed with the requisite intention or motive, (2) weapons must have been used, and (3) consequence must have ensued.

Having stipulated thus, it agreed with the arguments of the counsel of the accused that: "... in the present case though the evidence may show that weapons and consequence as contemplated by Section 3(1) is there it is lacking so far as the intention is concerned. Prosecution had to prove that the act was done with the intention to overawe the Government or to strike terror in people or any section of people or to adversely affect the harmony amongst different sections of people. There is no evidence that any of the accused had such an intention." (para 552)

4.2.6 The Commission is of a different view and believes that the assassination of the former Prime Minister along with 18 other persons was in itself sufficient to conclude that this heinous act was done with a view to strike terror in people. Besides it has been observed that many a time terrorist outfits target personnel belonging to the security forces or enforcement agencies in order to demoralize them or to avenge any strict action taken by them. The basic purpose behind these acts is to terrorise other personnel from taking action against terrorists. The Commission, therefore, feels that assassination of important public figures, as also murder of public functionaries by way of revenge or with a view to subdue others in the organization, should be categorized as a terrorist act.

4.2.7 Inclusion of Terror Financing in the Definition of a ‘Terrorist Act’

4.2.7.1 Any counter terrorism strategy can succeed only if the sources of terrorist funding are blocked which is why recent trends in anti terror legislation worldwide focus on this aspect of the fight against terrorism. In India also the legislations to deal with terrorism had made provisions for tackling terror financing activities.

4.2.7.2 *POTA*: In the Prevention of Terrorism Act, 2002 (POTA), the phrase ‘*act of raising funds intended for the purpose of terrorism*’ was included in the definition of the term ‘*a terrorist act*’ provided in Section 3(1), by way of an Explanation to it. Thus, the penalties provided in offences mentioned in Sections 3(2) and 3(3) (maximum penalty of death and life imprisonment) of the Act became applicable to such financing activities also, if associated with the commission of these offences. Further, fund raising for a ‘terrorist organization’ was also made an offence (Section 22). This included:

- i. Inviting others to provide money or property with the intention of using it or having reasonable cause to suspect that it may be used, for the purposes of terrorism*
- ii. Receiving money or property with the intention of using it or having reasonable cause to suspect that it may be used, for the purposes of terrorism*
- iii. Providing money or property knowing or having reasonable cause to suspect that it may be used, for the purposes of terrorism*
- iv. The provision of money or property in the above mentioned situations referred to its being given, lent or otherwise made available, whether or not for consideration.*

A person guilty of an offence under Section 22 was liable on conviction to be imprisoned for a term not exceeding fourteen years or with fine or with both.

4.2.7.3 *ULPAA*: The current anti-terrorist law in operation, i.e. the Unlawful Activities (Prevention) Amendment Act, 2004 (ULPAA) provides for imprisonment for a term extending to life for raising funds for the purpose of committing a terrorist act (Section 17). Section 40 of the Act makes the raising of funds for a terrorist organization an offence (the provisions are similar in nature to those provided in Section 22 of POTA mentioned above). However, it does not reckon the ‘financing of terrorist activities’ as a ‘terrorist act’ as was done under POTA. This, in effect, is a dilution in the penal law as the commission of a ‘terrorist act’ resulting in death of a person was earlier punishable with death or imprisonment for life. In cases where it did not result in the death of a person, the punishment could extend to life imprisonment {Section 3(2)}. In addition to the above, as conspiring or attempting to commit, advocating, abetting, advising, inciting or knowingly facilitating the commission of a ‘terrorist

act' or any act preparatory to a 'terrorist act' was an offence punishable with imprisonment for a term which could extend to life imprisonment under POTA {Section 3(3)}, this provision was applicable in case of 'raising funds intended for the purpose of terrorism' also, as under POTA this constituted a 'terrorist act'.

4.2.7.4 The Commission is of the view that providing material support, including raising or channelising funds for terrorist activities is as serious an offence as the terrorist act itself and deserves severe punishment. This could be ensured by the inclusion of 'raising funds intended for the purpose of terrorism' in the definition of a 'terrorist act'.

4.2.8 Certain Acts Committed by Members or Supporters of Terrorist Organizations

4.2.8.1 POTA had contained a paragraph in the definition of a 'terrorist act' which provided that the possession of unlicensed fire arms etc. and commitment of an act resulting in loss of human life or causing damage to property by any member or a supporter of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 was also a 'terrorist act'. This provision was included on the recommendation of the Law Commission of India in its 173rd report on Prevention of Terrorism Bill, 2000. The Law Commission had occasion to look at international legislations and it was of the view that the legislation in the United Kingdom defined 'terrorism' and 'terrorist' in more extensive terms.

4.2.8.2 Thus the UK Terrorism Act 2000 defines 'terrorism' as follows:

- "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 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.*
- (4) *In this section –*
- (a) *“action” includes action outside the United Kingdom,*
- (b) *a reference to any person or to property is a reference to any person, or to property, wherever situated,*
- (c) *a reference to the public includes a reference to the public of a country other than the United Kingdom, and*
- (d) *“the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.*
- (5) *In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a prescribed organisation.”*

Box: 4.2 Membership of and Fund Raising for a ‘Terrorist Organization’

“Sections 20, 21 and 22 of POTA is similar to that of Sections 11, 12 and 15 of the Terrorism Act, 2000 of United Kingdom.

Such provisions are found to be quite necessary all over the world in anti-terrorism efforts. Sections 20, 21 and 22 are penal in nature that demand strict construction. These provisions are a departure from the ordinary law since the said law was found to be inadequate and not sufficiently effective to deal with the threat of terrorism. Moreover, the crime referred to herein under POTA is aggravated in nature. Hence special provisions are contemplated to combat the new threat of terrorism. Support either verbal or monetary, with a view to nurture terrorism and terrorist activities is causing new challenges. Therefore Parliament finds that such support to terrorist organizations or terrorist activities need to be made punishable. Viewing the legislation in its totality it cannot be said that these provisions are obnoxious.”

Source: Supreme Court’s decision in the case of People’s Union for Civil Liberties & Anr., W.P. No. 389 Of 2002; <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=25734>; extracted on 17.04.2008

4.2.8.3 Further, Section 3 of the UK Act prescribes for ‘proscribed organisations’. Sections 11 to 13 relate to offences pertaining to membership and support of ‘proscribed organisations’. Sections 15 to 18 relate to offences pertaining to fund raising and money laundering related to terrorism. Section 40 defines a ‘terrorist’ to mean a person who has committed certain offences under the Act or has been concerned in the commission, preparation or instigation of acts of terrorism. Section 54 pertains to weapon training, while Section 56 pertains to directing a terrorist organization and Section 57 pertains to possession of an article for terrorist purposes.

4.2.8.4 On a careful consideration of such provisions in the UK Act, the Law Commission was of the view that provisions to make membership of terrorist organizations and raising funds for terrorist organizations a terrorist act, should be included in the new law. Accordingly, the Law Commission introduced paragraph (b) to Section 3 (1) in the Draft Bill. As mentioned above, this paragraph was also included in the definition of a 'terrorist act' in POTA. After the repeal of POTA, the new law i.e. ULPAA did not include such a provision while defining a 'terrorist act'. However, it provided for a punishment extending to life imprisonment in case of a person who is a member of a 'terrorist gang' or 'terrorist organisation' which is 'involved in terrorist act' (Section 20).

4.2.8.5 The Commission feels that including provisions which make the possession of certain arms etc. and commission of certain acts by members or supporters of 'terrorist organizations' a 'terrorist act' would strengthen the law enforcement authorities in their fight against terrorism. However, the Commission feels that although paragraph (b) of Section 3(1) of POTA equated the commission of a 'terrorist act' with an act committed by a member or supporter of a terrorist organization on possession of certain arms etc., its subjection to the qualifying condition that such an act should result in 'loss of human life or grievous injury to any person' or cause 'significant damage to any property' substantially reduced its intended impact. The Commission is of the considered view that whether such an act results in the loss, injury or damage mentioned above is inconsequential, what is paramount is the commission of the act by members or supporters of terrorist organizations on possession of certain arms etc. Accordingly, paragraph (b) of Section 3(1) under POTA which was not included in the Unlawful Activities (Prevention) Amendment Act, 2004 should be included in the definition of a 'terrorist act' in the proposed new legislation. However, it should cover not only the acts committed by members or supporters of terrorist organizations resulting in 'loss of human life or grievous injury to any person' or causing 'significant damage to any property', but also acts which are likely to cause such death, injury or damage.

4.2.8.6 The extradition of accused persons assumes significance in case of terrorism related offences, as such persons often either flee from India or conspire from their bases in other countries. The Extradition Act, 1962 governs the extradition of such accused persons. Apart from this law, extradition is also governed by bilateral treaties between countries. Extraditions are generally governed by the 'principle of double criminality'- which stipulates that the alleged crime for which extradition is being sought must be criminal in both the demanding and the requested countries²⁰. It has been observed that in a number of cases, India's request for extradition was either turned down or avoidable delay and legal complications were created in the Courts of some foreign countries on the plea that the person to be extradited

²⁰<http://www.britannica.com/eb/topic-169892/double-criminality>

could not be unequivocally held to have committed or been wanted in any criminal case, which will have to be a crime in the laws of both countries. Such an eventuality can be avoided, at least so far as our law is concerned, by suitably wording the definition of 'terrorism' or 'terrorist act' in the Indian laws.

4.2.9 Recommendations

- a. There is need to define more clearly those criminal acts which can be construed as being terrorist in nature. The salient features of this definition should inter alia include the following:
 - i. use of firearms, explosives or any other lethal substance to cause or likely to cause damage to life and property and essential infrastructure including installations/establishments having military significance.
 - ii. assassination of (including attempt thereof) public functionaries.

The intent should be to threaten the integrity, security and sovereignty of India or overawe public functionaries or to terrorise people or sections of people.

- iii. Detention of any person or threat to kill or injure any person to force the government to act or abstain from acting in a particular manner.
- iv. Providing/facilitating material support, including finances, for the aforesaid activities.
- v. Commission of certain acts or possession of certain arms etc. by members or supporters of terrorist organizations which cause or are likely to cause loss of life, injury to a person or damage to any property.

4.3 Bail Provisions

4.3.1 Under Section 167 of CrPC, every person who is arrested, should be produced before the nearest magistrate within a period of 24 hours of arrest. The magistrate is authorized to

extend the detention for a maximum period of 15 days if the investigation cannot be completed within 24 hours. After the expiry of 15 days, the accused must once again be produced before the magistrate who may, after justification, extend the detention for another 15 days, but such detentions cannot be extended beyond 60 days. Sections 436 to 450 of CrPC deal with the bail provisions.

4.3.2 In laws dealing with terrorism, the bail provisions are made stringent so that the accused does not get easily released on bail. Under TADA, Section 20(8) made grant of bail to the accused difficult by providing that bail should not be given 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.

4.3.3 Similar provisions existed in POTA. Sections 49(6) and 49(7) of POTA laid down:

- (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 accused to release on bail, no person accused of an offence punishable under this Act or any rule made there-under 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.

4.3.4 This provision does not find place in the Unlawful Activities (Prevention) Amendment Act, 2004. Those who have opposed these provisions have argued that even in the most heinous cases, the general position is “bail but not jail”, which should also be the case in terrorism related matters. Moreover, the stipulation that the “court has to be satisfied that the accused has not committed any offence” has been perceived as being too strict. In fact, one of the main reasons cited for the repeal of POTA was the prolonged periods of detention as the accused were not able to get bail.

4.3.5 Investigation agencies have put forward the argument that persons accused of terrorism are not ordinary criminals and witnesses are afraid to depose against such persons. Therefore gathering evidence against them is difficult and time consuming, and if such persons are let out on bail they are bound to adversely influence the investigation.

4.3.6 The Law Commission examined this issue in its 173rd Report and observed as follows:

One set of objections was that the provision in sub-clause (6A) to the effect that no bail shall be granted unless the court is satisfied that "there are grounds for believing that he is not guilty of committing such offence" makes it almost impossible for any accused to get bail. In our opinion, there is no substance in this objection inasmuch as this is the very language which was used in sub-section (8) of section 20 of TADA and which has been the subject-matter of elaborate discussion and decision by the Supreme Court in Kartar Singh's case. The Supreme Court has pointed out that the language of sub-section (8) of section 20 of TADA is in substance no different from the language employed in section 437(1) of the Code, section 35 of the Foreign Exchange Regulation Act, 1976 and section 104 of the Customs Act, 1962. The Supreme Court accordingly upheld the validity of sub-section (8) of section 20 of TADA holding that the respective provisions contained therein are not violative of Article 21 of the Constitution. Be that as it may, having regard to the purpose and object underlying the Act and the context in which the Act has become necessary, these restrictive provisions may not be likely to be assailed on any reasonable basis. The objection, therefore, is unacceptable. However, certain other useful suggestions were made to which a reference is necessary. Justice J.S. Verma, Chairperson, National Human Rights Commission suggested that for the purpose of bail, the offences in the Act should be classified on the lines indicated by the Supreme Court in its decision in Shabeen Welfare Society's case (1996 (2) JT 719 (SC)). This view was supported by Sbri P.P. Rao, Senior Advocate, who emphasised that a routine refusal of bail was unacceptable. He added that since the normal rule was bail, any restriction placed thereon in an anti-terrorism law should not be disproportionate, making the very provision for bail meaningless. Several other participants also supported this line of reasoning which we find eminently reasonable and acceptable. In Shabeen Welfare Society's case (supra), the Supreme Court has suggested categorisation of offences under TADA into four categories for the purpose of bail. The following observations are relevant: "For the purpose of grant of bail to TADA detenus, we divide the undertrials into four classes, namely, (a) hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract sections 3 and/or 4 of the TADA Act; (c) undertrials who are roped in, not because of any activity directly attracting sections 3 and 4, but by virtue of sections 120B or 147, IPC and; (d) those undertrials who were found possessing incriminating articles in notified areas and are booked under section 5 of TADA. Ordinarily, it is true that the provisions of sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But

while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealt with by the same yardstick. Different approaches would be justified on the basis of the gravity of the charges. Adopting this approach we are of the opinion that undertrials falling within group (a) cannot receive liberal treatment. Cases of undertrials falling in group (b) would have to be differently dealt with, in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainants, the family members of the complainants, or witnesses. Cases of undertrials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in jail for three years and two years respectively. Those falling in group (b), when released on bail, may be released on bail of not less than Rs.50,000/- with one surety for like amount and those falling in groups (c) and (d) may be released on bail on their executing a bond for Rs.30,000/- with one surety for like amount, subject to the following terms:

- (1) the accused shall report to the concerned police station once a week;*
- (2) the accused shall remain within the area of jurisdiction of the Designated Court pending trial and shall not leave the area without the permission of the Designated Court;*
- (3) the accused shall deposit his passport, if any, with the Designated Court. If he does not hold a passport, he shall file an affidavit to that effect before the Designated Court. The Designated Court may ascertain the correct position from the passport authorities, if it deems it necessary;*
- (4) The Designated Court will be at liberty to cancel the bail if any of those conditions is violated or a case for cancellation of bail is otherwise made out.*
- (5) Before granting bail, a notice shall be given to the public prosecutor and an opportunity shall be given to him to oppose the application for such release. The Designated Court may refuse bail in very special circumstances for reasons to be recorded in writing. These conditions may be relaxed in cases of those under groups (c) and (d) and, for special reasons to be recorded in the case of group (b) prisoners. Also, these directions may not be applied by the Designated Court in exceptionally grave cases such as the Bombay Bomb Blast Case where a lengthy trial is inevitable looking to the number of accused, the number of witnesses and the nature of charges unless the court feels that the trial is being unduly delayed. However, even in such cases it is essential that the Review Committee examines the case against each accused bearing the above directions in mind, to ensure that TADA provisions are not unnecessarily invoked. Although the Court observed in the said judgment that the aforesaid directions were "a one-time measure meant only to alleviate the current situation", the*

spirit and principle behind the said observations should serve as guidelines to the Special Courts while dealing applications of bail of persons accused of offences under the Act, for the purposes of bail. Though we would like very much to incorporate the said classification in sub-clauses (5) to (7) of clause 18, we find it difficult to do so in view of the difficulty in incorporating the various ideas contained in the above judgment”.

4.3.7 Thus, the Law Commission did not suggest any modification to the somewhat stringent conditions for release of the accused on bail, which were present in TADA. It is generally known that persons accused of terrorist acts are not ordinary criminals and that witnesses are afraid of deposing against them for fear of physical harm to them or members of their family. Therefore, collecting evidence against them is both difficult and time consuming; if such persons are to be treated on par with other criminals the course of justice will be seriously jeopardised. The Commission is of the view that there is no need to dilute the provisions of bail as they existed in POTA. A closer scrutiny of the provisions would reveal that the test whether there are grounds for believing that the accused is innocent, has to be applied only when the prosecutor opposes the release of an accused on bail. Since there is a tendency for investigation agencies and the prosecution to oppose bail, a responsibility may be cast on both the investigation as well as the prosecution that bail applications should not be opposed in a routine manner and there must be application of mind to ascertain whether detention of an accused is required or not. This should be further fortified by an independent application of mind by the Review Committee (paragraph 4.7) which should advise the prosecution whether a bail application needs to be opposed or not and also on whether bail may be granted under certain circumstances.

4.3.8 Recommendations

- a. Regarding grant of bail, the law should provide that:
 - i. 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;
 - ii. Where the Public Prosecutor opposes the bail application of accused to release on bail, no person accused of an offence punishable under this Act or any rule made there under shall be released on bail until the Court is satisfied that there are grounds for believing that the accused 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 (i) of this section shall apply.

- iii. A Review Committee should review the case of all detenus periodically and advise the prosecution about the release of the accused on bail and the prosecution shall be bound by such advice.

4.4 Period of Detention (Remand) during Investigation

4.4.1 Section 167 of the CrPC provides that whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within a period of twenty-four hours and there are grounds for believing that the FIR is well founded, the officer in-charge of the police station shall produce the accused before the nearest Magistrate. On production of such accused, it has been stipulated that such Magistrate may authorize the detention of the accused in such custody for a term not exceeding fifteen days.

- (a) *the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding -*
 - i. *ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;*
 - ii. *sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that chapter.*
- (b) *No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;*
- (c) *No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.*

4.4.2 From the above provisions it is clear that a magistrate may order that an accused may be kept in police custody for a maximum period of fifteen days. Beyond this period, the accused may be kept in judicial custody for a maximum period of ninety days or sixty days

depending upon the nature of the alleged crime. In TADA, the time periods of “fifteen days”, “ninety days” and “sixty days” are replaced by “sixty days”, “one hundred eighty days” and ‘one hundred eighty days’ respectively. Thus, the period of remand under TADA was extended beyond what has been stipulated in the CrPC. Similarly, Section 49 of POTA provided that 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. 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. After the repeal of POTA, similar provisions have not been incorporated in the Unlawful Activities Prevention Act.

4.4.3 Thus, the provisions of both TADA and POTA provided for extended periods of remand. It has been argued that these provisions enabling extended periods of remand could result in unnecessary detentions and therefore the provisions of CrPC should be adhered to. On the other hand, the investigating agencies are of the view that these provisions of extended remand are necessary in cases involving terrorist related offences as people rarely come forward to depose because of fear of retribution. Also, there are complex crime networks sometimes involving transnational links and therefore these may require longer period of remand for successful investigation.

4.4.4 The Commission agrees that in terrorist related offences, witnesses are generally reluctant to depose because of fear of reprisals and also that investigating such cases are usually more complex and time consuming than ordinary crimes. This could necessitate a more intense and prolonged investigation by the police. Therefore the time limits specified under the CrPC may not be adequate. At the same time the limits prescribed under TADA were longer than required. POTA tried to achieve a fine balance as far as these time limits were concerned. Therefore, the Commission feels that the provisions of POTA regarding remand and completion of investigation may be restored and incorporated in the new law.

4.4.5 Recommendation

- a. For terrorist and other related offences, it should be provided that Section 167 of the CrPC shall apply subject to the modification that in sub-section (2), 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.

4.5 Confession before a Police Officer

4.5.1 Protection against self incrimination is a basic principle of the Constitution and our criminal justice system. This has been enshrined in Article 20 (3) which provides:

“No person accused of any offence shall be compelled to be a witness against himself”.

4.5.2 Section 25 of the Indian Evidence Act, 1872 makes all confessions made to a police officer inadmissible. It is felt that this provision was made because of the possibility of police resorting to force and torture to extract confessions. Another argument in support of this provision is that the police represents the State in the trial of an accused, and therefore, has a vested interest in seeing that the accused is punished. Therefore, an evidence of confession before the police is not taken to be objective and reliable. While this may hold true in dealing with ordinary crimes, in dealing with terrorism the issue needs reconsideration.

4.5.3 TADA had made certain confessions to police officers as admissible, thus making a departure from the ordinary criminal jurisprudence . Section 15 provides as follows:

“Certain confessions made to police officers to be taken into consideration:- (1) Notwithstanding 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 or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder:

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”.

4.5.4 As stated earlier, the validity of Section 15 of TADA and other provisions were examined and upheld by the Supreme Court in Kartar Singh vs State of Punjab. While upholding the law, the Supreme Court laid down certain specific guidelines as safeguards to ensure that confessions made before the police are not violative of the Constitutional provisions. These guidelines are as follows:

(1) *The confession should be recorded in a free atmosphere in the same language in which the*

person is examined and as narrated by him.

- (2) *The person from whom a confession has been recorded under Section 15 (1) of the Act, should be produced before the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.*
- (3) *The Chief Metropolitan of the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon.*
- (4) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a police officer of equivalent rank, should investigate any offence punishable under this Act of 1987.*

This is necessary in view of the drastic provisions of this Act, more so when the Prevention of Corruption Act, 1988 under Section 17 and the Immoral Traffic Prevention Act, 1956 under Section 13, authorise only a police officer of a specified rank to investigate the offences under those specified Acts.

- (5) *This police officer if he is seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay, if any, seeking the police custody.*
- (6) *In case, the person, taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so, the said statement maybe used against him as evidence, asserts his right to silence, the police officer must respect his right of assertion without making any compulsion to give a statement of disclosure.*

4.5.5 POTA also had provisions similar to TADA for dealing with the admissibility of confessions made before the police. It also incorporated the salient features of the guidelines laid down by the Supreme Court in the case *Kartar Singh vs State of Punjab*.

- (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.*

4.5.6 The issue of admissibility of confessions made before the police has been examined by several Law Commissions. The Law Commission in its Forty-Eighth Report favoured the admissibility of confessions made before the police. The Law Commission in its Sixty-Ninth Report revisited this issue and reaffirmed the suggestion made in the Forty-Eighth Report. Once again, the Law Commission examined the subject in great detail in its One-Eighty-Fifth Report and recommended that confessions made before the police should not be admissible under ordinary laws but could be admissible in case of grave offences like terrorism. The Committee on Reforms of the Criminal Justice System, 2003 recommended that Section 25 of the Indian Evidence Act should be amended to render confessions made before a police officer, admissible as evidence.

4.5.7 Those opposing the admissibility of confessions before the police have argued that if an accused is willing to make a voluntary confession, then he could easily be produced before a Magistrate rather than being produced before a senior police officer. It is also argued that

police may resort to coercive methods in order to extract confessions. The amended UAPA, therefore did not provide for making confessions before the police as admissible evidence.

4.5.8 The Commission has examined this issue in its report on 'Public Order' and has suggested wide ranging reforms in the structure and functioning of the police. It has recommended that the investigation agency should be supervised by an autonomous Board of Investigation. This would ensure that the Investigation Agency is insulated against any extraneous influences and would function in a professional manner. It has also recommended that the staff of the investigation agency should be specially trained for their job with emphasis on collecting evidence through use of forensic tools and eschewing coercive methods. Moreover, the Commission has recommended the setting up of a District Complaints Authority and also a State Police Complaints Authority which would effectively deal with cases of any misconduct by the police. The Commission was of the view that with these elaborate safeguards there should be no reason to continue to distrust the police with regard to admissibility of statements made before them.

4.5.9 However, till such time that comprehensive police reforms are carried out, the Commission is of the view that confessions and admissions whenever required may be made before the judicial magistrate. There was provision in POTA which made certain confessions admissible before the police. However it also stipulated that *the person from whom a confession has been recorded, 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*. Under the circumstances it would be better if the accused is produced directly before the judicial magistrate as criminal courts/magistrates are normally available at the taluka levels.

4.5.10 Recommendation

- a. Confession before the police should be made admissible as recommended in the Report on Public Order. But this should be done only if comprehensive police reforms as suggested by the Commission are carried out. Till such time confessions should continue to be made before judicial magistrates under Section 164 CrPC.

4.6 Presumptions under the Law

4.6.1 In all crimes the burden to establish the guilt of the accused is that of the prosecution. In other words an accused is presumed to be innocent unless his guilt is established beyond

all reasonable doubt. However, TADA Section 21 specifies the circumstances wherein it could be presumed that the accused is guilty:

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.*
- (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.*

4.6.2 A similar provision was made in POTA.

Section 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.*

4.6.3 This provision has not been included in the Unlawful Activities (Prevention) Amendment Act. According to one school of thought, shifting the burden of proof to the accused is violative of the basic principles of jurisprudence. Another viewpoint is that there are certain facts which are only within the knowledge of the accused and establishing such facts by the prosecution becomes difficult and the benefit generally passes on to the accused.

4.6.4 The Commission is of the view that because of the nature of the crime and the potential it has to threaten the security and integrity of the country on the one hand and spread terror among people on the other, it is necessary that the person who has indulged in the terrorist act is not able to make use of the protection which is provided to an accused person under the normal laws. In several cases, laws have provided for presumptions which may be drawn by the court if certain facts are established. However, such presumptions are not conclusive proof but can be rebutted by the accused by adducing evidence to the contrary. Both TADA and POTA had provisions wherein the court was under an obligation to draw adverse inference provided certain facts were established. The Commission feels that such presumptions should be made a necessary part of the new anti-terror law.

4.6.5 Recommendation

- a. The following legal provisions should be included regarding presumptions:

If it is proved –

- i. that the arms or explosives or any other dangerous substance 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 that by the evidence of an expert the fingerprints of the accused, or any other definitive evidence 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 Court shall draw adverse inference against the accused.
- ii. If it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence of terrorism, the Court shall draw adverse inference against the accused.

4.7 Review Committee

4.7.1 As stated earlier, laws dealing with extraordinary and complex crimes

like terrorism require extraordinary provisions which place special tools in the hands of the concerned agencies to successfully investigate and prosecute such crimes. Therefore, while the need for special provisions cannot be doubted, as stated earlier there can be a propensity for their misuse (as happened in the case of POTA in some of the States).

4.7.2 This underscores the need to provide adequate safeguards and checks and balances in the concerned legislation to prevent misuse/abuse of the stringent provisions contained in these Acts. It is also for this reason that the National Security Act which provides for preventive detention has a provision for an Advisory Board as an institutional safeguard to prevent /stop misuse of the detention provisions. Thus, all cases of preventive detention have to be placed before the Advisory Board and the further detention or release of the detainee depends on the opinion of the Advisory Board. COFEPOSA also has similar provisions to check wrongful detention/misuse.

4.7.3 TADA did not have a safeguard mechanism similar to the one provided in the National Security Act. While upholding the constitutional validity of TADA, the Supreme Court suggested the setting up of a Screening or Review Committee. Several States set up Screening Committees comprising senior officers of the Government.

4.7.4 However, POTA provided for constitution of review committees (Section 60).

- (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*

Box 4.3: Review Committees

"In order to ensure higher level of scrutiny and applicability of TADA Act, there must be a Screening Committee or a Review Committee constituted by the Central Government consisting of the Home Secretary, Law Secretary and other Secretaries concerned of the various Departments to review all the TADA cases instituted by the Central Government as well as to have a quarterly administrative review, reviewing the States' action in the application of the TADA provisions in the respective States, and the incidental questions arising in relation thereto. Similarly, there must be a Screening or Review Committee at the State level constituted by the respective States consisting of the Chief Secretary, Home Secretary, Law Secretary, Director General of Police (Law and Order) and other officials as the respective Government may think it fit, to review the action of the enforcing authorities under the Act and screen the cases registered under the provisions of the Act and decide the further course of action in every matter and so on."

Source: Kartar Singh v. State of Punjab, [(1994) 3 SCC 569: AIR 1995 SCC 1726]

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.

4.7.5 From the above, it is evident that Section 60 did not define the powers of these review committees. However, Section 19 gave review powers to these committees (Section 19 deals with notification of terrorist organizations). Further, Section 46 empowered these Committees to review the orders passed by competent authorities under Section 39 under POTA (Section 39 dealt with authorization for interception of communications). Thus, these committees did not have any powers to go into the investigation or prosecution of a case under POTA.

4.7.6 The Law Commission which recommended the 'Prevention of Terrorism Bill, 2000' proposed constitution of a review committee headed by the Chief Secretary, to review all cases at the end of each quarter and give directions as appropriate.

4.7.7 In order to give more teeth to these committees POTA was amended by way of the Prevention of Terrorism (Amendment) Act, 2003 and the following provisions made:

- “(4) Without prejudice to the other provisions of this Act, any Review Committee constituted under sub-section (1) shall, on an application by any aggrieved person, review whether there is a prima facie for proceeding against the accused under this Act and issue directions accordingly.*
- (5) Any direction issued under sub-section (4),-*
 - (i) by the Review Committee constituted by the Central Government, shall be binding on the Central Government, the State Government and the police officer investigating the offence; and*
 - (ii) by the Review Committee constituted by the State Government, shall be binding on the State Government and the police officer investigating the offence.*
- (6) Where the reviews under sub-section (4) relating to the same offence under this Act, have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State Government, under sub-section (1), any direction issued by the Review Committee constituted by the Central Government shall prevail.*
- (7) Where any Review Committee constituted under sub-section (1) is of opinion that there is*

no prima facie case for proceeding against the accused and issues directions under sub-section (4), then, the proceedings pending against the accused shall be deemed to have been withdrawn from the date of such direction.”.

4.7.8 After the repeal of POTA, the Unlawful Activities (Prevention) Amendment Act, 2004 provides for constitution of review committees headed by a person who is or has been a Judge of the High Court. The role of the review committees is however limited to Section 36 which provides for notification/denotification of a terrorist organization.

4.7.9 The Commission is of the view that while stringent legal provisions regarding investigation, bail and trial etc. are necessary for prosecuting persons charged with terrorist acts, it is equally necessary to provide for an effective statutory institutional mechanism to check any misuse / abuse of these provisions. The Commission, therefore, recommends that the proposed new chapter in the NSA should provide for constitution of an independent review committee before which all cases should be placed for review within 30 days of the registration of a case. This Review Committee should carefully examine the evidence collected and other relevant material and come to conclusion whether a prima facie case has been made out against the accused. Such a review should be carried out every quarter till such time that the charge-sheet is filed in the special court constituted to try cases of terrorism. If the Review Committee concludes at any stage that no case exists against the accused, the prosecution will be bound by such a decision. The Review Committee should be chaired by the Home Secretary of the State with the Law Secretary and the Director General of Police as its members.

4.7.10 Recommendation

- a. A statutory Review Committee should be constituted to examine each case registered, within 30 days of its registration. The Review Committee should satisfy itself that a prima facie case has been made out by the investigation agency. This Committee should review each case every quarter.

4.8 Witness Protection

4.8.1 The Commission has examined the issue of witness protection in its Report on Public Order. The Supreme Court of India in its observations in the case of NHRC vs The State of Gujarat (2003) regretted that “no law has yet been enacted for giving protection to witnesses”. Later, the Court while transferring the Best Bakery case (2004) from the Gujarat High Court to Mumbai also ordered protection to the witnesses in the matter. The Apex Court again observed in Zahira Habibullah Sheikh and another vs State of Gujarat and Ors. (2006) 3 SCC 374 that:

“Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to a mockery.”

The need for legislation on the matter was again felt by the Court which stated: *“Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society.”*

4.8.2 In its Report on Public Order, the Commission had observed that the problem with implementing a US type witness protection program in India is that an individual Indian's identity is so inextricably linked with his social milieu and place of origin that it may be practically impossible to extricate him from the same and relocate him with a fresh identity somewhere else in the country. It is also extremely costly. Consequently, witness protection programs of that type and scale may not be feasible except in a small number of very rare cases. Nevertheless, there is need for a statutorily backed witness protection provision.

4.8.3 It needs to be mentioned here that TADA had a provision concerning protection of witnesses (Section 16). Apart from providing for holding of proceedings in camera at the discretion of the Designated Court, it also empowered the Designated Court to take appropriate measures for keeping the identity and address of the witness secret, on its own or on an application made by a witness or the Public Prosecutor. Such measures could, inter alia, include holding of proceedings at a place to be decided by the Court, avoiding mention of the names and addresses of the witnesses in orders/judgments or in records accessible to the public, issuing of directions for not disclosing the identity of witnesses or not publishing the proceedings of the Court. The draft Prevention of Terrorism Bill, 2000 as recommended by the Law Commission also contained similar provisions (Clause 25) with the additions that the Court should be satisfied that the life of the witness is in danger and reasons have to be recorded in writing for such a decision. POTA, 2002 contained similar provisions. ULCAA, 2004 also has similar provisions.

4.8.4 Several measures are adopted to offer some protection to the witnesses and victims during trial.

Use of screen while recording of statement of victim – This is done to ensure that the witness is not overawed by the presence of the accused. Even the Law Commission in its 172nd Report (2000) had recommended such a measure so that the victim or the witness is not confronted with the accused. The Supreme Court of India in *Sakshi vs Union of India*, 2004 observed:

“The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment... The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witness do not have to undergo the trauma of seeing the body or face of the accused”

Recording of statement through video conferencing – This is another method by which a victim may avoid direct confrontation with the accused while adducing evidence.

Providing physical protection to the witnesses/victim: The Courts often direct the police to provide adequate protection to the witnesses/victims.

4.8.5 Witness protection programmes in several developed countries are quite comprehensive and include changing the “identity” of the witness. In a country like India where the bonds of a person to the place where he/she has been living is very strong, giving a new identity to a person could be difficult. But this option should be kept open and be exercised if the witness requests and the court is convinced of the need for such a move.

4.8.6 Another way of protecting the identity of a witness may be by disallowing the accused to see the witness or conceal the witness’s identity. However, this brings to the fore the issue of the right of the accused to cross-examine the witness which would tend to disclose his identity to the accused. The Law Commission had also examined this aspect and it was of the view that this right could not be taken away. The Commission is of the view that in view of the emerging threat to national security, the court may allow the identity of the witnesses to be concealed and instead of cross examination by the accused, carry out such cross examination itself in the rarest of rare cases.

4.8.7 Without going into the details of these measures the Commission would like to reiterate its recommendations in its Report on ‘Public Order’ that *“A statutory programme for guaranteeing anonymity of witnesses and for witness protection in specified types of cases, based on the best international models should be adopted early.”*

4.9 Special Courts

4.9.1 Section 9 of TADA provided for constitution of one or more Designated Courts for the trial of notified cases. Section 17 of TADA provided that the trial of any offence under the Act by such Designated Courts would have precedence over trial of other cases against the accused in any other court and would be concluded in preference to the other cases. The Law

Commission in its 173rd Report had also recommended the constitution of Special Courts for trial of cases. Section 23 of POTA also provided for constitution of Special Courts for trial of cases specified by notification. Further, Section 31 provided that trial of such cases would have precedence over the trial of other cases against the accused in any other court. However, the present law (ULPAA) does away with such Special Courts. Thus, trial of cases presently takes place as in any other criminal case.

4.9.2 The Supreme Court of India had occasion to comment on the principle of speedy trial associated with such Special Courts in the case of Kartar Singh v State of Punjab {(1994) 3 SCC 569: AIR 1995 SCC 1726}. As mentioned earlier, the Apex Court in the referred case was examining the validity of various provisions of TADA, inter alia. In paragraph 83 of their judgment, the Court mentioned that such constitution of Designated Courts etc. postulate the concept of speedy trial. It mentioned that:

“85. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.”

It further mentioned in paragraph 145 that:

“145. ... The provisions prescribing special procedures aiming at speedy disposal of cases, departing from the procedures prescribed under the ordinary procedural law are evidently for the reasons that the prevalent ordinary procedural law was found to be inadequate and not sufficiently effective to deal with the offenders indulging in terrorist and disruptive activities, secondly that the incensed offenses are arising out of the activities of the terrorists and disruptionists which disrupt or are

intended to disrupt even the sovereignty and territorial integrity of India or which may bring about or support any claim for the cession of any part of India or the secession of any part of India from the Union, and which create terror and a sense of insecurity in the minds of the people. Further, the Legislature being aware of the aggravated nature of the offences have brought this drastic change in the procedure under this law so that the object of the legislation may not be defeated and nullified.”

4.9.3 After discussing the arguments advanced for and against setting up of Special Courts, the Court summed up in paragraph 368 that the “challenge on the validity of Section 9 of TADA on the ground of lack of legislative competence has no merit.” It went on to conclude that:

“369. Keeping in view the doctrine of ‘speedy trial’ which is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution and which concept is manifested in the Special Courts Act, 1984 and TADA Act, 1987, the Designated Courts should dispose of the cases pending before them without giving room for any complaint of unreasonable delay. The Government concerned should ensure that no vacancy of Presiding Officer of the Designated Court remains vacant and should take necessary steps to fill up the vacancy as soon as any vacancy arises and also if necessitated, should constitute more Designated Courts so that the under trials charged with the provisions of TADA do not languish in jail indefinitely and the cases are disposed of expeditiously.”

4.9.4 The Commission is also of the view that the new law should include provisions for constitution of Special Courts to expeditiously try terrorism related offences. These Special Courts should be well equipped and fully staffed with personnel including presiding officers and prosecutors who should be specially trained to handle terrorism related cases. Presiding Officers and Prosecutors for such courts should be carefully selected on the basis of their integrity, independence, professional competence and track record. Since terrorist incidents are relatively few and far between and geographically dispersed, instead of setting up permanent special court/courts in every State it would be more appropriate and useful to set up fast track courts for trial of such offences. Other specific provisions related to such Special Courts may also be incorporated.

4.9.5 Recommendation

- a. Provisions for constitution of Special Fast Track Courts exclusively for trial of terrorism related cases may be incorporated in the law on terrorism. Other specific provisions related to such Special Courts may also be incorporated. Such Courts may be set up as and when required.

4.10 Possession of Arms etc.

4.10.1 Section 5 of TADA had made possession of any arms and ammunition which were 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, an offence. The Law Commission in its 173rd Report had also retained this provision (Clause 4). POTA retained and expanded the scope of this provision. Thus, Section 4 had two separate paragraphs, (a) and (b) – while paragraph (a) applied to persons in unauthorized possession of certain arms and ammunition specified in Arms Rules, 1962, in a notified area, paragraph (b) on the other hand was applicable in case of persons in unauthorized possession of not only bombs and dynamite but also hazardous explosive substances, weapons of mass destruction or biological or chemical substances of warfare in any area, whether notified or not. Under POTA, a person having unauthorised possession of these objects in both the cases was guilty of terrorist act punishable with a term extending to life imprisonment. The State Government was empowered to specify 'notified areas' by way of notification in the Official Gazette.

4.10.2 Such a provision is not present in the ULCAA. The Commission is of the considered view that the deterrent effect of having such a provision, which is applicable in some instances to both notified and non-notified areas is substantial. Thus, the new legal provisions on terrorism should include a provision to this effect.

4.10.3 Recommendation

- a. **Provision for penalizing unauthorized possession of certain specified arms and ammunition in notified areas and unauthorized explosive substances, weapons of mass destruction and biological or chemical substances of warfare in notified as well as non-notified areas, may be incorporated in the law on terrorism.**

4.11 A Federal Agency to Investigate Terrorist Offences

4.11.1 The Commission has examined this issue in detail in its Report on 'Public Order' and observed as follows:

"8.3.11 The Commission notes that all the offences proposed to be included in the category of so called 'Federal Crimes' are already included as offences under the Indian penal laws.

However, as the gravity and complexity of such offences have increased, it would be necessary to put in place appropriate procedures for dealing with such offences. This would necessitate the enactment of a new law to deal with a category of offences which have inter-state and national

ramifications. This would also facilitate their investigation by a specialised State or Central agency. The following offences may be included in the proposed new law:

- *Organised Crime*
- *Terrorism*
- *Acts threatening national security*
- *Trafficking in arms and human beings*
- *Sedition*
- *Major crimes with inter-state ramifications*
- *Assassination (including attempts) of major public figures*
- *Serious economic offences*

8.3.12 The Commission agrees with the approach suggested by the Padmanabhaiah Committee that such crimes should be investigated by a specialised wing in the Central Bureau of Investigation. Entry 8 of List I deals with 'Central Bureau of Intelligence and Investigation'. The Central Bureau of Investigation presently functions as a Special Police Establishment under the Delhi Special Police Establishment Act, 1946 as amended from time to time.

8.3.13 Most of the offences mentioned in para 8.3.11 are of a relatively recent origin and the state police with its restricted territorial jurisdiction and limited resources is likely to find it difficult to investigate such crimes effectively. Even though "Police" and "Public Order" figure in the State List in the Constitution, it is felt that this category of crimes with inter-state and national ramifications would fall under the 'residuary' powers of the Union. The Commission learns that the need for a separate law for CBI was considered on earlier occasions during 1986-89 and a draft Bill was prepared. The Commission is of the view that enactment of a law using the 'residuary powers' and Entry 8, List I, to define the constitution of CBI, its structure and jurisdiction is overdue and has to be enacted expeditiously. The changes made in the Delhi Special Police Establishment Act in 2003 should also be incorporated in the new law. Under the new law, the State Police as well as the CBI could be given concurrent jurisdiction over investigation of all such crimes. The empowered committee recommended for monitoring serious economic offences in this Commission's Report on 'Ethics in Governance' (para 3.7.19) may decide on the transfer of such cases to the CBI. Once the CBI takes over a case, investigation by the State Police would cease but the latter will be required to provide assistance to the CBI as may be needed. These offences should be tried by specially designated courts.

8.3.14 *Recommendations:*

- a. *There is need to re-examine certain offences which have inter-state or national ramification and include them in a new law. The law should also prescribe the procedure for investigation and trials of such offences. The following offences may be included in this category:*
1. *Organised Crime (examined in paragraph 8.4)*
 2. *Terrorism*
 3. *Acts threatening national security*
 4. *Trafficking in arms and human beings*
 5. *Sedition*
 6. *Major crimes with inter-state ramifications*
 7. *Assassination of (including attempts on) major public figures*
 8. *Serious economic offences*
- b. *A new law should be enacted to govern the working of the CBI. This law should also stipulate its jurisdiction including the power to investigate the new category of crimes.*
- c. *The empowered committee recommended in the Commission's Report on 'Ethics in Governance' (para 3.7.19) would decide on cases to be taken over by the CBI.*

Box 4.4: Federal Agency for Combatting Terrorism

16.9.16.1. The Committee is of the view that the internal threats posed by divisive forces are equally important as external aggressions and that technology has facilitated the exponential escalation of the danger and threat levels posed by organized crimes and terrorism. Therefore, they should be dealt with very stringently and while doing so, prevention of incidents which threaten the security of our nation should be given prime thrust and priority. In this regard, the Committee strongly feels that the Central Government should be given adequate powers to take prompt and effective action on the intelligence available to them. The Committee is of the opinion that in order to ensure proper management and prevention of such incidents which threaten the security of the nation, the CBI should be envisaged as an enforcement agency also which would mean that apart from investigation and prosecution, CBI should be given mandate to ensure prevention of crimes. The Committee recommends that a separate Anti-Terrorism Division should be created in the CBI.

Source: <http://164.100.47.5:8080/committeereports/reports/EnglishCommittees/Committee%20on%20Personnel,%20PublicGrievances,%20Law%20and%20Justice/24th%20Report%20-%20Working%20of%20CBI.htm>

4.11.2 The Parliamentary Standing Committee for Personnel, Public Grievances and Law and Justice, in its Twenty Fourth Report, proposed reconstituting the CBI as Central Bureau of Intelligence and Investigation, by creating a separate Anti-Terrorism Division (Box 4.4), and a mechanism for transfer of investigation in major cases such as terrorism to the

CBI. The Commission has already recommended creation of such a mechanism in its Report on 'Public Order' as highlighted above.

4.11.3 The Commission is also of the view that mere setting up of new agencies and structures would not suffice unless such agency/agencies are staffed by personnel whose integrity and independence cannot be doubted, who are professionally competent and have developed the required expertise in investigation of terrorism related offences. The autonomy and independence of such agency should be ensured through a laid down procedure of appointment and assured tenure of its personnel.

4.11.4 Recommendations

- a. The Commission would like to reiterate the recommendations made in its Report on 'Public Order' (paragraph 8.3.14) on the creation of a specialized Division in the CBI to investigate terror offences.
- b. It should be ensured that this Division of the CBI is staffed by personnel of proven integrity and who are professionally competent and have developed the required expertise in investigation of terrorism related offences. The autonomy and independence of this agency may be ensured through a laid down procedure of appointment and assured fixed tenure for its personnel.

4.12 The Commission has already recommended in paragraph 4.1.6.9 above that the legal provisions to deal with terrorism could be incorporated in a separate chapter in the National Security Act, 1980 (NSA). Accordingly, various recommendations made in this chapter on different aspects of the legal framework to deal with terrorism may be incorporated in the National Security Act.

5.1 Introduction

5.1.1 Terrorist activities in most cases require substantial financial support. Such activities generally involve the propagation of an ideology advocating militant action to achieve their goals, increasing the number of devoted followers willing to carry out militant action in furtherance of such goals, acquisition of and training in use of arms and explosives, planning and execution of such militant action etc. All these necessarily require significant funding. Apart from the proceeds of illegal operations, such funding could be sourced even from the proceeds of lawful activities. Supporters of a militant ideology could well make financial contributions to terrorist organizations from their known sources of income. Such contributions could also be made to some non-profit or charitable institutions acting as a front for terrorist organizations, knowingly or un-knowingly. Funds may also be provided to such front organizations by laundering the proceeds of crime. In fact, terrorist organizations could also finance their activities by either resorting to or working in concert with cartels involved in drug trafficking, smuggling etc. – without having to resort to money-laundering per se. Funding could also involve counterfeiting of currency. In all the scenarios mentioned above, the end result is that money reaches the persons involved in carrying out terrorist acts. This brings into focus the crucial issue of transfer of funds – both within and without the national boundaries. International organized crime makes use of a wide range of methods and networking to transfer funds with a view to launder the proceeds of crime. Many of these methods are utilized by terrorist organizations in order to transfer funds required for financing their activities. Apart from using the facilities provided by international trade, such organizations also take recourse to bulk cash smuggling and use of informal channels of transfer of money (like hawala). This is the reason that internationally, there has been a tendency to merge the anti-money laundering and counter-terrorist finance (AML/CTF) regimes. However, two features distinguish the activities related to money laundering operations with those related to financing of terrorist activities, which have a bearing on the nature of strategy to be adopted in a counter-terrorist finance regime. These are:

- a. In case of money laundering, the activity begins with the generation of proceeds from unlawful activities/crime and ends with their conversion into legal assets

(movable or immovable). On the other hand, financing of terrorist activities could be from legal or illegal funds and it culminates when it reaches the perpetrators of a terrorist act. Even if it involves money laundering activity in between, the money trail has to continue to its final destination. This widens the scope of investigation in cases involving terrorist finance.

- b. In the case of money laundering, even if the proceeds of unlawful activities/crime get 'laundered', enforcement authorities could undo the effect on the basis of post-facto investigation. In case of terrorist finance, once the finance chain is completed and an act of terrorism has taken place, post facto investigation is limited to generating evidence leading to conviction of the perpetrators; loss of life and damage to property and public confidence is already done.

It follows from the above that the law enforcement and investigation regime has to be wider in scope while dealing with terrorist finance as compared to money laundering operations. Further, in dealing with financing of terrorist activities, the emphasis has to be more on obstructing such activities while in progress. The success and failure of a counter-terrorist finance regime would thus depend on the manner in which these two elements are incorporated in its strategy.

5.1.2 The main planks of a strategy to deal with the financial aspects of terrorist activities tend to involve:

- i. Asset recovery and obstruction powers
- ii. Legal penalties against persons/organizations involved in financing terrorism
- iii. Adoption of diligent customer identification programmes and standard record keeping procedures by financial institutions/agencies
- iv. Reporting of suspicious financial activity by individuals and institutions
- v. Anti-money laundering measures
- vi. Capacity building and coordination mechanisms between agencies involved
- vii. International cooperation

To highlight the issues involved in dealing with financing of terrorism, the Commission studied the measures taken in the US and UK in their fight against terrorism and the prevalent set-up in India. The discussion, for the sake of convenience, is organized under two separate

heads, viz. 'anti-money laundering measures and due diligence in the financial system' and 'measures to block the flow of funds for financing of terrorist activities'.

5.2 Anti Money-laundering Measures and Due Diligence in the Financial System

5.2.1. USA: In the USA, these measures could be categorized as those taken before the events of September 11, 2001 and those undertaken thereafter.

Measures undertaken before September 11, 2001

5.2.1.1. Anti-money laundering provisions are included in 'The Money-Laundering Control Act of 1986' and are contained in Sections 1956 and 1957 of Chapter 95 of Part I of Title 18 of the US Code. Section 1956 pertains to laundering of monetary instruments while Section 1957 pertains to engaging in monetary transactions in property derived from specified unlawful activities. The following constitutes the offence of money-laundering under Section 1956:

- (i) With regard to property involved in any financial transaction, the conduct or attempt to conduct a financial transaction which involves the proceeds of specified unlawful activity –
 - (a) with the intent to promote the carrying on of that activity; or
 - (b) with the intent to violate certain tax evasion provisions of the Internal Revenue Code; or
 - (c) knowing that the transaction is designed to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of such activity; or
 - (d) knowing that the transaction is designed to avoid a reporting requirement under any law.
- (ii) Transportation, transmission, transfer of a monetary instrument or funds or attempt to undertake such activity from a place in the US to or through a place outside the US or vice versa:
 - (a) with the intent to promote the carrying on of specified unlawful activity;
 - (b) knowing that such instrument or funds represent the proceeds of such activity and knowing that such transportation, transmission or transfer is

designed either to conceal or disguise the nature, the location, the source, the ownership or control of the proceeds of such activity;

- (c) to avoid a reporting requirement under any law;
- (iii) Conduct or attempt to conduct a financial transaction involving property represented to be proceeds of specified unlawful activity or property used to conduct or facilitate such activity with the intent:
 - (a) to promote the carrying on of specified unlawful activity;
 - (b) to conceal or disguise the nature, the location, the source, the ownership or control of the proceeds of such activity;
 - (c) to avoid a reporting requirement under any law.

5.2.1.2 From the above, it is evident that the US law lays stress on financial transactions involved in promoting specified unlawful activity; perpetrating tax evasion; concealing the nature, location, source, ownership or control of proceeds of specified unlawful activity; avoiding transaction reporting requirements under different laws; actual transportation, transmission or transfer of instruments or funds from or to the United States as related to specific unlawful activities and property transactions for the same purpose. Financial transaction has been defined in Section 1956 to mean:

- (A) a transaction which in any way or degree affects interstate or foreign commerce –
 - (i) involving the movement of funds by wire or other means, or
 - (ii) involving one or more monetary instruments, or
 - (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft,
or
- (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

The predicate offences²¹ which are covered under this Act have a very wide span.

Measures undertaken after September 11, 2001:

²¹predicate offence' means any criminal offence by way of which the proceeds used in money-laundering were generated

5.2.1.3 *The 'Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001'*: This significant piece of legislation contains a number of provisions related to financial transactions and terrorist activities. Some of these are being described below:

- i. Interception of wire, oral and electronic communications relating to terrorism (Section 201): Law enforcement authorities in the US may intercept wire, oral or electronic communications under a judicially supervised procedure. However, this authority is only available in connection with the investigations of specifically designated serious crimes. Section 201, inter alia, adds to the list the offences of (a) engaging in financial transactions with the government of a country which is designated as country supporting international terrorism (18 USC 2332d) and (b) providing material support (including any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, or financial services) to terrorists (18 USC 2339A) or terrorist organizations (18 USC 2339B).²²
- ii. International Money Laundering Abatement and Financial Anti-terrorist Act (Title III): Title III of the USA PATRIOT Act emerged out of certain congressional findings. Briefly, these were (Section 302):
 1. money laundering provides the fuel that permits transnational criminal enterprises to conduct and expand their operations,
 2. money laundering and the defects in financial transparency are critical to the financing of global terrorism,
 3. legitimate financial mechanisms and banking relationships are subverted by the money launderers to move the proceeds of crime,
 4. certain national jurisdictions offer 'offshore' banking and related facilities which are designed to provide anonymity. Coupled with weak supervisory and enforcement regimes, these are suited to the movement of funds related to narcotics trafficking, terrorism, etc. They also pose challenges to tracking the trail of money.

5.2.1.4 *The main provisions of Title III are as follows*²³:

- (i) Special measures targeted towards international primary money laundering issues (Section 311): The Secretary of Treasury is authorized to require domestic financial

²² This has been made permanent under the USA PATRIOT Improvement and Reauthorization Act, 2005 (Section 102(a))

²³ Source: USA PATRIOT ACT 2001; aid has been taken of 'Terrorism: Section by Section Analysis of the USA PATRIOT Act, CRS Report for the Congress

- institutions and agencies to take 'special measures' upon finding that (a) a jurisdiction outside the US, or (b) a financial institution outside the US, or (c) a class of transactions involving a jurisdiction outside the US, or (d) a type of account is of primary money laundering concern. Such 'special measures' involve (1) recordkeeping and reporting of certain transactions, including format of such records and reports, information regarding identity and addresses of participants and originator of funds, legal capacity of participants, identity of beneficial owner of funds etc. (2) obtaining and retaining beneficial ownership of any account of a foreign person or his representative (3) identification of customers and obtaining information comparable to domestic institutions in case foreign financial institutions which are permitted to use payable-through accounts in the US or in case of such institutions who have correspondent accounts in the US. (4) prohibition or attaching conditions to opening or maintaining of correspondent accounts. In arriving at such finding, the Secretary of the Treasury shall consult with the Secretary of State and the Attorney General.
- (ii) Section 312 requires every financial institution with a private banking or correspondent account for a foreign person or bank to establish controls to detect and report money laundering.
 - (iii) Section 313 prohibits US banks, foreign banks and branches operating in the US and others from maintaining correspondent accounts for foreign shell banks.
 - (iv) Section 315 includes bribery of a public official etc. to the list of offences under foreign law, the proceeds of which may form a federal money laundering prosecution.
 - (v) Section 317 provides jurisdiction over foreign persons, including financial institutions under 18 USC 1956 and 1957, provided there is a valid service of process and the offence involves a transaction in the US or the property has been the subject of a forfeiture judgment or a criminal sentence.
 - (vi) Section 318 amends 18 USC 1956 to cover laundering money through a bank.
 - (vii) Section 326 requires minimum standards to be prescribed for financial institutions to identify their customers.
 - (viii) Section 352 requires each financial institution to develop an anti-money laundering programme. Sections 351, 356, 359 extend the Suspicious Activity Reporting Regime.

- (ix) Section 361 institutionalises the Financial Crimes Enforcement Network (FinCEN) as a statutory bureau in the Treasury Department.

5.2.1.5 Thus, the USA PATRIOT Act, 2001 is basically an exercise in capacity building in order to create an information-rich environment enabling the law enforcement agencies to effectively trace and obstruct terrorist finance and protect the financial systems from money laundering and terrorist abuse. Thus, the focus is now on protecting the financial system from abuse through customer identification programmes, maintenance of records by financial institutions and reporting of suspicious transactions to FinCEN.

5.2.1.6 Section 405 of Title IV of USA PATRIOT Improvement and Reauthorization Act, 2005 makes money laundering through hawalas an offence by incorporating it into Section 1956 of 18 USC.

Additional provisions for dealing with money laundering

5.2.1.7 Presently, apart from the reporting regime administered by FinCEN, information on financial transactions is also provided by financial institutions, their regulators and certain offices within the Department of Treasury to the Internal Revenue Service, Bureau of Customs and Border Protection, Bureau of Immigration and Customs Enforcement, US Secret Service, FBI, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Drug Enforcement Administration (DEA), which take action as per their own codes and charters.²⁴ In case of investigations related to money laundering, the agencies authorized to investigate into violations of Sections 1956 and 1957 as described above, are such components of (a) Department of Justice as the Attorney General may direct, (b) Department of the Treasury as the Secretary of the Treasury may direct and (c) with respect to offences over which the United States Postal Service has jurisdiction, the Postal Service. The authority has to be exercised on the basis of an agreement between the three offices. Further, offences related to pollution may be investigated by the Department of Justice and the National Enforcement Investigations Center of the Environment Protection Agency [Sections 1956(e) and 1957 (e)]. This list of authorized agencies has now been expanded vide Section 403 of Title IV of USA PATRIOT Improvement and Reauthorization Act, 2005 by inserting the phrase 'with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct' and consequently, the aforesaid agreement is now to be entered into by four parties.

5.2.1.8 The Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), Internal Revenue Service-Criminal Investigation (IRS-CI) and Drug Enforcement

Authority (DEA) are the main US agencies involved in the fight against money laundering. The following Table gives details of results achieved by them in the years 2003 to 2005:

Table : 5.1 Anti-Money Laundering Statistics (USA)

Agency	Action	FY 2003	FY 2004	FY 2005
FBI	Arrests	342	353	253
	Convictions	512	459	440
DEA (Office of Financial Operations)	Investigations	236	253	319
	Arrests	76	112	156
IRS-CI	Investigations initiated	1590	1789	1639
	Indictments/Informations	1041	1304	1147
	Sentenced	667	687	782
ICE (under 18 USC 1956 and 1957)	Arrests	314	421	340
	Indictments	360	499	378
ICE (bulk cash smuggling under 31 USC 5332)	Arrests	87	58	32
	Indictments	124	133	75
	Convictions	125	142	101

Source : Appendix B: Anti-Money Laundering Statistics; 2007 National Money Laundering Strategy, USA

5.2.2 UK: The United Kingdom has also put in place a sound anti-money laundering system. This includes²⁵:

- i. legal provisions outlawing money laundering
- ii. application of financial safeguards by industry

Some of the measures taken are outlined below:

5.2.2.1 *Legal provisions outlawing money laundering*

5.2.2.1.1 The Proceeds of Crime Act 2002 (POCA) provides for a single set of money laundering offences, applicable throughout the UK to proceeds of all crimes. Thus, law enforcement agencies no longer need to show that illicit money has been derived from one particular kind of crime.²⁶ Some of the offences mentioned in Part 7 of POCA which deals with money laundering, are as follows:

Section 327: Concealing etc.

- (1) *A person commits an offence if he –*

²⁵The Financial Challenge to Crime and Terrorism'; HM Treasury, February, 2007

²⁶ *ibid*

- (a) *conceals criminal property;*
 - (b) *disguises criminal property;*
 - (c) *converts criminal property;*
 - (d) *transfers criminal property;*
 - (e) *removes criminal property from England and Wales or from Scotland or from Northern Ireland.*
- (2) *But a person does not commit such an offence if-*
- (a) *he makes an authorized disclosure under section 338 and {if the disclosure is made before he does the act mentioned in subsection (1)} he has the appropriate consent;*
 - (b) *he intended to make such a disclosure but had a reasonable excuse for not doing so;*
 - (c) *the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.*
- (3) *Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.*

Section 328: Arrangements

- (1) *A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.*
- (2) *But a person does not commit such an offence if-*
- (a) *he makes an authorized disclosure under section 338 and {if the disclosure is made before he does the act mentioned in subsection (1)} he has the appropriate consent;*
 - (b) *he intended to make such a disclosure but had a reasonable excuse for not doing so;*
 - (c) *the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.*

Section 329: Acquisition, use and possession

- (1) *A person commits an offence if be-*
 - (a) *acquires criminal property;*
 - (b) *uses criminal property;*
 - (c) *has possession of criminal property.*
- (2) *But a person does not commit such an offence if-*
 - (a) *he makes an authorized disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;*
 - (b) *he intended to make such a disclosure but had a reasonable excuse for not doing so;*
 - (c) *he acquired or used or had possession of property for adequate consideration;*
 - (d) *the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.*
- (3) *For the purposes of this section –*
 - (a) *a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;*
 - (b) *a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;*
 - (c) *the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.*

5.2.2.1.2 The penalties for such offences are provided as under:

Section 334: Penalties

- (1) *A person guilty of an offence under section 327, 328 or 329 is liable –*
 - (a) *on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or*

- (b) *on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.*

5.2.2.1.3 Definitions applicable to this part are:

Section 340: Interpretation

- (1) *This section applies for the purposes of this Part.*
- (2) *Criminal conduct is conduct which -*
 - a) *constitutes an offence in any part of the United Kingdom, or*
 - b) *would constitute an offence in any part of the United Kingdom if it occurred there.*
- (3) *Property is criminal property if -*
 - a) *it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and*
 - b) *the alleged offender knows or suspects that it constitutes or represents such a benefit.*
- (4) *It is immaterial -*
 - a) *who carried out the conduct;*
 - b) *who benefited from it;*
 - c) *whether the conduct occurred before or after the passing of this Act.*
- (5) *A person benefits from conduct if he obtains property as a result of or in connection with the conduct.*
- (6) *If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.*
- (7) *References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.*
- (8) *If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.*

- (9) *Property is all property wherever situated and includes –*
- a) money;*
 - b) all forms of property, real or personal, heritable or moveable;*
 - c) things in action and other intangible or incorporeal property.*
- (10) *The following rules apply in relation to property –*
- a) property is obtained by a person if he obtains an interest in it;*
 - b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;*
 - c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;*
 - d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).*
- (11) *Money laundering is an act which –*
- a) constitutes an offence under section 327, 328 or 329,*
 - b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),*
 - c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or*
 - d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.*

5.2.2.1.4 Thus, with one stroke, POCA ‘opens up new legal avenues to prosecute those associated with criminal finance and to deprive them of any benefit they might enjoy from criminal assets’²⁷. It has been claimed that POCA “delivers one of the world’s most powerful legal tools against money laundering.”²⁸

5.2.2.2 *Application of financial safeguards by industry*

5.2.2.2.1 These involve procedural mechanisms and monitoring measures to be adopted by

²⁷ibid
²⁸ ibid

players in the financial system. The Money Laundering Regulations 2007 provides that due diligence measures be undertaken in the case of customer identification; record-keeping, procedures and training; supervision and registration of high value dealers, money service businesses and trusts or company service providers; etc. These Regulations apply to (i) credit institutions, (ii) financial institutions, (iii) auditors, insolvency practitioners, external accountants and tax advisers, (iv) independent legal professionals, (v) trust or company service providers, (vi) estate agents, (vii) high value dealers, and (viii) casinos.²⁹ Thus, a very wide spectrum of service providers is covered under these Regulations. The information is to be provided to the UK FIU, (which is now a unit housed within Serious Organised Crime Agency), which in turn analyses the information and makes it available to law enforcement agencies. The FIU also has a specialized Terrorist Finance Team.³⁰

5.2.2.2.2 Further, in case of persons convicted for certain serious offences, the Court may make a Financial Reporting Order under Section 76 of the Serious Crime and Police Act 2005 which requires continuous disclosure of financial records provided the court is satisfied that the risk of the offender committing another such offence is 'sufficiently high'.

5.2.2.2.3 POCA also contains provisions for making confiscation orders in cases where the offender has been convicted under any other law. Under these orders, the offender is required to pay back the value of the benefit derived from a given crime. As mentioned earlier, it is not necessary under POCA to link a particular crime with a particular benefit. Further, provisions for making Restraint Orders are also available in POCA to prevent the disposal or disappearance of property that may ultimately need to be sold to satisfy a confiscation order.³¹

5.2.3 Measures in India

5.2.3.1 *Anti money-laundering measures*

5.2.3.1.1 The provisions related to money laundering are contained in the Prevention of Money-Laundering Act, 2002 (PMLA) as amended by the Prevention of Money-Laundering (Amendment) Act, 2005. As per Section 2(p) of the PMLA, money-laundering has the meaning assigned to it in Section 3 of the Act which defines the offence of money-laundering as follows:

“Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-launder.” (emphasis added)

5.2.3.1.2 Thus, money-laundering is confined to activities/offences connected with 'proceeds of crime'. 'Proceeds of crime' has been defined in Section 2(u) of the Act to mean any property

²⁹Regulation 3(1), The Money Laundering Regulations 2007

³⁰The Financial Challenge to Crime and Terrorism'; HM Treasury, February, 2007

³¹The Financial Challenge to Crime and Terrorism'; HM Treasury, February, 2007

derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a 'scheduled offence' or the value of any such property. 'Scheduled offence' has been defined in Section 2(y) to mean the offences specified under Part A of the Schedule to the Act or those offences specified under Part B of the Schedule to the Act, if the total value involved in such offences is thirty lakh rupees or more.

5.2.3.1.3 Money-laundering will be an offence under the Act only if it relates to any activity connected with the proceeds of crime which find mention in the Schedule to the Act. Transactions not related to these scheduled crimes will be beyond the purview of the Act. Further, such activity connected with the proceeds of crime should be projected as untainted property to come under the purview of this Act. Although 'property' has been defined in the Act, the term 'untainted' has been left open for interpretation. It is apparent that the effectiveness of this Act is dependent on the inclusions and exclusions in the Schedule to the Act. The Schedule has two parts viz. Part A and Part B. Part A consists of Paragraph 1 which describes certain offences under the Indian Penal Code. Paragraph 2 contains certain offences under the NDPS Act, 1985. Part B of the Schedule contains 5 Paragraphs which pertain to offences under the IPC; the Arms Act, 1959; The Wildlife (Protection) Act, 1972; The Immoral Traffic (Prevention) Act, 1956 and The Prevention of Corruption Act, 1988 respectively. A glance at the offences listed in the Schedule reveals that offences related to organised crime and racketeering; terrorism, including terrorist financing; trafficking in human beings; illicit trafficking in stolen and other goods; fraud, especially financial frauds; counterfeiting and piracy of goods; smuggling and insider trading and capital market manipulations etc. are not listed therein. This limits the effectiveness of the Act as far as dealing with complex money laundering and terrorist financing operations is concerned.

5.2.3.1.4 Even the offences mentioned in the Schedule have various short-comings in the present scope of the application of the law. Thus, Paragraph 2 of Part A of the Schedule lists out Sections 15, 18, 20, 22, 23, 24, 25A, 27A and 29 of the NDPS Act, 1985 while leaving Section 21 of the same Act untouched which deals with punishment for contravention in relation to manufacture, possession, sale, purchase, transport, interstate trade or use of 'manufactured drug' or any preparation thereof. It may be mentioned here that this is one of the major areas of criminal activities related to offences under the NDPS Act attracting punishment in the form of rigorous imprisonment for a term not less than 10 years.

5.2.3.1.5 Similarly, paragraph 4 of Part B of the Schedule lists out offences described in Sections 5, 6, 8 and 9 of the Immoral Traffic (Prevention) Act, 1956 but conspicuously leaves offences contained in Sections 3 & 4 of this Act which relate to keeping a brothel and living on the earnings of prostitution. The omission of this section from the purview of the PMLA removes the proceeds of crime related to this area from the pale of money-laundering legislation.

5.2.3.1.6 In the same vein, paragraph 5 of Part B of the Schedule lists out offences contained in Sections 7 to 10 of the Prevention of Corruption Act, 1988 but significantly, leaves out the provisions of Section 13 which pertain to criminal misconduct by public servants. The provisions therein cover cases of habitual offence and more importantly, cases of 'property disproportionate to known sources of income'. Sections 7 to 10 deal with offences related to taking gratification other than legal remuneration in respect of an official act, or to influence a public servant or for exercise of personal influence with a public servant or abetment by a public servant in some cases. Once the provisions related to offences pertaining to acquisition of 'property disproportionate to known sources of income' have become divorced from the list of predicate offences, the PMLA would be attracted only if the nexus between a laundered property and any particular predicate offence is established, an arduous task in itself. As Part B of the Schedule pertains to offences which would attract the provisions of the PMLA only if transactions are equal to or more than Rs.30 lacs, to pin down any particular property as laundered property associated with offences coming under Sections 7 to 10 and involving transactions of Rs 30 lakhs or more would be rather difficult.

5.2.3.1.7 Apart from the lacunae in the scope and application of the law in the present Act, there are also some procedural enforcement issues which could impinge on the overall effectiveness of the Act. These are discussed in the following paragraphs.

5.2.3.1.8 *Attachment of property involved in money-laundering:* Section 5(1) of the Act empowers the appropriate authority to provisionally attach property which he has reason to believe are related to proceeds of crime, provided the possessor of the property has been charged of having committed a Scheduled offence (Part A and Part B of the Schedule as mentioned *supra*). But, the proviso mentions that “no such order of attachment shall be made unless, in relation to an offence under:

- (i) Paragraph 1 of Part A and Part B of the schedule, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or
- (ii) Paragraph 2 of Part A of the schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of Section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).”

Thus, except for offences under the NDPS Act, 1985, action regarding attachment of property under PMLA in case of all other offences finding mention in the Schedule can only be initiated when proceedings under Section 173 of the CrPC have been completed. Section 173 of the Cr.P.C. casts a mandatory obligation on a police officer to file a report on completion of investigation. This Section mentions that:

- “(1) Every investigation under this Chapter shall be completed without unnecessary delay.*
- (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government”. (emphasis added)*

This would mean that no action for attachment of any property, which is believed to be related to the proceeds of crime, can be initiated until the offence is registered with the police, investigation has been completed by the competent authority and a report to that effect has been made to the Magistrate.

5.2.3.1.9 *Search and Seizure etc.:* Section 17(1) of the Act empowers the Director (appointed under Section 49 of the Act) to authorize any officer subordinate to him to carry out search and seizure proceedings if he has reason to believe that any person has committed an act, which constitutes money-laundering or is in possession of proceeds of the crime or records related to money-laundering. But the proviso to this Section lays down the same pre-conditions as mentioned in Section 5(1) above meaning thereby that the requirements of Section 173 of the CrPC have to be fulfilled before any search could be conducted.

5.2.3.1.10 Attachment of assets and search and seizure action are the two means by which proceedings can be initiated under the PMLA and both these proceedings are encumbered by the provisions of Section 173 of CrPC. Thus, these proceedings will remain non-starters until and unless a complaint has been lodged with the respective authorities and a report has been submitted to the Magistrate.

5.2.3.1.11 Once the proceedings under the PMLA have been initiated, the appropriate authorities are required to file a complaint before the adjudicating authority within a period of 30 days. The adjudicating authority will then decide whether such property is involved in money-laundering. If it confirms such attachment, then such attachment or retention of the seized property or record shall -

- “(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and*
- (b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.”*

The order of attachment of any property or retention of the seized property or record will become final only after the guilt of the person is proved in the trial court and the order of such

trial court becomes final. Thus, the punishment under this Act is predicate on conviction under the offences mentioned in the Schedule to the Act.

5.2.3.1.12 It is understood by the Commission, that Government of India, Ministry of Finance, has already taken cognizance of most of these infirmities in the Act and is proposing to introduce amendments to include offences under the SEBI Act, the Customs Act and those related to counterfeiting and printing of currency as well as offences covered under Section 21 of Narcotic Drugs and Psychotropic Substances Act, Section 12 of Prevention of Corruption Act and offences under Sections 10, 11, 13, 15 to 21, and 38 to 40 of the Unlawful Activities (Prevention) Amendment Act. The Commission would urge that the Bill containing these amendments, which will substantially strengthen the country's ability to fight the menace of money laundering, be expeditiously placed before Parliament.

5.2.3.1.13 As mentioned earlier, although the law enforcement agency (i.e. the Directorate of Enforcement) has been empowered to attach property and conduct search and seizure operations in relation to money laundering activities, except in the case of offences under the Narcotic Drugs and Psychotropic Substances Act, such action under Section 17(1) of the Act can only take place after the submission of the completion report of investigation under Section 173 of CrPC to the Magistrate with regard to the offences mentioned in the Schedule to the PMLA. However, in many cases, waiting for the investigation to be completed by the police officer and filing of the report by him could provide ample opportunities for obliterating the money laundering trail, destruction of evidence, movement of assets etc. Thus, the Commission is of the view that there is a case for advancement of the stage at which the search & seizure action or attachment of property could be undertaken under the PMLA, especially in cases which may have wider ramifications. Nonetheless, while allowing for the same, adequate safeguards may also be provided in the Act in order to reduce the scope for any possible misuse.

5.2.3.2 *Investigation of Money Laundering Offences:* The Prevention of Money Laundering Act incorporates two sets of measures to counter money laundering: (i) it describes the power and authority available with the officers enforcing the law; and (ii) it also provides for a transaction reporting regime which is administered by a separate financial intelligence unit. The Directorate of Enforcement is the law enforcing agency in the case of PMLA. It draws its strength from officers with proven investigative and related skills from various Services, for example the Income-tax, Customs and Police, etc. through an objective selection mechanism for all officers above the rank of Deputy Director. The Enforcement Directorate enforces the law through its 22 offices across the country, including 10 zonal offices. The present composition and structure of the Directorate of Enforcement is sound but it may be examined whether institutional coordination mechanisms between the Directorate of Enforcement and other

intelligence collecting and coordinating agencies, could be strengthened and some provisions of the PMLA delegated to them with the Enforcement Directorate, of course, remaining the nodal agency.

5.2.3.3 *Financial Intelligence Unit*

5.2.3.3.1 After the PMLA was brought into force from 1st July, 2005, the reporting regime with regard to financial transactions as envisaged in the Act also came into force. This also led to the creation of the Indian Financial Intelligence Unit (FIU-IND). The formats for the reporting transactions to the FIU-IND were notified by March, 2006. Reporting could start only in the financial year 2006-07.³² The regulations include maintenance of record of prescribed transactions, furnishing information to FIU-IND in the prescribed format, and verification of clients in the prescribed manner. Every reporting entity is required to furnish to FIU-IND, inter alia, monthly information relating to cash transactions of value of rupees ten lakhs or its equivalent in foreign currency, series of integrated cash transactions valued below rupees ten lakhs or equivalent foreign currency taking place in a month; information on transactions which appear to be complex or which raise the suspicion of involving proceeds of crime, within seven days of being satisfied regarding this etc. FIU-IND analyses these reports and disseminates the information to appropriate enforcement/intelligence agencies.³³ The recipients of such information are the Ministry of Home Affairs, Research & Analysis Wing, Intelligence Bureau, National Security Council Secretariat, Central Board of Direct Taxes, Central Board of Excise & Customs, Directorate of Enforcement, Narcotics Control Bureau, Central Bureau of Investigation, Reserve Bank of India, Securities and Exchange Board of India and Insurance Regulatory Development Authority.³⁴ Presently, all banking companies including private foreign banks, co-operative banks, RRBs, financial institutions including insurance companies, hire-purchase companies, chit funds, non-banking financial companies and intermediaries mentioned in Section 12 of SEBI Act constitute a reporting entity.³⁵ The reporting regime needs to be extended to high risk sectors such as real-estate as is the case in the UK.

5.2.3.3.2 As the volume of transactions reported would see a continuous growth accompanied by an increase in their relative complexity, the FIU-IND would have to be strengthened organizationally to meet the challenges. Presently, FIU-IND has a sanctioned staff strength of 43, out of which only 24 are managerial or specialist personnel.³⁶ Compared to this, the Financial Crimes Enforcement Network (FinCEN), which is the US-FIU, consists of about 300 full-time employees, a third of whom are analysts, another third are administrative and managerial professionals, with the remaining third including regulatory specialists, technology experts and Federal agents. In addition, there are approximately 40 long-term detailees from

³²Source: FIU-IND; Annual Report, 2006-07

³³Source: *ibid*

³⁴Source: *ibid*

³⁵Source: *ibid*

³⁶Source: *ibid*

20 different law enforcement and regulatory agencies.³⁷ There is need to strengthen the FIU-IND urgently and to build capacity to meet its present and future challenges as required.

5.2.3.4 Co-ordination: Apart from the specific inputs provided by FIU-IND on transactions suspected of being related to money laundering, the main forum for co-ordination and co-operation among various agencies dealing with economic offences available to the Directorate of Enforcement is the Regional Economic Intelligence Councils (REICs). The REICs, constituted in 1996, are the nodal regional agencies for ensuring operational coordination amongst different enforcement and investigation agencies dealing with economic offences in their respective regions. These REICs are located at 18 regional centres throughout the country and consist of designated officers of CBDT, CBEC, CBI, ED, heads of related agencies of the Union and State Governments in the region, RBI, SBI, Registrar of Companies, etc. The REICs not only share information related to tax matters but also cover all areas of economic intelligence focusing on real time dissemination of information. The functioning of the REICs is coordinated by the Central Economic Intelligence Bureau (CEIB) which is under the administrative control of the Department of Revenue, Ministry of Finance. The CEIB acts as the nodal agency for economic intelligence. As the Directorate of Enforcement is a member of the REIC, it would be useful if the platform provided by them is also utilized to coordinate among agencies in cases which are suspected to be linked with money laundering. Further, owing to the complexity of cases involved, it would also be useful if the FIU-IND, apart from disseminating agency specific information, furnishes overall region-centric information to the CEIB for disseminating it to the respective REICs with a view to expanding the information regime.

5.2.4 Recommendations

- a. The Prevention of Money-laundering Act (PMLA) may be suitably amended at an early date to expand the list of predicate offences to widen its scope and outreach.
- b. The stage at which search and seizure action may be taken under the PMLA may be advanced in cases involving wider ramifications. Adequate safeguards may also be put in place in such cases.
- c. It may be examined whether institutional coordination mechanisms between the Directorate of Enforcement and other intelligence collecting and investigating agencies, could be strengthened and some provisions of the PMLA delegated to them by the Enforcement Directorate.

- d. The financial transaction reporting regime under the Financial Intelligence Unit (FIU-IND) may be extended to cover high risk sectors such as real-estate. There is also need to strengthen the capacity of FIU-IND to enable it to meet future challenges.
- e. It would be useful to utilize the platform provided by the Regional Economic Intelligence Councils (REICs) for increased coordination among various investigation agencies in cases which are suspected to be linked with money laundering. Further, owing to the complexity of cases involved, the FIU-IND, apart from disseminating agency specific information, should furnish overall region-centric information to the Central Economic Intelligence Bureau (CEIB) for disseminating it to the respective REICs with a view to expanding the information regime.

5.3 Measures to Block the Flow of Funds for Financing Terrorist Activities

While an effective money laundering regime is an essential element of the fight against terrorist finance, certain additional measures are required to prevent financing of terrorist activities. Steps taken in this connection in the USA and UK are detailed below.

5.3.1 USA

5.3.1.1 *Making terrorist finance an offence* : US Code, Title 18, Part 1, Chapter 113B, Sections 2331 to 2339D deal with offences related to 'terrorism'. Section 2332d relates to 'Financial Transactions', wherein engagement in financial transactions with the government of a country designated as a country supporting international terrorism has been made an offence. Under Section 2339A, the provision of material support or resources or concealment of the nature, location, source or ownership of such material support knowing or intending their use in certain acts etc. is made an offence. Here 'material support or resources' has been defined to include any property, tangible or intangible, or service, including currency or monetary instruments or financial securities and financial services, inter alia. Section 2339B makes the provision of such material support to designated foreign terrorist organizations an offence. Section 2339C makes the provision or collection of funds, directly or indirectly, with the intention of using or knowing that they would be used to carry out an act to intimidate a population or to compel a government etc. to do or abstain from doing any act, or which is an offence under some treaties, an offence.

5.3.1.2 *Asset freezing*: In the aftermath of the events of September 11, 2001, terrorist assets and fund were dealt with by way of Executive Order 13224, dated 24.9.01. It is aimed at all

individuals and institutions linked to global terrorism and allows the US to freeze assets subject to US jurisdiction and to prohibit transactions by US persons with any person or institution designated pursuant to the Executive Order based on their association with terrorists or terrorist organizations. This is achieved by naming such individuals or organizations specifically. It also authorizes the imposition of blocking orders on additional domestic or foreign institutions that support terrorism.³⁸ This Order immediately froze the financial assets situated in the US of 27 listed entities and prohibited transactions of US citizens with these entities. The list included entities which were terrorist organizations, individual terrorist leaders, several non-profit organizations and a corporation which served as a front for terrorism.³⁹ The scope of these sanctions was broader than the existing sanctions against terrorist activities. The list has been subsequently expanded to include many more individuals, charitable organisations, businesses etc.⁴⁰

5.3.2 UK

5.3.2.1 *Making terrorist finance an offence*: Part 3 of the Terrorist Act, 2000 creates offences related to fund-raising (Section 15), use and possession of property and money (Section 16), funding arrangements (Section 17) and money laundering (Section 18) in connection with terrorist activity. The offences related to terrorist finance are as follows:

(i) Fund raising

15.—(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*

³⁸Source: Contributions by the Department of the Treasury to the Financial War on Terrorism: Fact Sheet; United States Treasury Department, September, 2002

³⁹Source: 'The merging of the counter-terrorism and anti-money laundering regimes', Bruce Zagaris; http://findarticles.com/p/articles/mi_qa3791/is_200210/ai_n9108489; extracted on 05.03.2008

⁴⁰Source: *ibid*

(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.*

(ii) Use and possession of money and property

16.—(1) *A person commits an offence if he uses money or other property for the purposes of terrorism.*

(2) *A person commits an offence if he -*

(a) *possesses 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.*

(iii) Funding arrangements

17. *A person commits an offence if -*

(a) *he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and*

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

(iv) Money laundering

18.—(1) *A person commits an offence if he enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property -*

(a) *by concealment,*

(b) *by removal from the jurisdiction,*

(c) *by transfer to nominees, or*

(d) *in any other way.*

(2) *It is a defence for a person charged with an offence under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.*

Section 22 of the Act provides for penalties for offences under Sections 15 to 18 which are similar to Section 334 of POCA as mentioned earlier in this Chapter. Section 23 provides for forfeiture order by the court by or before which a person is convicted under sections 15 to 18. Thus, the legal apparatus for dealing with terrorist finance have been put in place.

5.3.2.2 *Asset freezing*: HM Treasury can direct freezing of assets and funds on grounds of suspected involvement with terrorism. This action is also taken in concert with other Governments.⁴¹ The Anti-terrorism, Crime and Security Act 2001 provides for making of 'freezing orders' with respect to certain funds. The relevant provisions are being cited below:

“4 Power to make order

- (1) *The Treasury may make a freezing order if the following two conditions are satisfied.*
- (2) *The first condition is that the Treasury reasonably believe that –*
 - a) *action to the detriment of the United Kingdom's economy (or part of it) has been or is likely to be taken by a person or persons, or*
 - b) *action constituting a threat to the life or property of one or more nationals of the United Kingdom or residents of the United Kingdom has been or is likely to be taken by a person or persons.*
- (3) *If one person is believed to have taken or to be likely to take the action the second condition is that the person is –*
 - a) *the government of a country or territory outside the United Kingdom, or*
 - b) *a resident of a country or territory outside the United Kingdom.*
- (4) *If two or more persons are believed to have taken or to be likely to take the action the second condition is that each of them falls within paragraph (a) or (b) of subsection (3); and different persons may fall within different paragraphs.*

5 Contents of order

- (1) *A freezing order is an order which prohibits persons from making funds available to or for the benefit of a person or persons specified in the order.*
- (2) *The order must provide that these are the persons who are prohibited –*
 - a) *all persons in the United Kingdom, and*

5.3.3 Measures undertaken in India

Anti-terrorist legislations in India always contained provisions pertaining to financing of terrorist activities and proceeds of terrorist acts. These are described below in brief:

5.3.3.1 *Making terrorist finance an offence*

5.3.3.1.1 *TADA*: Under TADA (as mentioned in Chapter 4 earlier) holding property derived or obtained from any terrorist activity or acquiring them through terrorist funds was an offence. The Act also provided for seizure of such property. Section 7-A empowered the investigating officer to seize or attach any property about which he has reasons to believe that it is derived or obtained from the commission of any terrorist act under investigation, albeit with the prior approval of the Superintendent of Police. However, he was also required to duly inform the Designated Court within 48 hours of such attachment for confirmation or revoking of the order. The Designated Court was empowered to order forfeiture of such properties in the event of conviction. (Section 8)

5.3.3.1.2 POTA

5.3.3.1.2.1 Under POTA also, holding property derived or obtained from any terrorist activity or acquiring them through terrorist funds was an offence. As mentioned earlier in this Report, the Prevention of Terrorism Act, 2002 (POTA) also included the phrase ‘act of raising funds intended for the purpose of terrorism’ in the definition of the term ‘a terrorist act’ itself. This was achieved by way of an Explanation to Section 3(1) which gave the definition of ‘terrorist act’. POTA also made the holding of proceeds of terrorism illegal {Section 6(1)} and provided that such proceeds “*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...*” {Section 6(2)}. Further, fund raising for a terrorist organization was also made an offence (Section 22). This included inviting others to provide money or property and receiving money or property with the intention of using it or having reasonable cause to suspect that it may be used, for the purposes of terrorism and providing money or property knowing or having reasonable cause to suspect that it may be used for the purpose of terrorism.

5.3.3.1.2.2 Section 7(1) authorized an officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act to seize or attach any property representing the proceeds of terrorism. However, prior approval in this case was to be obtained from the Director General of Police of the State Government before making the order. This authority extended to seizure or attachment of any property which is being used or is intended to be

used for the purpose of any organization declared as a terrorist organization for the purposes of the Act {Section 7(2)}.

5.3.3.1.2.3 Further, the investigating officer had the power to seize and detain cash, including postal orders, traveller's cheques, banker's drafts and other specified monetary instruments, if had reasons to suspect that it was intended to be used for the purposes of terrorism or it formed a part of the resources of a terrorist organization {Section 7(6)}. As in the case of TADA, the investigating officer was required to inform the Designated Authority within 48 hours, who had the authority to confirm or revoke the order. Section 8 empowered the Special Court to pass an order regarding forfeiture of such property or otherwise. The Special Court was also empowered to order the attachment of movable and immovable property belonging to a person accused of any offence under POTA during the period of the trial (Section 16).

5.3.3.1.3 ULPAA

5.3.3.1.3.1 The Unlawful Activities (Prevention) Amendment Act, 2004 also provides for punishment for knowingly holding a property derived or obtained from the commission of a terrorist act or acquired through terrorist funds (Section 21). Like POTA, this Act also prohibits the possession of any proceeds of terrorism and provides for forfeiture of such proceeds (Section 24). Besides, raising funds for a terrorist organization has also been made an offence (Section 40).

5.3.3.1.3.2 The Investigating Officer is authorized to seize or attach property representing the proceeds of terrorism with the prior approval of the Director General of Police of the State in which such properties are situated. He is required to duly inform the Designated Authority within forty-eight hours of the seizure or attachment who in turn is empowered to confirm or revoke the same {Section 25 (1 to 4)}. The Investigating Officer is also authorized to seize and detain any cash to which the Chapter on 'Forfeiture of Proceeds of Crime' applies including traveller's cheques and banker's drafts etc. if they are related to terrorism or a terrorist organization {Section 25 (5)}. The forfeiture of such proceeds is to be ordered by a Court of law (Section 26). The Court is also authorized to order attachment of properties of an accused (Section 33).

5.3.3.2 *Blocking the channels of financing terrorist activities*

5.3.3.2.1 Owing to the fact that carrying out of any terrorist act would necessarily involve financial backing, any strategy to counter financing of terrorism should not only contain measures regarding investigation and prosecution of the offence after the commission of any terrorist act, but also measures providing legal and institutional basis to gathering of intelligence/information leading to carrying out of investigations and blocking of funds and

material support essential for the commissioning of such acts. In other words, apart from making the raising of funds for terrorism an offence, focus has to be on prevention of such acts also. For example, in the US, one important development in the aftermath of the events of September 11, 2001 was the operationalisation of a Terrorism Financing Operations Section (TFOS) by the FBI which *“works not only to identify and track financial transactions and links after a terrorist act has occurred; it exploits financial information to identify previously unknown terrorist cells, to recognize potential terrorist activity or planning, and to predict and prevent potential terrorist acts”*.⁴² In fact, to strengthen the efforts against terrorist financing activities, various investigation agencies in the US have separately created their own anti-terrorist finance units or cells apart from increasing their participation in inter-agency efforts.⁴³

5.3.3.2.2 In India the provisions in the ULCAA (the anti-terrorist law in operation today) regarding attachment and seizure of property leading to forfeiture (Sections 24 to 34) are applicable only in the case of ‘proceeds of terrorism’. For the purposes of this Act, the term ‘proceeds of terrorism’ has been defined in Section 2(g) to 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, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organization”*. Thus, attachment and forfeiture could only be in the case of properties which are derived or obtained from the commission of any ‘terrorist act’ or are acquired by using funds traceable to a ‘terrorist act’. This means that, except in the case of a ‘terrorist organisation’ {which is specifically defined in Section 2(m), ULCAA}, the attachment and forfeiture provisions become operative only after the ‘terrorist act’ has already been committed. Even the seizure and detaining of cash etc. {provided for in Section 25(5) as mentioned above}, is subject to the pre-condition put by the phrase ‘to which this Chapter applies’. When taken together with the fact that Section 25(5) is contained in Chapter V, which pertains to ‘Forfeiture of Proceeds of Terrorism’, it follows that this provision is also linked with ‘proceeds of terrorism’ and is further dependent on the prior commission of a terrorist act as mentioned above.

5.3.3.2.3 Under POTA also, attachment could be done of only that property which represented proceeds of terrorism {Section 7(1)}. ‘Proceeds of terrorism’ was defined to 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”*. Further, even under POTA, the seizure and detaining of cash etc. for which there is reasonable grounds to suspect that it is either intended to be used for the purpose of terrorism or it forms the whole or part of the resources of an organization declared as ‘terrorist organisation’ {provided for in Section 7(6) as mentioned

⁴²Report to the National Commission on Terrorist Attacks upon the United States: The FBI's Counterterrorism Program since September 2001; April 14, 2004

⁴³Anne L. Clunan: ‘US and International Responses to Terrorist Financing’; in ‘Strategic Insights’, Volume IV, Issue 1 (January 2005); <http://www.ccc.nps.navy.mil/si/2005/jan/clunanJan05.pdf> (extracted on 19.03.08)

above}, was subject to the pre-condition put by the phrase 'to which this Chapter applies'. However, the Chapter in this case pertained to 'Punishment for, and measures for dealing with, terrorist activities'. Thus, this provision was not restrained by limiting its application to 'proceeds of terrorism' as is the case presently under ULPAA. Thus, under Section 7(6) of POTA, cash etc which was suspected to be intended for carrying out a terrorist act could be seized even before the commission of such act. This was also facilitated by the fact that the phrase 'the raising of funds intended for the purpose of terrorism' was included in the definition of a 'terrorist act'. The Commission is of the view that in order to thwart the menace of terrorism and block the financing of terrorist activities, apart from the provisions already mentioned above, the new legal provisions on terrorism may also incorporate provisions regarding freezing of assets, bank accounts, deposits etc. while investigating the financial trail in cases where there is reasonable suspicion of their intended use in facilitating the commission of terrorist acts. Such actions may be undertaken by the investigating officer with the prior approval of a designated authority and subject to adequate safeguards.

5.3.3.2.4 Information/intelligence on terrorist financing activities could be, and are actually being, generated by different intelligence and investigation agencies which are engaged in general or specific fields of activities. Financing of terrorist activities can be done through a multitude of modes, like: (a) value transfers through trading transactions, (b) hawala transactions, (c) currency smuggling, (d) counterfeiting, (e) defrauding financial institutions and the public at large, (f) false claim of exemptions, (g) false claim of refunds, (h) using non-profit organizations and charities as a vehicle (i) drug trafficking and narcotics trade, (j) investments and trading in capital and commodities markets (including foreign investments), (k) transactions in real estate etc. The Commission is of the view that owing to the scope for their abuse, the investigation agencies having the authority to inquire into such activities as mentioned above, need to devote more resources and manpower to identify suspected terrorist financing activities so that information could be provided to intelligence agencies and authorities empowered to investigate terrorism cases.

5.3.3.2.5 Another important source of information in this regard is the financial reporting regime administered by FIU-IND. This regime has been strengthened recently, in the sense that the Prevention of Money-laundering (Maintenance of Record of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time of Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 have been amended in May, 2007 to include reporting to FIU-IND of any transaction which "*gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism*".⁴⁴ Thus, the entities covered by the transaction reporting regime are now required to report such specific

⁴⁴Notification No. 4/2007 dated 24.05.2007, Department of Revenue, Ministry of Finance; Source: <http://fiuindia.gov.in/notifications-no4amendments.htm> (extracted on 26.03.2008)

suspicious transactions also. However, for concerted action on the financial leads provided by information gathered by various sources, a specialized cell may be created in the proposed National Counter-terrorism Centre drawing upon expertise from the Union Ministries of Finance and Home Affairs and the Cabinet Secretariat. Further, different investigation agencies dealing with financial transactions may set-up anti-terrorist finance cells within their organizations to augment the efforts of intelligence agencies involved in counter-terrorism activities and facilitate coordination among agencies.

5.3.3.2.6 While financing of terrorist activity through 'conventional' methods such as currency smuggling, counterfeiting, drug-trafficking, frauds, use of informal channels of money transmission ('hawala') etc. continues, methods such as online payments, trade-based money-laundering, abuse of charities, false claims etc. have increasingly assumed centre-stage in the recent years. As investigation of transactions related to such activities requires specialized investigation techniques and skills, there is need to develop multi-faceted investigation teams in the agencies charged with the responsibility of conducting investigations under the anti-terrorist law. However, apart from the present system of deputations to such agencies, it would be useful to commission dedicated teams within these investigating agencies with a view to investigate financial aspects of specific cases/group of cases by inducting officers having specialization in different aspects of financial investigation for short periods. The objective would be speedy and focused completion of the financial aspect of the investigation in such cases within, say three to six months. The placement of officers belonging to different agencies/organizations for such short periods and for specific cases would thus require arriving at an understanding between the jurisdictional ministries of the Union and State Governments and the organizations from which such officers would be sourced. A protocol for achieving this may be arrived at to facilitate such capacity building, thereby strengthening the effectiveness of counter-terrorist measures.

5.3.4 Recommendations

- a. The new legal framework on terrorism may incorporate provisions regarding freezing of assets, funds, bank accounts, deposits, cash etc. when there is reasonable suspicion of their intended use in terrorist activities. Such actions may be undertaken by the investigating officer with the prior approval of a designated authority, subject to adequate safeguards. These provisions may be incorporated in a separate chapter in the National Security Act, 1980 as recommended in paragraph 4.1.6.9.
- b. A specialized cell may be created in the proposed National Counter-

terrorism Centre drawing upon expertise from the Union Ministries of Finance and Home Affairs and the Cabinet Secretariat for taking concerted action on the financial leads provided from information gathered by various sources. Further, different investigation agencies dealing with financial transactions may set up anti-terrorist finance cells within their organizations to augment the efforts of intelligence agencies involved in counter-terrorism activities.

- c. For speedy investigation into the financial aspects of specific cases/group of cases related to terrorist activities, dedicated teams may be formed within the agencies charged with the responsibility of investigating into offences related to terrorism. This may be accomplished by inducting officers having specialization in different aspects of financial investigation for short periods, say three to six months. A protocol for achieving this may be arrived at between the concerned Union and State Ministries/Departments to facilitate such capacity building and strengthening the effectiveness of the counter-terrorist measures.

6

INSTITUTIONAL AND ADMINISTRATIVE MEASURE*

ROLE OF CITIZENS, CIVIL SOCIETY AND MEDIA IN COMBATTING TERRORISM

7.1 A Multi-dimensional Response

The Commission in its Report on 'Public Order' had emphasized the important role played by the civil society, media and political parties in maintaining public order. A multi-dimensional response to combat terrorism would require well coordinated action on all fronts and each of these agencies/institutions has an important role to play.

7.2 Education

7.2.1 Decades ago, Carl G. Jung had warned:

"I am convinced that exploration of the psyche is the science of the future.... This is the science we need most of all, for it is gradually becoming more and more obvious that neither famine nor earthquake nor microbes nor carcinoma, but man himself is the greatest peril to man, just because there is no adequate defense against psychic epidemics, which cause infinitely more devastations than the greatest natural catastrophes".

7.2.2 Often violence has its roots in the discord between different social groups who feel alienated from each other on account of political, religious, social or ideological differences. In its Seventh Report on 'Conflict Resolution', the Commission has observed that individual and societal tensions manifest themselves in situations of latent conflicts which can sometimes escalate and erupt into violent outbreaks. Such violence can take the form of terrorism at the instance of anti-national elements. Changing the individual psyche through education would make the society more harmonious and cohesive in the long run and therefore less likely to get influenced by terrorists ideology.

7.2.3 The National Curriculum Framework, 2005 had made certain recommendations for promoting Education for Peace. The National Council of Educational Research and Training

Box 7.1 : The National Curriculum Framework, 2005

Peace as a precondition for national development and as a social temper is proposed as a comprehensive value framework that has immense relevance today in view of the growing tendency across the world towards intolerance and violence as a way of resolving conflicts. The potential of peace education for socialising children into a democratic and just culture can be actualised through appropriate activities and a judicious choice of topics in all subjects and at all stages. Peace education as an area of study is recommended for inclusion in the curriculum for teacher education.

Source: <http://ncert.nic.in/html/pdf/schoolcurriculum/framework05/prelims.pdf>

(NCERT) has taken initiatives like organizing training programmes for teachers and teacher education for peace as well as development of resource material. Ministry of Human Resources Development (MHRD) has recently off-loaded its Education in Human Values Scheme to the NCERT with the suggestion that the scheme be re-conceptualized by NCERT in line with the priorities on Education for Peace emerging from National Curriculum Framework, 2005. The National Focus Group on Education for Peace set up by the NCERT has stated that the fundamental principles underlying the initiatives are:

- i. schools are potential nurseries for peace since school education involves the formative years in a person's life during which children can be oriented to peace rather than towards violence;
- ii. teachers can be social healers by going beyond the academic syllabi to focus on pupil centred education in order to inculcate human values in the students;
- iii. peace skills promote academic excellence because the capacity to listen, to cooperate with each other and to develop a positive attitude are the hallmarks of a good student as well of a peace oriented person.

NCERT has accordingly proposed a scheme to encourage and support institutions, voluntary agencies and NGOs etc. engaged with school education for promotion of Education for Peace within the country. These initiatives need to be encouraged with necessary funds and other material support.

7.2.4 Education also has a role in creating the proper environment for peace. As Krishna Kumar, Director, NCERT has pointed out in his recent book, 'Battle for Peace', " We who live in India and Pakistan must realize that the politics of war and the social mindset which supports it are our own creations and therefore we are the only ones who can change them". He suggests that education does not merely aim at "identification with

**Box 7.2: Some Recommendations for Education for Peace
Suggested by the National Focus Group**

- Set up peace clubs and peace libraries in schools. Make supplementary reading materials available that promote peace values and skills.
- Co-opt the media as a stakeholder in education for peace. Newspapers can be persuaded to run peace columns, similar to the current columns on religion. The electronic media can be persuaded to broadcast peace programmes tailored to the needs of education for peace in schools. In these, there needs to be a special focus on motivating and enabling teachers to be peace educators.
- Make provisions in schools to enable students to celebrate: (a) the cultural and religious diversity of India, (b) Human Rights Day, (c) Day for the Differentlyabled, (d) Girl Child Day, (e) Women's Day, and (f) Environment Day.
- Organise district-level peace festivals for school students, the two-fold purpose of celebrating peace and removing
- Facilitate short-term exchanges between students from various streams to help students overcome prejudices, regional, caste, and class barriers.

one's own nation and loyalty to its sovereign state, but it should also enable a child to accept the validity of competing memories". He argues that an obsession with education for building national identity can be debilitating. However, the negative aspect of this laudable suggestion is that such an approach, even if adopted in India would serve no purpose, unless Pakistan also shows a similar willingness to give its educational policies a peace orientation.

7.2.5 The response to the phenomenon of Jehadi terrorism being advocated in some madrassas needs to be countered by emphasising on the true essence of Islam. Educational Institutions like madrassas as well as other social institutions could play a major role in this regard. In fact, it is important to have a holistic strategy for promotion of Education for Peace, covering secular as well as religious schools. As far as the secular schools are concerned, the National Curriculum Framework, 2005, brought out by National Steering Committee of the NCERT has already suggested a course of action. The feasibility of extending this scheme to religious schools could also be considered.

7.2.6 Recommendations

- a. NCERT has proposed a scheme to encourage and support institutions, voluntary agencies and NGOs etc. engaged with school education for promotion of Education for Peace within the country. These initiatives need to be encouraged with necessary funds and other material support.
- b. The feasibility of extending the scheme to religious schools also needs to be examined.

7.3 The Civil Society

7.3.1 The importance of involving civil society in a comprehensive and multi-dimensional response to the threat of terrorism had been recognized by the United Nations General Assembly which, while adopting the UN Global Counter Terrorism Strategy on 8th September, 2006 affirmed the determination of Member States to 'further encourage non governmental organizations and civil society to engage, as appropriate, on how to enhance efforts to implement strategy' (Source: UN General Assembly, The United Nations Global Counter-Terrorism Strategy, 8 September 2006, operative paragraph 3 (d); [#### Box 7.3: The Government's Resolve to Fight Terrorism](http://www.un.org/terrorism/strategy-counter-</p></div><div data-bbox=)

"I reiterate our Government's firm commitment to deal with such threats to peace and security, to political stability and economic progress, to social and communal harmony in our country. Whatever the source of terrorism, we are determined to root it out and ensure that in a democracy political change can only come through the ballot box and not through the barrel of a gun."

Excerpts from the Prime Minister Dr Manmohan Singh's address at the SPG Raising Day; March 31, 2008; New Delhi

terrorism.shtml). In recent years, there has been a substantial increase in the involvement of civil society groups in public affairs. They have been instrumental in drawing the attention of government towards the grievances of the citizens and have also been active in highlighting the ‘human rights violations’ by the security forces while dealing with terrorists. The Commission is of the view that given the proximity of these groups to the grassroots their potential could also be used in several ways which would help in the State’s fight against terrorism including information of a “local” intelligence type. The Commission also recognizes that civil society institutions and NGOs can play a prominent and meaningful role in fostering social inclusion as well as in helping the Government address socio-economic deprivation that may be a factor in the spread of terrorism.

7.3.2 Civil Society could also be of immense help in the prevention of terrorist acts. They could play an advisory and educative role in making the community at large aware of the basic precautions to be taken because in most terrorist strikes, the common citizens are the target. It is therefore necessary that the citizens are themselves well equipped and trained to handle any such incident, as apart from being the victims they are also often the first responders in any crisis. Civil societies and NGOs can partner with law enforcement agencies to develop targeted programmes for cooperation focusing, for example, on spreading awareness and understanding of the diversity of local cultures, religious customs and traditions of certain communities and in developing outreach activities for healing community rifts and tensions. An alert citizenry is perhaps the best way to ward off terrorist strikes. Civil society in conjunction with the agencies of the State can help in developing this capability among the citizens.

7.4 Media

7.4.1 Media is a generic term used to denote all channels of mass information and communication including newspapers, publications, electronic media and internet. The Fourth Estate – the media- has always played a major role in public life. It has been a formulator as well as a reflection of public opinion. With the advent of the electronic media and modernization of the print media, the coverage, influence and reaction time of the media has improved substantially. There have also been instances where media reports have stoked conflicts; though on several occasions they have been instrumental in prevention of outbreak of violence.

7.4.2 A terrorist act affects each of the three – the media, government and terrorists – differently. The conflicting perspectives arising out of their mutually exclusive concerns and the urge, of both the terrorists and the government, to bend the media to serve their respective agendas, could widen the distance between government and the media. Terrorism in

democratic countries shows that terrorists thrive on publicity. The media does not intend to promote the cause of terrorism, but the nature and mandated function of the media – to cover events, developments and issues – can be exploited by the terrorists. Thus, regardless of the media's intentions, the news coverage may serve the expectations of the terrorists. It should be recognised that even terrorists have a craving for publicity, and the media should not unwittingly help the terrorists in their designs. Government has its own expectations, it wants the media to depend on the official version. Government therefore wants the media to be cooperative and keep the national interests or security concerns uppermost. In fact, when it comes to acts of terrorism, both the media and the government have a common interest in protecting people and democracy. But their perspectives and positions defined by their functions and responsibilities could lead to different and sometimes conflicting stands. Therefore, it is necessary that government should work towards harnessing the power of the mass media as a part of its strategy to defeat terrorism. It would be necessary to have an affirmative media policy based on:

- a. Transparency in governance.
- b. Easy access to information and sources.
- c. Advancing the media's role as an instrument of vigilance to scrutinize and check administrative, legal and judicial violations and excesses that endanger civil and democratic rights in situations of conflict and terrorism.
- d. Engaging, enabling, encouraging and assisting the media to fulfil its role of informed, fair and balanced coverage of crisis, particularly terrorism.

7.4.3 Media policy should include principles of self restraint. Publishers, editors and reporters need to be sensitized to avoid and exclude those elements of media coverage that may unwittingly advance the agenda of terrorists. All forms of media should be encouraged to evolve a self regulating code of conduct to ensure that publicity arising out of terrorist attacks does not help the terrorist with their nefarious intentions.

7.4.4 The administration needs the support of the media and information professionals who are schooled and steeped in media values and have acceptance in today's highly competitive media world. At present, the availability of professional media officers is limited particularly at the field levels. This shortage of media professionals in the administration should be addressed by:

- a. Employing professionals from the media who can deliver on responsibilities and at the same time transform the culture and functioning of government media departments;
- b. Educating information and media officials who have the potential in media-oriented functions;

- c. Inculcating professionalism and media values through training in media skills, including in independent news organizations; and
- d. Adopting a performance-driven, result-based approach comparable with best practices in the media industry as against the prevalent cadre-based, service/tenure-oriented culture.

7.4.5 Induction of media professionals from outside and imparting of media education, training and skills should not be confined to those in press, publicity and public information departments. Given the administration's need and the importance of crisis-preparedness, it is essential that officials from other all branches of the administration such as general administration, security forces, forest services, information technology, intelligence and police, are schooled to become media-savvy.

7.4.6 An informed and engaged media that is not restricted, manipulated or overly regulated can better appreciate the imperatives of the administration in its fight against terrorism. Thereby, the administration would also increase its preparedness and effectiveness in dealing with crisis and develop more appropriate media-oriented responses. Greater transparency would make the media a purposeful partner in the larger cause of the fight against terrorism. Transparency can win over the media as an asset and an ally. The potential of media in spreading education and awareness needs to be tapped to build the capacity of citizens in dealing with any public disorder and particularly terrorist violence.

7.4.7 Recommendations

- a. The potential of media in spreading education and awareness needs to be tapped to build the capacity of citizens in dealing with any public disorder, particularly terrorist violence.
- b. Media should be encouraged to evolve a self regulating code of conduct to ensure that publicity arising out of terrorist attacks does not help the terrorist in their anti-national designs.

CONCLUSION

Development, stability, good governance and the rule of law are inextricably linked and any threat to peace poses an obstacle to the objective of sustainable development of the country. Terrorism not only subverts the political and social climate but also threatens the economic stability of the country, undermines democracy and even deprives ordinary citizens of their fundamental rights, including their right to life.

Terrorists do not belong to any religion or faith or community. Terrorism is an attack on democracy and the civilized society by a violent few who resort to targeted killing of innocent citizens in pursuit of their evil designs. In some respects, terrorism is more damaging than an act of war against the nation because terror acts often target innocent civilians – apart from the symbols of the State – terrorists have targeted women and children in public parks, commuters during rush hours on suburban trains, shoppers in a crowded market, community gatherings on religious occasions. Furthermore, terrorism today has acquired newer and more dangerous dimensions threatening international peace and stability worldwide with the use by terrorist groups of modern communication systems, and state-of-the-art technology combined with global linkages with organized crime, drug trafficking, counterfeit currency and money laundering. That is why international cooperation is essential in the fight against terror. India has been one of the worst victims of terrorism but our society has shown tremendous spirit and resilience in the wake of repeated and wanton terrorist attacks by maintaining communal harmony and social amity. It is time however for the nation to gear itself to counter terror in a more coherent and proactive manner and not rely on the patience of its citizens to outlast and defeat terrorists and their supporters.

The anti-terrorism strategy must recognise that terrorist acts not only ruin innocent lives, but also divide our society, create discord among people and cause lasting damage to the fabric of the society. Unlike 'chemotherapy' in cancer treatment which destroys both good and bad cells, a strong anti-terrorism response has to be focussed and well directed against the anti-national elements. In this Report on Terrorism, the Commission has made wide-ranging recommendations for improving the capabilities of our intelligence and security agencies, enhancing coordination among the various security agencies, and creating a new legal framework for the prosecution of terrorist acts as well as to cut off the flow of funds to terrorist

groups. The Report also points out that in addition to sustained and stringent action by the security agencies against terrorists and anti-national activities, civil society can also play a major role both in preventing terrorist activities and in countering the ideology of terrorism. Cooperation by the citizens and by the media is equally vital in the fight against terrorism. The thrust of the Report is that a multi-pronged approach encompassing legal and administrative measures combined with good governance, inclusive development, a vigilant media and an alert citizenry can defeat terrorism in any form.

SUMMARY OF RECOMMENDATIONS

1. (Para 4.1.6.9) Need for a Comprehensive Anti Terrorist Legislation
 - a. A comprehensive and effective legal framework to deal with all aspects of terrorism needs to be enacted. The law should have adequate safeguards to prevent its misuse. The legal provisions to deal with terrorism could be incorporated in a separate chapter in the National Security Act, 1980.
2. (Para 4.2.9) Definition of Terrorism
 - a. There is need to define more clearly those criminal acts which can be construed as being terrorist in nature. The salient features of this definition should inter alia include the following:
 - i. use of firearms, explosives or any other lethal substance to cause or likely to cause damage to life and property and essential infrastructure including installations/establishments having military significance.
 - ii. assassination of (including attempt thereof) public functionaries.
The intent should be to threaten the integrity, security and sovereignty of India or overawe public functionaries or to terrorise people or sections of people.
 - iii. Detention of any person or threat to kill or injure any person to force the government to act or abstain from acting in a particular manner.
 - iv. Providing/facilitating material support, including finances, for the aforesaid activities.
 - v. Commission of certain acts or possession of certain arms etc. by members or supporters of terrorist organizations which cause or are likely to cause loss of life, injury to a person or damage to any property.
3. (Para 4.3.8) Bail Provisions
 - a. Regarding grant of bail, the law should provide that:
 - i. 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;
 - ii. Where the Public Prosecutor opposes the bail application of accused to release on bail, no person accused of an offence punishable under

trial of terrorism related cases may be incorporated in the law on terrorism. Other specific provisions related to such Special Courts may also be incorporated. Such Courts may be set up as and when required.

9. (Para 4.10.3) Possession of Arms etc.
 - a. Provision for penalizing unauthorized possession of certain specified arms and ammunition in notified areas and unauthorized explosive substances, weapons of mass destruction and biological or chemical substances of warfare in notified as well as non-notified areas, may be incorporated in the law on terrorism.
10. (Para 4.11.4) A Federal Agency to Investigate Terrorist Offences
 - a. The Commission would like to reiterate the recommendations made in its Report on 'Public Order' (paragraph 8.3.14) on the creation of a specialized Division in the CBI to investigate terror offences.
 - b. It should be ensured that this Division of the CBI is staffed by personnel of proven integrity and who are professionally competent and have developed the required expertise in investigation of terrorism related offences. The autonomy and independence of this agency may be ensured through a laid down procedure of appointment and assured fixed tenure for its personnel.
11. (Para 5.2.4) Measures against Financing of Terrorism – Anti-money Laundering Measures
 - a. The Prevention of Money-laundering Act (PMLA) may be suitably amended at an early date to expand the list of predicate offences to widen its scope and outreach.
 - b. The stage at which search and seizure action may be taken under the PMLA may be advanced in cases involving wider ramifications. Adequate safeguards may also be put in place in such cases.
 - c. It may be examined whether institutional coordination mechanisms between the Directorate of Enforcement and other intelligence collecting and investigating agencies, could be strengthened and some provisions of the PMLA delegated to them by the Enforcement Directorate.
 - d. The financial transaction reporting regime under the Financial Intelligence Unit (FIU-IND) may be extended to cover high risk sectors such as real-estate. There is also need to strengthen the capacity of FIU-IND to enable it to meet future challenges.
 - e. It would be useful to utilize the platform provided by the Regional Economic Intelligence Councils (REICs) for increased coordination among various investigation agencies in cases which are suspected to be linked with money laundering. Further, owing to the complexity of cases involved, the FIU-IND, apart from disseminating agency specific information, should furnish overall region-centric information to the Central Economic Intelligence Bureau (CEIB) for disseminating it to the respective REICs with a view to expanding the information regime.

12. (Para 5.3.4) Measures against Financing of Terrorism – Measures to Block the flow of Funds for Financing Terrorist Activities
 - a. The new legal framework on terrorism may incorporate provisions regarding freezing of assets, funds, bank accounts, deposits, cash etc. when there is reasonable suspicion of their intended use in terrorist activities. Such actions may be undertaken by the investigating officer with the prior approval of a designated authority, subject to adequate safeguards. These provisions may be incorporated in a separate chapter in the National Security Act, 1980 as recommended in paragraph 4.1.6.9.
 - b. A specialized cell may be created in the proposed National Counter-terrorism Centre drawing upon expertise from the Union Ministries of Finance and Home Affairs and the Cabinet Secretariat for taking concerted action on the financial leads provided from information gathered by various sources. Further, different investigation agencies dealing with financial transactions may setup anti-terrorist finance cells within their organizations to augment the efforts of intelligence agencies involved in counter-terrorism activities.
 - c. For speedy investigation into the financial aspects of specific cases/group of cases related to terrorist activities, dedicated teams may be formed within the agencies charged with the responsibility of investigating into offences related to terrorism. This may be accomplished by inducting officers having specialization in different aspects of financial investigation for short periods, say three to six months. A protocol for achieving this may be arrived at between the concerned Union and State Ministries/Departments to facilitate such capacity building and strengthening the effectiveness of the counter-terrorist measures.

13. (Para 7.2.6) Role of Citizens, Civil Society and Media in Combatting Terrorism – Education
 - a. NCERT has proposed a scheme to encourage and support institutions, voluntary agencies and NGOs etc. engaged with school education for promotion of Education for Peace within the country. These initiatives need to be encouraged with necessary funds and other material support.
 - b. The feasibility of extending the scheme to religious schools also needs to be examined.

18. (Para 7.4.7) Role of Citizens, Civil Society and Media in Combatting Terrorism – Media
 - a. The potential of media in spreading education and awareness needs to be tapped to build the capacity of citizens in dealing with any public disorder, particularly terrorist violence.
 - b. Media should be encouraged to evolve a self regulating code of conduct to ensure that publicity arising out of terrorist attacks does not help the terrorist in their anti-national designs.

Recommendations made at 'National Workshop on Public Order'

March 11th-12th, 2006

Sardar Vallabhbhai Patel National Police Academy, Hyderabad

I. Organised Violence, Terrorism & Extremism: Role of the State and Reforms

- A national forum should be set up for formulation of policy and strategy for dealing with terrorism.
- A stable, comprehensive, all India anti-terrorist legislation, having adequate safeguards against abuse, must be put in place.
- While terrorist violence has to be effectively dealt with by the security forces, people's grievances – genuine and perceived – which get exploited, have to be redressed by concerned agencies with a sense of urgency.
- A stable, effective and responsive administration is an antidote to terrorism.
- For effectively dealing with violence, outdated laws (eg., The Explosive Act), containing irrelevant provisions resulting in delay in investigation and prosecution of offenders, must be amended.
- Developmental activities should be planned and executed with due regard to problems of displacement of people, resettlement etc., so that violent eruption of conflicts on such issues can be avoided.
- For tackling the root causes of Left Wing Extremism, relevant socio-economic issues such as land reforms, alienation of tribals from forest land etc. should be addressed and relevant laws must be strictly enforced.
- An all-India legislation should be enacted for tackling the growing menace of organised crime.
- Terrorism has to be fought by the security forces with the cooperation of the people. Appropriate sensitisation training should be given to security forces for avoiding alienation of the people and for enlisting their cooperation.

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ADMINISTRATIVE REFORMS COMMISSION
Comparison of Anti-terrorism Legislations in India

Annexure-IV(1)

Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
1.	Extent	Whole of India	A. DEFINITIONS Whole of India	Whole of India	Whole of India
2.	Application	"also applies to" 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. (Section 1(2))	Same as TADA	Apart from this provision, it also mentions: Sec.1 (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.	Same as POTA, 2002

ADMINISTRATIVE REFORMS COMMISSION
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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
3.	Definition of Terrorism Act	Section 3(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	Section 3(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 fire arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or distribution of any supplies or services essential to the life of	Same as Law Commission Draft Bill. It adds the following: (1) The phrase or by any other means whatsoever' in Section 3(1)(a) and (2) adds an explanation to Section 3(1) which extends the meaning of a terrorist act to include the act of raising funds intended for the purpose of terrorism.	Section 15: Terrorist Act - Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or distribution of any supplies or services essential to the life of

ADMINISTRATIVE REFORMS COMMISSION
Comparison of Anti-terrorism Legislations in India

Annexure-IV(1) Contd.

Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
		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.	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;	the community in India or in any foreign country 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 in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.	the community in India or in any foreign country 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 in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act. (The phrase in emphasis is new. However, the provisions pertaining to associations declared Unlawful under the

ADMINISTRATIVE REFORMS COMMISSION
Comparison of anti-terrorism legislations in India

Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
			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.		ULPA, 1967 as included in Section 3(1)(b) of POTA, 2002 have been excluded. Further, the explanation to Section 3(1) of POTA, 2002 is also missing which includes the raising of funds for the purpose of terrorism as a terrorist act.
B. ENHANCED PUNISHMENTS					
1.	Punishment, if terrorist act has resulted in the death of any person	Death or imprisonment for life and also liable to fine [Section 3(2)(i)]	Same as TADA	Same as TADA	Same as TADA

**ADMINISTRATIVE REFORMS COMMISSION
Comparison of Anti-terrorism Legislations in India**

Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
2.	Punishment, for committing a 'terrorist act' in a case other than that resulting in the death of any person.	Imprisonment for a term not less than five years which may extend to imprisonment for life and also liable to fine.	Same as TADA	Same as TADA	Same as TADA
3.	Punishment in case of 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,	imprisonment for a term not less than five years which may extend to life term and also liable to fine.	Same as TADA	Same as TADA	Same as TADA

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
4.	Punishment for harbouring or concealing any other person etc.	Imprisonment for five years extending to life term and also liable to fine.	Imprisonment for three years extending to life term and also liable to fine.	Same as Law Commission Draft Bill.	Same as POTA, 2002
5.	Punishment for being a member of a terrorist gang or a terrorist organisation involved in terrorist acts.	Imprisonment for five years extending to life term and also liable to fine.	Same as TADA	Minimum punishment not mentioned, term may extend to life imprisonment or with fine which may extend to rupees ten lakh or with both.	Minimum punishment not mentioned, term may extend to life imprisonment and also liable to fine.
6.	Punishment for holding property derived or obtained from Commission of any terrorist act or acquired through terrorist funds.	imprisonment for five years extending to life term and also liable to fine.	Same as TADA	Punishment is for 'knowingly' holding such property; minimum term not prescribed, imprisonment may extend for life or with fine which may extend to rupees ten lakh or with both.	Same as POTA, 2002, except that there is a mandatory fine for which minimum limit is not prescribed.

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7.	Punishment for threatening a witness or in a person whom a witness may be interested.	Nil.	Imprisonment extending to three years and fine.	Imprisonment extending to three years and fine.	Imprisonment extending to three years and fine.
8.	Punishment for not disclosing any information to the police which a person knows to be of assistance in preventing a terrorist act or apprehending etc. a person involved in such an act.	Nil.	Imprisonment for a term extending to one year or fine or both.	Nil	Nil.
9.	Possession of certain unauthorised arms in certain areas.	Imprisonment for a term not less than five years extending to life term and also liable to fine. For abetment etc. the reference to life term is construed as ten years.	Same as TADA	Further elaborations with regard to explosive and hazardous substances; applicable to areas which have not	Imprisonment for a term not less than five years extending to life term and also liable to fine. For abetment same.

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10.	Punishment for raising fund for terrorist act.	Nil.	Nil.	Raising of funds intended for the purpose of terrorism is included in the definition of 'a terrorist act'.	Imprisonment for a term not less than five years extending to life term and also liable to fine.
C. INVESTIGATING OFFICERS AND THEIR POWERS					
1.	Investigating officers.	Apart from officers authorised under the Cr.PC, the Central Government may by notification confer on any officer of the Central	Clause 32: Notwithstanding anything contained in the Code, no police officer below the rank - (a) in the case of the Delhi Special Police Establishment,	Similar provisions as in previous column (Section 51)	Similar provision as in the previous column (Section 43)

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2.	Powers of investigating officer regarding attachment and seizure of property	Government the powers exercisable by a police officer under the Cr.PC and all officers of police and the government are required to assist him.	of a Deputy Superintendent of Police or a police officer of equivalent rank; (b) in the metropolitan areas of Mumbai, Calcutta, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, of an Assistant Commissioner of Police; (c) in any other case not relating to clause (a) or clause (b), of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act.	Generally, the provisions are similar to that of the Law Commission Draft Bill. The new provisions are as follows: (1) Section 7(2); For the	Generally, the provisions are similar to that of POTA, 2002 except the following: (1) The designation of the officer passing the order of seizure or attachment is not

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		<p>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 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</p>	<p>property in relation to which an investigation is being conducted, constitutes proceeds of terrorism, he shall, with the prior approval in writing of the Director General of 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, or the Special Court, as the case may be, before whom the properties seized or attached are produced and a copy of such order shall be served on the person concerned.</p>	<p>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.</p> <p>(2) Section 7(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</p>	<p>mentioned, thereby meaning that officers mentioned in Section 43 of the Act are authorised to pass such orders.</p> <p>(2) Provisions regarding property used or intended to be used for the purpose of the terrorist organisation as appearing in Section 7(2) of POTA, 2002 are not included.</p> <p>(3) The Designated Authority has to either confirm or revoke the order of seizure or attachment within a period of sixty days from the date of production of a copy of such order before it.</p> <p>(4) The person aggrieved by an order of the designated authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order. The term 'Court' has been defined to</p>

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		confirm or revoke the order of attachment so issued.	(2) The investigating officer shall duly inform the Designated Authority or, as the case may be, the Special Court, within forty-eight hours of the seizure or attachment of such property. (3) It shall be open to the Designated Authority or the Special Court before whom the seized or attached properties are produced either to confirm or revoke the order of attachment so issued. (Thus the power of making an order of seizure or attachment has been given to an officer not below the rank of an SP. The approval has to be obtained from the DGP of the State).	attached shall be given. (3) Section 7(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	mean a criminal court having jurisdiction under the CrPC to try offences under this Act.

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				<p>Authority and such Authority passes an order allowing its retention beyond forty-eight hours.</p> <p>Explanation.—For the purposes of this sub-section, "cash" means—</p> <ul style="list-style-type: none"> (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. <p>(4) Further, provision for appeal against the order by the designated authority is also provided in the form of Section 7(7);</p>	

Annexure-IV(1) Contd.

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
				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.	

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3.	Power to direct for samples etc.	No such provision	Clause 22: (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 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.	Similar provisions as in the previous column (Section 27).	No such provision

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Comparison of Anti-terrorism Legislations in India					
<i>Annexure-IV(I) Contd.</i>					
Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
			(2) If any accused person refuses to give samples as provided in sub-section (1), in a trial under this Act, the court shall draw adverse inference against the accused.		
D. FORFEITURE OF PROCEEDS OF TERRORISM					
1.	For forfeiture of proceeds of terrorism	No separate provision. Omnibus provision (Section 8).	Clause 8: Where any property is seized or attached in the belief that it constitutes proceeds of terrorism and is produced before the Designated Authority, it shall, on being satisfied that the said property constitutes proceeds of terrorism, 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	Similar provisions except, in case of Designated Authority the powers are with the Special Court. Appeal lies with the jurisdictional High Court.	Similar provisions as POTA, 2002 except the powers are, in this case with the Court. The term 'Court' has been defined to mean a criminal court having jurisdiction under the Cr.PC to try offences under this Act. Accordingly, the appeal lies with the jurisdictional High Court.

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
			<p>under this Act. Clause 9 provides for a show cause notice to be issued in writing before making any order forfeiting proceeds of terrorism. If the person establishes that he is a bona fide transferee of such proceeds without knowing that they represent proceeds of terrorism, order of forfeiture cannot be made. In case of perishable property the Designated Authority may direct to be sold and the provisions of Section 459 of the GPC shall generally apply. In case of other properties it may nominate any officer of the Central or State Government to perform the function of the administrator of such property. As per clause 10 appeal lies with the</p>		

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			jurisdictional High Court. In case of modification or annulment of the order of forfeiture by the High Court, the property has to be returned or a price has to be paid; as if the property has been sold to the Central Government along with reasonable interest. As per clause 11 order of forfeiture does not interfere with other punishments. As per clause 12 the Designated Authority has the power to consider claims by third parties.		
2.	Certain transfers to be null and void	No specific provisions.	No specific provisions.	Provisions are there.	Provisions are there.
3.	Forfeiture of property of certain persons	Section 8(1) Where a person has been convicted to any offence punishable under this Act or any rule made	Clause 16 is same as Section 8 (1) and (2) of TADA Act. Further, Clause 17 is same as Section 8(4) of TADA Act.	Generally same as the Draft Bill.	Same as POTA, 2002

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		<p>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.</p> <p>(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</p>			

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		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			

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		<p>not more than thirty days from the date of publication of such proclamation.</p> <p>(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 85 to 85 of the Code shall apply to such attachment as if such attachment were made under that Code.</p> <p>(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</p>			

Annexure-IV (1) Contd.

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
		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.			

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		(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.			
E. DESIGNATED AUTHORITY/DESIGNATED COURT/SPECIAL COURT					
1.	Powers of Designated Authority	There is no Designated Authority.	As per clause 13, the Designated Authority has the powers of a Civil Court for making a full and fair enquiry into matters placed before it. Designated Authority has not been defined.	Designated Authority has the powers of a Civil Court. Designated Authority has been defined to mean such officer of the Central Government not below the rank of Joint Secretary or such officer of the State Government not below the rank of	Same as POTA, 2002.

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				Secretary as specified by the respective Governments by a notification.	
2.	Designated Courts/Special Courts.	Provisions for constitution of one or more Designated Courts by the Central Government or State Government by way of notification for such area or areas or for such case or clause or group of cases as specified therein.	Instead of Designated Courts, Special Courts have been provided for. Provisions similar to TADA Act. Clause 18(9) further mentions that a Designated Court constituted under Section 9 of the TADA Act, 1987 shall be deemed to be a Special Court.	Same as Draft Bill.	No provision for Special Courts.
3.	Procedure and powers of Designated Courts/Special Courts.	Section 14: (1) A Designated Court may take cognizance of any offence, without the accused being committed to trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.(2) Where an offence	Similar provisions have been provided for (Clause 24) except that the Special Court is not empowered to take cognizance of any offence without the previous sanction of the Central or State Government, as the case may be.	Similar provisions as in Law Commission Draft Bill.	No such provision.

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		<p>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</p>			

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		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			

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		<p>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) Notwithstanding 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</p>			

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4.	Trial by Special Courts to have precedence	witness, subject to the right of the accused to recall the witness for cross-examination. Provisions exist (Section 17).	Provisions exist (Clause 26).	Provisions exist (Section 31).	No such provision.
F. COGNIZANCE OF ANY OFFENCE/PRESUMPTION AS TO AN OFFENCE					
1.	Cognizance of offence	Section 20 A (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	Clause 31: (1) The police officer recording information in respect of an offence under this Act shall promptly forward copies of all the material including information given to the police under section 154 of the Code and its accompaniments to the Director General of Police and the Review Committee. (2) It shall be open to the Director General of Police or	Section 50: 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. Section 45: No court shall take cognizance of any offence- (i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf, (ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such	

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		previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police.	the Review Committee to call for such further information, as they may deem necessary, from the police or any other person before approving or disapproving the action taken by the subordinate authorities. (3) If the Director General of Police does not approve the recording of the aforesaid information within ten days, or the Review Committee does not approve the same within thirty days, the recording of the said information shall become null and void with effect from the tenth, or as the case may be, the thirtieth day and all proceedings in that behalf shall stand withdrawn and if the accused is in custody, he shall		offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

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Annexure-IV(1) Contd.	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
			<p>be released forthwith unless required in connection with some other offence.</p> <p>(4) Any action taken or any order passed under this section shall be in addition to and independent of any action taken by the Review Committee under section 39.</p> <p>(5) No court shall take cognizance of any offence under this Act without the previous sanction of the State Government, or as the case may be, the Central Government.</p>		
2.	Presumption as to an offence	Section 21: (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	Clause 34: (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	Section 53: (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	No separate provision.

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		<p>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</p> <p>(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.</p> <p>(2) In a prosecution for an offence under sub-section 3 of Section 3, 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</p>	<p>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 a similar nature, were used in the commission of such offence; or</p> <p>(b) that by the evidence of an expert 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 the adverse inference against the accused.</p> <p>(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</p>	<p>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;</p> <p>or</p> <p>(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.</p> <p>(2) In a prosecution for an offence under sub-section (3) of section 3, if it is proved that the accused rendered</p>	

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
		Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section.	person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw the adverse inference against the accused.	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. (In case of finger prints, Section 53 (1) (b), POTA, 2002 does not mention the phrase 'by the evidence of an expert')	
G. CONFESSIONS BEFORE POLICE OFFICERS/PROTECTION OF WITNESSES					
1.	Certain confessions made to police officers to be taken into consideration.	Section 15: (1) Notwithstanding 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	Section 27: (1) Notwithstanding 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	Similar provisions as in Law Commission Draft Bill exist in POTA, 2002 (Section 32).	No such provision. However, there exist separate provisions for admissibility of evidence collected through the interception of communications (Section 46).

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
		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 (or co-accused, abettor or conspirator) for an offence under this Act or rules made thereunder: [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 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	Superintendent of Police and recorded by such police officer either in writing or any mechanical 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 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		

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Annexure-IV(1) Contd.

Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
		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.	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 48 hours. (5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, scrupulously record the statement, if any, made by the person so produced and get his signature and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical		

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
1.	Protection of Witnesses.	Section 16: (1) Notwithstanding 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	Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody. Clause 25: (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	Same as Law Commission Draft Bill (Section 30).	Provisions similar to POTA, 2002 except that in place of mentioning a Special Court reference is made to 'a court'.

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
		<p>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.</p>	<p>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 addresses 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-</p>		

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			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.		
H. GRANT OF BAIL/MODIFIED APPLICATION OF PROVISIONS OF CrPC/ARREST					
1.	Grant of Bail	Section 20: (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	Clause 30(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 Public Prosecutor has been given an opportunity to oppose the application for such release. Clause 30(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 shall be released on bail until the Court is satisfied that there are grounds for believing that he is not guilty	Sections 49 (6) to 49 (9) : Provisions similar to Law Commission Draft Bill, except for Section 49(7). 49(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 shall be released on bail until the Court is satisfied that there are grounds for believing that he is not guilty	No such provision.

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
		<p>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.</p> <p>(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.</p>	<p>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.</p> <p>Clause 30(8): The limitations on granting of bail specified in sub-sections (6) and (7) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.</p> <p>Clause 30(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 except in very exceptional circumstances and for reasons to be recorded therefor.</p>	<p>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.</p>	

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
2.	Modified application of certain provisions of the Cr.PC especially Section 167.	<p>Section 2(c), Section 21, Section 164, Section 268, Sections 366 to 371, Section 392, and Section 438 of the Cr.PC have modified application.</p> <p>Further, Section 20(4) of the Act provides that:</p> <p>"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,-</p> <p>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;</p> <p>b. the reference in sub-section (2) thereof to "fifteen days," "ninety days" and "sixty days" wherever they occur, shall be</p>	<p>Clause 30 provides that Section 2(c), 268, 366, 367, 371 and 438 shall have modified application. Further Clause 30(2) provides that 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</p>	<p>Provisions similar as to the Law Commission Draft Bill (Section 49).</p>	<p>No such provision.</p>

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Annexure-IV(1) Contd.

Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
		<p>construed as references to "sixty days" [one hundred and eighty days] and 8 [one hundred and eighty days], respectively; and</p> <p>(bb) sub-section (2-A) thereof shall be deemed to have been omitted.</p> <p>(bbb) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:-</p> <p>"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."</p>	<p>ninety days, the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of 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 police custody from judicial custody of any person, for the purposes of investigation, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."</p>		

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
3.	Arrest	Section 20(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.	Clause 30(5): 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. Clause 33: (1) Whenever any person, who being a citizen of India, is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or a relative of such person by telegram, phone or by any other means which shall be recorded by the police officer under the signature of the person arrested. (2) Where a police officer arrests a person, he shall prepare a custody memo of the person arrested.	Section 49(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. Section 52: (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	No provision.

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			<p>(3) During the interrogation, the legal practitioner of the person arrested shall be allowed to remain present and the person arrested shall be informed of his right as soon as he is brought to the police station.</p>	<p>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.</p> <p>(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. (Thus, while the person arrested has to be informed of his right to consult a legal practitioner, the legal practitioner is not entitled to remain present throughout</p>	

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				the period of interrogation reversing the position in the Law Commission Draft Bill).	
I. TERRORIST ORGANISATIONS					
1.	Terrorist Organisation	No separate provision	No separate provision	Specific provisions under Chapter III of the Act covering (1) declaration of an organisation as a terrorist organisation (2) offences relating to membership of a terrorist organisation (3) offences relating to support given to a terrorist organisation and (4) offences related to fund raising for a terrorist organisation.	Specific provisions under Chapter VI of the Act regarding (1) identification of a terrorist organisation (2) denotification of a terrorist organisation (3) setting up of review committees for considering issues related to denotification etc. (4) offences relating to membership of a terrorist organisation (similar to POTA, 2002) (5) offences related to support given to a terrorist organisation (similar to POTA, 2002) (6) offences related to fund raising for a terrorist organisation (similar to POTA, 2002)

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J. INTERCEPTION OF COMMUNICATIONS					
1.	Interception of communication in certain cases	No separate provision	No separate provision	Separate chapter 5 containing provisions regarding (1) description of communication meant for interception (2) appointment of competent authority by the Central or State Government for this purpose (3) authorisation of such interception (4) review of order of interception issued by the competent authority by a review committee (5) duration of an order of interception etc.	No such provisions. However, Section 46 provides the following: Admissibility of evidence collected through the interception of communications.- "Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 (13 of 1885) or the Information Technology Act, 2000 (21 of 2000) or any other law for the time being in force, shall be

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				<p>(6) description of authority competent to carryout interception</p> <p>(7) interception of communication in emergency situations</p> <p>(8) protection of information collected</p> <p>(9) admissibility of evidence collected through interception of communications</p> <p>(10) prohibition of interception and disclosure of certain communication</p> <p>(11) annual report of interceptions.</p>	<p>admissible as evidence against the accused in the court during the trial of a case:</p> <p>Provided that the contents of any wire, electronic or oral communication intercepted 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 under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:</p> <p>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</p>

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Sl.No	Item	Terrorism and Disruptive Activities (Prevention) Act, 1987	The Prevention of Terrorism Bill, 2000 (Draft Bill as recommended by the Law Commission of India)	The Prevention of Terrorism Act, 2002	The Unlawful Activities (Prevention) Amendment Act, 2004
					possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order."
K. REVIEW COMMITTEES					
1.	Review Committee	No separate provision	Clause 39 provides for setting up of review committees by the Central and State Governments to review, at the end of each quarter in a year, cases instituted by them under the Act.	Section 60 provides that the Central and State Governments shall constitute one or more review committees for the purposes of the Act.	Section 37 provides for constitution of one or more Review Committees for purposes of review of an order of the Central Government rejecting an application for denotification of a 'terrorist organisation'.
L. OBLIGATION TO FURNISH INFORMATION					
1.	Obligation to furnish information	No separate provision	Clause 14: (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, shall	Same as Law Commission Draft Bill except that provisions of Clause 14(4) of the Draft Bill have not been included.	No such provision.

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			<p>have power to require any officer or authority of the Central Government or a State Government or a local authority or a Bank, 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, as in the opinion of such officer, will be useful for, or relevant to, the purposes of this Act.</p> <p>(2) Failure to furnish the information called for under sub-section (1), or furnishing false information shall be punishable with imprisonment for a term which may extend to three years or fine, or with both.</p>		

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			<p>(3) Not withstanding 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. (4) Any officer in possession of any information shall furnish the same suo motu to the officer investigating an offence under this Act, if in the opinion of such officer such information will be useful to the investigating officer for the purposes of this Act.</p>		

Some Salient Features of Anti-terrorist Legislations in Other Countries

Sl.No.	Description	USA	UK	Australia
1.	Definition(s)	<p>US Code; Title 18; Part 1; Chapter 113B; Terrorism</p> <p>Section 2331 Definitions</p> <p>As used in this chapter—</p> <p>(1) the term “international terrorism” means activities that—</p> <p>(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;</p> <p>(B) appear to be intended—</p> <p>(i) to intimidate or coerce a civilian population;</p> <p>(ii) to influence the policy of a government by intimidation or coercion; or</p> <p>(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and</p> <p>(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by</p>	<p>Terrorism Act, 2000</p> <p>Section 1:</p> <p>(1) In this Act “terrorism” means the use or threat of action where—</p> <p>(a) the action falls within subsection (2),</p> <p>(b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and</p> <p>(c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.</p> <p>(2) Action falls within this subsection if it –</p> <p>(a) involves serious violence against a person,</p> <p>(b) involves serious damage to property,</p> <p>(c) endangers a person’s life, other than that of the person committing the action,</p> <p>(d) creates a serious risk to the health or safety of the public or a section of the public, or</p>	<p>Criminal Code Act, 1995</p> <p>Section 100.1 Definitions</p> <p>(1) In this Part:</p> <p>... “terrorist act” means an action or threat of action where:</p> <p>(a) the action falls within sub-section (2) and does not fall within sub-section (3); and</p> <p>(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and</p> <p>(c) the action is done or the threat is made with the intention of:</p> <p>(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or</p> <p>(ii) intimidating the public or a section of the public.</p> <p>(2) Action falls within this subsection if it:</p>

Some Salient Features of Anti-terrorist Legislations in Other Countries

Sl.No.	Description	USA	UK	Australia
		<p>which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;</p> <p>(2) the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;</p> <p>(3) the term "person" means any individual or entity capable of holding a legal or beneficial interest in property;</p> <p>(4) the term "act of war" means any act occurring in the course of—</p> <p>(A) declared war;</p> <p>(B) armed conflict, whether or not war has been declared, between two or more nations; or</p> <p>(C) armed conflict between military forces of any origin; and</p> <p>(5) the term "domestic terrorism" means activities that—</p> <p>(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;</p>	<p>(e) is designed seriously to interfere with or seriously to disrupt an electronic system.</p> <p>(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.</p> <p>(4) In this section –</p> <p>(a) "action" includes action outside the United Kingdom,</p> <p>(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,</p> <p>(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and</p> <p>(d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.</p> <p>(5) In this Act a reference to action taken for the purposes of terrorism</p>	<p>(a) causes serious harm that is physical harm to a person; or</p> <p>(b) causes serious damage to property; or</p> <p>(c) causes a person's death; or</p> <p>(d) endangers a person's life, other than the life of the person taking the action; or</p> <p>(e) creates a serious risk to the health or safety of the public or a section of the public; or</p> <p>(f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:</p> <p>(i) an information system; or</p> <p>(ii) a telecommunication system; or</p> <p>(iii) a financial system; or</p> <p>(iv) a system used for the delivery of essential government services; or</p> <p>(v) a system used for, or by, an essential public utility; or</p> <p>(vi) a system used for, or by, a transport system.</p>

Some Salient Features of Anti-terrorist Legislations in Other Countries

Sl.No.	Description	USA	UK	Australia
		<p>(B) appear to be intended—</p> <p>(i) to intimidate or coerce a civilian population;</p> <p>(ii) to influence the policy of a government by intimidation or coercion; or</p> <p>(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and</p> <p>(C) occur primarily within the territorial jurisdiction of the United States.</p>	<p>includes a reference to action taken for the benefit of a prescribed organisation.</p>	<p>(3) Action falls within this subsection if it:</p> <p>(a) is advocacy, protest, dissent or industrial action; and</p> <p>(b) is not intended:</p> <p>(i) to cause serious harm that is physical harm to a person; or</p> <p>(ii) to cause a person's death; or</p> <p>(iii) to endanger the life of a person, other than the person taking the action; or</p> <p>(iv) to create a serious risk to the health or safety of the public or a section of the public.</p> <p>(4) In this Division: (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and</p> <p>(b) a reference to the public includes a reference to the public of a country other than Australia.</p>

Some Salient Features of Anti-terrorist Legislations in Other Countries

Sl.No.	Description	USA	UK	Australia
2.	Financing of terrorism	<p>US Code; Title 18; Part 1; Chapter 113B; Terrorism</p> <p>Section 2332d Financial Transactions</p> <p>(a) Offense.— Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(i) of the Export Administration Act of 1979 (50 App. USC 2405) as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years, or both.</p> <p>(b) Definitions.— As used in this section—</p> <p>(1) the term "financial transaction" has the same meaning as in section 1956(c)(4); and</p> <p>(2) the term "United States person" means any—</p> <p>(A) United States citizen or national;</p> <p>(B) permanent resident alien;</p>	<p>Terrorism Act, 2000</p> <p>Terrorist Property</p> <p>14.-(1) In this Act "terrorist property" means-</p> <p>(a) money or other property which is likely to be used for the purposes or terrorism (including any resources of a proscribed organisation),</p> <p>(b) proceeds of the commission of acts of terrorism, and</p> <p>(c) proceeds of acts carried out for the purposes of terrorism.</p> <p>(2) In subsection (1)-</p> <p>(a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and</p> <p>(b) the reference to an organisation's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation.</p>	<p>Terrorism Act, 2000</p> <p>Section 102.6 Getting Funds to or from a terrorist organization</p> <p>(1) A person commits an offence if</p> <p>(a) the person intentionally receives funds from, or makes funds available to, an organization (whether directly or indirectly); and</p> <p>(b) the organization is a terrorist organization; and</p> <p>(c) the person knows the organization is a terrorist organization.</p> <p>Penalty : Imprisonment for 25 years.</p> <p>(2) A person commits an offence if</p> <p>(a) the person intentionally receives funds from, or makes funds available to, an organization (whether directly or indirectly); and</p> <p>(b) the organization is a terrorist organization; and</p> <p>(c) the person is reckless as to whether the organization is a terrorist organization.</p> <p>Penalty : Imprisonment for 15 years.</p> <p>(3) Sub-sections (1) and (2) do not apply to the person's receipt of funds from the organization if the person proves that</p>

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		<p>(C) juridical person organized under the laws of the United States; or</p> <p>(D) any person in the United States.</p> <p>Section 2339A. Providing material support to terrorists</p> <p>(a) Offense.— Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842 (m) or (n), 844 (b) or (c), 930 (c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 1993, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 (42 USC 2284), section 46502 or 60123 (b) of title 49, or any offense listed in section 2332b (g)(5)(B) (except for sections</p>	<p>Fund raising</p> <p>15.-(1) A person commits an offence if he—</p> <p>(a) invites another to provide money or other property, and</p> <p>(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p>(2) A person commits an offence if he—</p> <p>(a) receives money or other property, and</p> <p>(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p>(3) A person commits an offence if he—</p> <p>(a) provides money or other property, and</p> <p>(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.</p> <p>(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.</p> <p>Use and possession 16.-(1)– A person</p>	<p>he or she received the funds solely for the purpose of the provision of:</p> <p>(a) legal representation for a person in proceedings relating to this Division; or</p> <p>(b) assistance to the organization for it to comply with a law of the Commonwealth or a State or Territory.</p> <p>Note: A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).</p> <p>103.1 Financing Terrorism</p> <p>(1) A person commits an offence if:</p> <p>(a) the person provides or collects funds; and</p> <p>(b) the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.</p> <p>Penalty: Imprisonment for life.</p> <p>Note: Intention is the fault element for the conduct described in paragraph (1) (a). See subsection 5.6(1).</p> <p>(2) A person commits an offence under subsection (1) even if:</p> <p>(a) a terrorist act does not occur; or</p> <p>(b) the funds will not be used to</p>

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		<p>2339A. and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.</p> <p>(b) Definitions.— As used in this section— (1) the term "material support or resources" means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification,</p>	<p>commits an offence if he uses money or other property for the purposes of terrorism.(2) A person commits an offence if he-(a) possesses 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.</p> <p>Funding Arrangements 17. A person commits an offence if- (a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and(b) he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.</p> <p>Money Laundering 18.-(1) A person commits an offence if he enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property- (a) by concealment, (b) by removal from the jurisdiction,</p>	<p>facilitate or engage in a specific terrorist act; or (c) the funds will be used to facilitate or engage in more than one terrorist act. (3) Section 15.4 (extended geographical jurisdiction – category D) applies to an offence against subsection (1).</p>

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		<p>communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials;</p> <p>(2) the term "training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge; and</p> <p>(3) the term "expert advice or assistance" means advice or assistance derived from scientific, technical or other specialized knowledge.</p> <p>Section 2339B. Providing material support or resources to designated foreign terrorist organizations</p> <p>(a) Prohibited Activities.—</p> <p>(1) Unlawful conduct.—</p> <p>Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or</p>	<p>(c) by transfer to nominees, or (d) in any other way.</p> <p>(2) It is a defence for a person charged with an offence under sub-section(1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.</p> <p>22. A person guilty of an offence under any of sections 15 to 18 shall be liable—</p> <p>(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or</p> <p>(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.</p>	

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		<p>both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization [as defined in subsection (g)(6)], that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).</p> <p>(2) Financial Institutions.— Except as authorized by the Secretary, any financial institution that becomes aware that it has possession of, or control over, any funds in which a foreign terrorist organization, or its agent, has an interest, shall—</p> <p>(A) retain possession of, or maintain control over, such funds; and</p>		

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		<p>(B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.</p> <p>(b) Civil Penalty.— Any financial institution that knowingly fails to comply with subsection (a)(2) shall be subject to a civil penalty in an amount that is the greater of—</p> <p>(A) \$50,000 per violation; or</p> <p>(B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.</p> <p>(c) Injunction.— Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.</p> <p>(d) Extraterritorial Jurisdiction.</p> <p>(1) In general.— There is jurisdiction over an offense under sub-section (a) if—</p>		

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		<p>(A) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act [8 U.S.C. 1101 (a)(22)] or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act [8 U.S.C. 1101 (a)(20)];</p> <p>(B) an offender is a stateless person whose habitual residence is in the United States;</p> <p>(C) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;</p> <p>(D) the offense occurs in whole or in part within the United States;</p> <p>(E) the offense occurs in or affects interstate or foreign commerce; or</p> <p>(F) an offender aids or abets any</p>		

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		<p>person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).</p> <p>(2) Extraterritorial jurisdiction.— There is extraterritorial Federal jurisdiction over an offense under this section.</p> <p>(e) Investigations.— (1) In general.—The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section.</p> <p>(2) Coordination with the department of the treasury.— The Attorney General shall work in coordination with the Secretary in investigations relating to— (A) the compliance or noncompliance by a financial institution with the</p>		

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		<p>requirements of sub-section (a)(2); and (B) civil penalty proceedings authorized under subsection (b). (3) Referral.— Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other Federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action. ... (g) Definitions.— As used in this section— (1) the term “classified information” has the</p>		

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		<p>meaning given that term in section 1(a) of the Classified Information Procedures Act (18 USC App.);</p> <p>(2) the term "financial institution" has the same meaning as in section 5312(a)(2) of title 31, United States Code;</p> <p>(3) the term "funds" includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;</p> <p>(4) the term "material support or resources" has the same meaning given that term in section 2339A (including the definitions of "training" and "expert advice or assistance" in that section);</p> <p>(5) the term "Secretary" means the Secretary of the Treasury; and</p>		

Annexure-IV(2) Contd.

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		<p>(6) the term "terrorist organization" means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.</p>		

List of Reports Submitted by the Second Administrative Reforms Commission upto May 2008

1. First Report: *Right to Information: Master Key to Good Governance*
2. Second Report: *Unlocking Human Capital: Entitlements and Governance – a case study*
3. Third Report: *Crisis Management: From Despair to Hope*
4. Fourth Report: *Ethics in Governance*
5. Fifth Report: *Public Order – Justice for All . . . Peace for All*
6. Sixth Report: *Local Governance – An inspiring journey into the future*
7. Seventh Report: *Capacity Building for Conflict Resolution – Friction to Fusion*



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