CHAPTER- 3
LEGAL FRAMEWORK TO PREVENT AND COMBAT TERRORISM:
INTERNATIONAL AND NATIONAL EFFORTS

3.1. Introduction

Today terrorism is a worldwide phenomenon. New technology, advancement in the means of communication and transportation have made the problem of terrorism more complex and challenging for all the developing and developed countries.¹ Though terrorism is having an international ramification but it has not been regarded as international crime such as genocide, war crimes, and crimes against humanity and is outside the jurisdiction of international court or tribunal though the Security Council has regarded it as a threat to peace and security of the world. Terrorism being a transnational character is much more prone to spreading in comparison to the conventional wars. It can be used against the state by others to attain certain tactical and strategic gains over the adversaries without involving in the direct conflict with it.

The United Nation General Assembly has adopted Global Counter Terrorism Strategy which is composed of five foundations which include “to deter the terrorist groups from resorting to terrorism; denying them access to any means to undertake attack; prevent states sponsored terrorism; enhance the capability of states prevent and combat terrorism; protect human rights in the context of terrorism and counter-terrorism”.² International community has stressed on developing national criminal justice system to prevent, combat and bring the perpetrator of terrorism to justice without which international counter terrorism efforts are futile. The criminal justice system of a state are obligated to prevent and combat terrorism in all forms due to treaty based obligation on ratification of the universally legal instruments against terrorism, obligation imposed by security council resolution on counter terrorism, obligation under international human rights, humanitarian, refugee and customary law.

India has been witnessing terrorism since many centuries particularly when Arabs, Turks and Mongols invaded her. She suffered another setback of terrorism through Britishers. Terrorism is a threat to national security. Thus, laws formulated to combat terrorism would also come under the preview of protecting the security of the state. It is a right and duty of every State to take all steps within its means to protect its people and institution from acts of terror. In India, a number of factors have created a need for stringent national security laws. Mr. K.P.S.Gill, Former Director General of Police of the State of Punjab, has stated that: “National security legislation is not just a definition of crimes but relates to the entire system, institutional structure and process that are required to prevent and penalize such crimes, to preserve order, and secure the sphere of governance.” On the urgent need for anti-terrorism laws in India, Gill has observed that, “a comprehensive set of counter terrorism laws, as well as laws to combat organized crime must be drafted and given permanent place in our statute”.

3.2. International Cooperation to Prevent and Combat Terrorism

As the terrorism has occupied the characteristic of ‘transnational’, the national authority gets stalled with menace created by it. The need for international cooperation in the fight against terrorism was stated in international instruments and declarations. The mechanism adopted for international, regional cooperation include mutual legal assistance, extradition, transfer of prisoners and proceedings in criminal courts, freezing and confiscation of criminal proceeds which are governed by the nations legislation. The UN General assembly has emphasized that terrorist’s violence, wherever and whoever perpetrated, including those that worsen the relations among nation and endanger their peace and security must be dealt strictly. It has advocated to sign existing international treaties against terrorism and take steps to eliminate the problem including harmonizing domestic legislation with international treaties. It has demanded cooperation in exchange of relevant information, apprehension and prosecution of extradition of perpetrator of the terrorist acts and the conclusion of special treaties. It also advocated contributing to progressive elimination of causes underlying international terrorism.

3. Supra Note 1, p 60.
5. Ibid.
The Security Council has called upon the states to increase cooperation in applying the relevant international conventions and protocol and deny safe haven that finance, plan, support or commit terrorist act. The council also requires all the state to provide assistance to each other in criminal investigation and proceedings relating to terrorist activities.\textsuperscript{6} It is expected that the states shall take steps to incorporate all these measures in their criminal justice system by legal reforms to prevent and punish terrorist.

3.3. Indian Parliament Power to Give Effect to International Agreements

Under Article 253, read with entry 14 of the Union List, The Parliament has been conferred exclusive power to legislate to give effect to international agreement. Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.\textsuperscript{7} The law passed by the Parliament to give effect to an international convention shall not be invalidated on the ground that it contained provisions relating to the state subjects. But the provisions of the Constitution contained in other chapters, like fundamental rights, cannot be overridden by a law made under Article 253 of the Constitution.\textsuperscript{8}

Further, Police is a state subject\textsuperscript{9} and its function cannot by a Parliamentary Law be conferred on an existing or new Central Police Force except under Article 249\textsuperscript{10} or 252\textsuperscript{11} of the constitution. Moreover, Entry 1 of the list 1 i.e. Defence of India, read in conjunction with Article 355\textsuperscript{12} of the Constitution, is sufficient to allow the centre to legislate in the matter of “defence of India and every part thereof including preparation for defence and all such acts may be conducive in times of war to its prosecution and after its termination to effective

\textsuperscript{6} UN Security Council Resolution, 1373 (2001).
\textsuperscript{8} \textit{Maganbhai Ishwarbhai Patel Vs. Union of India}, (1970) 3 SCC 400; AIR 1969 SC 783.
\textsuperscript{9} The Constitution of India, State List, Entry -2 of Schedule VII.
\textsuperscript{10} The power of Parliament to legislate with respect to matter in the State list in the National interest which is valid for a period of one year.
\textsuperscript{11} Parliament may legislate for two or more States by consent and adoption of such legislation be any other State.
\textsuperscript{12} It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution.
demobilization along with the duty of the Union to protect States against external aggression and internal disturbance."

Thus the Indian Parliament is having power and obligation within the ambit the Constitution to give effect to the International treaty, conventions, bilateral agreement etc. and make laws to prevent and combat terrorism. The Preamble of UAPA was extended to comply with the Security Council resolution to make special provision for prevention and for coping with terrorist activities, to combat International terrorism; take action against certain terrorists and terrorist organizations, freeze their assets and economic resources, prevent their movement, and to prevent supply, sale or transfer of arms and ammunition.

3.4. International Legislative Framework to Prevent and Combat Terrorism

Despite political difficulties, there is progress at an international and regional level to have a comprehensive set of universal legal instruments to prevent and combat terrorism. The United Nation has adopted sixteen international conventions concerning terrorism, dealing with the issue such as hijacking, hostage and bombing. In addition the general Assembly set up an ad-hoc committee on terrorism to elaborate international conventions on terrorism. The Security Council has also been active in dealing with terrorism threat. In addition to above United Nation Activities, a number of regional instruments condemning terrorism have been adopted to prevent and combat terrorism.

3.4.1. Universal Instruments


Failure of the league of nations to create an international criminal court to deal with acts of international terrorism and growing threat to hijacking, diversion of flights and crimes committed on board an aircraft paved the way for this multilateral convention which was signed at Tokyo on 14th September 1963 and came into force six years later on 4th December 1969. The convention is made for safety of the aircraft or person(s) or property therein and to maintain good order and discipline on the board. The convention shall apply in respect of offences

committed or acts done by a person on board with respect to any aircraft registered in a 
contracting state while the aircraft is in flight\textsuperscript{17} or on the surface of the high seas or of any other 
area outside the territory of the state but the convention shall not apply to aircraft used in 
military, customs or police services.\textsuperscript{18}

Chapter II of the convention clarifies the jurisdiction of state. It provides that the state 
in which the aircraft is registered is competent to exercise jurisdiction over and acts committed 
on board\textsuperscript{19} in addition to criminal jurisdiction exercised in accordance with national laws.\textsuperscript{20} A 
contracting state which is not the state of registration may exercise jurisdiction over an offence 
under this convention in following circumstances:-

\begin{enumerate}
\item the offence has effect on the territory of such state;
\item the offence has been committed by or against a national or permanent residence of 
such state;
\item the offence is against the security of such state;
\item the offence consist of a breach of any rules or regulation relating to the flight man over 
of aircraft in force in such state;
\item the exercise of jurisdiction is necessary to ensure the observance of any obligation of 
such state under multilateral international agreements.\textsuperscript{21}
\end{enumerate}

The convention for the first time in the history of international aviation law recognizes 
certain powers and immunities of the aircraft commanders.\textsuperscript{22} It is the duty and obligation of the 
contracting states to allow commander of an aircraft to disembark any person pursuant to 
article 8,\textsuperscript{23} take delivery of any person,\textsuperscript{24} take custody of offenders,\textsuperscript{25} take necessary measures 
to ensure presence of any person suspected of an act prohibited under this convention,\textsuperscript{26} and

\textsuperscript{17} Article 1(3) for the purpose of this convention an aircraft is considered to be in flight from the 
moment when power is applied for the purpose of take off until the moment when the landing run 
ends.
\textsuperscript{18} Convention on Offences and Certain other Acts Committed on Board Aircraft, 1963, Article 1 (b).
\textsuperscript{19} Ibid. Article 1(4).
\textsuperscript{20} Ibid. Article 3(1).
\textsuperscript{21} Ibid. Article 3(3).
\textsuperscript{22} Ibid. Article 4.
\textsuperscript{23} Ibid. Article 11.
\textsuperscript{24} Ibid. Article 12.
\textsuperscript{25} Ibid. Article 13(1).
\textsuperscript{26} Ibid. Article 13(2).
communicate the nearest appropriate representatives of that state of which the offender is a national, make preliminary enquiry, notify the state where the aircraft is registered and state of offenders nationality.


Inadequacy of the Tokyo convention and increase in the number of hijackings resulted in the need to define the act of hijacking and recognizing it as an international offence. A draft of Convention for the Suppression of Unlawful Seizure of Aircraft was submitted to an ICAO conference at Hague which was attended by 77 states and was adopted on 16th December 1970. The object stated in its preamble that the unlawful act of seizure or exercise of control of aircraft in flight jeopardize the safety of person(s) and property, seriously affecting the operation of air services and undermine the confidence of the people of the world in the safety of civil aviation and to provide measures for punishment of offenders.

The convention makes it an offence for any person who is on the board of an aircraft in flight and unlawfully, by force or threat or by any other form of intimidation seizes or exercises control of that aircraft or attempts to perform such act or is an accomplice of person who performs or attempt to perform any of such act. Moreover, the convention grants every contracting States the power to exercise jurisdiction over a hijacker if such states are affected by an offence committed under the convention. Thus, it has made impossible for the hijackers to escape the normal process of law.


Since, both the Tokyo and Hague conventions dealt only with unlawful seizure and offence committed on the board of aircraft. Due to the increase in number of acts of violence committed on board of aircraft and on airport ground facilities, the drafter of Montreal convention decided to remedy these lapses and to criminalize such acts. The convention repeats some of the provisions of the Hague convention but it was considered a breakthrough in combating terrorism against air transport as it is pioneered a new series of offences which can be committed

27. Ibid, Article 13(3).
28. Ibid, Article 13(4).
29. Ibid, Article 13(5).
without the offender being on board of the aircraft by defining them broadly in order to cover all possible acts that might occur.

The definition of an aircraft ‘in service’ was introduced which extended the safety of civil aviation by providing that placement of a device or substance on an aircraft in service which is likely to destroy that aircraft is an offence. The definition ‘in service’ ensures that a device or substance placed on the aircraft prior to an aircraft being considered in flight is covered by the convention.


In response to kidnappings and killings of diplomatic agents in the late 1960 this convention was drafted which also known as “Protection of Diplomats convention” and was adopted by the United Nation General Assembly on 14th December 1973 and came into force on 20th February 1977.30

The convention consists of 20 Article and follows closely the pattern set by the Hague convention 1970 and Montreal convention 1971 as far as the principle of “extradition or prosecution” is concern. The convention obligated each state party to make offence punishable if there is intentional commission of murder, kidnapping or other attack upon the person or liberty of an ‘internationally protected person’, or a violent attack upon the official premises, private accommodation or the means of transport of an internationally protected person which is likely to endanger his person or liberty, or threat or attempt to commit any such act or participate as accomplice.31

The term ‘Internationally Protected Person’ was defined under Article 1(1), which means and includes: (a) a Head of state, Head of Government or a Minister for foreign State; (b) any representative or official of a State or any official or other agent of an international organization of an international character, his official premises or his means of transport’ and they are entitled special protection from any attack on his person, freedom or dignity as well as

members of family forming part of his household. The convention central provisions requires that a person alleged to have committed serious attack against the diplomats and other internationally protected persons should either be extradited or his or her case submitted to the authorities for the purpose of prosecution.\(^{33}\)

3.4.1.5. **International Convention against the Taking of Hostages, 1979.**

Hostage-taking was applied as new weapon by the terrorist which can be evident from the incident of kidnapping and killing of 11 Israeli athletes during the Olympic Games at Munich in 1972; the seizure of 60 OPEC officials in Vienna in 1975; the 1976 hijacking of an Air France flight; the prolonged 1979-1981 detention of the American embassy staff in Tehran; the capture of the Dominican embassy in Bogota during a diplomatic reception in February 1980; the siege of the Iranian embassy in London in April 1980; and the spate of hostage-taking in Lebanon in the mid- and late-1980;\(^{34}\) the Iran hostage crisis and failure of Operation Eagle Claw.\(^{35}\) To eliminate this terrorist threat The International Convention against the Taking of Hostages was adopted by the United Nations General Assembly on 17 December 1979 and entered into force on 3 June 1983.

The convention in its preamble considered that the taking of hostage is an offence of grave concern to the international community and any person committing an act of hostage taking shall either be prosecuted or extradited. The offence of hostage taking is defined as, the seizure or detention by a person of another person and includes, a threat to kill, injure or continue to detain him or her unless a third party, which includes a State, an international intergovernmental organisation, a natural or juridical person or a group of persons. A person who attempts to commit an act of hostage taking or participate as an accomplice commits an act offence of hostage taking for the purpose of this convention.\(^{36}\)

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34. David A. Alexander and Susan Klein, “Hostage-Taking: motives, resolution, coping and effect, advances in psychiatric treatment”, available at [http://apt.rcpsych.org/content/16/3/176.full](http://apt.rcpsych.org/content/16/3/176.full) [Accessed on 27-09-2013]
36. The International Convention against the Taking of Hostages, 1979, Article 1 (2).
The convention obligated the states party to make hostage taking punishable in their internal / municipal law and to take all measures to secure release of hostage and to facilitate their departure.\(^{37}\) This Convention shall also not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.\(^{38}\)

3.4.1.6. **Convention on the Physical Protection of Nuclear Material, 1980.**

The nuclear production poses threat to global security. The international community has tried to control it by the Nuclear Non-Proliferation Treaty (NPT) and the International Atomic Energy Agency (IAEA).\(^{39}\) The NPT is an international treaty that, originally, sought to limit the possession of nuclear weapons to five recognized nuclear weapons states (NWS) and the IAEA, an agency charged with actually verifying that states.

The *Convention* contains twenty two Articles and two annexure providing the levels of physical protection to be applied in international transport of nuclear material and categorizing the nuclear materials respectively. It was signed at Vienna and at New York on 3 March 1980 and came into force on 8\(^{th}\) February 1987. It establishes measures related to the prevention, detection and punishment of offenses relating to nuclear material.

The convention recognizes the rights of all state parties in their cooperation to develop, use, prevent from its danger, safe transfer and application of nuclear energy for peaceful and legitimate purposes. It is important that the nuclear materials must be physically protected while using it in domestic sphere or storing it or while transporting it. For the purpose of this convention nuclear material means plutonium; uranium; any material containing one or more of the foregoing.\(^{40}\)

The application of convention is restricted to nuclear material used for peaceful purposes while in international nuclear transport or while in domestic use, storage and transport.\(^{41}\) In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat

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thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to recover and protect such material to any State that so requests.\textsuperscript{42} A Diplomatic Conference in July 2005 was convened to amend the Convention and strengthen its provisions.


Through this convention the State parties have considered the unlawful acts of violence which endanger or act which is likely to endanger the safety of person at airports serving international civil aviation or which jeopardize the safe operation of such airports will undermine the confidence of the people of the world and disturb the safe and orderly conduct of civil aviation for all States. The Protocol adds to the definition of “offence” given in the Montreal Convention of 1971 unlawful and intentional acts of violence against persons at an airport serving international civil aviation which cause or are likely to cause serious injury or death and such acts which destroy or seriously damage the facilities of such an airport or aircraft not in service located thereon or disrupt the services of the airport. These offences are punishable by severe penalties, and Contracting States are obliged to establish jurisdiction over the offences not only in the case where the offence was committed in their territory but also in the case where the alleged offender is present in their territory and they do not extradite him to the State where the offence took place.


According to Helmut Tuerk “Person hijacked of Italian ship in 1985 and held the crew and passengers as hostage and threatened to kill unless Israel releases 50 Palestine prisoners and also threatened to blow the ship if any rescue mission was attempted. A United States national was murdered on the board”.\textsuperscript{43} It provided an impetus for drafting a

\textsuperscript{42} Ibid, Article 5.
convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, based on a draft submitted by Austria, Egypt and Italy.\textsuperscript{44} The convention was adopted on March 1988, at Rome and came into force on 1\textsuperscript{st} March 1992.

The Convention consists of twenty two Articles. The Convention applies to the offences of direct involvement or complicity in the intentional and unlawful threatened, attempted or actual endangerment of the safe navigation of a ship by the commission of any of the following acts: seizure of or exercise of control over a ship by any form of intimidation; performs an act of violence against a person on board a ship; destruction of a ship or the causing of damage to a ship or to its cargo; placement on a ship of a device or substance which is likely to destroy or cause damage to that ship or its cargo; destruction of, serious damaging of, or interference with maritime navigational facilities; knowing communication of false information; injury to or murder of any person in connection with any of the preceding acts.\textsuperscript{45}

The Convention applies to ships navigating or scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States, or when the alleged offender is found in the territory of a State Party.\textsuperscript{46} The Convention does not apply to warships, ships owned or operated by a State when being used as a naval auxiliary or for customs or police purposes or ships that have been withdrawn from navigation or laid up.\textsuperscript{47}


The protocol was adopted on 10\textsuperscript{th} March 1988 and came into force on 1\textsuperscript{st} March 1992. This protocol has extended the safety measures for the safety of maritime navigation to the fixed platform which includes artificial Island, installation, structures which is permanently fixed to the sea bed for the purpose of exploration or exploitation of resources or for other


\textsuperscript{45} The Suppression of Unlawful Acts Against The Safety of Maritime Navigation, 1988, Article 3.

\textsuperscript{46} \textit{Ibid}, Article 4.

\textsuperscript{47} \textit{Ibid}, Article 2.
economic purposes.\textsuperscript{48} Many of the provisions of Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 were extended to the safety of fixed platform located at the continental shelf. Creating violence against the person on the board of fixed platform is an offence. Exercising unlawful control or destroying the fixed platform is also an offence.\textsuperscript{49}


The Convention consists of fifteen Articles. The Convention requires each State Party to prohibit and prevent the manufacture\textsuperscript{50} in its territory of unmarked plastic explosives\textsuperscript{51} and movement into or out of its territory of unmarked explosives.\textsuperscript{52} Plastic explosives\textsuperscript{53} will be marked by introducing during the manufacturing process any one of the detection agents defined in the Technical Annex to the Convention. The Convention also requires each State Party to strict and has effective control over the possession of any existing stocks of unmarked explosives.\textsuperscript{54} Stocks of plastic explosives not held by authorities performing military and police functions are to be destroyed or consumed for purposes not inconsistent with the objectives of the Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of the Convention in respect of the State concerned\textsuperscript{55} and those which are not incorporated as integral part of duly authorized military device are destroyed or consumed, marked or rendered permanently ineffective within fifteen years.\textsuperscript{56}

The Convention establishes an International Explosives Technical Commission composed of members appointed by the Council of the International Civil Aviation

\begin{itemize}
\item \textsuperscript{48} Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, Article I(3).
\item \textsuperscript{49} \textit{Ibid}, Article 3
\item \textsuperscript{50} As per Article I clause 4, manufacture means any process, including reprocessing, that produces explosives.
\item \textsuperscript{51} Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991, Article II.
\item \textsuperscript{52} \textit{Ibid}, Article III.
\item \textsuperscript{53} \textit{Ibid}, Article I: Explosive means explosive products, commonly known as ‘plastic explosive’ including explosive in flexible or elastic sheet form, as described in the technical Annex to this convention.
\item \textsuperscript{54} Supra Note 51, Article IV (1).
\item \textsuperscript{55} \textit{Ibid}, Article IV (2).
\item \textsuperscript{56} \textit{Ibid}, Article IV (3).
\end{itemize}
Organization.\textsuperscript{57} The Commission will evaluate technical developments relating to the manufacture, marking and detection of explosives.\textsuperscript{58}


United Nations General Assembly adopted the draft Convention for the Suppression of Terrorist Bombing on 15 December 1997. The Convention entered into force on 23 May, 2001 after the ratification by the 22nd state. The objective of the Convention is to enhance international cooperation among States in devising and adopting effective and practical measures for the prevention of the acts of terrorism and for the prosecution and punishment of their perpetrators.

A person commits an offence under this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to result or actually resulting in major economic loss. Attempt to commit such act is also punishable.


The Convention entered into force on 10 April 2002 with an objective to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators. Any person commits an offence if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention or knowledge that they should be used in full or in part, to carry out any of the offences described in the treaties listed in the annex to the Convention, or an act intended to cause death or serious bodily injury to any person not actively involved in armed conflict in order to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act. Attempt to commit such act is also an offence.

\textsuperscript{57} Ibid, Article V.
\textsuperscript{58} Ibid, Article VI.
For an act to constitute an offence, it is not necessary that funds were actually used to carry out an offence as described above. The Convention does not apply where an act of this nature does not involve any international elements. The Convention requires each State party to take appropriate measures, in accordance with its domestic legal principles, for the detection and freezing, seizure or forfeiture of any funds used or allocated for the purposes of committing the offences described.


A report was prepared by the UN Security Council to eliminate international terrorism\(^{59}\) in which it was concluded that there was a need to elaborate international treaties. On 11 September 2001, when members of Al-Qaeda terrorist organization hijacked four aircraft and flew three of them into the world trade centre and the pentagon wherein 3000 (approx) people were killed and many injured. It had revealed the fact that terrorists are threat to the world and they could use the weapon of mass destruction and may strike against the nuclear plant and they are seeking to acquire nuclear materials.\(^{60}\) The convention on physical Protection of Nuclear Material was only with regard to nuclear materials used for peaceful purposes and does not extend for military purposes. But the new draft convention was aimed at combating new and dangerous manifestations of terrorism, stimulating the adoption of effective preventive measures. It was adopted on 13\(^{th}\) April, 2005 and came into force on 7\(^{th}\) July 2007.

The convention prescribes punishment for four acts, the use of nuclear explosives against public targets with intention to cause death, serious injury, or significant economic damages; the unlawful possession of radioactive materials with the intention to cause death or serious injury; the unlawful use of such material with the intention to cause death or serious bodily injury or substantial property or environment damage; and the threat or use of nuclear materials that causes or likely to cause serious injury, death or property damage.


The General Assembly has adopted without a vote the Convention on 13 April 2005. The main objective of the Convention is to prevent and suppress acts of nuclear terrorism. The


\(^{60}\) Ibid.
convention provides the definition of ‘radioactive material’, ‘nuclear material’, ‘nuclear facility’, ‘device’, ‘State or government facility’ and ‘military forces of a State’. A person is said to commit offence under this convention if that person possesses radioactive material or makes or possesses a device with the intent to cause death or serious bodily injury or to cause substantial damage to property or to the environment. The use or threat of use or attempt to use of radioactive material or a device constitutes an offence under the Convention.

It does not apply if the offence is committed in a State by the alleged offender and the victims of the same state. Further it did not apply to the activities of armed forces during an armed conflict, which are governed by international humanitarian law and discharge military duties. Legality of use of nuclear material has not been taken as defence. Parties are required to establish the acts referred to in article 2 as criminal offences under their national laws, and to make such offences punishable by appropriate penalties. Moreover, the Convention stipulates that each Party taking control of radioactive material, devices or nuclear facilities should adopt measures to render harmless of such items.


In wake of terrorist attack on world trade tower, 2001 UN General assembly condemning the attack and called for global cooperation for suppression of terrorism. There was a gap in the existing 1988 SUA Convention. The term piracy was narrowly defined to cover all threats to human life and security of navigation and commerce at sea. It did not address the shortcomings of the law of the sea and international criminal law. It had no law enforcement provisions to address an imminent offence. After substantial reviews and discussions, the 2005 Protocol to the SUA Convention was introduced this amended the convention on suppression of Unlawful Acts against the Safety of Maritime Navigation 1988.61

The convention applies if the ship is navigating or is schedule to navigate into, through or from water beyond the outline limit of the territorial sea of a single state, or adjacent States. it covers acts of unlawful and intentional to intimidate a population or to compel a government

or an international organization to do or to abstain using a ‘ship’\textsuperscript{62} or uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon\textsuperscript{63}; discharge, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance in such quantity or concentration which causes or likely to cause or threaten to cause death or ‘serious injury’\textsuperscript{64} or damage.\textsuperscript{65} Communication of information knowing that it is false thereby endangering the safe navigation of a ship\textsuperscript{66} or transport another person on a board knowing that the person has committed an offence is punishable offence.\textsuperscript{67} Commission of an offence unlawfully or intentionally or attempt to commit or participate or organize or direct others or contributes to the commission of an offence is liable for criminal prosecution.\textsuperscript{68} The act does not include transport an item or material under the control of a State Party on the Non-Proliferation of Nuclear Weapons,\textsuperscript{69} to the activities of armed forces during armed conflict.\textsuperscript{70}

3.4.2. Regional instruments

At the regional level, three conventions have been concluded aiming at combating acts of international terrorism: (a) the Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortions that are of international significance, adopted by the Organization of American States (OAS) on 2 February 1971, (b) the European Convention on the Suppression of Terrorism, adopted by the States Members

\textsuperscript{62} Added by article 1(a) “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

\textsuperscript{63} Added by Article 1(d) biological weapons means microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

\textsuperscript{64} Added by Article 1 (c) “Serious injury or damage” means serious bodily injury; extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or substantial damage to the environment, including air, soil, water, fauna, or flora.

\textsuperscript{65} Added by Article 3bis 1(a) of Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005.

\textsuperscript{66} Article 4 (2) replaced Article 3, para 1(f) of the convention 1988.


\textsuperscript{68} Added by article 3 quarter, of Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005.

\textsuperscript{69} Article 3bis (2) of Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005.

of the Council of Europe on 27 January 1977; and (c) the Regional Convention on Suppression of Terrorism, adopted by the States Members of the South Asian Association for Regional Cooperation (SAARC) on 4 November 1987.


Under the OAS Convention, the Contracting States undertake to cooperate among themselves by taking all the measures that they may consider effective, under their own laws, to prevent and punish acts of terrorism, especially kidnapping, murder and other assaults against the life or physical integrity of those persons to whom the State has the duty according to international law to give special protection, as well as extortion in connection with those crimes. Motive for the commission of any of these crimes is immaterial. The Convention makes persons charged or convicted for any of the crimes above subject to extradition. States parties also undertook, inter alia, to endeavor to make the crimes listed above included in their penal laws, if not already so included. The Convention also sets forth the principle of aut dedere aut judicare, which obliges the State where the alleged offender is found to extradite him to the requesting State or to prosecute him.

3.4.2.2. European Convention on the Suppression of Terrorism, as amended by its Protocol, 1977.

The European Convention on the Suppression of Terrorism has primary objective of ensuring that certain offences should not be regarded as political offences for purposes of extradition. According to article 1 of the Convention, the offences in question are those which fall within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970; those under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971; serious offences involving an attack against

72. Ibid, Article 2.
73. Ibid, Article 8.
74. Ibid, Article 5.
the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; offences involving kidnapping, the taking of hostages or serious unlawful detention; offences involving the use of bombs, grenades, rockets, automatic firearms or letter or parcel bombs if this use endangers persons; and attempts to commit any of these offences or participation as an accomplice of a person who commits or attempts to commit such offences.

3.4.2.3. South Asian Association for Regional Cooperation (SAARC) Regional Convention on Suppression of Terrorism, 1987.

This Convention apply the principle of aut dedere aut judicare with respect to the offences within the scope of the Hague Convention; the Montreal Convention; the Convention on Internationally Protected Persons; convention based on the extradite or prosecute principle to which SAARC member States are parties; murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offences relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property; an attempt or conspiracy to commit any of the above offences, aiding, abetting or counseling, or participating as an accomplice in, the commission of such offence (articles I and IV). States parties have agreed not to consider, for the purposes of extradition, any of the above offences as a political offence or as an offence connected with a political offence or as an offence inspired by political motives (article I).

3.4.2.4. Other Regional Instruments: Apart from these above state regional conventions there are also other regional conventions like The Arab Convention on the Suppression of Terrorism, 1998; Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism, 1999; Convention of the Organization of the Islamic Conference on Combating International Terrorism, 1999; Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism, 1999; Shanghai Convention against Terrorism, Separatism and Extremism, 2001; Inter-American Convention against Terrorism, 2002; Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism, 2004; Council of Europe Convention on the Prevention of Terrorism, 2005; Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from

3.4.3. Role of United Nation and Its Specialized Agencies towards Terrorism

United Nation being only international organisation at the global level is under obligation to take reasonable but effective and active effort to maintain peace and tranquility in the world. The United Nation and its specialized agencies of General Assembly and Security Council have adopted many resolutions along with international legal instruments for combating and controlling of terrorist menace. The issue of international terrorism was for the first time discussed by the UN General Assembly in 1972 and in the same year, an ad-hoc Committee on International Terrorism was established in pursuant to its resolution. Since then the matter was discussed at various forum of the UN and its specialized agencies. On the occasion of 50th anniversary of UN, the member states have advocated and agreed to act together to defeat the threats to states and people posed by terrorism, in all its form and manifestations and transnational organized crime and the illicit trade in arms and production, consumption and trafficking of illicit drugs.75

The declaration on Measure to Eliminate International Terrorism, the general assembly resolution of 1994, has reaffirmed to condemn all acts, methods and practices of terrorism as criminal and unjustifiable. It is immaterial that where and by whom it is committed. The declaration also encourages states to review urgently the scope of the existing legal provisions on the prevention, repression and elimination of terrorism in all its forms and manifestation.76 The General Assembly Resolutions of 1996 and 1994 has obtained the consensus to combat terrorism.77 Series of Security Council resolutions relating to terrorism were adopted and are binding on all the member’s states. The resolution of 2001 was adopted in reaction to WTC attack in 2001 for providing extensive counter terrorism efforts obligating the states to freeze the financial assets of terrorist and their organizations. The resolution obligated the states to prevent terrorist recruitment and weapons supply as terrorism is a transnational crime.

75. http://www.un.org/UN50/dec.htm available at [accessed on 21-09-2013 at 2.18 a.m.]
Participation, financing, planning, preparation as well as perpetration of terrorist act are to be prosecuted by national legal system.\textsuperscript{78} A counter terrorism executive directorate was advocated and established to provide assistance to the counter terrorism committee by resolution of 2004.\textsuperscript{79} The Security Council resolution of 2004 obligated the states to restrict the non state actor with regard to dealing with nuclear, chemical, and biological weapons. The brief details of important Security Council resolution are as follows:

1. Resolution 1373 (2001) - Establishment of Counter-Terrorism Committee (CTC) threats to international peace and security caused by terrorist acts.
10. Resolution 1566 (2004) - Establishment of a working group to consider measures to be imposed upon individuals, groups or entities other than those designated by the Al-Qaida Taliban Sanctions Committee.

\textsuperscript{79} The Role of the Counter-Terrorism Committee and its Executive Directorate in The International Counter Terrorism Efforts, available at \url{http://www.un.org/en/sc/ctc/docs/presskit/2011-01-presskit-en.pdf} [accessed on 12-09-2013 at 2.43 a.m]
3.4.4. International Humanitarian Law (IHL)

The international humanitarian law provides a set of rules to protect person(s) who are not participating in the hostilities and to restrict the means and methods of warfare. This law is also known as ‘law of war’ or law of ‘armed conflict’. The international humanitarian law consists of Geneva Convention of 1949 and its additional two protocols which does not define terrorism as a crime. Nevertheless it prohibits use of certain specific weapons as a crime which is also covered under various international instruments. But the IHL prohibit commission of act in armed conflict that is similar to terrorist act as defined by the international instruments on terrorism. For example hostage taking is prosecutable under the International Convention against the hostage taking and it is also prohibited by common article 3 of the Geneva Convention where person is not taking active part in hostilities which are not in the nature of international armed conflict and by 4th Geneva convention which concerns about the person in case of conflict of international in nature and are also prohibited by additional two protocols which specifically prohibits acts or violence which spreads terror among the civilian population.

Many of the International conventions does not apply in relation to the military and war time situation as they are governed by the International humanitarian law. To that extent the international humanitarian law is very helpful in providing set of rules during armed conflict and military operation to prevent spreading terror. The application of international humanitarian law does not hinder in criminal law justice administration in response to preventing terrorism rather it supplements the effort. The International committee of the Red Cross has frequently reaffirmed that the compliance with IHL does not create obstacle to struggle against terrorism but provide positive contribution in eradicating the menace of terrorism.

3.5. Indian Legislative Framework to Prevent and Combat Terrorism

3.5. A. Pre-Mumbai Attack 2008 Legislations

3.5. A. 1. Rawlatt Act:

Pre independence legislation relevant to deal with the terrorist activities trace back to the Rawlatt Act wherein the British Government extended its war time extraordinary power conferred by the Defence of India Act, 1919 and Defence of India Act, 1935 to peace time situation by enacting Anarchical and Revolutionary Crimes Act, popularly known as Rawlatt
Act. It conferred wide power of Britisher's to combat and curtail the freedom movement
without clearly spelling its meaning and extent of operation.

Further legislation upon the subject matter are the Explosive Substance Act, 1908,
the Bengal Suppression of Terrorist outrages (Supplementary) Act, 1932 and the Bombay
Public Security Measures Act, 1947 some of the provisions find place in Indian Statute even
after independence.

3.5. A. 2. The Preventive Detention Act, 1950 and Maintenance of Internal Security
Act, 1971

An additional consideration for understanding the Indian response to terrorism is the
Preventive Detention Act, 1950 which authorized detention up to 12 years for the act against
the security of the state, public order and for essentials supplies. With minimum constitutional
safeguards it was replaced by Maintenance of Internal Security Act, 1971 which was enacted
during the Indo-Pak war. The legislation was miserably abused by the government and law
enforcement agencies thus, was repealed it in 1978 and the National Security Act of 1980
was enacted to provide for preventative detention in matters related to foreign affairs, defense,
or security.  


The NSA, 1980 empowered the Central and State government to order detention of
a person so that he can be prevented to act in a manner prejudicial to the defence of India,
India relation with foreign country or security of India. The statute requires detention order to
meet with the same procedural requirements as a warrant under the ordinary criminal procedure
code and provided for a maximum period of 12 months of detention. The procedural safe


guard employed is to inform the detainee about the reason of his or her detention and the case
must be sent to the advisory board 3 weeks of such detention so that legality and sufficient
cause of detention can check.

81. The National Security Act of 1980, Section 3(1),(2).
82. Ibid, Section 4.
83. Ibid, Section 13.
84. Ibid, Section 10.
85. Ibid, Section 11.

The National Security Act, 1980 was the first attempt towards antiterrorist legislation and its effectiveness was strengthened by amendment in 1984 to deal with the insurgency in Punjab. The (TADA) came into being in 1985 (UPA government) with a having life span of two years and ceased to be enforce in 1987 as the Parliament was not in session. The Terrorist and Disruptive Activities (Prevention) Ordinance 1987 was promulgated which was replaced by enactment of TADA 1987 with minor changes.

The Act defined terrorist act and disruptive activities and made it an offence. Part two of the Act lays down punishment and measure for coping with terrorist and disruptive activities. Section 3 states the punishment for terrorist act if the act is done with intention to overawe the government or strike terror and disturb harmony in the society. Such act is punishable if means used is hazardous in nature causing death, injury, destruction of property, kidnapping whereby to compel the government to fulfill their illegal demands. Further, the terrorist may be punished for conspiracy, attempt, abetment, advice or if they are having knowledge about the nature of act about be done. Provision was made to punish the harboring, holding any proceeds of terrorism and being the member of any terrorist gangs or organization which is involved in terrorist act. Possession of unauthorized arms, ammunition or explosive substance in notified area is punishable subject to its use or intended to be used in furtherance of terrorist or disruptive activities. This Act was severally abused by the law enforcement agencies and therefore pressure was created upon the government to allow it to lapse though its constitutionality was upheld by the Supreme Court.

3.5. A. 5. The prevention of Terrorist Act, 2002

After lapse of TADA a criminal law (Amendment) Bill 1995 was drafted but never enacted due to unstable government in 1999 it was referred to the Law Commission for recommendation. The Prevention of terrorism Ordinance 2001 was replaced by legislature

86. The Terrorist and Disruptive Activities (Prevention) Act, 1987, Section 3.
87. Ibid, Section 5. See also, Abdul Hamid Haji Mohammed Vs. State of Maharashtra, 1994, Cr. L.J. 1447.
as The Prevention of Terrorism Act, 2002 (POTA) in reaction to attack on parliament in 2001. The POTA was the replica of TADA with certain modification. It contained similar provisions in new form like definitions of terrorist acts, the criminalization of support for terrorism, and the prohibition of the proceeds of terrorist acts. The act also provides for the seizure of property connected to terrorist activity, and requires this disclosure to government authorities of financial transactions. Like TADA, POTA established Special courts with exclusive jurisdictions to try terrorist offenses and supplemental jurisdictions to try other offences. Finally, POTA gives some protections to the accused, notably by allowing them to control with counsel. POTA departs from TADA in establishing a procedure for declaration of terrorist organizations under the Act. Membership in such organization is criminalized, as is providing support to such organizations. The Act also established a procedure for organizations wishing to challenge their status as terrorist organizations. In addition, POTA is substantially different from TADA in allowing for interception of electronic communications. Like the Patriot Act, POTA is designed to spend the investigatory power of the state to take into account changing technology. POTA requires investigators to apply a competent Authority, rather than a judicial officer, for a warrant to intercept electronic communications if there is reason to believe a terrorist act will occur.

The dominant criticism of POTA is that, like TADA, it can be used to arrest political opposition not engaged in terrorist acts. For example, the definition of terrorist act includes intents not only to threaten the security, but also the “unity” of India, and incorporates not only acts of violence but “any other means” which “disrupt service.” A Human Rights Watch Reports issued in March 2003 noted that POTA had in fact been used against political opponents

91. Ibid, Section 7, 10, 12.
92. Ibid, Section 14.
93. Ibid, Section 23, 25.
94. Section 52 (4). However, counsel does not have to be present at all times during interrogation.
95. Ibid, Section 18-32.
97. Supra Note 87, Section 38.
99. Supra Note 87, Section 3 (1)(a).
and religious minorities. This has included the arrest of leaders of various political parties not only in Kashmir but in states of Tamil Nadu and Uttar Pradesh.

3.5. A. 6. The Unlawful Activities (Prevention) Act, 1967 (UAPA)

The UAPA 1967 was originally enacted to provide effective prevention of certain unlawful activities of individual or association which was declared by the government as unlawful and to terrorist activities. Unlawful activities means and includes words spoken, written, sign and visible representation of such individual or association, so declared unlawful, with intent to cession of territory of India or disrupt sovereignty and integrity of India or bring disaffection against India. The Act prescribes procedure for declaration of any association as unlawful by the Central government on fulfillment of requirement of section 4 i.e. the order of tribunal and publication of such notification. The order of the tribunal will be binding on the parties. Upon such order the members of unlawful association are prohibited to use funds of association, notified place and contravention of this order attract penalty.

3.5. A. 7. The Unlawful Activities (Prevention) Amendment Act, 2004

In 2004 the Parliament has repealed the POTA and made amendment in the existing UAPA 1967 enlarging its scope of operation and extending the provision to punish terrorist act and related activities. A new chapter IV and VI was inserted to deal with terrorist act, punishment for terrorist act, raising funds for terrorist act, conspiracy to commit terrorist act, harboring a terrorist, member of terrorist gangs or organization, holding proceeds of terrorism, threatening witnesses. It has provided power and procedure for forfeiture of proceeds of terrorism. It also provided power of designated authority, power to notify and denotify a terrorist organization. The Salient features of Unlawful Activities (prevention) Amendment Act, 2004 is as follows:

a) A person who continues to be a member of unlawful association after so declared by the government or provide aid or promote its object and in possession of unlicensed

100. Supra Note 98.
101. Ibid.
102. The Unlawful Activities (Prevention) Act, 1967, the Preamble.
103. Ibid, Section 3.
104. Ibid, Section 2(o).
105. Ibid, Section 3.
106. Ibid, Section 4, 5, and 6.
107. Ibid, Section 7 to 13.
arms, ammunition, explosive substances and commit any act which results in to loss of life, property or injury to person shall be punishable with death or life imprisonment.108

b) The term terrorist was not defined but it may be construed in accordance with the definition of terrorist act109 which means act intended to challenge the sovereignty, integrity, security of India, strike terror, with the use of hazardous substance (bombs, dynamite, explosive or inflammable or chemical or biological substance, fire), which causes or likely to cause loss of person life, property, disrupts the supply of essentials to the community. The meaning also extends to killing, abduction, injury to any person so to compel the government to accept their illegal demands.110

c) Causing death of any person by terrorist act is punishable with death or life imprisonment or fine and in any other case imprisonment for not less than five years which may extends to life also.111

d) Raising funds for terrorist act is punishable for imprisonment not less than 5 years.112

e) Act of conspiracy to commit a terrorist act including attempt, abetment, giving advice or advocating or incitement or participating or facilitating knowingly a terrorist act is punishable.113

f) Harboring someone or concealing someone knowing that he is a terrorist is a punishable offence.114

g) Terrorist gang and terrorist organization involved in terrorist activities is punishable offence.115

h) Central government may add or delete any organization from the list of terrorist organization enlisted under the schedule of the Act. All the Terrorist organization identified by the Security Council is included. an organization is deemed to involve in terrorism if it commits, prepare, promotes or otherwise involve in terrorism.116

i) On the rejection of application to delete a terrorist organization the aggrieved person may apply to review committee whose decision shall be final.117

109. Ibid, Section 2(k).
110. Ibid, Section 15.
111. Ibid, Section 16.
112. Ibid, Section 17.
113. Ibid, Section 18.
114. Ibid, Section 19.
115. Ibid, Section 20.
116. Ibid, Section 35 and 36.
117. Ibid, Section 36 and 37.
j) Member of terrorist organization and person who profess or further its object118 or provide support or raise funds for terrorist organization119 is punishable offence.

k) Holding any property which is derived or obtained from commission of terrorist act is punishable offence.120

l) Threatening any witnesses or wrongfully restraining or confining him is a punishable offence.121 The court may take measures to provide protection to witnesses’ life, and may held proceeding in camera, keep identity and address of them secrete, restrict the publication of order or judgment.122

m) Intentionally extending any aid to a terrorist by contravening to the provisions of Explosive Act, 1884, Explosive Substance Act, 1908. The Inflammable Substance Act, 1952, Arms Act, 1959 is punishable. Mere possession of weapon or substance prohibited under these laws is sufficient if intention is to give aid to a terrorist.123

n) Proceed of terrorism is liable to be forfeited by the government and for which power and procedure is provided under the Act.124

o) The investigating officers are empowered to seize or the proceed of terrorism with prior approval of DGP which is to be confirmed or revoked by the designated authority within a period of 60 days after giving due opportunity to the other party of being heard. In appeal the court may confirm or alter the order of forfeiture.125

p) On the forfeiture of share of any company belonging to a terrorist, the company upon the order of the court has to register the government as a trustee of such shares.126

q) Evidences collected through the interception of wire, electronic or other communication is admissible in evidence.127

r) Other provision added by the amendment deal with providing protection of action taken in good faith;128 impounding of passport and arm license of person charge sheeted;129 rule making power of the central government;130 Order and rules to be laid before the Parliament.131

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118. Ibid, Section 38.
119. Ibid, Section 40.
120. Ibid, Section 21.
121. Ibid, Section 22.
122. Ibid, Section 44.
123. Ibid, Section 23.
124. Ibid, Section 24.
125. Ibid, Section 25 to 33.
126. Ibid, Section 34.
127. Ibid, Section 46.
128. Ibid, Section 49.
129. Ibid, Section 51.
130. Ibid, Section 52.
131. Ibid, Section 53.
3.5. B. Post-Mumbai Attack 2008 Legislative Developments

3.5. B. 1. The Unlawful Activities (Prevention) Amendment Act, 2008

In 2008 further amendment to the UAPA was made in wake of Mumbai attack. Hurriedly the Indian Parliamentarians have went ahead to make amendment in the existing UAPA with object to prevent and combat terrorism and meet the international legal standards on terrorism. The Unlawful Activities (Prevention) amendment Act, 2008 brought following changes to the parent Act:

a) Preamble of UAPA was extended to comply with the Security Council resolution to make special provision for prevention and for coping with terrorist activities, to combat International terrorism; take action against certain terrorists and terrorist organizations, freeze their assets and economic resources, prevent their movement, and to prevent supply, sale or transfer of arms and ammunition.132

b) The definition of terrorist act provided under section 15 was reframed with use of term ‘likely’ in the first part of it and in clause (a) with the term threat and cause so to create likelihood in commission of terrorist act. Further, means used for commission of terrorist act was extended to almost every kind of means employed for causing or bringing the effect of terrorism. Clause (b) was inserted to extend the meaning of terrorism as “overawes by means of criminal force or the show of criminal force or attempt to do so or cause death of any public functionary or attempts to cause death of any public functionary”.133 Terrorist act was also extended to the act of kidnaps, abduction of any person.134

c) The term property was defined which means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes legal documents, deeds, instruments in any form whether electronically or digitally. Assets means bank credits, travelers cheque, bank cheque, money orders, shares, securities, bonds, drafts, letter of credit, cash and bank account including fund.135

d) A new section 16A is inserted for making provision for punishing person who demands by use or forces any bomb, dynamite or other lethal weapon, explosive or inflammable substance including chemical, biological, nuclear device for aiding, abetting or committing terrorist act is punishable offence for a term of 10 years or life.136

132. New Preamble was inserted by Section 2 of The Unlawful Activities (Prevention) Amendment Act, 2008.
133. Substitution of new section for section 15 by Section 4 of Unlawful Activities (Prevention) Amendment Act, 2008.
134. Ibid.
135. Amendment to section 2(h) by section 3(iv) of Unlawful Activities (Prevention) Amendment Act, 2008.
e) Section 17 was inserted providing for punishment for raising funds for terrorist act knowing that such funds are likely to be used to commit terrorist act is punishable.\textsuperscript{137}

f) Amendment also inserted new provisions providing punishment for organizing camps for imparting training in terrorism under section 18A and recruiting any person for commission of a terrorist act under section 18B is punishable.\textsuperscript{138}

g) The amendment extended the operation of section 23 and 24 to terrorist organization and terrorist gangs in addition to earlier terrorist only.\textsuperscript{139}

h) with insertion of new section 43A and 43B, the designated authority is empowered to arrest person; search building, conveyance or place and seize, freeze or forfeit property which are used in the commission of terrorism. Certain safeguards were also provided like informing the ground of arrest, forwarding the person and article to the nearest police station.\textsuperscript{140}

i) A new section 43D was inserted which states that every offence punishable under this Act is a cognizable offence and detention period of person is extended upto 180 days.\textsuperscript{141}

j) New section 43D also states that no person in custody be granted bail unless the public prosecutor has been given an opportunity of being heard and foreigner accused under this Act shall not be granted bail.\textsuperscript{142}

k) New section 43E creates Presumption of guilt if arms or ammunition or any other substances were recovered from the possession of accused and there is reason to believe that similar nature of material was used in commission of terrorist act.\textsuperscript{143}

l) Section 43F provides that officer of government or public under takings or private under taking are under obligation to furnish information in his or her possession and failure to provide is punishable for 3 years.\textsuperscript{144}

m) A new section 51A was inserted giving power to the Central government to freeze, seize or attach funds and other financial assets or economic resources from person engaged in or suspected to be engaged in terrorism.\textsuperscript{145}

\textsuperscript{137} Substitution of new section for section 17 by of Unlawful Activities (Prevention) Amendment Act, 2008.
\textsuperscript{138} Insertion of new section 18A and 18B by section 8 of Unlawful Activities (Prevention) Amendment Act, 2008.
\textsuperscript{139} Amendment to section 23 and 24 by section 9 and 10 of Unlawful Activities (Prevention) Amendment Act, 2008.
\textsuperscript{140} Insertion of new section 43A and 43B by section 12 of Unlawful Activities (Prevention) Amendment Act, 2008.
\textsuperscript{141} Insertion of new section 43D by section 12 of Unlawful Activities (Prevention) Amendment Act, 2008.
\textsuperscript{142} Unlawful Activities (Prevention) Amendment Act, 2008, Section 12.
\textsuperscript{143} Ibid.
\textsuperscript{144} Ibid.
\textsuperscript{145} Section 51A inserted by section 14 of Unlawful Activities (Prevention) Amendment Act, 2008.
n) The schedule of terrorist organization was amended to include the organization listed in the schedule to the U.N. Prevention and Suppression of terrorism (Implementation of Security Council Resolution) Order 2007 and amended from time to time.\textsuperscript{146}

3.5. B. 2. The Unlawful Activities (Prevention) Amendment Act, 2012

The UAPA was further amended in the year 2012 and received the assent of President on the 3rd January, 2013. The amendment introduce the meaning of term ‘Person” which includes an individual; a company; a firm; incorporated or unincorporated organization, an association of person, body of individuals; artificial juristic person; and any agency, office or branch owned or controlled by any person.\textsuperscript{147} The meaning to terrorist is extended to threatening economic security which includes financial, monetary and fiscal stability, security of means of production and distribution, food security, livelihood security, energy security, ecological and environmental security.\textsuperscript{148} Any threat to economic stability of the country by producing or smuggling or circulating high quality of counterfeit Indian paper currency, coin or any material is a terrorist act. Further, detaining or kidnapping or abducting any person and threaten to kill or injure him for the purpose of compelling the government or foreign country or any other person which also now after amendment of 2012 includes an international or inter-governmental organization amount to terrorist act.\textsuperscript{149}

Section 16A as inserted by the amendment of 2008 was omitted.\textsuperscript{150} Punishment of raising funds provided under section 17 now does not depends on source whether it was legitimate or illegitimate and to be used by such person or terrorist organization or gangs or individual terrorist is punishable.\textsuperscript{151} New section 22A, 22B and 22C were inserted to make every person, promoter, director, manager, secretary or other officer responsible for the conduct of company, society or trust liable for imprisonment which shall not be less than 7 years and fine not less than 5 crore if the act if terrorism is committed by company, society or trust as the case may be.\textsuperscript{152} Further the amendment has inserted two new schedules to the Act Second

\textsuperscript{146} Amendment to Schedule by section 17 of Unlawful Activities (Prevention) Amendment Act, 2008.
\textsuperscript{147} Unlawful Activities (Prevention) Amendment Act, 2012, section 2(ii) and 4.
\textsuperscript{148} Insertion of section 2(ea) by section 2(i) of Unlawful Activities (Prevention) Amendment Act, 2012.
\textsuperscript{149} Unlawful Activities (Prevention) Amendment Act, 2012, Section 4.
\textsuperscript{150} \textit{Ibid}, Section 5.
\textsuperscript{151} \textit{Ibid}, Section 6.
\textsuperscript{152} \textit{Ibid}, Section 7.
Schedule containing total nine United Nation conventions on terrorism and Third Schedule stating water mark, latent image and registration in the currency note as security feature to define high quality of counterfeit Indian currency notes.\textsuperscript{153}


The National Investigation Agency Act, 2008 is also enacted on the same day and with same reason as the introduction of UAPA amendment of 2008. The Act created a central investigation agency as a counter terrorist investigation and prosecution wing to investigate and prosecute offence affecting the sovereignty, security and integrity of India, security of state, friendly relations with foreign states and offences under the Acts enacted to implement international treaties, agreements, conventions and resolution of the UN and its agencies.\textsuperscript{154} The Act empowered the Central government to constitute NIA\textsuperscript{155}, Prosecutor and NIA Special Court\textsuperscript{156} having primary function to investigate, prosecute\textsuperscript{157} and adjudicate respectively the terrorist act and related offences. Being a federal agency the state government is expected to provide assistance and cooperation with the institution so created in discharge of their duties.\textsuperscript{158} The central government on the report of the state government or suo motu assign task of investigation to the agency. Therefore, function of investigation, prosecution and special court much depends on the power and discretion of the government to see the NIA Act in motion. The agency is having power only to investigate into the offence so laid down in the schedule of the Act.

3.6. Laws Extended to Combat Terrorism

The National Investigation Agency Act, 2008 lays down the schedule offences listed under the schedule of the Act in relation to which the agency can investigate the offences. the schedule enactment includes, The Atomic Energy Act, 1962; The Unlawful Activities (Prevention) Act, 1967; The Anti-Hijacking Act, 1982; The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982; The SAARC Convention (Suppression of Terrorism) Act, 1993;

\textsuperscript{153} Ibid, Section 14.
\textsuperscript{154} The National Investigation Agency Act, 2008, Preamble.
\textsuperscript{155} National Investigation Agency Act, 2008, Section 3 and 6.
\textsuperscript{156} Ibid, Section 11 and 12.
\textsuperscript{157} Ibid, Section 14.
\textsuperscript{158} Ibid, Section 9.
The Suppression of unlawful Act Against Safety of Maritime Navigation and fixed Platforms on Continental Shelf Act, 2002; The Weapons of Mass Destruction and their Delivery (Prohibition of Unlawful Activities) Act, 2005; Section 121 to 130 and Section 489A to 489 E of the Indian Penal Code.


The Atomic Energy Act, 1962, contains 30 sections and was extended to the whole of India. It was enacted to provide for development, control and use of atomic energy for the welfare of the people. Atomic energy means energy released from atomic nuclei as a result of fission or fusion or any other process. The central government is empowered to produce, develop, use and dispose of atomic energy and to manufacture, produce, buy, acquire, store or transport any prescribed or radioactive substance which is essential in the production of atomic energy. Radioactive substance means a substance or material which spontaneously emits radiation in excess of the level so prescribed of gamma rays, X-rays and rays containing alpha or beta particles, neutron, proton and other nuclear and sub atomic particles but not

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sound or radio waves or visible, infrared or ultraviolet lights.\textsuperscript{161} Prescribed substance means the substance used for the production or use of atomic energy and includes uranium, plutonium, thorium, beryllium, deuterium or any of its respective derivatives or compound.\textsuperscript{162}

Section 14 empowers the central government to prohibit working of any mine or mineral or plant, acquisition, production, possession, use, disposal, export or import in relation of prescribed substance or atomic energy. The government may allow the above activity by grant of license with fees and subject to condition imposed therein.\textsuperscript{163} The government is also empowered to make rules which is necessary to prevent injury to person employed, secure the safe disposal of radioactive waste at place where radioactive substances are manufactured, produced, mined, treated, stored or used for radiation generating plant and also to prescribe the qualification of person working therein and manner of regulation of their employment.\textsuperscript{164} Section 24 prescribes penalty for contravening to the above provision laid down in section 14 and 17 which may extend to imprisonment for five years or fine or both. The Act also penalize for unauthorized mining of uranium, concentration of substance containing uranium and its disposal which extends to imprisonment for one year or fine or both.\textsuperscript{165}

3.6.2. The Anti-Hijacking Act, 1982

The Act was enacted on 6th November 1982 to give effect to the Convention of Unlawful Seizure of Aircraft 1970 signed at Hague and for matters connected therewith. The Act contains three chapter and eleven sections which applies to the whole of India.\textsuperscript{166} The meaning to aircraft given under the Act includes any registered or unregistered aircraft in India but it does not includes the military aircraft or aircraft used in custom or police services.\textsuperscript{167} Chapter two of the Act contains provisions making hijacking which means seizing, exercises control forcefully or attempt to seize or exercise control, and other offences committed on the board an aircraft in flight as punishable with life imprisonment and fine.\textsuperscript{168} No bail can be given to the

\textsuperscript{161. Ibid, Section 2(h) and (i).}
\textsuperscript{162. Ibid, Section 2(g).}
\textsuperscript{163. Ibid, Section 14.}
\textsuperscript{164. Ibid, Section 17.}
\textsuperscript{165. Ibid, Section 24.}
\textsuperscript{166. The Anti-Hijacking Act, 1982, Section 1.}
\textsuperscript{167. Ibid, Section 2(a), (b), (c), (d) and (e).}
\textsuperscript{168. Ibid, Section 3, 4, and 5.}
offender unless public prosecutor has been heard. The central governments empowered to get the offence investigated by any agency and tried by Designated court of session judge. Recovery of arms, ammunition and explosive substance of similar nature used in the commission of offence under this Act or evidence of using force on crew member or passenger creates presumption of guilt.

The Anti-Hijacking (Amendment) Bill 2010 will be withdrawn by the government which was introduced in the wake of Indian Airlines (Flight IC-814) hijack and use of aircraft in attack at world center 2001, and new comprehensive Anti-Hijacking Bill 2014 will be introduced as confirmed by the Prime Minister Narendra Modi. The bill enhance the punishment to death penalty and allow the hostile plane to shot down if there is reason to believe that it could be used as missile to hit a vital installation.

3.6.3. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982

The Act contains ten Section and give effect to the Convention for Suppression of Unlawful Acts against the safety of Civil Aviation, 1971 signed at Montreal, in the whole of India. As per section 3, if a person unlawful and intentionally commits an act of violence against person on board an aircraft in flight which is likely to endanger the safety of such aircraft or destroys or causes damage to an aircraft in service in such manner as to render it incapable of flight or place any device by which there is likelihood that the aircraft will be destroyed or communicate any information which he knows to be false so to endanger the safety of an aircraft in flight, is punished with imprisonment for life and fine. Any abetment or attempt to commit such act is also punishable. The aircraft is said to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation and in case of forced landing the aircraft deemed to be in flight and continued to be in flight until the competent authority take over the responsibility of the aircraft and person and property on the board.

169. Ibid, Section 7A.
170. Ibid, Section 5A, 6, 6A, and 6B.
171. Ibid, Section 10A.
173. Suppression of Unlawful Acts against the safety of Civil Aviation, 1982, Section 3.
174. Ibid, Section 2(2) (b).
The amendment to the Act of 1994 added section 3A which provides that if the act of violence committed at the airport causing grievous hurt or death of any person or destroy, damage any aircraft or facility at the airport thereby endangering the safety of airport is also punishable to life imprisonment and fine.\textsuperscript{175} Further, damaging or destroying the air navigation facilities or interfering with their operation which endanger the safety of aircraft in flight is punishable to life imprisonment and fine.\textsuperscript{176} The Central government is empowered to confer arrest, investigation, prosecution to any agency and adjudication of the matter to the Designated courts of session judge.\textsuperscript{177} The other provisions provided under this Act are similar in nature as of the Anti-Hijacking Act, 1982.

\textbf{3.6.4. The SAARC Convention (Suppression of Terrorism) Act, 1993}

The Act has given effect to the South Asian Association for Regional Cooperation Convention on Suppression of terrorism which was signed at Kathmandu in 1987.\textsuperscript{178} The Act contains eight sections and is applicable to the whole of India.\textsuperscript{179} Section 3 of the Act has given effect to the provisions of Article I to VII of the SAARC Convention and was declared to have the force of law and given precedence over any other existing law in India.\textsuperscript{180} The Act provide punishment for hostage taking which means applying force or threat of force or intimidation and seize or detains any person and threatens to kill or injure them with an intention to cause the convention country to do or abstain from doing any act is punishable for a term of 10 years imprisonment and fine.\textsuperscript{181} The Act provides provision for extradition and previous sanction of central government for prosecution of offence under this Act.\textsuperscript{182}

\textbf{3.6.5. The Suppression of unlawful Act against Safety of Maritime Navigation and fixed Platforms on Continental Shelf Act, 2002}

The Act contains three chapters and fourteen sections to give effect to the International Maritime Organization Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation.

\begin{itemize}
\item\textsuperscript{175} Ibid, Section 3A.
\item\textsuperscript{176} Ibid, Section 4.
\item\textsuperscript{177} Ibid, Section 5A, 5B, and 5C.
\item\textsuperscript{178} Preamble of The SAARC Convention (Suppression of Terrorism) Act, 1993.
\item\textsuperscript{179} The SAARC Convention (Suppression of Terrorism) Act, 1993, Section 1.
\item\textsuperscript{180} Ibid, Section 3.
\item\textsuperscript{181} Ibid, Section 4.
\item\textsuperscript{182} Ibid, Section 5 and 7.
\end{itemize}
Navigation and its Protocol signed at Rome in 1988.\textsuperscript{183} It extends to the whole of India including the limit of territorial waters, continental shelf, exclusive zone or other maritime zone.\textsuperscript{184} The Act prescribes punishment for unlawful or intentional commission of violence against person on the board of fixed platform or ship; or destroying a fixed platform or a ship or cargo of the ship; or if he seizes or exercise control over the fixed platform or a ship; or places or cause to place on the board of fixed platform or ship any substance which is likely to endanger the safety of fixed platform or ship; or destroy the maritime navigation facilities; or communicate information which he know to be false so to endanger the safe navigation of ship.\textsuperscript{185} While committing the above act, if he causes person’s death, grievous hurt, injury, threatens the person or threatens the endanger to the ship, he shall be punished with death, imprisonment for 14 years, imprisonment for 10 years, imprisonment for 10 years and imprisonment for 2 years respectively.\textsuperscript{186} Provisions regarding power of Central government regarding investigation of offence, constitution of designated court, bail provisions, extradition are same as of the Anti-Hijacking Act of 1982.

3.6.6. The Weapons of Mass Destruction and their Delivery (Prohibition of Unlawful Activities) Act, 2005

The Act contains 27 section which aims to prohibit unlawful activities in relation to weapons of mass destruction and their delivery system and to fulfill the international obligation to the convention on the prohibition of the development, production, stockpiling and use of chemical weapons, bacteriological and toxic weapons and on their destruction. To control over the export of chemical, organism, material, equipment and technologies in relation to mass destruction and their delivery system.\textsuperscript{187} Biological weapon means microbial or other biological agents or toxins which do not have protective or peaceful purpose. It also includes weapons; equipment or delivery system specially designed to use such agents or toxin for

\begin{itemize}
  \item \textsuperscript{183} Preamble of The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002.
  \item \textsuperscript{184} The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002, Section 1.
  \item \textsuperscript{185} Ibid, Section 3.
  \item \textsuperscript{186} Ibid.
  \item \textsuperscript{187} Preamble of The Weapons of Mass Destruction and their Delivery (Prohibition of Unlawful Activities) Act, 2005.
\end{itemize}
hostile purpose or armed conflict.\textsuperscript{188} Chemical weapons means the toxic chemical and their precursors which are intended not for industrial, agriculture, research, medical, pharmaceutical or other peaceful purpose. It is also not intended for protective purpose or military purpose of the government or law enforcement purpose. It includes munitions and devices specially designed to cause death or any harm.\textsuperscript{189} Nuclear weapons or nuclear explosive device means any nuclear weapon or device as may be determined by the government.\textsuperscript{190}

Section 8 of the Act prohibit a person to unlawfully manufacture, acquire, possess, develop or transport a nuclear weapon or device, biological or chemical weapons and their means of deliver and transfer. Section 9 prohibits transfer of any material, equipment and technology related to relevant activity to any non-state actor or terrorist. Non-State actor is a person or entity not acting under the lawful authority of any country.\textsuperscript{191} Relative activity means development, production, handling, operation, maintenance, storage or dissemination of nuclear, chemical or biological weapons and missile specially designed for delivering any such weapons.\textsuperscript{192} Section 10 prohibits transfer, acquisition, or possession or transport of any fissile or radioactive material which is intended to cause death, serious injury or damage to property for the purpose of intimidating people or foreign country or international organization to do or abstain doing any act. Moreover, export of any material, equipment or technology intended to be used in manufacturing biological, chemical and nuclear weapons or device or in their missile delivery system is also prohibited.\textsuperscript{193} Violation of prohibition laid down under this Act is cognizable offence.

3.6.7. The Indian Penal Code, 1860

The National Investigating Act, 2008 empowers the agency to investigate the offences relating to the enactment included under the schedule of the Act which also includes section 121 to 130 and section 489A to 489E of Indian Penal Code, 1860.

\textsuperscript{188} The Weapons of Mass Destruction and their Delivery (Prohibition of Unlawful Activities) Act, 2005, Section 2(a).
\textsuperscript{189} Ibid, Section 2(c).
\textsuperscript{190} Ibid, Section 2(h).
\textsuperscript{191} Ibid, Section 2(g).
\textsuperscript{192} Ibid, Section 2 (j).
\textsuperscript{193} Ibid, Section 11.
3.6.7.1. Offence against the State

Chapter VI of Indian penal code from Section 121 to 130 deals with the offences against the State. Section 121 makes any act or attempt or abetment to wage war against the government of India an offence for which punishment is death penalty or life imprisonment and also liable for fine. Conspiracy to wage war and conspiracy to overawe the government by the use of criminal force is also punishable with life imprisonment.\textsuperscript{194} Under section 122, Recruitment of person or collection of arms and ammunition or any preparation with intention to wage war is a penal liability. Moreover, any act or omission of person concealing any existing design which is meant for waging war or knowing the fact that such concealment of design will facilitate the waging war against the government is also an offence.\textsuperscript{195} If the President of India or the Governor is compelled by any person to exercise any lawful power or refrain from exercising such power then such person is said to wage war against the government. Even the wrongful restraint or assault or use of criminal force against them is also an offence.\textsuperscript{196}

An act of sedition i.e. bringing disharmony and hatred feeling or excitement to disaffection towards the government is an offence. Such disharmony or disaffection may be by words spoken, written, or by sign or visible representation.\textsuperscript{197} Any act or abetment or attempt to wage war against the Asiatic Power in alliance with the government of India or with whom the government of India is having peaceful relation is an offence.\textsuperscript{198} Commission and preparation to commit depredation on the territory of any alliance power with whom India is having peaceful relation is an offence.\textsuperscript{199} Receiving any property knowing that it was taken by committing the offence of depredation is prosecuted.\textsuperscript{200} Public servants are liable for voluntarily allowing or suffers or the prisoners of war or state prisoners to escape from the place of confinement.\textsuperscript{201}

\textsuperscript{194} The Indian Penal Code, 1860, Section 121A.
\textsuperscript{195} Ibid, Section 123.
\textsuperscript{196} Ibid, Section 124.
\textsuperscript{197} Ibid, Section 124A.
\textsuperscript{198} Ibid, Section 125.
\textsuperscript{199} Ibid, Section 126.
\textsuperscript{200} Ibid, Section 127.
\textsuperscript{201} Ibid, Section 128.
give assistance or aid to escape from lawful custody is an offence. Further, harboring such prisoner or concealing them is also an offence.  

3.6.7.2. Counterfeiting Currency notes and Bank notes

Section 489A to 489E are the part of chapter XVIII “of offences relating to document and property mark” of the Indian Penal Code. According to section 489A, the act of counterfeiting of currency notes or bank notes is an offence punished with life imprisonment or imprisonment for a term extended for 10 years and fine. Even if a person take part in the process of counterfeiting such notes with knowledge is an offence falls under this section. Buying or selling of such notes or receiving or using it with knowledge that it is a forged in nature is punishable.  

The person who is having reason to believe that he is in possession of such counterfeit or forged currency note or bank note and he intends to use it as genuine one commits the offence under section 489C of the IPC. Moreover, the person who found in possession with any machine or instrument of material and he is having reason to believe that it will be used for counterfeiting notes is punished. Even the person who makes such notes or participates in the process of making it is also liable under section 489D. Section 489 criminalizes an act of person who makes or delivers any document which resemble to the original one with purpose of deceiving any person with such counterfeit notes or bank notes.

3.7. The Armed Forces (Special Powers) Act, 1958

Though this Act was highly protested by people of Northeast, academia, and human rights activists but still it found place in the legislative framework of the government to see it in action. The Armed forces of Northeast were armed with the provision of Armed Forces (Special Powers) Act, 1958 to control and combat with insurgency. A similar enactment was also enforced in the state of Jammu and Kashmir known as Armed Forces (Jammu and Kashmir) Special Powers Act, 1990. Both the legislation is having seven sections in it.

Section 3 of the Act empowers the Central government and the Governor of the State to notify any part of the state as ‘disturbed area’. The armed forces are empowered to use special powers along with civil powers to prevent and combat terrorism. Section 4 of the

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202. Ibid, Section 130.
203. Ibid, Section 489B.
Act, empowers the authorised officer in so declared disturbed area to prohibit assembly of five or more persons. It also empowers to prohibit any person from carrying arms or ammunition or weapons or explosive substances. For prohibiting such act the authorised officer is having power to open fire after giving a reasonable warning. The authorised officers under the Act are also given power to destroy any arms or any structure used for organizing camps for insurgents or terrorist. To destroy any hide out by armed gangs or absconders of any offence.

Section 4 of the Act, also gives power to the officer to make arrest of person without warrant if the officer is having reasonable belief that a cognizable offence is committed or likely to be committed. The officer is empowered to use force which is necessary for affecting his arrest. For making arrest the officer is empowered to enter any premises and search for any person who is believed to be wrongfully restrained or having reasonable belief that any stolen property is there, or any arms, ammunition of explosive substances believed to be unlawfully kept there. Individuals who have been taken into custody have to be handed over to the nearest police station as soon as possible. Prosecution of an authorized officer requires prior permission of the Central government.

3.8. Conclusion:

Terrorism in all forms is in principle criminal offence in all civilized nations. The United Nation and its specialized agencies of General Assembly and Security Council have adopted many resolutions along with international legal instruments for combating and controlling of terrorist menace. The declaration on Measure to Eliminate International Terrorism, the general assembly resolution of 1994, has reaffirmed to condemn all acts, methods and practices of terrorism as criminal and unjustifiable. Series of Security Council resolutions relating to terrorism were adopted and are binding on all the members’ states. The resolution of 2001 was adopted in reaction to WTC attack in 2001 for providing extensive counter terrorism efforts obligating the states to freeze the financial assets of terrorist and their organizations.

There are sixteen UN International Conventions on terrorism. Although the three civil aviation agreement concluded at Tokyo, Hague and Montreal may not refer to terrorism as

205. Ibid, Section 6.
such, they are counter-terrorism conventions as they include both terrorist deeds and those willing to escape from nation governed by the so-called terror regime. The Hague convention is more specific which refers mainly to the punishment of offenders. The Montreal convention primarily aimed at complementing the other two aviation agreements and deals with both acts of violence against persons on the board of aircraft and sabotage of aircraft and aviation facilities. But the military, police, and customs aircraft are excluded from the confines of all three conventions.

The Convention on the Physical Protection of Nuclear Material, 1980 does not extend for military purposes. It was amended in 2005 to cover specifically the Nuclear Terrorism. It does not apply if the offence is committed in a state where the alleged offender and the victims are from the same state. Further, it did not apply to the activities of armed forces during an armed conflict. Legality of use of nuclear material has not been taken as defense.

At the regional level, various conventions have been concluded aiming at combating acts of international terrorism. All the acts for creating violence except the political offenses are within the preview of this convention. The International humanitarian law prohibits certain acts and use of certain specific weapons as a crime which are also covered under various international instruments. Many of the International conventions do not apply in relation to the military and war-time situations as they are governed by the International humanitarian law. To that extent the international humanitarian law is very helpful in providing a set of rules during armed conflict and military operation to prevent spreading terror.

The development of Indian legislation on terrorism was divided into pre and post Mumbai terrorist attack of 2008. The terrorist laws in India find its origin from the Rawlatt Act. The Preventive Detention Act, 1950 was replaced by Maintenance of Internal Security Act, 1971 which was enacted during the Indo-Pak war. The legislation was miserably abused therefore was repealed in 1978 and the National Security Act of 1980 was enacted to provide for preventative detention in matters related to foreign affairs, defense, or security. The (TADA) came into being in 1985. The Act was severally abused by the law enforcement agencies and therefore pressure was created upon the government to allow it to lapse though its constitutionality
was upheld by the Supreme Court. The Prevention of Terrorism Act, 2002 (POTA) in reaction to attack on parliament in 2001 was the replica of TADA with certain modification.

In 2004 the Parliament has repealed the POTA and made amendment in the existing UAPA 1967, which was originally enacted to provide effective prevention of certain unlawful activities of individual or association, enlarging its scope of operation and extending the provisions to punish terrorist act and related activities. A new chapter IV and VI was inserted to deal with terrorist act, punishment for terrorist act, raising funds for terrorist act, conspiracy to commit terrorist act, harboring a terrorist, member of terrorist gangs or organization, holding proceeds of terrorism, threatening witnesses.

In 2008 further amendment to the UAPA was made hurriedly the in wake of Mumbai attack with object to prevent and combat terrorism and meet the international legal standards on terrorism. The definition of terrorist act provided under section 15 was reframed with use of term ‘likely’ in the first part of it and in clause (a) with the term threat and cause so to create likelihood in commission of terrorist act. Further, means used for commission of terrorist act was extended to almost every kind of means employed for causing or bringing the effect of terrorism. New Provisions were included to provide punishment for demand of bombs, lethal weapons, punishment for raising funds for terrorist act, punishment for organizing camps for imparting training in terrorism, recruiting any person for commission of a terrorist act, punishment for the act of terrorism by terrorist organization and terrorist gangs. Restriction of grant of bail was made stricter and provisions for Presumption, obligation to furnish information were added. The schedule of terrorist organization was amended to include the organization listed in the schedule to the U.N. Prevention and Suppression of terrorism (Implementation of Security Council Resolution) Order 2007 and amended from time to time.

The UAPA was further amended in the year 2012 introduced the meaning of term ‘Person’ and meaning to terrorist is extended to threatening economic security. Further, detaining or kidnapping or abducting any person and threaten to kill or injure him for the purpose of compelling the government or foreign country or any other person which also now after amendment of 2012 includes an international or inter-governmental organization amount to terrorist act. New section 22A, 22B and 22C were inserted to make corporate liability for the
act of terrorism and related Activities. Further the amendment has inserted two new schedules to the Act Second Schedule containing total nine United Nation conventions on terrorism and Third Schedule stating water mark, latent image and registration in the currency note as security feature to define high quality of counterfeit Indian currency notes.

The National Investigation Agency Act, 2008 is also enacted on the same day and with same reason as the introduction of UAPA amendment of 2008. The Act created a central investigation agency as a counter terrorist investigation and prosecution wing to investigate and prosecute offence laid in the schedule. The function of investigation, prosecution and special court much depends on the power and discretion of the central government to see the NIA Act in motion. The agency is having power only to investigate into the offence so laid down in the schedule of the Act.

The Armed Forces Special Powers Act, 1958 is also in existence to control and combat insurgency in North East and similar enactment was also enforced in the state of Jammu and Kashmir known as Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.