CHAPTER –7
CONCLUSION AND SUGGESTIONS

Externally, India has to guard its 15,106.7 km land border and 7,516.6 km coastline in order to provide security from external threat, to prevent and combat trans-border crime and within it to protect the life, liberty, security and property of individual, maintain the law and order, respect and ensure all human rights without discrimination. India is a nation of multiplicity of ethnic, religious, linguistic, social, cultural values practiced by peoples who often involved in internal conflicts. Among all the conflict ‘Terrorism’ is used as both a tactic and strategy of the weaker side and asymmetric to conflict. The problem of terrorism challenges the political stability, economic growth and international image of the nation. Thus, terrorism is anti-democratic in nature.

Terrorism originated in different countries of the world at different times with religion being a strong motivating factor behind terrorist activities until the French Revolution. Thomas C. Shelling has suggested that “Terrorism is one form of violent coercion, a bargaining process based on power to hurt and intimidate as a substitute for the use of overt military force.” Hardman defines Terrorism as “the method or the theory behind the method whereby an organized group or party seeks to achieve its avowed aims chiefly through the systematic use of violence.” Terrorism, therefore, is not merely an act of violence; it is propaganda by deeds.

It is surprising that despite terrorism being recognized as a global phenomenon, there is no universal agreement on a single definition of terrorism. Though it is as old as civilization itself and existed in ancient India but it has not find place in the general law prohibiting and punishing the act or omission of person as a crime. The definition of organized crime, terrorism or federal crime is not provided in the IPC. Therefore, it is suggested to reclassify the crimes under the Indian Penal code based on economic offences, Political offences, social offences, general crimes/ crimes federal in nature.

There are common elements of various definitions identify the presence of political, psychological, violent, dynamic and deliberate act in terrorism. In India, the attempt to define
terrorism was made by TADA, 1987 which was pursued by the POTA, 2002. After repeal of POAT the same definition in extensive form was integrated in the Unlawful Activities (Prevention) Act, 1967 which was further extended by amendment of 2008 and 2012. After these amendments, the Indian legislation has seen ever-broadening definitions of terrorism with the removal of sunset provisions and procedural safeguards. The extensive meaning was given to the meaning of terrorism which has emphasized more on the means of causing terrorism which may be designed and done with the use of bombs, dynamite, explosive substance, inflammable substance, fire arms, lethal weapons, poisonous or toxic gases, chemical or biological or radioactive or nuclear substance which is hazardous in nature. Meaning to the term terrorist act is also expanded to cover act which threatens the economic security which includes financial, monetary and fiscal stability, food security, energy security, ecological and environmental security. But use of means under section 15 of UAPA does not state the use of cyber networking or nexus of terrorist act with cyber crimes. Therefore, Section 15 of the UAPA needs to be amended to the extent of covering cyber crimes as a means of causing terrorism.

Though the main thrust to provide definition of terrorism is on causing terror but the same has not been defined under the UAPA. Many writers have defined ‘Terrorism’ as “Use of Terror especially for political purpose”, “illegitimate use of force by those who oppose existing social, political or economic arrangements”, “synthesis of war”, “violent coercion”, “method or theory adopted for causing systematic violence”. Even the threat of violence against small section of individual so to put large section of people in fear is terrorism as stated by an ancient Chinese philosopher, “kill one, and frighten thousand.” Therefore, it is suggested that the term terror be defined in line with psycho-socio impact generated on the society. Section 2(ja) defining ‘terror’ be inserted under UAPA as “Terror means creating sense of fear and insecurity to life, liberty, property of person, threat to unity, integrity and sovereignty of the country, destabilize the economic security and is generated by committing or threat to commit any or combination of federal crimes.” Accordingly definition of ‘terrorist act’ is included as “Whoever causes or likely to cause or threat to cause terror by any means in the mind of people or against the state is said to have done a terrorist act.”
Meaning to ‘federal crime’ may be given on the basis of crime which is having international implication, challenges to the security of nation, protecting government currency and controlling national borders. It may include terrorism, organized crimes, crime in special maritime, aircrafts, crime against the Head of the state, central government, judges of the courts, internationally protected persons, crime against the banks and financial institutions, offences relating to taxes, counterfeit currency, money laundering, piracy to high seas and offences relating to prevention of corruption and cyber crimes.

It is apparent that the definition of terrorism given in U.K., U.S., Canada, Australia do contain the cause for doing so like political, religious, ideological, but such reference were not made under the definition of terrorism extended by UAPA except reference to act intended to threaten the unity, integrity, sovereignty of India which are very broad in nature and also cognizable offence under section 121 to 130 of the Indian Penal Code as act against the state. Terrorist movement may be motivated by nationalist, ethnic, religious, ideology etc and accordingly they undertake insurgency, Naxalism, Maoism, Guerrilla or terrorism as a tactics to spread mass casualties or state of fear. Reference of religious or ideological cause for creating conflict in the society can be punished under section 153A and 153B of IPC as an act against the public tranquility but the same is not within the perview of schedule of NIA Act. Therefore, it is suggested that the term terrorism be defined under the IPC and the NIA Act schedule be amended to include Section 153A and 153B.

The definition covers even the act of smuggling or circulation of high quality counterfeit Indian currency, raising funds which can be used for terrorist act and are in the nature of organised crimes but terrorism and organized crime differ in concept. Organised crime groups and terrorist are acting in the same criminal sphere where artificial distinction is required to be maintained so to prevent organized crime including potential to prevent and combat terrorist threats. It is observed that there is absence of entry federal crime of inter-state or crime having international ramification or crime having transnational in nature. It is suggested to amend the Constitution to the extent of inclusion of federal crime in the Union List-I of 7th Schedule of the Constitution of India to remove any conflicting issue between the centre and the state as far as legislative, institutional and administrative efforts to prevent and combat terrorism is concern.
There are various causes of terrorism which needs special attention of the government for early resolution and suppression of the matters. The element of helplessness and hopelessness of people in the society where his political, social, economic and other rights are overlooked and he receive injustice. Political deprivation is an another cause of terrorism including poverty and economic disadvantages, easy access to technology and weapons, easy and quicker achievement of objects by employing terrorism, lack of faith in democracy, religious extremism and last but not the least is biological and social traits of terrorist. Sri Manmohan Singh, has termed left-wing extremism as the biggest challenge to India’s internal security. Therefore, in what condition the act of insurgents and other group amount to terrorism must be stated.

It is suggested that terrorist movement motivated by the above causes must be addressed by the Government on priority basis. Concrete measure to remove the causes of insurgency, Naxalism, Maoism, guerilla warfare may be undertaken by the concerned government. It is suggested that a ‘National committee on Terrorism’ may be established to appraise the various causes and motivating factors to adopt terrorism and related activities by the youth and accordingly suggest the government the strategies and measures to remove those causes and factors. A ‘Citizens Redressal Forum’ may be created in electronic mode so that complaint of Injustice done to individual be maintained online and it can be directed easily to the respective department to hear on the matter and resolve the issue within a period a stipulated period of time. The government may be requested to hold meeting with each insurgency, Naxal, Militant groups active in the states and formulate a policy to the legitimate satisfaction of these groups so to gain their trust and confidence in the government, democracy and rule of law. Media be included in collecting facts which resulted into terrorist act in different part of the states and generate awareness about its menace through TV show, advertisement, radio talks etc.

Terrorism may be classified into different kind or category on the basis of different factors like level of operation (National, International, and Regional), goal and objectives, Ideology, means and method employed in causing terrorism. Terrorists have now switched from traditional tactics to the technology to commit crimes. Developments in science and technology have materialized into new sophisticated weapons (biological, chemical, nuclear) which are having capability to kill from a distance and cause mass destruction. Advancement in
the means and modes of communication particularly cyber networking system has also made possible to reach far placed people easily and to get connected with large group of individual at a time on a click of finger. Therefore, there is need to find out scientific technique and equipped our law enforcement agencies to **fight terrorism with the help of technology**. 

There is a need to **restatement of punishment** for terrorist act based on the means employed for causing terrorism. In light of means used for causing the terrorism, its nature and probable threat to the life and property and intensity to create terror, accordingly the punishment be provided. Cyber crime as a means of causing terrorism may be included in the definition of terrorist act. The Government must formulate policy to regulate the identity of person using such WMD weapons information.

There are **difference between a terrorist and a freedom fighter**. Patric Clauson writes, “one man’s terrorist could be other man’s freedom fighter”. Calling a terrorist, freedom fighter and vice-versa, is an extreme example of dilemma. Terrorism has its own identity and so has the freedom fighters and it would be disgrace to allow to associate both the term together in democracy. After the state has been recognized as a Nation under the UN Charter, the citizens of that states cannot be regarded as freedom fighters as this would promote sub nationalism within a country and promote disharmony which are crime under IPC in India. Therefore, all the freedom struggles except by peaceful means must be declared to be an act of 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 preventing and combating terrorist menace. An ad-hoc Committee on International Terrorism have advocated and agreed to “act together to defeat the threats to states and people posed by terrorism, in all its form and manifestations. 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. Resolution obligated the states to prevent terrorist recruitment and weapons supply as terrorism is a transnational crime.

International Convention are concluded on hijacking, kidnapping of diplomats, hostage taking, act committed on aircraft, maritime navigation, fixed platform, bomb, nuclear safety etc. Although the three civil aviation agreements concluded at Tokyo, Hague and Montreal may not refer to terrorism as such. The Tokyo convention was the first international endeavor to mention hijacking or the unlawful seizure of an aircraft as an act of interference, seizure or other wrongful control as prosecutable offence. The Hague convention on combating the unlawful seizure of aircraft is more specific which refers mainly to the punishment of offenders. It provides for extradition of offenders which was not provided under the Tokyo convention. The Montreal convention primarily aimed at complementing the other two aviation agreement and deal with both acts of violence against person on the board of aircraft and sabotage of aircraft and aviation facilities. On the extradition and other matters the provision are same as of earlier two conventions. But the Military, police and customs aircraft are excluded from the confines of all three conventions.

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation provides safe navigation of the ship, person and cargo therein from any violence or endangerment. The warships, state owned ship for naval or custom or police purpose is excluded from the operation of this convention. The term piracy was narrowly covered only to the extent of threats to human life and security of navigation and commerce at sea. Law of sea and international criminal law were not properly addressed and there was lack of law enforcement provisions. After substantial reviews in the wake of WTC attack in 2001, amendment to the SUA convention was introduced in 2005 by Protocol to the SUA Convention. Now 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’. Use of any explosive substance or BCN weapon is prosecuted. The convention does not apply to transportation of any hazardous material by state party or armed forces.
The Convention on the Physical Protection of Nuclear Material provides levels of physical protection to be applied in international transport of nuclear material. It establishes measures related to the prevention, detection and punishment of offenses relating to nuclear material. The convention applies only with regard to nuclear materials used for peaceful purposes and does not extend for military purposes. International Convention for the Suppression of Acts of Nuclear Terrorism was adopted in 2005 with specifically to prevent nuclear terrorism. The convention prescribes punishment for four acts, the use of nuclear explosives against public targets; unlawful possession of radioactive materials; the unlawful use of such material; and the threat or use of nuclear materials that causes or likely to cause serious injury, death or property damage. 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 defence. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf provides 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 economic purposes. 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.

The International Convention for the Suppression of the Financing of Terrorism 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. 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.

At the regional level, various conventions have been concluded aiming at combating acts of international terrorism. 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). It provided for inter-
governmental cooperation to make efficacious law to prevent and punish acts of terrorism
specially kidnapping, murder and other assault against person to whom the state is under duty
to extend special protection. Motive is immaterial under this convention. States also obligate
themselves for extradite those offenders. The European Convention on the Suppression of
Terrorism, as amended by its Protocol, 1977 has primary entered into to exclude certain
offences from the preview of political offences which get protected earlier for extradition. The
convention extends to covers offences mentioned under the International Conventions. The
South Asian Association for Regional Cooperation (SAARC) Regional Convention on
Suppression of Terrorism, 1987 had extradition jurisdiction in relation to offences within the
scope of The Hague Convention, Montreal Convention, Convention on the Prevention and
Punishment of Crimes against Internationally Protected Persons. An act creating violence except
the political offences is within the preview of this convention. Apart from these above state
regional conventions there are also other regional conventions.

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
certain acts and use of certain specific weapons as a crime which are also covered under
various international instruments. 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.

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 it 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.
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 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.

The UAPA was further amended in the year 2012 and introduced the meaning of term ‘Person’, extended the meaning of terrorism to threatening economic security, damage to the monetary stability of India. 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. Further the amendment has inserted two new schedule 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 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. The Act empowered the Central government to constitute NIA, Prosecutor and NIA Special Court having primary function to investigate, prosecute 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.
When enactment of anti-terrorism laws came before the Supreme Court for adjudication, the court has tried to bring a balance between the civil liberties and the security of the nation and many a times it has favoured one compare to another. In the case of Pragyasingh Chandrapal Singh Thakur vs. State of Maharashtra through Additional Chief Secretary & Ors [2014 (1) Bom.C.R.(Cri.) 135] the constitutionality of the National Investigation Agency Act, 2008 was upheld by the Division Bench of Bombay High Court and the appeal against it is pending before the Supreme Court. The Division Bench without stressing on the need of defining the federal crime has upheld that due to nature of terrorism as transnational in nature, it is federal crime and need to be combated by effective legislation and law enforcement machineries. The Court has find the legislative competence of the Parliament from referring to Article 248 read with 97 of the Union List-I as well as other provision of the constitution from Article 250 to 253. In the name of giving effect to the international conventions, treaties and agreement when there is no universal understanding on the definition, nature of problem, application of the same without highlighting the local needs and requirement of the state government police structure and it updating is breach to the federal structure of the constitution.

On earlier occasion also the judiciary has responded in favour of legislative competence of the parliament in enacting anti-terrorist laws in India. It was found that while applying the Armed Forces Special Powers Act, 1958 it was brought to the noticed of the court about the violation of human rights and abuse of power by the law enforcement agencies in the extra Judicial execution Victims Families Association and Anr case wherein the 1528 cases of alleged false encounter was exposed. The Hegde Commission was appointed by the court to investigate six sample cases which established the false killing but still the court has not taken burden to protect the rights of individual and prevent the exercise of abusive power by the authorities. Moreover, when the UAPA is enacted and operated throughout the India then why still AFSPA is still in operation. The success of the court depends upon how the court has responded on a given case and the extent of confidence the court inspire in the parties and the society as a whole. It is recommended that when UAPA and NIA Act are in existence there is no need of extending AFSPA and it is required to be repealed.
The Division bench has committed error while upholding the section 6 of the NIA Act as intra virus to Article 14 and 21. It was not provided in the NIA Act that the Central government must record reason for forming opinion or satisfaction but the court has referred it as mentioned under the Act. It shows the intent of the court to safeguard the provisions of the Act from any challenge instead of referring it for correction. Power to decide the matter is one thing and responsibility to record the reason of decision is another thing. If the statute confers power but does not obligate the authority to record reason for exercising such power it means that it has conferred unfettered, arbitrary, unbridled and unguided power on the authority. Even under the Act the appeal provision is absence against such exercise of power by the central government which makes the judicial review necessary. Where there is absence of a statutory requirement to give reason, an administrative order need not to be a speaking order except where there was a provision for an administrative appeal. Both these requirements were absent but still section 6 was held constitutional.

There cannot be any hard and fast rule regarding grant and refusal to grant of bail by the court and each case has to be treated on merits with application of court discretion. Section 43D (5) of UAPA states that the accused shall not be released on bail if the court, on perusal of the case diary or the report under Section 173 of Cr.P.C., is of the opinion that there is a prima facie case against him. The principles of res judicata are not applicable to bail applications. In the case of Jayant Kumar Ghos vs. National Investigation Agency[(2014) 1 GLT 01], the Division Bench of the Guwahati High Court has held that further detention can be extended by the special court and the source of power to grant bail lies in section 43D and section 437 of the Code and not section 439. The High Court cannot invoke its power under section 439 to grant or refused to grant bail and cancel the bail if already granted by the special court. The jurisdiction of the Session Court and High Court is excluded. The order granting or refusing to grant bail is an interlocutory order and no appeal would lie against such order except under section 21(4). Section 21(4) of the NIA Act has departed from this general rule contained in section 437 to 439 of the Code. The Court in the case of National Investigation Agency vs. Redaul Hussain Khan, [(2010) 2 GLT 302] has laid down some of factors which is to be kept in mind while granting bail.
In the case of Sayed Mohad. Ahmed Kazmi Vs. State, GNCTD and Others, [AIR 2013 SC 152; (2013) Bom. CR(cri) 111], the Supreme Court has not accepted the procedure adopted by the CMM who has tried to give retrospective validity to illegal custody by allowing the NIA time to file charge sheet when the detenue has already filed default bail application under section 167(2) of the Code.

The Malimath committee and the law commission recommendation have brought many changes in the Code by amendment of 2008. The newly added provision of 372 of the code, for the first time confers right on the victim to appeal in Criminal Jurisprudence of our country. Such right can be exercised by the victim against acquittal of the accused, or Conviction of the accused for a lesser offence, or for inadequate compensation. It is to be noted that the provision does not provide for the victims right of appeal for enhancement of sentence which still remain the prerogative of the State under section 377 of code. Since no amendment was made to section 378, therefore, a question arises that whether or not leave to appeal of the High Court would be required in case of appeal against acquittal. There was division of High Court Judgment on this issue. Therefore, it is recommended that Section 378 of the code be amended to do away with the leave to appeal of the High Court in case of appeal against acquittal.

Article 72 and 161 of the Constitution of India confer pardoning power on the President and Governor respectively for providing remedy to convicts. In the cases of Devender Pal Singh Bhullar vs. State (NCT) of Delhi [(2013) 6 SCC 195], the Court has refused to commuted the death sentence of the convict persons on the ground of inordinate delay in the execution of sentence and mental health problems faced by the petitioner. The court has held that while imposing punishment the Court is duty bound to take into consideration the nature of the crime, the motive for commission of the crime, the magnitude of the crime and its impact on the society, the nature of weapon used for commission of the crime, etc. All the terrorist cases stand on altogether different footing and cannot be compared with murder committed due to personal animosity or over property disputes.

In the case of Shatrughan Chauhan & Anr [(2014) 3 SCC 1] the apex court held that the ratio laid down in Devender Pal Singh Bhullar is per-incuriam and there is no good reason to disqualify all TADA cases as a class from relief on account of delay in execution of death
sentence. The court has commuted death sentences of 15 death convicts of terrorist cases to
life sentence. The Court has also laid own guidelines for effective governing the procedure for
filing mercy petitions and for the cause of the death convicts so that the executive action and
the legal procedure adopted to deprive a person of his life or liberty must be fair, just and
reasonable for even death row prisoners, till the very last breath of their lives. It is suggested
that there should be either no provision for presidential pardon for person convicted of
terrorism or if the power is allowed to exist then it must be subject to limited judicial
scrutiny and in accordance with guidelines laid down in Shatrughan Chauhan case.

In the “Enrica Lexie” case the Union of India has conferred the investigation of the case
to NIA in April 2013 which was challenged before the Supreme Court. Mean while the MHA
has superseded its sanction order and thus, deleted Section 3 of SUA Act. Hence, NIA has
ceased to have jurisdiction in view of the mandate of Section 3 of the NIA Act though the NIA
was never consulted. In absence of SUA charges in the present case, the specialized agency to
probe terror related matter is legally barred from probing the case. It means that conferring the
jurisdiction on NIA is totally political in nature and the central government is having power
implicate or absolve anyone for terrorist act.

The Indian legislations particularly the Unlawful Activities (Prevention) Act, 1967 as
framed therein are the manifestation of government to combat and prevent the act of terrorism
in all forms and to fulfil the promise made at various international and regional Conventions/
Treaties/agreements to fight against terrorism. These two piece of legislation are the overall
existing laws in India presently on terrorism which are stringent special laws having features to
depart from the established principle of criminal justice system except the conventional provisions
of IPC. The power of National Investigation Agency (NIA) and the Special Court so constituted
under the NIA Act extends to UAPA and other special laws along with limited provisions of
IPC enlisted under the schedule of the NIA Act. The NIA Act does not extends to many other
legislation providing offences having trans-border ramification and are related to the commission
of terrorism like Information Technology Act, 2000, Human Trafficking law etc.
The Central government is having power to declare any association as unlawful and prohibit and punish a person to be a member, take part in its meeting, make or receive any contribution and provide any assistance to the unlawful association. The government has identified 65 active terror groups in India and banned 37 terrorist organisations though the UAPA has not provided a precise meaning to the term ‘terrorist organisation’ except providing the schedule list. The government is empowered to notify or denotify any terrorist organisation but not obligated to give reason while doing so under section 35 and 36 of UAPA and section 2 and 3 of the Procedure for Admission and Disposal of Application Rules, 2004. Though section 38 of UAPA punishes member of terrorist organisation but what constitute a membership is not defined. Further, lack of knowledge about the declaration of terrorist organisation was not taken as a relevant defence. Meaning of Terrorist gangs and terrorist organisation must be clearly used to provide a precise meaning on the basis of level of operation. UAPA may be amended to provide that terrorist gangs means association of individual with the object of carrying out terrorist act and is operative within the national territory is a terrorist gang and others operating at transnational or international level are terrorist organisation. Government may be empowered to declare by notification any association as a terrorist gang and included in a separate schedule to the UAPA Act. Section 35 of the UAPA may be amended to insert reasons to be recorded by the Central Government for declaring any association as a terrorist organisation and similar provision should be made for terrorist gangs. Absence of knowledge about declaration of any organisation as terrorist organisation may be created as a defence. Section 38 of the UAPA may be amended to include within it proviso “that he is not having knowledge about the declaration of terrorist organisation to which he was a member”. It is suggested to incorporate a distinction between an ‘active knowing’ membership and ‘passive/nominal’ membership and a new Section 2(eaa) be inserted defining membership. Active membership to prohibited and passive association only with intent and knowledge about its objectives as terror act or knowledge about declaration of association as terrorist organisation or gang and still continuing as member may be included in the meaning of membership. Being sympathetic to any organisation cannot constitute membership.
The term ‘support’ used in Section 39 is not defined. It is also not covered in the Indian Penal Code or the Code of Criminal Procedure. The term creates confusion in application of law because it has been given wider connotation when already terms like abet, advocates, attempt, incite etc is used at different places and particularly at Section 18 of the Act. It is suggested to remove this term ‘support’ or to be well defined so that it cannot be misused for political gain. Section 17 and 40 of UAPA provides for similar nature of offence ‘financing of terrorism’ with only difference that section 17 is general in nature and section 40 is with respect to terrorist organisation. It is recommended that ‘intention’ may also be included in section 17, attempt to raise or invite or provide funds may be included in the Section 40 and punishment provided under both the Sections must be brought at parity. Transfer of funds for non-terrorist purposes like JHF is not taken care. It is suggested that the term ‘fund’ used in section 17 and 40 is to be defined with reference to meaning of property given under section 2(h) of the Act.

Forfeiture of proceed of terrorism or property of terrorism have a deterrent effect on the dependents family of the terrorist who are not having any knowledge or suspicion about terrorist activities. Exercise of power of forfeiture must be exercised keeping in view the rights of dependents of terrorist who are in need of necessary supports. Though the MHA has laid down instructions for the financial sectors in order to secure economic security under Section 51A but there are no appropriate measures in place to monitor the compliance with the relevant legislation and guidelines and to impose sanctions for non-compliance. Further, there is also no monitoring agency to ensure compliance with freezing mechanism outside the financial sector. Therefore, it is suggested that monitoring power to be handed over to Indian Counter Terrorism Organisation (ICTO) as suggested under institutional and administrative development.

Section 43F has conferred unquestionable power on the executive which can be misused by them as proper procedural safeguard was not placed as in existence in Canada. There is absence of judicial security as to why and how such information is relevant or useful. Section 43F of UAPA may be amended to incorporate explanation about the application of this Section by the order of the ICTO or NCTC or NATGRID only and all are under obligation to furnish information in his or her possession in relation to such offences. Exercise of power under section 43F is subject to judicial scrutiny as to why and how such information is relevant or useful.
Section 44 of UAPA and Section 17 of NIA Act may be amended to provide due facilities to the witnesses. Accused be disallowed to see the witness by using screen, recording of statement and cross examination through audio-video conferencing and other technology be incorporated, and at the same time hostile witnesses giving false evidence must be dealt in accordance with the existing perjury law and shall be tried summarily and punished without waiting the end of the main trial.

The Review committee established under UAPA is having very restrictive role to play i.e. de-notification of a terrorist organisation, as compared to earlier anti-terrorist laws which are extended even to interfere in investigation and trial and its orders are binding on the investigating officers and central/state governments. The scope of power exercised by ‘review committee’ constituted under section 37 of UAPA be extended to review other orders of the central government allowing interception of communication, supervise the investigation by NIA, review the necessity to keep person in custody, periodical scrutiny of the cases registered by NIA and withdrawal of case on the recommendation of it.

The NIA, State police and intelligence should be legally empowered to carry out wire tapping and communication interception of terrorism suspects only by taking approval of the Judiciary and following the procedural safeguard which now included under the IT amendment 2008 and IT Interception Rules 2009. Section 49 bar the judicial review of administrative action done in good faith but there is lack of provision for guarding unreasonable action or malicious prosecution done by law enforcement agencies as in the case of Liyaqat. It is suggested that section 49 of UAPA may be amended to provide exception to ‘act done in good faith’ and total immunity cannot be granted.

Provision of section 43E of UAPA regarding presumption of guilt and creation of adverse inference is violative of fundamental rights of accused but it is not conclusive in nature and can be refuted by the accused by providing evidence to the contrary. Section 43D of UAPA empowers to detain the accused for a longer term of 180 days which is much stringent provision compare to other countries and is misused in political interest and meeting police demand. The period of detention mentioned under Section 43D shall be removed and Section 167 of the code be applied in general.
There is a need to establish a **National Prosecutor Academy (NPA)** at par with National Judicial Academy (NJA) to appoint, impart skill, knowledge, training and to provide acquaintance with recent development on nature of terrorism, methods and modes employed, legislative and political development in other countries, art and skill used in other countries by prosecutors etc. to ensure professionalism in prosecution which will raise the efficacy and fairness in the administration of justice in relation to terrorism. The public prosecutor may be given access through National Prosecutor Academy to the NATGRID, to seek information required in a given case on terrorism in which he was engaged so that prosecution case be represented strongly increasing conviction rate in terrorist offences. Moreover, there is absence of provision providing appointment and protection to the defence lawyer though protection to public prosecutor is provided by both UAPA and NIA Act. Therefore, comprehensive legislative measures must be incorporated to introduce the system of **Board of Advocates for Terrorist Cases (BATC)** composed of panel of lawyers who are well skilled and are voluntarily ready to defend accused case. It selection, training and other matters shall be the matters independent from the National Prosecutor Academy (NPA) suggested for public prosecutor.

**Confession made to police officers** is not contained in UAPA though it was present in earlier anti-terrorist enactments. As the general public is scared of giving statements out of fear and the fact that terrorists plan their acts in great detail to prevent leaving behind of any evidence. Admissibility of confession in front of a police officer should be made admissible as is in the case of federal crimes including oragnised crimes and terrorism with the help of technology via video conferencing, video tape etc as the same is also recommended by the Law commission, the Second Administrative Reform Commission 5th report & 8th report and Madhava Menon committee.

**The jurisdiction of National Investigation Agency Act** extended to the whole of India but cases of terrorism of Jammu and Kashmir were not conferred by the government upon the NIA though the terrorist incidents reported are much higher. The agency so created is having power to investigate and prosecute schedule offences but not to prevent it as it lacks intelligence function and to depend upon other intelligence agencies. The provision of Section 4 regarding superintendence of the Central government is not defined and the power to get the
case investigated by the agency is much influenced by political consideration rather done by professional experts with substantial reasons. What other consideration are important under Section 6 for central government is also not clear. There is no guideline for exercising suo motu power for assigning investigation to agency. The time limit for the state government to forward the report to the central government is not fixed. There is lack of machinery to supervise the act of officer in-charge of police station for forwarding the report to State government as there is no database created relating terrorist offences. The role of State government is very minimal under the Act.

The NIA Branch offices are under staffed and there is lack of counter terror infrastructure. Now the NIA has started preparing its own data base of criminals and terror related investigation as it did not have good coordination with IB R&AW, BSF, Army and other anti terror agencies. The UAPA and NIA have stringent legal policy, while implementing it full disclosure about details of person arrested, date, time and duration of custody, date on which bail granted, duration of police or judicial custody has not been proactively provided. It raise question on performance of NIA. An accused before the NIA special court has alleged before the Special Court that he was kept naked but the court have not taken the matter seriously and ignored it allowing the officer to escape the liability. The NIA has been entrusted with terrorist related cases at the decision of central government and many cases of Maoist, extremist were not handed over to it. The State Government are reluctant to allow its police staff to join NIA. Due to lack of staff, scientific advanced tools and means of investigation, cyber and forensic skill and expertise its performance has suffered in investigating terror related cases.

The NIA Special court is working very slowly in disposal of terrorist cases. At present 39 NIA Special Court is constituted by the central government but no court is created till yet by the State government. Out of 35 cases only two cases has been resulted in conviction and in other 33 cases trial is in progress or pending. In many cases the court has not started the process of trial even after the agency has submitted the charge sheet. It is a fast track court and there is lack of time limit in disposal of case after charge sheet is filed. Moreover, the judge of NIA special courts are regular judges who are not having expertise vision about the nature of terrorism, causes, means and modes of causing it. The judges lack expertise knowledge to handle biological terrorism, chemical terrorism, nuclear terrorism, cyber terrorism etc.
It is therefore, suggested to adopt the following:-

(a) The sanctioned strength of NIA Staff may be increased from 735 and its branch office be extended in Kolkata, Manipur, Jammu & Kashmir, Bihar.

(b) The NIA should be vested with powers to investigate a case based on sue motu cognizance of the scheduled offence.

(c) NIA must prepare the details of persons arrested, name, gender, age, place of arrest, date and time of arrest, date on which judicial custody/police custody granted.

(d) NIA must prepare the details of person released on Bail.

(e) NIA must have a proactive intelligence wing with officers from R&AW and IB.

(f) The handing over of cases to NIA must be made by the sole determining authority of the DG of NIA and it should be freed from the government interference, political interference and subjugation.

(g) The DG of the NIA shall be given power to supervise and monitor the preparation of record and maintenance of data with regard to registration of terrorist related case at police station within his jurisdiction and officer in charge of the police station shall be obligated to inform the NIA head quarter or the Branch office regarding terrorist cases immediately within 24 hours of receiving information.

(h) Insurgency cases of J&K, cases of Maoism, Naxalism etc. may be entrusted to NIA.

(i) The NIA, State police and intelligence should be legally empowered to carry out wire tapping and communication interception of terrorism suspects only by taking approval of the Judiciary.

(j) There shall be a limitation of time period within which the NIA has to complete the investigation.

(k) The Judges of NIA Special Court may be given training about development in science and technology, advancement in means and modes of communication which is more prone to be adopted by the terrorist, new dimension of terrorism, legislative, administrative and judicial development on terrorism in and outside India.

(l) The NIA Special Court may be requested to conduct the hearing on day to day basis for early disposal of cases.

(m) State government may be requested to establish NIA Special court.

It is expected from the state to adopt both preventive as well as deterrent measures against terrorism to establish rule of law which demands apart from a good legislative framework a strong and accountable institutions. Kargil, Guwahati and the recent Mumbai mayhem have exposed the institutional and administrative short comings to prevent and combat terrorism.
India has largest number of intelligence agencies established for cross purposes instead of complementing each other. It has almost twenty five internal and external intelligence agencies compare to UK which just has one agency (MI-5), France has four, China has one and the US has fifteen in total. Even compare to developed countries India has maximum number of intelligence agencies in the world. Being have so large number of agencies functioning in their self created soil, it has invited other problem of lack of coordination, cooperation, data sharing, superiority complex etc. Moreover, IB does not have any constitutional or statutory sanction for its existence. Even the Group of Ministers and L. P. Singh committee had recommended to have a formal charter for intelligence agencies but still the work was not taken up by the government on priority basis.

There is lack of public and private partnership, outsourcing, unbiased and honest analyst and language skill at border areas or at location where to prevent and combat terrorism. The law enforcement machineries were not acquainted with sophisticated technical means of gathering intelligence related information and there is lack of trained persons to use those equipments. Even the training instructor was not trained for imparting training to newly recruited personnel’s. There is need to train the officers and staff with scientific and technological advancement, cyber trafficking and security, strategic intelligence, skill of execution, investigation and prosecution while preventing and combating terrorism. The demand from the government for absorption of talented personnel’s was stressed upon by various committees a various occasion. G.C Saxena had stated about the rigorous training (physical and psychological) including inculcating knowledge of local and other languages and a detailed service rule was formalized accordingly. All the funds kept for intelligence agencies are not open for security by the Comptroller and Auditor General of India(CAG). There is centralized decision making and inaccurate reporting on security related issues. Many a time intelligence was used as a tool for targeting opposition. There is no review or monitoring of such policy at operational level in terms of its object being achieved.

Number of Central and state armed forces are created to combat terrorism. Federal agencies like NSG, BSF, CISF, CRPF, ITBP, SPF, SSB and State Police forces are standing to combat terrorism in India. States have a major role to play in maintaining law and order.
However, terrorists operate not only across state boundaries but across international borders. After every blast, the security agencies swing into action but often fail to follow up the trail completely to reach the masterminds or the main operatives. By the time one state police gathers valuable information and tries to contract its counterpart in other state, the perpetrators of crime disappear leaving the security officials baffled. Policing in general and counterterrorism operations in particular, have remained trapped in a low technology paradigm for decades. The introduction of cellular phones and later satellite phones are cases in point where the potential for misuse and abuse of these technologies by terrorist have caught the law enforcement agencies off guard. With every major terrorist incident, what comes to light is the slow response of our counter terror agencies. The allowing of the hijacked plane to take off from Amritsar to Kandahar and the arrival of NSG after nine hours to Mumbai only proves that these lessons are being re-learnt every time.

The Para military and Central Police Forces are not properly trained, raised and equipped to deal with dynamic nature of terrorism. The quality of these forces has not been appropriately upgraded effectively to deal with the challenges of the times and this has led to the increased dependence on the army fight insurgency and terrorism, the conventional superiority of the army was downgraded to the level of paramilitary forces and paramilitary forces to that of ordinary police forces. Toll rate of death of security personnel while on duty by terrorist is due to one of factor among others that is modernization of arms and ammunition was not provided for combating terrorism.

There is also conflict in opinion and existence between Army and paramilitary force, and between civil and military authorities which need reorganization of its structure and to provide permanent solution to the problem. Inspite of continuing counter terrorism policy over past many years, there has been no integrated equipment policy in respect of army, paramilitary and central police forces. There is need of power integration to ensure capability of equipment. There is lack of an effective border management policy which covers not only terrorist infiltration but illegal migration, smuggling and the flow of narcotics. Narcotics trade has been used by neighbouring country for cross border terrorism.
It is important to note that terrorism is a threat to humanity and security of nation and the world as a whole. All the institutional and administrative body of India has to show collectively their concern and integrity to fight with terrorism. Success of institution much depends on the successful effort to keep their track and action in consonance with the rule of law. To reorganise and improve the capability and efficiency of institutional and administrative set up to prevent and combat terrorism following suggestion are made:

The Government must draft a National Counter Terrorism Plan (NCTP) highlighting important guidelines relating to preventive intelligence management, preventive security management and terrorism disaster management as to how to respond to such act of terrorism and deal with consequences in order to minimize loss of life. It means that intelligence should prevent terrorist attacks and if the intelligence machinery fails to provide early warning about an apprehended act of terrorism, the physical security apparatus should be effective enough to thwart the terrorists in their attempts to indulge in terrorism even without advance warning. In the event of both the intelligence and the physical security mechanisms failing, the terrorism disaster management must have efficient infrastructure able to cope with the sequel.

Indian Counter Terrorism Organisation (ICTO), a federal organisation is needed to be established to deal with all aspects of terrorism from proactive formulation of policy, advising and informing the government, raising/equipping/training of Counter Terrorism Security Forces, their development, co-ordination amongst intelligence agencies, Investigation agencies, Security forces, formulating preventive measures and reconstruction at national level. This organization will attract the best of the talents and be well-funded. Its functioning should be made immune from political interference in their day-to-day functioning. NCTC, NATGRID, MAC, IB, etc will function under it coordination.

A Private Public partnership strategies must be drafted inviting private experts to offer their services in intelligence, investigation, security for which a counter-terrorism security advisor (CTSA) in police forces at appropriate levels be established.

The Geographic information system (GIS) is needed to be introduced at decentralized level at each state police station, NIA stations which is very helpful in gathering
multilayer geo-referenced information which includes hazard zoning, incident mapping and critical infrastructure at risk, available resources for response and real time satellite imagery.

The infiltration across the border is to be checked and stopped preventing the organized crime and terrorism. It is suggested that CCTV is required to be placed at the border area and the border is required to be monitored by highly sophisticated technology using the satellite created images so to monitor the movement across the border. Mutual agreements with Nepal, Bangladesh, Pakistan, and Burma may be entered into with India to prohibit the transnational source of funds, weapons, fighters and all logistic supports extended to terrorist. There were forty two terrorist camps directed against India operating in Pakistan and POK and militants are waiting for infiltration in India. Closed Circuit Television (CCTV) is to be installed at all important places, markets, intersections of roads, road toll counter, worship places, and other place of public important and densely place.

Counter-Terrorism Security Forces (CTSF) be established at central and state level with various wings especially to deal and combat terrorism. It must be composed of security personnel's of SAG, NSG, BSF, CISF, CRPF particularly and specially to deal with terrorism. The Special Action Groups (SAG) of National Security Guards shall be clubbed with CTSF. All the state must raise CTSF as a specialist anti-terrorist Units. The CTSF must be equipped with dedicated Air-assets like aircraft, helicopters with separate budget. CTSF must be supervised by all the three wings of Defence of India. CTSF must be equipped with specialized and sophisticated weapons.

All the security forces of central government and state government are made to undergo compulsory training by Counter Insurgency and Anti-Terrorist (CIAT) School. There is a need for uniform syllabus and training infrastructure for all the security forces of central and state tasked for preventing and combating terrorism in India. The training must to structured to enhance the police personnel to tackle physiological challenges and stressed, to train senior police officers to integrate and employ emergency services, to enhance capability for evacuate the site, to use and handle sophisticated weaponry and ammunitions, technology based machines, cyber knowledge etc.
Coastal Security Network must be strengthened by Border security Force Water Wing in Rann of Kutch area. The coastguard must be equipped with ships having good speed, powerful day and night radar, night surveillance capabilities and effect weapon system to meet any challenge posed by marauders who entre Indian territorial waters. The Coast Guard sea and air fleet must be upgraded to meet the challenges.

The Securities from the skies is also be strengthened. It is recommended that an integrated network of surveillance radars, air defence control centres, and anti-aircraft guns for air and missile bases tasked with the protection of India’s vast airspace be established at the earliest.

Security at the Airport and Vital Installations must be technologically increased. Along with passport and other documents verifications which may be duplicated by terrorists, biometric methods of identification must be introduced like fingerprints, eye screening etc which can be easily compared with large databases of stored images. Iris-scanning system installed at the airport in Amsterdam is an example. Possession of Adhar Card by all the citizens of India must be made compulsory which will have identification of individual on the basis of their fingerprints, eye scanning, and blood groups. Such information must be made available with NCTC/ICTO.

Counter Terrorism Research Institute (CTRI) may be established to promote research and study in the field of terrorism and related activities, threat assessment, growing terrorist capabilities, enhancement of ability and efficiency to counter terrorist threat, work on technology up gradation and one step ahead strategy to counter terrorism, intrusion.

Granting police power on NCTC, is nothing but conferring the same power on IB indirectly. What cannot be done directly has been done indirectly by this executive order which violates the division of powers under the constitution. Therefore, it suggested either withdrawing police power from NCTC or bringing the NCTC under the preview of Right to Information Act.

The blueprint for NATGRID laying down fair, just and equitable procedure must be drafted. Personal information of citizens kept with NATGRID should not result into violation of right to privacy and therefore, information must be shared with speaking orders. NATGRID transfer of data must be secured by firewalls. Institutions may be given defence for not sharing data with NATGRID if it amount to breach of security and misuse of information.