CHAPTER - VI

Anti-terror Laws in India
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History of anti-terrorism laws in India.

Terrorism is the systematic use of terror especially as a means of coercion. Terrorism has been used by a broad array of political organizations in furthering their objectives both right-wing and left wing political parties, nationalistic and religious groups, revolutionaries and ruling governments. The presence of non-state actors is widespread armed conflict has created controversy regarding the application of the laws of war.

The acts of terrorism are criminal acts as per the United Nations security council Resolution 1373 and domestic jursprudence of almost all countries in the world. Terrorism refers to a phenomenon including the actual acts, the perpetrators of the acts of terrorism and their motives. Act of terrorism can be carried out by individuals, groups, or states.

Responses to terrorism are broad in scope. They can include re-alignments of the political spectrum and reassessments of fundamental values. The term counter-terrorism has a narrower connotation, implying that it is directed at terrorist actors, specific types of responses include:

- Targeted law, criminal procedures, deportation and enhanced police powers.
- Target hardening, such as locking doors or adding traffic barriers.
- Pre-emptive or reactive military action.
- Increased intelligence and surveillance activities.
- Pre-emptive humanitarian activities.
- More permisive interrogation and detention policies.
- Official acceptance of torture as a valid tool.

Homegrown terror has engulfed India from all sides take it from the hindi heartland of Uttar Pradesh or Bihar mountains of Jammu and Kashmir, to metro cities like mumbai and Bangalore, the terrorists have caught India on the wrong foot. They are planting bombs and killing people, safe in the knowledge that even...
if they are caught, the system will fail to punish them. Terrorist find India a safe
ground for local and global Jehad.

No doubt India is facing multifarious challenges in the management of its
internal security. The reasons for terrorism in India may vary vastly from religious
to geographical to caste history. Apart from many skirmishes in various parts
of the country, there were countless serious and horrendous events engulfing many
cities with blood-bath, firing mad killing even without sparing women and children
and reducing the sub continent into a graveyard. The brutal atrocities have rocked
and shocked the whole nation. Deplorably, determined youths lured by hard core
criminals and under ground extremists and attracted by the act of terrorism.

Anti-terrorism laws in India have always been a subject of much controversy.
The draft makers of the constitution of India, had definitely the thread bare study
in British, American and canadian, constitution. Even the Indian penal code
contains most of the provisions as those in Britain which have not been subjected
to any drastic changes by the Indian legislatures, so far. During the British regime,
the courts in India took resort to the provisions of the Indian penal code to combat
with the revolutionary zeal of those fighting tooth and nail to throw out the Britishers
from the India soil. The provisions of the Indian penal code 1860, the Indian
evidence act, 1872. The explosive substance Act, 1908, the explosive act, 1984
etc. are still in force in India.

Security - Need for Larger Freedom

Security is multiple in its interpretation. The physical survival is a generic
one. The physical survival of an individual subsequently form the security of society
or nation. Now nation’s security is the paramount object of every society and
in every region of the world. Infact security lends the right direction to its broadened
perspective, freedom from danger, freedom from fear and anxiety, freedom from
want and deprivation.

The UN Human development report 2000 has enlarged its scope. The term
mostly used in the context of preservation of territorial integrity. Security and its
development is mostly a military concept. To enlarge security as political
independence or sovereignty, freedom from foreign control and preservation
of domestic political, society and economic orders. Obviously it mean national security.

**State Oriented Security Approach**

The Nation Centric defence approach is a post industrial phenomena, emnates from the evolution of the nation- State concept. By this time Nations inter relationship or interaction are in a very fluid state of nature. As a result international system was in a quasi anarchial state. To ensure peace and security of the state the principal means was to use military force. National security embraced more with alliances, arms agreements and defence policies of a state. National Security solely rely on national defence till world war I. There after there is a significant influence and charge in events the world over.

Technology revolution is redefining the fundamentals for a new security paradigm for the future. The state and military power may be found weaker or subordinate or may be replaced by global village and knowledge power. The information revolution has significantly reduced the national boundaries.

Netizens may now clamour for multinational citizenship. Human Security is gaining ascendancy over nation state security. Non military threats to security and survival of mankind have become a source of international concerns and attract concerted action. It demand active international intervention to resolve the human security and environmental crisis.

The experts and strategic analysts have identified the nature of twists that nations or societies are facing. The twists that concerns much are like one nation's security can be cause for another nations insecurity and one nation security may be inextricably connected to another's insecurity. The scope of national regional, international security intertwined with each other. The new world order implies international intervention and cooperation through international instruments for preserving peace and continuing harmonious security for every individuals of the global village.
International, Regional and Individual Security Perspective²

In recent time the security debate has transcended the nation centric barrier and security concerns are covering international, national and individual human perspectives. The international security recognises that the security of one state is interconnected with others based on cooperative interaction. So, it pays more attention to international institutions and regions to manage and control international security environment. Similar premises is also relevant for regional security arrangement.

In contrast to global security other than military goes beyond conflict and war to settle issues at universal level including management of environmental conflict, economic threats, human right, AIDS, narcotics and so on focusing on cooperation, negotiation and consensus to promote a peaceful change.

The new dimensions of human security were defined in the UN Human Development Report 1994: "Human Security is not a concern with weapons, it is a concern with human life and dignity". Security is a Universal Concern and interdependent. It is no more a defensive concept but an integrative concept. Time has reached to make a transition from national security to the all encompassing concept of human security.

If "Security is managing society" concept is applied there exists a need to encompass all fields of humans endeavours in all identified threat areas economic food, health, environmental, personal, community and political security, duly understanding mysterious overlaps, interdependencies, multiplexing cleavages and the intern divides.

India's Security heritage and obsessions:

Kautilyas, the "Arthashastra" is an integrated security manual. The Chapters on foreign policy, wars both internal and external are extraordinarily unique and relevant for eternity. As per his postulations the choice of policy is dictated by present conditions prevailing in the state. He emphasized on "mantra Yudha" that is warfare by good counselor diplomacy. His focus remains on his theory of ultimate good welfare of people to bring beneficial end results.
Modern India’s security perceptions largely followed classical nation centric theory based on the premises that boundaries of security and strategy mostly confined to issues of territorial inviolability and military preparedness against external threats.

The subject of National Security and its management is not as simple as perceived and practised in the past as a nation centric and political and military concen. Now its ultimate purpose is to promote and advance peace, progress, prosperity and universal brotherhood such an important complex and dynamic subject require precise understanding, accurate monitoring and constant analysing the activities of human affairs. A high order intellectual acumen is vital to manage security concerns. Security strategic formulations must cater to a wide range of needs like wars, stalmates, peace and aberrations like terrorism, narco-terrorism etc.

The non-military concern like terrorism is now the center point of headache of every state. India to curb such menace emphasized in all three possible directions to bring some legal instruments helpful to proceed and control it in national, regional and international levels.

There are three ways in which international understanding in supressing terrorism can be reached.

a) Bilateral Cooperation b) Regional Cooperation c) International cooperation

Bilateral Cooperation

Bilateral understanding represents a low state of understanding regarding achievement of consent relating to future acts of terrorism between two countries. It range from intelligence sharing or police exchange of information and operation, legislative and Judicial assistance and cooperation in criminal matter, comparatively easy and simple.

There are certain limitation in bilateral agreements. Third states may get involved in the terrorist offence where it becomes difficult to apprehend and prosecute the terrorist. Ideological, moral divergence as well different political regimes different national legal systems and complexities of bureaucratic apparatus may put hindrances in proper implementation of bilateral agreements. The political
economic interdependence factor is so strong that it hinders cooperation even between countries with similar ideological, moral and political structure. Apart from formal legal instruments, such as extradition treaties, bilateral cooperation is achieved in the framework of non institutionalised, informal, behind the scene cooperation.

**Regional Cooperation**

Regional cooperation operates in formal or informal manners in the executive as well as legislative and judicial spheres. It include the regional intelligence pool, police coordination and frontier cooperation etc. Cooperation in other matters that is through regional extradition treaties, through convention on guidelines concerning the common effort to curb terrorism and through other relevant agreements on criminal matters. The European council undertaken a convention and accepted by the fourteen member states to 27th January 1977 convention till 1985. The convention established a catalogue of terrorist offences and the states agreed to the Principle of Primo dediere secondo judicare; a state holding a terrorist must extradite him to the state which requests it to do so or if it refuses must try him itself. The convention was more concerned with the procedures to be followed after the arrest of the terrorist than with the prevention of the specific act. Cooperation in combating terrorism is the outcome of political instability of various regimes and the need to ensure stability and continuation of these regimes. It was not based on a common ideology which concerns human rights and liberties.

South Asian Association for Regional Cooperation (SAARC) nation-- India, Srilanka, Pakistan, Bhutan, Nepal, Bangladesh and Maldives pledged to refrain from organising, instigations or participating in terrorist acts in member countries. It can be submitted that this documents outlines the modalities of cooperation on terrorism. This is an enabling document outlines the modalities of cooperation of terrorism as well as it attempts to reflect the political and moral, commitment of the member countries towards eradication of terrorism. It is need not to mention that India plays a bigbrother role for the protection and preventing terrorism in the region.
International Cooperation

Attempts both to give international agreed definition and effective international legislation date back to the 1926, when first congress of penal law held at Brussels. Thereafter thirteen International conventions to prevent & control terrorism drafted and ratified to which mostly India is a signatory. Apart from International and regional involvement in the legal pursuit to prevent and control terrorism, India has taken a lot of legal measures to curb terrorism in its own territory. In this chapter more emphasis given on anti legal measures in domestic or state made laws in India both in state assemblies as well as in parliament.

India - Central Law Relevant to Terrorism

The Unlawful Activities (Prevention) Act, 1967

The National Integration Council appointed a committee on national integration and regionalisation to look into the different aspects of putting reasonable restrictions on liberty of individual in the interest of the sovereignty and integrity of India. Pursuant to the acceptance of recommendations of the committee constituted and to implement the provisions of 1963 Act, the unlawful Activities (prevention) Bill was introduced in the parliament, passed by both the houses of parliament, received assent of the parliament on 30th December 1967. This act provides an act for more effective prevention of certain unlawful activities of individuals and associations dealing with terrorist activities and any such connected matters. In this act Central Government empowered to opine and declared any organisation to be unlawful, which it consider to be against the public interest to disclose. The Central Govt. can prohibit the use of funds of an unlawful association.

Penalty can be imposed on any individual who become a member of an unlawful association, and deals with funds of an unlawful association. This act under section 15 has defined the acts which can be included as a terrorist act and under section 6,17 provided punishment for such terrorist act and raising fund for terrorist act. The punishment may be life imprisonment, fine or both. The
This act has undergone five amendments. Such as
1. The unlawful activities (prevented Amendment Act, 1969)
3. The delegated Legislation provisions (Amendment Act 1986)

**The Maintenance of Internal Security Act, 1971.**

The legislative weapons like the maintenance of Internal Security Act 1971 was enacted dated 2nd July 1971 to provide for detention in certain cases for the purpose of maintenance of internal security and any matter connected with as a part of preventive penal law. This act was repealed in 1978 when Mrs. Indira Gandhi was out of power.

Again 1980, the **National Security Act** came into force, with an object and reasoning to pacify the then prevailing situation of communal disharmony, extremist activities, industrial unrest to tackle in a more determined and effective way. Considering the complexity and the nature of the problems particularly in respect of defence, security, terrorist and other segregated activities administration need power in dealing effectively with preventive detention.

The central government or the state government under section 3 have power to detain any person of satisfied with respect that the act of the individual is prejudicial to the defence of India or security of the state or for the maintenance of public order or the services essential to the community. The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be twelve months from the date of detention. The section 14 provide, without prejudice to the provisions of section 21 of the General clauses Act, 1897, a detention order may at any time be revoked or modified. Section 16 of the Act provide no suit or other legal proceeding shall lie against the central government or a state and no suit or prosecution or legal
proceeding shall lie against any person, for anything done in good faith or done to be intended.4

The National Investigation Agency Act, 2008

For the last few decades there have been innumerable terrorist attack in India sponsored from across the boarders in the form of bomb blasts in various parts of the hinterland and major cities. A large number of such incidents are found to have complex interstate and international linkage with possible connection of other activities like the smuggling of arms and drugs, pushing in and circulation of fake currency, infiltration from across the boarders etc. Taking a fresh note on all these activities it has been felt that there is need for establishing an Agency at the Central level for investigation of offenders related to terrorism and certain related acts which have national ramification.

For taking up specific cases under specific Acts for investigation, by setting up some special courts the Government of India enacted a legislation for the establishment a National Investigation Agency in a Concurrent Jurisdiction frame work basis. The act came on the Statute Book as The National Investigation Agency Act, 2008 (34 of 2008). Through this act a national level investigation agency has been constituted to prosecute offences affecting the sovereignty, security and integrity of India, security of the state as well as foreign states with which India have a friendly relation. This Investigation agency can also make investigations of the offences under the acts enacted to implement international treaties, agreement, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto.

This act extends to whole India and applies to citizens of India outside India, to the persons in the service of government wherever they may be and also to the persons on ships and aircrafts registered in India wherever the man be.

The officers of the Agency have all the powers, privileges and liabilities which the police officers have in connection with the investigation of any offence. The superintendence of the National Investigation Agency vest in Central Government and administration to vest in the officer designated in this behalf by it.
Investigation by the National Investigation Agency can be started by both Central Government as well as by the state Government.

On receipt of information recorded under section 154 of Criminal procedure code relating to any schedule offence the officer-in-charge of the police station, can forward the report to the state Government and subsequently state Government forward the report to the Central Government as expeditiously as possible. Basing on the report of state Government or received from other sources, within fifteen days of receipt of information Central Government has to decide regarding the offence whether that case is a fit case to be investigated by the agency falling within the schedule of the offences provided by this act.

Where the Central Government is of the opinion that the offence is a schedule offence and it is a fit case to be investigated by the Agency, it shall direct the agency to investigate the said offence.

Notwithstanding anything in this section if the Central Government is of the opinion that a scheduled offence has been committed which is required to be investigated under this Act, it may suo motu, direct the Agency to investigate the said offence when any direction given by the Central Government to the state Government not to investigate further the offence in that case the investigating officer of the state shall transmit to relevant documents and records to the Agency. Till the Agency takes up the investigation of the case it shall be the duty of the officer-in-charge of the police station to continue the investigation.  

The agency with the previous approval of the Central Government having regard to the gravity of the offence can transfer the investigation and trial to the state government. The state government shall extend all assistance to the Agency for the investigation of scheduled offences. The Act provides that the provisions with regard to investigation shall not affect the powers of the state Government to investigate and prosecute any schedule offence or any other offences. The Central Government has power to constitute special courts for specific area or for such case or class or group of cases by official Gazette notification. The special court if it expedient to sit at any place other than the ordinary place of sitting for any of its proceeding other than its ordinary place of sitting. The High
Court empowers to make rules for carrying out the provisions of this act to the special courts falling within its jurisdiction. The Central Government empowers the Central Government to make rules for carrying out the provisions of this act.

The schedule of offences enlisted to the National Investigation Agency Act 2008 are as follows:

5. The SAARC Convention (Suppression of Terrorism) Act, 1993.
8. Offences under (a) chapter VI of the Indian Penal Code Section (121-130) (b) Section 489A to 489 (E) of the Indian penal code. As per the National Investigation Agency (Manner of Constitution) Rules 2008, the headquarters of the Agency at Delhi and administration of Agency vested to the Director General of the Agency and exercises power in respect of a Director General Police in respect of a police force in a state as may be specified by the Central Government from time to time. The agency enjoys the power to investigate, to prosecute, to provide assistances, to seek assistance, other intelligence and investigation agencies of the Central Government or state Government and to take appropriate measures necessary for speedy and effective implementation of the provisions of the Act.

Other than the international and regional instruments, on the national level India has enacted some legislations which can be utilized directly or indirectly to prevent terrorism in our country. In addition to all these acts or legislative measures different states have also enacted some laws in their state territories.
to secure security and prevent terrorist activities. The different state laws on terrorism are as follows:

- The Assam disturbed Area Act, 1955.
- Tamil Nadu Prevention of Dangerous Activities of Bootleggers Drug offenders, Forest offence, Goondas, Immoral Traffic offenders Grabbers and Slum Act, 1982
- The Punjab Disturbed Area Act, 1983.
- The Chandigarh Disturbed Area Act, 1983.

**The Punjab Security of State Act 1953.**

This act intended to provide for special measures to prevent activities prejudicial to the security of the state or the maintenance of public order. Under this act no person shall be deemed to have contravened or attempt to have contravened, continues to act or emits to do anything in pursuance of a strike which is not illegal under any law. This act do not allow any person to take part in the organisation, control management or training of or be a member of any organisation, organised or trained for uprising the function of police for the unauthorised use or display of force.

The District Magistrate empowered under this act to prevent any person from acting in any manner prejudicial to the security of the state or the maintenance of public order. Also enjoys the power to search any person or place and issue warrant if the officer executive warrant has a reason to believe regarding insecurity to any disposal of property. Offence under the act to be recognisable and non-bailable. The punishment is imprisonment for a term extend to a period exceeding one year be non bailable.

**The Assam Disturbed Areas Act 1955.**

This act has been enacted to make better provisions for the suppression
of disorder and for the restoration and maintenance of public order in the disturbed areas of Assam, by notification in the official gazette by the state government. The state government has power to declare any area of the state as the disturbed areas. Under the provisions of the Act any police officer not below the rank of sub-Inspector can open fire or cause the death of a person, if that person carrying of weapons or thing capable of being used as weapons of fire arms, ammunition and explosive substances as per the opinion of the police officer or magistrate.

The Police also have power to destroy any arms, dump prepared, any structure used for training camps for arm volunteers or any place or hideouts by any armed gangs wanted for offences in connection with the disturbances.

**Assam maintenance of public order (Autonomous District) Act, 1953 (Relevant provisions).**

Under the relevant provisions Act, the state government have power to impose collective fine on the inhabitants of the area where it appears to the Government that inhabitants concerned are directly or indirectly responsible abetting the commission of offences prejudicially affecting the public safety or maintenance of public order. The state also empowered here in this act to prevent or prohibit any meeting or impose conditions for holding meeting or assemblies by a class of people or persons whose activities are subversive to law and order. The punishment for such disobey or contravene to the provision may be imprisonment up to two year or fine or both. The police officer not below the rank of subinspector has power to arrest without warrant if a person is reasonably suspected of an offence under this Act subjected to be free from malicious arrest.

**The Nagaland security Regulation, 1962** A regulation to make special provision for the safety and security of Nagaland came in 1962 to prevent any subversive activities endangering the life of the people of the state and also to prevent possesing certain articles inside the state. Under this regulation the government empowered to declare any place as protected area to protect the interest, safety and security of the people of the state.

No person is allowed without the permission of the Governor or of any person in authority of Deputy Commissioner to enter into the protected area not even
loiter in the vicinity of such place. The police has the power to search such person or the vehicle of that person and in case of contravene to the rule provided under this act the punishment may be for a term extend to three years imprisonment or with fine or both. If the Governor considers for the interest of public and safety of people of Nagaland, by order direct, in respect of any inhabited area to shift the person, property of to any other suitable area. The Governor has the power to establish searching station to search, all person, vehicle, casts, animals, baggages, boxes in transit to avoid transportation of any unwanted materials to the area, so that no untoward incident can happen.

The Act specifically provided that no court shall take cognisance of any alleged. Contravention of the Provision of this regulation or of any order made thereunder except on a report in writing of the facts constituting such contravention made by a public servant.

**The Punjab Disturbed Areas Act, 1983**

This act was enacted to make better provision for the suppression of disorder and for the restoration and maintenance of public order in the disturbed area in Punjab. The state government has the power to declare any area to be disturbed areas. The state government also empowered to destroy any arms dump, prepared a fortified position or shelter from which armed attacks are made or are likely to be made or any training camp structure utilized for armed volunteers doing to create disturbance and destabilize the state. The police officer not below the rank of sub Inspector or any magistrate are conferred with power to open fire or causing death of a person, the contravention of any provisions of the act in carrying ammunition or explosive.\(^1\)

**Tamilnadu Prevention of Dangerous Activities of Bootleggers Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Grabbers and slum act 1982.**

This act to provide prevention detention of bootleggers, drug offenders, forest offenders, goondas, immoral traffic offenders and slum grabbers for preventing their dangerous activities prejudicial to the maintenance of public order.

Bootlegger means a person who distills, manufacture stores, transports,
imports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of Tamil Nadu Prohibition Act 1937 and rules, notifications and order made thereunder.

"Drug offender" means a person who manufactures stores, imports, exports, sells or distributes any drug or cultivates any plant or does any other thing in contravention of any of the provisions of the Drugs and cosmetics Act 1940 or Narcotic Drugs and Psychotrophic substances Act 1985 and the rules, notifications or order made there under. Forest offender are those who commits or abets the commission of offences punishable under chapter II or Chapter III. V, VI, B of the Tamil Nadu Forest Act 1882 and chapter VI of the wide life (protection) Act 1972. Immeral traffic offender means a person who commits or abets the commission of any offence under the "Suppression of Immoral Traffic in Women and Girls Act 1956 (Central Act 104 of 1956).

Slumb grabber means a person belong to Government local authority or any other person) or enters into or creates illegal tendencies or leave or licence agreements in respect of such lands who construct unauthorised structures there on for sale or hire any person on rental or without resorting to the lawful procedure.12

If the State Government have a reason to believe that a person in respect of whom a detention order has been made absconded or concealing himself so that order can not be execucuted, then the provision of criminal procedure code shall apply in respect of such person and his property. This detention order is subjects to modifications mentioned in this subsection and irrespective of the place where such person ordinarily resides the detention order make against him shall be deemed to be a warrant issued by a competent Govt. The government has power to constitute one or more Advisory boards for the purpose of he act.

**The Maharastra Control of Organised Crime Act, 1999.**

This Act came into force in the state of Maharashtra to make special provision for prevention and control of the organised crime syndicate and their criminal activity in the state. Organised crime is understood as any continuing unlawful activity by an individual, singly or jointly or as a member of a syndicate
by using force, violence, threat or coercion or other unlawful means with an objective of pecuniary benefit or other advantages for himself or any other person of promoting insurgency. The punishment for the commission of organised crime is death or imprisonment for life the act resulted with death of any person. If any person possesses unaccountable wealth on behalf of member of organised crime syndicate movable or immovable punished imprisonment upto ten years and also with minimum fine of one lac rupees. The property so possessed is liable for attachment and forfeiture as provided in Act.13

The state government has the power to constitute one or more special courts for such area or areas or such cases by giving specified notification. Regarding the Jurisdiction of any special court the decision of the state Government is final. A special court may take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such facts. This act has authorises a police officer not below th rank of Deputy commission of police supervising the investigation of an organised crime under this act by writing application to the competent authority for an order approving the interception of wire electronic or oral communications by the investigating officer. The act also provides to constitute the review committee to review the order passed by the competent authority. Where a person has been convicted of any offence punishable under this act the special court in addition to awarding any punishment may attach the property or declare such movable or immovable property stand forfeited to the government free from all encumbrances. Any terrorist organisations funded by any other organisations the property of such organisations should be made forfeited to the government without any encumbrances. Both the High court and state government enjoys power to make any appropriate rules for purpose of special court or carrying out the purpose of the Act.

Legal Provisions of Terrorism Pertaining to the Armed Forces.

- The Armed forces (Assam and Manipur) Special powers Act 1958.
The Armd forces (Assam and Manipur) special power (Amendment) Act, 1972.

The Armed Forces (Punjab and Chandigarh) special power Act, 1983.


The Armed Forces (Assam and Manipur) Special powers Act, 1958.

This act has been enacted enabling certain special power to the members of the armed Forces in disturbed areas in the state of Assam and Manipur, keeping in view the strategic location of the states. This act was also essential to enact in that point of time to strengthen the internal turmoil and protection the state in its international boundary preserving the sovereignty of the nation. Whenever the governor of the states is of the opinion that whole or any part of the state is in disturbed or dangerous condition that the use of Armed forces in aid of the civil power is necessary, by notification in official Gazette, declare the whole or any part to be disturbed area.¹⁴

Any commissioned officer, warrant officer, non commissioned officer or any person of equivalent rank in the Armed forces, for the maintenance of public order, is of the opinion that it is necessary to give warning, fire upon or use force otherwise, even to cause death when any person act in the contravention of any law. The members of such armed forces may prohibit the assembly of five or more persons of carrying weapons ammunition or explosives substances to be used for any unlawful purposes.

Power also given under the act to the armed forces to destroy any arms dump, fortified position or shelter or any place of structure intended to be used for any armed training or utilized as a hide-out by armed gangs or absconders wanted for any offence. Any person of suspicion who has committed a cognizable offence can be arrested by the armed forces even without warrant. The arrested person taken into custody under this act to be made over to the officer incharge of the nearest police station with report of the circumstances occasioning the arrest. No prosecution, suit or other legal proceeding shall be instituted except with the previous sanction the central government, against those members of the armed force.

This amendment act was to make certain change in the long title and to extend its territorial jurisdiction. After the amendment, the armed forces, special power Act Assam and Manipur substituted in the states of Assam, Manipur, Meghalaya, Nagaland and Tripura and Arunachal Pradesh and Mizoram. The Armed forces (Assam and Manipur) special power Act, 1958 referred as the principal Act.

The Armed Forces (Punjab and Chandigarh) Special Power Act, 1983. This act enable certain special powers to be conferred upon members of the armed forces in the disturbed areas of Punjab and Chandigarh. The Governor of the state is empowered to declare any part or whole state to be a disturbed area. This Act gave power to the commissioned officer to warn or even to cause in case more than five persons assembled carrying weapons or fire arm or explosive substances. The officers of Armed forces can destroy arms dump or any fortified position or shelter or hide outs used by the armed gangs or any absconder wanted for any offence to ensure public safety. They can arrest any person without warrant who has committed any cognizable offence or against whom a reasonable suspicion exists. The members of those ranked officers can stop, search and seize any vehicle or vessel reasonably suspected to be carrying any proclaimed offender or any prohibited materials or can break to open locks, cupboard to search any such materials or any other things related to commission of offence. The Act directed to submit the every property, arm ammunition or explosive substances to the officer-in-charge of the nearest police station. The person acting in good faith or anything done in exercise of the powers can not be prosecuted except with the previous sanction of the central government.

This Act given a more open hand to deal with the suspected person who may intend to do terrorist activities or any such dangerous acts to the members of the armed force.

forces (J 8 K) special power Act came into force for maintenance of public safety and security. The state governor has been empowered to declare the state or any part of it as the disturbed area by gazette notification. The commissioned officer or any equivalent officers of the armed forces conferred with the power to arrest without warrant if find anybody committed any cognizable offence, can break lock to open and search any home, almirah, or cup board to search and seize any material or person which is wanted or relevant to prevent any commission of explosion or any other dangerous act intended to be committed to infringe safety and security of the general public. The arrested person and seized property to be made over to the police officer of that locality. The officers of such ranked have been protected under the act to the extent that without permission of the central government, suit can not be filed against him.\footnote{16}

**The Madhya Pradesh Special Areas Security Act, 2000**

The Madyapradesh Special Areas Security Act is aimed at preventing illegal activities for maintenance of law and order situation. The Act empowered the state government to declare any organisation is an illegal one, when such organisation poses a danger to public peace, maintaining order, involves acts of violence, terrorism or vandalism or encourages disobedience of the established law or involves in any unlawful activities. Anyone who is a member of an illegal organisation or takes part in such organisation or support or involve in any manner is liable to be punished three year imprisonment. The court shall take cognizance of any superintendent for the prosecution of any accused person.

The act provides that after carrying injury when the government is satisfied that any money, properties are likely to be used by an illegal organisation has also power to take possession of places used for the purpose of illegal activities. The state government in order to carry out the provisions of the act, by notification can make rules.\footnote{17}

**The Karnataka Control of Organised Crime Act 2000**

The main object of this act to control, organised crimes and tackling the activities of the crime syndicates in the state and to give stringent punishment to the perpetrators. To the act provides establishment of special court, authorizing
interception of wire, electronic or oral communication vesting enormous power to police personnel. The punishment varies from or extend from three years imprisonment to life imprisonment depending on the act done by members of such syndicate such as conspires or attempts to commit or facilitates the commission or habours or concels the members of such organisation or keep possession of unaccouuntable wealth on behalf of such organisation. A special Court may take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint or upon a police report or may transfer the case to regular court. The secretary of the home department can authorize a police officer not below the rank of supervising the investigation of an organised crime or intercepting of wire, electronic or oral communications to collect evidence. An order directing a cellular phone operator to deactivate any mobile phone and delink the calls from any mobile phone reasonably suspected of being used for any criminal or terrorist act can be given. Provisions have been made to forefeiture and attachment of property of the convicted persons. Both the state government and the High Court empowered to make rules that deem necessary for carrying out the provision of those act and the special court respectively. 18

**The Andhra Pradesh Control of Organised Crime Act, 2001**

This act came in the state of Andhra pradesh keeping in view the illegal wealth and black money generated by smuggling in contraband, illegal trade in narcotics, money laundering has serious adverse effects on our economy. The organised crime syndicates make common cause with terrorist gangs and promote marco terrorism extending beyond the national boundaries. The punishment for facilitating the commission of an organised crime or harbours or conceals or attempts to conceal any person, is not less than five years and extending the maximum to life imprisonment and minimum fine to five lakh rupees. The person who possesses unaccountable money on behalf of member of organised crime syndicate liable to be punished for term of five years of imprisonment with fine.

In spite of anything contained in the code, this act provide to conduct proceeding held in camera giving certain protection to the witnesses. The person convicted of offence under this code in addition to awarding any punishment,
his property may stand forfeited to the state government. This act has also provided punishment for public servant failing to discharge of their duties the functioning of the special court. The state government has jurisdiction to make law for the purpose of this act.\textsuperscript{19}

The Maintenance of Internal Security Act (MISA), 1971 was passed by the parliament of India Came into force from the 2nd July, 1971 and amended in 1975 during national emergency taken away the powers of the court. The grounds of detention were not to be supplied to the detene and the result the act can not be challenged in any court of law which was not judicious. The infamous maintenance of Internal Security Act which was later grossly misused to settle all political opposition during emergency (1975-1977). The Act has given extraordinary power to executive . The misuse of which was observed by the supreme court in Bankar Lal V State of Rajstan that “It turned into an engine of oppression posing threat to democratic way of life.” The MISA repealed in August 1979.\textsuperscript{20}

The Armed forces (Special powers) ordinance, 1942 was promulgated on 15th August 1942 by the rulers of British India. A bill was introduced in the parliament in 1958 to replace the ordinance by enacting the Armed Forces (Special powers) Act. Section 4 (c) of the Armed Forces (Special Powers) Act gives commissioned officer, warrant officer or other person of equivalent rank of armed forces to arrest without warrant who has committed a cognizable offence or against whom a reasonable suspicion exists, in a disturbed area. Section 5 of the act stipulates that the person arrested under the act must be handed over to the nearest police station with least possible delay. There is no time limit within which the arrested person should be handed over to the police under this section 5 of the act. This broad provision has encouraged the armed forces personnel to make arbitrary arrest and detention of any arrest and goes against the Article 22 (2) of the constitution which provides detained person shall be produced before nearest magistrate within a period of twenty four hours. The Gauhati High Court has held in Nungshitombi V Rishang keishing, that the Armed forces can not arrest and detain any persons they
choose, but can exercise their power of arrest and detention only against those who fall under the section 4(c) of the Armed Force (Special Powers) Act 1958, having a lawful ground for it.

Section 4 (a) of the Armed Forces (Special Power) Act, 1958 empowers a commissioned officer a warrant officer or any person of equivalent rank in the armed forces to shoot down or otherwise use force even to the causing death against any citizen who is suspected acting in contravention of law or order in force in disturbed area. This provision is directly contradict the article 21 of the Constitution of India which guarantees life and liberty except procedure established by law. Section 6 of the Act also provided impunity to the armed force personnel can not be prosecuted without previous sanction of central government.

The National Security Act, 1980 initially has used by the government to prevent smuggling activities, later extended to the areas where the internal armed conflict have occurred. In Meinam Manikumar VS State of Manipur, the supreme Court held that the procedural safeguards available under the Constitution of India and the National Security Act 1980 shall be observed and adopted as just fair and real. The grounds of detention communicated to the detenue should be self-sufficient and self-explanatory. If the detaining authority has acted mechanically without applying his mind while making the detention order Causing the liberty of a Citizen the order is liable to be set aside. The United Nations Human Rights Committee has observed that section 8 (2) of the National Security Act empowers the executive authority not to disclose the ground on which individual can be detained is against constitutional rights of any individual. The provision has Contravened the articles 4 (2) and 9 (1) of the International Covenant on Civil and Political Rights 1966. In A.K. Roy Vs union of India the supreme Court held that the right to legal counsel can not be permitted in the proceeding article 10 of the UDHR, 1948 and article 9 (3) and 14 of the ICCPR, 1966 on the ground that the detenue has been denied the right to fair and public hearing. The Terrorist and Disruptive Activities (Prevention) Act 1985 came into force or may 24, 1985
in whole India popularly known as TADA.\textsuperscript{22} The Supreme Court has pronounced the Constitutional Validity of anti-terror legislations like TADA in Kartar Singh V State of Punjab. In a full bench of Punjab & Haryana Court in Bimal Kaur Khosla U. Union of India also considered the constitutional validity of this anti-terror law in India. TADA had many rigorous provisions, some of which proved to be open to gross abuse in the hands of law enforcement officials. The supreme court of India upheld its constitutional validity on the assumption that those entrusted with such draconian statutory powers would act in good faith and for Public good. There were many instances of misuse of power for collateral purposes. The act gave strong search and seizure powers to the police. Because of the more possibility of the misuse of the act finally it has repealed.

Taking into account the terrorist activities of various groups the Government enacted another Act, namely, the Prevention of Terrorism Act (POTA) 2002. The essential Points of difference between TADA and POTA can be summerised as follows:\textsuperscript{23}

(1) Provisions allegedly misused/likely to be misused are deleted from the new legislation.

(2) Section 5 of TADA, which had made unauthorised possession of arms in a notified area, an offence is deleted. The arms act, amended already provided for a deterrent punishment for possession of certain classes of unauthorised arms. It has been alleged that this section mostly misused.

(3) Section 15 of the TADA which had provided that confessions made to a police officer was admissible in evidence, which was against normal provision of the Indian Evidence Act, In new Act certain safeguards have been incorporated. Section 20 (8) b had provided that a Court shall not grant bail unless it was satisfied that there are reasonable grounds for believing that accused was not guilty of an offence under TADA. Due to this provision it was extremely difficult to obtain bail in TADA Cases. No such provision has been made in the new act POTA.

Under TADA an appeal from the designated court lies to the supreme
Court, which is expensive under Indian conditions, changed to High Court in the new legislation POTA.

The unlawful Activities (Prevention) Act 1967 was designed to deal with associations and activities that questioned the territorial integrity of India. This Act amended in 2004 to give unlawful Activities (Prevention) Amendment Act, 2004. Some Legal critics viewed that the new law has retained all the operational teeth of Prevention of Terrorism Act or it has made only cosmetic changes. Another amendment to this act came is unlawful Activities (prevention) Amendment Act 2008 with a view to strengthening the law for dealing with terrorism. The brief outline of the amendments are given below.

i) The period prescribed in the Criminal procedure code for detention i.e., remand during the period of investigation has been extended from 15, 60' and '90 days in respect of different types of case to 30', 90 and 90 days.

ii) Where it has not been possible to complete investigations in 90 days and the court is satisfied with the report of the public prosecutor, a provision has been made to enable the period to be extended to 180 days.

iii) No court shall grant bail under the Act without giving an opportunity of being heard to the public prosecutor.

iv) After the perusal of the case diary or charge sheet under section 173 of the Cr P.C. that the accusations made against the accused are true, if the court satisfied shall not grant bail.

Adjudging the constitutional validity of prevention of Terrorism Act 2002, challenged in people's union for civil liberties V union of India supreme court observed that terrorism affects the security and sovereignty of the nations and it should not be equated with the law and order or public order problem which is only confine to state jurisdiction only.

In Mohd Iqbal M. Shaikh V. State of Maharashtra the supreme court held that:

"It is not possible to give a precise definition of terrorism or to lay down what constitutes terrorism. But it may be possible to describe it as a use of violence when its most important result is not merely the physical and mental
damage of the victim but the prolonged psychological effect it produces or has
the potential of producing on the society as a whole, if the object of the activity
is to disturb harmony of the society or to terrorize people and the society with
view to disturb even tempo, tranquility of the society and a sense of fear and
insecurity is created in the minds of a section of society at large, then it will
undoubtedly be held to be terrorist act."

The concept of fair trial is constitutional imperative and is explicitly
recognised as such in the specific provisions of the constitution including Articles
14, 19, 21, 22 and 39A and under the various provisions of the code of criminal
procedure 1973 (Cr. P.C.). Supreme court of India25 in people's Union for civil
liberties V. Union of India, observed : "The protection and promotion of human
rights under the rule of law is essential in the prevention of terrorism. Here comes
the role of law and court's responsibility. If human rights are violated in the process
of combating terrorism, it will be self defeating. Terrorism often thrives where
human rights are violated, which adds to the need to strengthen action to combat
violations of human rights. The lack of hope for justice provides breeding grounds
for terrorism. Terrorism itself should also be understood as an assault on basic
rights. In all cases, the fight against terrorism must be respectful to the human
rights. Our constitution laid down clear limitations on state actions within the
context of the fight against terrorism. To maintain this delicate balance by
protecting 'core' human rights is the responsibility of court in a matter like this.
Constitutional soundness of POTA needs to be judged by keeping these aspects
in mind."26

The court contended in People's Union of Civil liberties V union of India,
that before making the notification whereby an organisation is declared as a
terrorist organisation there is no provision for pre-decisional hearing. But this can
not be considered as a violation of audi alteram partem principle, which is
absolute because in the peculiar background of terrorism it may necessary for
the central government to declare an organisation as terrorist organisation, even
without hearing the organisation. The aggrieved persons can approach the central
Government itself for reviewing its decision. If not satisfied by the decision of
central Government can subsequently approach Review Committee and are also free to exercise their constitutional remedies. The post-decisional remedy provided and POTA satisfies the audi alteram partem requirement in the matter of declaring an organisation as a terrorist organisation.

In A.K. Gopalan V. State of Madras the Supreme Court observed that preventive detention laws were repugnant to democratic constitutions and did not exist in democratic countries. In case, Chief Justice of Supreme court, Patanjali Shastri in Ram Krishnan Bhardwaj V State of Delhi stated that

"Preventive Detention" is a serious invasion of personal liberty has provided against improper exercise of the power must be zealously watched and safeguarded by the Supreme Court.

The Naga people's movement for Human right established on September 9, 1978, wrote letter to justice C. Reddy of Supreme Court regarding atrocities committed by the armed forces in Ukrual District of Manipur, the home of the Tankhul Nagas. This letter was treated as writ petition and notice was given to the army. In a similar petition the PUDR challenged the constitutional validity of the Armed forces Special power Act. These two petition are pending before the constitutional Bench of Supreme Court.

In Maneka Gandhi V Union of India the supreme Court reaffirmed that Article 21 of the constitution asserts basic right to life and liberty. It is the state which is prevented from taking away this right except procedure established by law.

In Nilabati Behera's case the supreme court hold adverting to the grant or relief to the heirs of a victim of custodial death for the information or invasion of his nights guaranteed under article 21 of the constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the state as that remedy in private law indeed is available to the aggrieved party.

The citizen complaining of the infringement of the indefeasible right under Article 21 of the constitution can not be told that for the established violation of the fundamental right to life, he can not get any relief under the public law by the courts exercising writ jurisdiction.
9. Assam Maintenance of Public order (Autonomous District Act, 1953)
22. The Terrorist and Disruptive Activities act. 1985
23. The Prevention of Terrorism Act, 2002
   Annual survey of Indian law 2000, p 581.
25. AIR 2004 Supreme Court, p 456