Legislating on an issue like terrorism in India is a strenuous exercise given the myriad of attributes that make up both the rationale and practice of violent movements. While anti-terrorist laws are meant to address a certain constituent of violence practitioners, in India, these have often reflected domestic imperatives of securing for itself some sort of harmony in its perplexing diversity. In the process, therefore, India’s attempts at controlling what it perceives as terrorism have clashed with its own principles of a liberal democratic system. This has happened through tendencies towards what may be called ‘executive despotism’ particularly in matters of security. Despite India’s sophisticated judicial systems and other institutional mechanisms functioning within a strong tradition of independence, this tendency has flourished particularly during sensitive periods of crisis.¹

India has experienced extremely volatile periods of crisis in various dimensions ever since 1947. While anti-terrorist laws, to respond to a number of these situations, were specifically formulated in the mid-1980s, a number of harsh ‘internal security’ and ‘emergency’ measures have been used earlier to control violence. Although these do not come under the substantial scope of this study, it will be extremely helpful to delve into some of the details of these measures as

¹ Venkat Iyer notes, for example, that in India despite a remarkable show of courage by several state High Courts during the ‘emergency’ period between 1975-77 against the misuse of Maintenance of Internal Security Act (MISA) by the then government in power, all those efforts became useless by a crucial decision of the Supreme Court in April 1976, which effectively affirmed the executive’s omnipotence during states of emergency. Iyer, Venkat, States of Emergency: The Indian Experience (New Delhi: Butterworths, 2000), p. x.
their operationalisation initiated the debate and to a large extent defined the nature of debate on subsequent anti-terrorist laws in the Indian context. Most instructive in this case has been the nature of the use or rather the abuse of the Maintenance of Internal Security Act 1971 (MISA) during the ‘Emergency’ of 1975-1977 under the Indira Gandhi regime.

It was MISA that created the faultlines along which ‘anti-terrorism’ would be subsequently debated and politicized and there have not been attempts so far to break down the MISA legacy. This experience laid down the foundations for mutual political distrust. This is evident from the issue being raked up time and again whenever subsequent anti-terrorist laws were debated. The main contention has usually been that important national security laws have consistently reflected ‘power’ objectives for the ‘political’ benefit of the party in power. Opposition members in all the subsequent governments have taken this line of argument.

From the MISA Controversy to TADA

The most striking aspect of MISA was that no political debate took place or rather, no debate was allowed to take place inside or outside the government on the law as rationalized by the then Prime Minister Indira Gandhi. On the evening of 25 June 1975, the President of India declared a state of emergency and imposed MISA on the ground that a “grave emergency” existed “whereby the security of India” was “threatened by internal disturbances”.² Large-scale arrests of political

² Notification No. II/16013/1/75-S&P (D-II), Gazette of India, Extraordinary, 26 June 1975, Part II, s 3, sub-s (i) at 1349.
activists were carried out. There was severe curtailment of civil liberties and
rights of the people with a plethora of amendments to existing laws with regards
to personal liberties, criminal procedure, freedom of association, freedom of
expression and right of democratic representation. Mrs. Gandhi in a radio
broadcast to the nation on 26 June 1975, justifying the ‘emergency’ said:

In the name of democracy it has been sought to negate the very functioning of
democracy. Duly elected governments have not been allowed to function ... Agitations have a surcharged atmosphere, leading to violent incidents ... Certain persons have gone to the length of inciting our armed forces to mutiny and our police to rebel ... the forces of disintegration are in full play and communal passions are being aroused, threatening our unity ... How can any government worth the name stand by and allow the country’s stability to be imperiled?³

Post analysis and debate of the circumstances leading to the emergency, however, made it clear that the proclamation of the emergency was not because of any form of serious threat to the security of the country, but rather, it was the “steep decline in popularity and prestige” of the Congress party that paved the way for the Indira Gandhi regime to give a “shock treatment” to regain the lost ground.⁴ The Shah Commission that was instituted to look into the emergency reported in 1978 said:

MISA was used as a weapon against all kinds of activities, not even remotely connected with the security of the state, public order or maintenance of essential supplies. Government servants accused of corruption or misbehaviour, petty traders violating licensing conditions, persons involved in land disputes, contractors supplying inferior materials for construction works, those contesting government decisions in civil courts, those selling milk at inflated prices, workers in factories pressing their demands or criticizing the management, persons accused (not convicted) of committing irregularities or defalcation in cooperative societies and banks, those not cooperating in [the] family planning programmes of the government or refusing to get themselves sterilized – all came within the all-pervading sweep of MISA.⁵

⁴ Iyer, States of Emergency, p. 152.
In the first few days of the emergency more than 900 people were arrested and by the end of the emergency period a total of 1,10,806 people had been detained under MISA and the Defence and Internal Security of India Act throughout India. Most of those arrested were reportedly members or sympathizers of political parties other than the Congress or petty criminals. A number of ordinances and constitutional amendments were brought about during the period. Presidential powers were enhanced but it was made clear that the President could only act on the advice of the Cabinet. The powers of the Judiciary were severely curtailed. For example, it was provided that the state was granted immunity from producing before any court the rules framed for the transaction of government business. Further, administrative tribunals were created to try cases, which were hitherto adjudicated by the courts. The term of the Parliament was increased from five to 6 years. All amendments of the Constitution were made immune from challenge in any court on any ground and it was declared that the power of Parliament to amend the Constitution was unlimited.

Opposition party leaders and members belonging to various political hues suffered detention and other abuse on the ground that they participated in secret meetings where the emergency and other government policies were discussed. The emergency provisions targeted all those parties that campaigned against the government of Indira Gandhi or that did not fall in line with the Congress directives.

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6 Ibid., p. 134.
7 A number of changes were brought about in these regards by the Constitution (Forty-second Amendment) Act, 1976, (s 59) w.e.f 3 January 1977.
On 29 June 1975, Jayaprakash Narayan reportedly made an appeal to the government servants, the military and the police not to obey 'unjust orders by the government'. This irked Mrs. Gandhi who saw it as an appeal to the military and the police to mutiny. This, along with protest activities by Left parties triggered by shortage of food, rising inflation and government apathy earlier in June put the Left parties under stricter vigilance including the mass arrests of prominent Left leaders including Jayaprakash Narayan.

This political abuse of MISA and the debate that ensued on internal security or anti-terrorism laws started a trend that has persisted over the years. While the weaknesses and inadequacies of the existing domestic legal controls on the use of crisis powers were clearly highlighted, the Executive's ability to manipulate the situation for its own gains was made very apparent through the experiences of the 1975 Emergency. This further created a situation whereby opposition parties in subsequent governments became very apprehensive of any attempt by the party in power to bring about such types of laws. One of their consistent contentions has been that there are enough laws to deal with internal security or terrorism and that any additional power in the form of anti-terrorist laws were but attempts to widen and strengthen the hands of the executive to take control of the activities of both political and non-political agencies or organizations.

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9 This point is made by Venkat Iyer. Iyer, States of Emergency, p. 151.
The casualness but politically-motivated way in which ordinances have been promulgated has also been a trend that started with the 1975 Emergency and has featured powerfully in subsequent debates on anti-terrorist legislation. It was reported that the letter recommending the proclamation of 1975 Emergency was dispatched to the President’s office even before the Home Minister was informed of the decision.\(^\text{10}\) This meant that the recommendation was not discussed and passed by the Union Cabinet. Further, the country was already in a state of Emergency by a proclamation on 3 December 1971 in the wake of the war with Pakistan. This again meant that the new proclamation was an “overlapping proclamation”, which according to many was a new phenomenon in the Indian context.

The Janata government that came to power in early 1977 tried to undo all the measures that were introduced during the time of the emergency although it was already revoked much before the party took office. The government released all political prisoners, it repealed MISA and also the Prevention of Publication of Objectionable matter Act and it brought about two constitutional amendments, the first to restore the powers of the Judiciary and, secondly, to undo most of the changes brought about by the 42\(^{\text{nd}}\) Amendment.

The loss of power by the Janata government two years later, however, made it evident that there was no fundamental opposition to the Congress. Despite MISA and the ‘Emergency’ the Congress received 182 seats in the 1977 elections and

recaptured power through an overwhelming majority of 353 seats in the Parliament in the 1980 elections.

_National Security Act, 1980_

The Congress did not receive much opposition when it subsequently enacted the National Security Act in 1980.\(^{11}\) According to the Statement of Objects and Reasons attached to the Bill the measure was necessary in the face of "communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues."\(^{12}\) Further, according to the Congress government:

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\text{[T]he anti-social and anti-national elements including secessionist, communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge at the lawful authority and sometimes even hold the society to ransom. Considering the complexity and nature of the problems, particularly in respect of defense, security, public order and services essential to the community, it is the considered view of the government that the administration would be greatly handicapped in dealing effectively with the same in the absence of powers of preventive detention.}^{13}
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Although the Act was brought into the statute books in the face of renewed violence in the Punjab, many have commented on this Act, both in rationale and objectives, as nothing less than MISA. Yet, a chronically insecure Opposition posed no significant challenge to the government's enactment of the new law. The Act, however, after it was sought to be amended in respect to Punjab and Chandigarh in April 1984, saw for the first time some principled opposition to the

\(^{11}\) Act No. 65 of 1980. This Act replaced the National Security Ordinance 1980 promulgated by the President of India on 22 September 1980.


\(^{13}\) Iyer, _States of Emergency_, p. 213.
government. This also meant that for the first time and in good measure, Congress’ predominance was being challenged. The Opposition’s main argument was that special security legislations had been enacted for Punjab and Chandigarh the previous year in 1983 and hence there was no need to amend the NSA 1980 in respect of the two. The National Security (Amendment) Ordinance 1984 envisaged harsher measures for Chandigarh and Punjab. The Opposition, principally the Janata Party and the Left parties, accused the government of intentions similar to MISA.

Prof. Madhu Dandavate of the Janata Party initiated a debate in the Lok Sabha on 4 April 1984 on Punjab and Chandigarh saying that there had been a consistent “degree of apathy, insensitivity and also unresponsiveness on the part of the government.” 14 His contention was that despite the various Acts there was no let up in the violent situation in the state. Further, he argued that there was no political will on the part of the government and that the law that was brought about, in substance, to deal with the Punjab issue, featured more as a handy political tool rather than as a measure against terrorist violence.

The Left parties vehemently opposed the attempt to pass the amendment on the basis of three points. First, they argued that in both the states specific laws to deal with the violence had been passed recently – the Punjab Disturbed Areas Act 1983 and the Chandigarh Disturbed Areas Act 1983. And hence that there was no

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need for another law. Secondly, they pointed out that rights of the people would be severely curtailed with a further strengthening of the detention regime through the various provisions of the new law. And finally, that quite like the way MISA was brought about, as an Ordinance first, the amendment was introduced in the form of an Ordinance on 5 April 1984. Further, that the Ordinance was brought about when the Parliament was in session indicating a ‘despotic’ way in passing the Ordinance. In fact it was stated that the President signed the Ordinance even while the Home Minister was making a statement in Parliament on security concerns arising out of the situation in Punjab.

Somnath Chatterjee of the CPI (M), moving the motion against the amendment argued that it was the failure of the government machinery that has resulted in an increased dependence on security laws. He noted that this was because “the hunger for power of this government is insatiable.” He pointed out that the new law was an attempt to resurrect MISA, which had been a useful political tool for the Congress party during the time of the Emergency. One of the first victims of the National Security Act 1980 was reportedly A.K. Roy, a sitting Member of Parliament. After his release the Chief Minister of Bihar was reported to have stated that Mr. Roy had been detained by ‘mistake’ - by a case of mistaken identity. Such use of the law was nothing less than a complete failure on the part of the government machinery. Chitta Basu of the All India Forward Block also argued how he and his colleagues were victimized during the Emergency and how

15 Somnath Chatterjee made this point time and again in the debates to amend the NSA 1980 in respect to Punjab and Chandigarh. See Lok Sabha Debates, 7th Series, Vol. XLVIII, No. 43, Wednesday April 25, 1984, Government of India, Lok Sabha Secretariat, New Delhi, c. 378.
security laws had been specifically used for political purposes. He asserted that his colleagues' opposition was against the Bill and not against "national security".  

In the Rajya Sabha too this principled stand of the Opposition was reflected. L.K. Advani of the Bharatiya Janta Party (BJP) moving the motion seeking for the disapproval of the Amendment, while pointing out to the above deficiencies in procedures, argued that the situation in Punjab was "really bad", but that no "further powers" were necessary. He argued that the government lacked the will to resolve the issue through the use of the powers already in hand. According to him, powers under the Unlawful Activities Act, Punjab Disturbed Areas Act 1983, Chandigarh Disturbed Areas Act 1983, the Armed Forces (Special) Powers Act 1958 and others were adequate to deal with the situation.

The Union Minister of State for Home Affairs, P. Venkatasubhaiah, replying to the debate in the Lok Sabha said that the serious threat arising out of the escalation in violence in Punjab was a case of serious concern as it was becoming evident that that the case of Punjab was not just domestic-political in nature, but indicated the hands of 'foreigners' in the increased level of threat of violence in the state. Indicating in clear terms that the government would not take no for an answer to the amendment he said, "members in opposing this Bill have further

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17 Rajya Sabha Debates, Vol. CXXX, No.6, Monday, 30 April, 1984, Government of India, Rajya Sabha Secretariat, New Delhi, c. 248.
convinced me that the Bill in necessary” and that “it is very difficult to convince those who do not want to be convinced.”18 The Bill was subsequently passed.

_Terrorist Affected Areas (Special Courts) Act 1984_

The challenge posed to the government from the opposition was also echoed during the debates on the Terrorist Affected Areas (Special Courts) Act 1984 on 14 August 1984.19 When the debate was taken up in Parliament the Union State Minister for Home, P. Venkatasubhaiah, reasoned that the law had become necessary in the context of “compelling circumstances” particularly in Punjab.20 According to the Minister, earlier on the 23 July 1984 the government had come up with a _White Paper on the Punjab Agitation_, which had been debated at length in Parliament. It was in the background of this Paper that the new law was being introduced. The law, according to him, would help speed up cases with regard to ‘terrorist’ crimes, which would further help in a more effective judicial system to deal with the threat. He also said that one of the important features of the new law would be that unlike the regular courts, the new law would enable the court to keep the identity of the witnesses confidential.

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18 _Lok Sabha Debates_, 7th Series, Vol. XLVIII, No. 43, c. 453.
20 See Union State Minister for Home, P. Venkatasubhaiah’s elaboration in this regard in _Lok Sabha Debates_, 7th Series, Vol. XL, No. 17, Tuesday, August 14, 1984, Government of India, Lok Sabha Secretariat, New Delhi, c. 340-355.
It was during the debates on this law that for the first time the issue of the
definition of what would constitute terrorism in the Indian context emerged.21
Geeta Mukherjee of the CPI pointed out that the various activities, which had
been included in the new law as coming within the ambit of ‘terrorist acts’, were
far too comprehensive and included “all kinds of offences”.22 She further said that
“not only offences indicated in the Schedule but also offences connected
therewith” were to be treated as terrorist, which meant that “anything can be
connected with anything else in police matters.”23 This meant that even legal,
democratic activities of protest/dissent, according to her, could be treated as
terrorist acts according to the new law.

The issue was debated at length and most of the opposition members pointed out
that the definition was far too ‘inclusive’ and hence the law was highly
susceptible to abuse.24 Satyasadhan Chakraborty of the CPI(M) also pointed out
that the definition was structured in such a way that “if anyone was willing to be
the tool of Congress (I) he no longer remains a terrorist or extremist.”25 He
accused the government of its consistent attempt to maintain a “one party rule”

21 It may be noted here that the term “terrorism” was for the first time used in this piece of
legislation, the Terrorist Affected Areas (Special Courts) Ordinance 1984, signaling a departure
from the ‘anti-national’ label used earlier and in good measure indicated a more serious attitude of
the government with regards to acts of terrorism.
22 Lok Sabha Debates, 7th Series, Vol. XL, No. 17, c. 341. According to the new definition, a
terrorist was defined “as any person who indulges in wanton killing of persons or in violence or in
the disruption of services or means of communications essential to the community or in damaging
property with a view to – (a) putting the public or any section of the public in fear; or (b) affecting
adversely the harmony between different religious, racial, language or regional groups or castes or
communities; or (c) coercing or overawing the government established by law; or (d) endangering
the sovereignty and integrity of India”. Section 2 (1) (h) of the Terrorist Affected Areas (Special
24 Ibid., p. 341.
25 Ibid., c. 355.
and according to him, the new law was but an attempt at a “state-sponsored low-key terrorism for political purposes”.\footnote{Ibid., c. 357.}

The new law provided for power to the Center to declare any area as “disturbed” and the area declared thus would invite the provisions of the new law. The Left parties argued that this was giving license to the Center when actually ‘law and order’ was a state subject. They pointed out that this would seriously jeopardize Center-State relations in the future particularly if conflict of interests arose among the two on this sensitive subject. Further, that in the hands of a despotic regime, this license could be used in a severe curtailment of oppositional activities particularly in the states.

Another point of contention brought out by the Left parties and the other Opposition was that quite like MISA, the National Security Act 1980, and the National Security (Amendment) Act 1984, this Act was also first promulgated in the form of an Ordinance and that too at a time when the Parliament was about to meet. They argued that the Parliament was to begin its session in the next nine days and that the government could have waited so that a bill could be introduced, debated over and if necessary passed through the normal legislative procedures.

It may be necessary to note here that two things are important to justify the promulgation of an Ordinance. First, the Cabinet must decide that an extraordinary situation has arisen in the country that warrant such a decision and
the President of the country, under Article 123 of the Constitution, promulgates an
Ordinance. An Ordinance is an emergency step, the ultimate aim of which is to
come up with a Bill that will have to be debated and passed in the Parliament.
This is a constitutional action when the Parliament is not in session. Secondly, a
law has to be enacted to replace the Ordinance when the Parliament meets for
session. This will justify the constitutional action taken with regards to the
extraordinary situation that in the first place warranted the promulgation of the
Ordinance. An Ordinance, then, is promulgated only after it is presumed that the
Cabinet fully enjoys the confidence of both houses of Parliament. If a
Government issues an Ordinance knowing fully well that it will not be passed in
both houses of Parliament, it tantamounts to misuse of the constitutional powers
under Article 123 of the Indian Constitution.

The Union State Minister for Home, P. Venkataseshaiah, however, justified the
need of the law in the face of the situation in Punjab. He also made brief
references to the security situation in the North East part of the country, the
volatile situation in Jammu and Kashmir and Left wing extremist-hit areas in
various parts of the country as necessitating such a law. The issue of Pakistani
hand in the fiasco in Punjab featured powerfully in the debates. Chiranji Lal
Sharma of the Congress, for instance, pointed out, “Pakistan conceived Khalistan
20 years ago”. The Congress government also maintained that it needed to arm
itself so that the situation did not go out of hand. Replying to the question on the
scope of terrorist acts as defined in the new law, the Home Minister said that acts

27 Ibid., c. 377.
that would invite prosecution were clearly defined and that utmost care would have to be taken so that the law was not abused. He ended up the debates by saying that ‘abuse’ concerns as expressed by the opposition members would be taken care of by “in camera trials” where “advocates will be present”. This law was also passed.

The overwhelming predominance of the Congress party in decision-making in the above enactments must be attributed to its strength in terms of numbers in Parliament and the confidence it had built over the years as the only viable political party for governance. Opposition to a number of these enactments was rendered practically toothless. Any debate on these decisions was consistently shelved in favour of the Congress party. While these smacked of the tendency towards ‘executive despotism’ in decision-making, the operationalisation of a number of these laws subsequently made clear that not only were these laws used to respond to the increasing terrorist activities, particularly in Punjab and Jammu and Kashmir, but also that they became handy tools for the Congress to achieve certain political objectives. The consequence in the aftermath of these experiences has been the increasing inability to achieve a certain amount of consensus on vital issues in this regard across party lines.

Significant, however, has been the gradual transition of the role of other national and regional parties triggered by a sense of ‘insecurity’ in the aftermath of the 1975 Emergency clearly demarcating the contours of political party dynamics in

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28 Ibid., c. 359.
India in the days to come. Though it was evident that the Congress continued to face no major threat from the Opposition, a certain amount of principled opposition to Congress policies on anti-terrorist laws became manifest in the early 1980s. In the Opposition, across party lines, some amount of consensus also became apparent particularly on issues of internal security or terrorism despite internal fissures. This became particularly discernible when the Congress introduced the Terrorist and Disruptive Activities (Prevention) Act in 1985.

The TADA 1985

On 23 May 1985, TADA was enacted by the government. The statement of objects and reasons stated:

> Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. Since the 10 May 1985, the terrorists have expanded their activities to other parts of the country, i.e. Delhi, Haryana, Uttar Pradesh and Rajasthan and as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to terrorise, to create fear and panic in the minds of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires to be taken serious note of and dealt with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern.²⁹

This piece of legislation was the first attempt in the Indian context to provide a comprehensive legal answer to the terrorist problem but was to become a much controversial one subsequently. Initially meant for the whole of India except the state of Jammu and Kashmir, by an amendment in the Act on 5 June 1985, the provisions of the law was also made applicable to the State.³⁰

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From the very introduction of the Bill, it seemed like the piece of law was fated to be steeped in controversy. On May 18, when the Bill was to be debated in Parliament, Prof. Madhu Dandavate of the Janata Party pointed out that the bill was being “rushed” in Parliament. He said that he had only received the draft bill for perusal and necessary suggestions for amendments at 9.30 AM in the morning when the bill was to be debated at 10.00 AM.\(^{31}\) According to him the members needed more time to read and make necessary changes to a piece of law as “important” as this. Further that it might be necessary to “convene a meeting of Opposition leaders just as was done in the case of the Anti-Defection Bill.”

Geeta Mukherjee of the CPI also made similar remarks. She suggested that it might even be necessary to refer the draft to a select committee and if need be even a special Joint Session of Parliament could be summoned to debate on the Bill.\(^{32}\) Prof. Dandavate also pointed out that “unanimity” in this “vital matter” was important and hence there should be an attempt by all concerned to build up a unanimous decision in this regard. Minister for Law and Justice, A.K. Sen, speaking for the government said that the government would do its best to build up a consensus. The House decided to give more time to the members to read the draft and suggest amendments and the issue was decided to be taken up again after two days.


\(^{32}\) Ibid., c. 20.
The TADA debate, despite the fact that it was the first of its kind, did not generate the expected themes or issues on anti-terrorism. The entire debate again saw a reflection of the party positions taken by both the Congress and the Opposition in earlier debates. It may be noted that the two ends of the political divide also consisted of the same parties and TADA was being debated after the debate and passage of internal security/anti-terrorist laws such as the NSA 1980 and the Terrorist Affected Areas (Special Courts) Act 1984.

Debating the issue two days later in the Rajya Sabha, Minister for Law and Justice, A.K. Sen categorically remarked that in the escalating terrorist problems in the country, particularly in Punjab, "a foreign hand was clearly visible in all these operations".33 He stated "the government must be given the powers necessary to find out where these acts of terrorism originate and why and with whom and with whose assistance."34

To this, however, Dipen Ghosh of the CPM said that the Punjab problem was a "political issue" and not necessarily a "law and order" issue.35 And that the government had made no attempt to answer the core grievances of the people in the region. Mr. Gurupadaswamy, KMP member, also reflected similar opinion when he accused the government of failing to politically resolve the Punjab problem because the government "machinery" was "rotten and ineffective,

33 See also Rajya Sabha Debates, Vol. CXXXIV, No. 15, Monday, 20 May, 1985, Government of India, Rajya Sabha Secretariat, New Delhi, c. 56.
34 Ibid., c. 56.
35 Ibid., c. 74.
demoralized and corrupt” and that with all the powers already in existence the
government had failed to do much in Punjab.36

The various Opposition party members argued that the government had not
consulted all the parties before the decision to bring about the Bill was taken,
despite its statement that the bill should be a consensus document. The answer of
the Home Minister, S.B. Chavan, in this regard that the “government had very
little time and since the problem was going out of hand the government had to act
fast”, they argued, did not answer all the concerns of the Opposition who wanted
consensus in an important legislation as this.

Dipen Ghosh of the CPM said that in the past despite promises from the Law and
Home Ministers that there was no scope for the abuse of the laws, all the laws had
targeted political opponents. The new law according to him would be no different
from the others. He asserted that the way the new law was introduced indicated
that the government was not attempting to build up a consensus, which implied
that it could very well be used against political opponents. He strongly suggested
that the bill be handed over to a select committee for recommendations. He also
pointed out that when “law and order” was a state subject the free hand given to
the Centre to declare any part of the country as “disturbed” was in fact clipping
the wings of the state governments which would have a far reaching impact on the

36 Ibid., e. 95.
federal structure of the country.\footnote{Section 18 of the Bill provided for the Centre's authority in declaring any part of the country as disturbed after due "consultation" with the state concerned whereby the provisions of the new law would be implemented.} He suggested that the word "consultation" as mentioned in Section 18 of the law be changed to "concurrence". This implied that the Centre would have to be partners with the state authorities in deciding whether a region was disturbed for the new law to take effect.

The Left parties were very critical of the wide scope of the definition particularly as defined under the section on "disruptive" activities.\footnote{Section 2 (c) of TADA read with Section 4 (2).} They argued that under such a definition all democratic movements, such as working class and socialist movements would come under its purview and targeted whenever the government felt like doing so. Prof. Dandavate of the Janata Party also pointed out that the definition of "disruptive" activities was too wide that a repeat of the experiences of past laws like MISA was bound to take place again wherein the law would be used to target political opponents.\footnote{Lok Sabha Debates, 8\textsuperscript{th} Series, Vol. VI, No. 47, c. 18.}

Many in the Opposition members argued that the new law was only going to be another addition to the plethora of existing laws. They said that if situations in Punjab and Chandigarh were the rationale of the new law, there were already enough laws to deal with the problem. Janga Reddy of the BJP said that it was not the paucity of laws but the weak "morale" of the police force that was responsible for the law and order situation in the states.\footnote{Lok Sabha Debates, Vol. VIII, No. 12. Wednesday, August 7, 1985, Government of India, Lok Sabha Secretariat, New Delhi, p. 330.} The Opposition pointed out that the
following laws were already in operation and another law was not needed: Punjab
Disturbed Areas Act 1983, Chandigarh Disturbed Areas Act 1983, the Armed
Forces Special Powers (Punjab and Chandigarh) Act 1983, Terrorist Affected
(Special Courts) Act 1984, Arms Act (Amendment) 1984, Code of Criminal
Procedure (Punjab Amendment) Act, 1983 and various provisions of the Indian
Penal Code including sections 121, 130, 503-507.

A month after the law was enacted the government passed an amendment to the
Act making it applicable to the state of Jammu and Kashmir when the earlier Act
was not. Earlier in the debates many members had mentioned that if the new Act
was meant to target terrorism, why was it not applicable to Jammu and Kashmir
right from the start when it was a hotbed of terrorist activity ever since the
country got independence. The Opposition asserted that there was no need to add
another law to those already in existence in the state. The issue of manipulation of
politics in Jammu and Kashmir by the Centre also came into focus. The
Opposition criticized the government of dismissing the popular government of
Farooq Abdullah and installing a Congress ‘puppet’ government of G.M. Shah.
They argued that in such a scenario whereby the Centre’s only intention was
political control of the state, the introduction of the new law would only result in a
further strengthening of the hands of the government to target political
adversaries.
TADA was passed despite stiff opposition. The Opposition’s stand was that the new law was susceptible to gross abuse like MISA. This perception was based on three assertions, which also appeared time and again during the debates. The first was the unconventional passage of the Bill, the second was the existence in the statute books of adequate laws on internal security/terrorism and finally the range of activities that would be considered as terrorist activities, which seemed in many respects to target oppositional activities.

The form and tenor of the TADA debate in Parliament highlighted only highly politicized themes with little consideration for the substance and the rationale of the law. The TADA debate, wherein the Opposition also failed to raise any issue that was related to India’s vulnerabilities from terrorists, brought to the fore questions of whether the opposition to the law by the various constituents were also motivated purely by political considerations. While, it was made apparent that the Congress’ attitude during the period could be termed as ‘politically despotic’, the Opposition’s contentions were also directed only at the Congress party and not at the importance or the necessity of a national strategy against terrorists. The passage of TADA in 1985, thus, again, reflected earlier parliamentary processes wherein numbers were given prominence over crucial issues in terms of debating and evolving a consensual strategy against terrorists. It was the debate that ensued afterwards, during periods of TADA’s mandatory lapse and further re-enactments, that highlighted insights into prominent issues
and also saw political parties, to some degree, leaving aside their political stances to debate on important issues associated with terrorism in India.

_The TADA Extension Debates, 1990 – 1995_

Initially meant for a period of two years, the Terrorist & Disruptive Activities (Prevention) Act 1985 was amended for a further extension of two years by the Terrorist & Disruptive Activities (Prevention) Amendment Bill 1987. It was further continually extended for two years till 1995. It was during this period that saw the Opposition pitted against the Government on a number of issues other than traditionally debated. For example, the issue of rights and civil liberties made a prominent entry into the anti-terrorism discourse in fundamental ways. This was a period also when terrorism, especially Pakistan-sponsored terrorism, reached high levels of intensity. This was an important period because government concerns of security from terrorist attacks was pitted against Opposition and the general public’s perceptions of increased assault on liberty and rights.

When TADA lapsed in 1989, the government decided to give it another two years justifying that terrorist threats had not subsided. The government asserted that the loss of a Prime Minister (Rajiv Gandhi) in a terrorist attack made it obvious that ‘new’ terrorist threats had begun to emerge from sources other than Punjab. It also said that Pakistani sponsored terrorism in Kashmir had become much more overt. M.M. Jacob, The Minister of State for Parliamentary Affairs and Minister of State for Home Affairs argued that the terrorist menace still continued in the country
and that the “terrorist virus had spread to other areas, other than Punjab.” The government’s concern, according to him, was that terrorism was spreading to other areas and that even though the situation in Punjab had considerably improved it had become much worse in the state of Jammu and Kashmir since December 1989. Further that the government needed such a law, applicable to the entire country, so that it could control the spread through the success example as shown in Punjab.

**TADA Extension Debate 1991**

In July 1991, TADA was again sought to be extended for another two years. Despite the government justifications, the opinions expressed by the Opposition members indicated that the stands of its various constituents had not fundamentally changed. George Fernandes of the Samata Party, for example, said that the specific situation in Punjab that had necessitated the law initially was no more and that there was no need for further extension. He drew on the example of the Armed Forces Special Powers Act of 1958 that was initially meant for six months but was continually extended for decades. Further, he argued that there were many cases of the law being used against legitimate protest activities in different States of the Union particularly in Tamil Nadu, Andhra Pradesh, Maharashtra, Gujarat and Rajasthan. According to him, in Ahmedabad, Reliance

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41 Ibid., c. 330.
42 It may be noted here that the government had attributed the success story in Punjab with regards to the improvement in law and order to the implementation of the Terrorist & Disruptive Activities (Prevention) Act 1987. This also gave the government the leverage it needed to push for the continued extension of the law.
Textiles mill workers demanding interim wage benefits for three months finally were arrested under TADA after the owner of the Reliance Textiles reportedly called on the Chief Minister.\textsuperscript{44}

A month later, it was the First Session of the Tenth Lok Sabha, on 12 August 1991 that debated at length the extension of the Bill. The issues raised in this debate were significant for three reasons. First, the law was already in operation for six years and statistics/reports were already available with some of them being tabled in the House about the operationalisation of the law in the various states. Secondly, the House in the last few weeks had debated at length the Jammu and Kashmir Criminal Law Amendment (Second) Bill and the Code of Criminal Procedure (Amendment) Bill. The issues raised during the debate on TADA were already discussed especially those pertaining to Jammu and Kashmir. And thirdly, the Opposition’s voice was consistently stifled by the unfolding intensity of terrorist activities, from sources such as the Liberation Tigers of Tamil Eelam (LTTE), in Assam and escalation in Naxalite violence in Andhra Pradesh and other areas.\textsuperscript{45}

Mani Shankar Aiyar of the Congress speaking on behalf of the party said that the problem in Kashmir in regard to terrorism was one, which had its origins in the

\textsuperscript{44} Ibid., c. 235.

\textsuperscript{45} The Home Minister, S.B. Chavan presenting a summary of why further extension of the law was necessary pointed out that the situation in Punjab and Jammu & Kashmir, the Naxalite issue, the Assam issue and the LTTE issue were the main motivations behind which the bill for further extension was introduced in the House. See \textit{Lok Sabha Debates}, 10\textsuperscript{th} Series, Vol. III, No. 24, Monday, August 12, 1991, Government of India, Lok Sabha Secretariat, c. 882.
actions of the terrorists backed up by hostile foreign powers.\footnote{Ibid., c. 822.} And as a result there was extreme insecurity among the people, especially among the minority Hindu community which resulted in the exodus of an entire community from the Valley to other parts of the country. Bijoy Krishna Handique of the Congress added on to the need for the extension by pointing out that the situation in the North-Eastern region also warranted such a measure although the situation there was not necessarily similar to that in Jammu and Kashmir or Punjab.\footnote{Ibid., c. 835-6.}

Dr. Laxminarayan Pandeya of the BJP pointed out that the main reason for the increased escalation particularly in Jammu and Kashmir was the laxity in the approach of the Government and the way it ignored the problem. Mr. Ram Naik of the BJP similarly said that although “theoretically” he was in favour of a stringent anti-terrorist measure due to the threat arising out of foreign-sponsored terrorism, he was against the use of the law as a political tool or a police tool to apprehend innocents.\footnote{Ibid., c. 858.} He said that the police were in favour of TADA only because it made them easy to apprehend a person whether he is a terrorist or not without much of a legal wrangle. TADA, according to him, should have been for terrorists only but that it has been targeted at political opponents.

Chitta Basu of the All India Forward Block (AIFB) argued that the Bill was nothing but another Maintenance of the Internal Security Act of the Emergency days. Ever since the inception of the laws such as these he argued that civil
liberties of the people in the country were at an all time low. He said that while
terrorism had to be suppressed it could not be eliminated simply by trigger-happy
policemen, army men or repressive measures. He said that these laws, in the
recent past had been utilised against the trade unions and against democratic
movements. He observed that Nirmal Singh, President of Punjab Panchayats
Secretaries Union and a trade union activist was held under TADA. He had
reportedly written a letter to the authorities against the wrongs of a Block
Development Officer who got him arrested under TADA. Lokanath Choudhury,
Ramashray Prasad Singh, Indrajit Gupta, all from the Left made similar
arguments. Their main contentions have been that there are already enough laws
in the statute books to respond to the threat and that the laws had on many
occasions targeted trade union activities and protests. They also argued for the
removal of the section dealing with “disruptive” activities as these targeted all
forms of mass democratic activities.

Sobhana Dreeswara Rao Vadde of the TDP, while, agreeing that the Naxalite
problem in Andhra Pradesh was serious and that the Centre needed to respond to
it, argued that the problem did not need a legislation like TADA. He pointed out
that the misdeeds of the Congress Party in Andhra Pradesh had only encouraged
terrorism. He accused the Congress of colluding with the Naxalites when it came
to power in 1989. He said that his party, the TDP, which had taken strong
measures against the Naxalites had forced them to look for political allies which

49 Ibid., c. 830.
50 Ibid., c. 841.
they readily found in the Congress. He said that the problem would be much better solved if the Congress stopped giving support to the Naxalites rather than TADA.

George Fernandes of the Samata Party brought into limited focus the issue of the genesis of terrorism in Jammu and Kashmir. He argued that the year 1984 saw the beginning of terrorist activities after elections were held there. In 1987, the government of Farooq Abdullah was replaced by an alliance government with the help of the Congress Party. This introduced rigging, corruption and other malpractices by the state, which, according to him, only invited terrorism. It may be noted here that Ramashray Prasad Singh of the CPI also called upon the government to give due importance to the genesis of terrorism in the country. He argued that there was need to identify the persons who gave rise to this malady in the country. He said that some politicians committed all misdeeds in order to save their chair at the expense of seriously indulging in developmental works, which only encouraged terrorism. And that it was quite natural for the poor to take recourse to terrorism. He accused the government by saying that it was misgovernance that had spread terrorism everywhere, whether it was in Punjab, in Kashmir, in Assam or in Andhra Pradesh.

Girdhari Lal Bhargava and Dau Dayal Joshi, both from the BJP, had earlier moved an amendment in the House for eliciting public opinion in this regard.

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51 Ibid., c. 850.
52 Ibid., c. 869.
They had argued that any further extension needed to be debated upon by the public. Bringing the issue again during the debates, Mr. Bhargava asked the Chair if he be given the chance to once again move the amendment. The Chairman, however, refused to oblige by pointing out the Bill had earlier been circulated but had been subsequently withdrawn. 53

P.C. Chacko of the Congress remarked that the Opposition was using the time of the debate to attack the Congress on no merit. He said that Congress Party’s assertion now that “extraordinary situations warrant extraordinary legislations” was in the past a statement made in the House by none other than the then Law Minister in the Morarji Desai Government. 54 He said that in the recent past the country was facing acute terrorist threats including attacks on leaders in the political arena, the most recent of which was Rajiv Gandhi. He also pointed out that the Vice-Chancellor of Kashmir University and the General Manager of HMT fell to the bullets of the assassins. He also argued that when Mr. V.P. Singh was heading the Government and Mr. George Fernandes was a Minister, extraordinary laws were there and it was also used during those times. Terrorism now, according to him, had become part of society and all had to face it.

Both the Home Minister, S.B. Chavan and the State Minister for Home, Shriram Lal Rahi, replying to the various questions reiterated that the escalating situation in Jammu and Kashmir was the chief motivation behind the government’s

53 Ibid., c. 871-2.
54 Ibid., c. 866.
intention to push for the extension of the law while also mentioning that situation in Assam, Andhra Pradesh and Tamil Nadu involving the LTTE had also become serious.\(^{55}\) The Home Minister said that political initiatives to find out the grievances of the people were his responsibility and he would do so. Regarding the misuse of the provisions of the law, he pointed out that it was possible that certain people might have misused it but that he would require more facts to that effect. Mr. Rahi also said that wherever reports of misuse came in the government would do its utmost to make the necessary enquiries.

Syed Shahabuddin of the JD pointed to the House that the reckless manner in which the law had been used in the past two years after the law was extended in 1989 could be understood from the way in which the number of arrested people had gone up dramatically in the year 1990-91. He said that initially there were only five States which had crossed the triple digit, i.e. Andhra Pradesh - 640; Gujarat - 1,623; Jammu and Kashmir - 141; Manipur - 279 and Punjab - 3,563. One year later, five more States had reached the three-figure mark.\(^{56}\) He pointed out to another disturbing feature with regards to Andhra Pradesh and Gujarat which had reached the figures of 2,143 and 4491 by March 1989. He argued that arrests under TADA were reported most from areas that had supposedly less terrorist activities. He also said that as per a statement made in the House on 1 January 1991, in Jammu and Kashmir out of the 4593 persons arrested by the

\(^{55}\) It may be worth noting here that the Home Minister went on record saying that he was yet to visit Jammu and Kashmir to “see the situation” himself. See \textit{Lok Sabha Debates, 10}^\textsuperscript{th} Series, Vol. III, No. 24, c. 873.

\(^{56}\) Ibid., c. 885-6.
authorities, 2044 were arrested under TADA, which meant that nearly 55% of the total were arrested under other laws.\textsuperscript{57} Out of this the Government had admitted that only 124 were terrorists, which meant that the rest of those arrested were civilians or innocents.

The motion to extend the Bill was put to vote and finally adopted with 133 AYES and 116 NOES. Meanwhile, the Opposition made an effort to get some assurances from the government with regards to some issues that were discussed during the debate. George Fernandes, for example, wanted an assurance that no Member of Legislative Assembly or a political worker would be arrested. Syed Shahabuddin wanted a categorical assurance from the government that every single case of TADA detainee would be reviewed by the Home Minister within a period of three months. Sobhanadreeswara Rao Vadde wanted that all statistics and reports of the operationalisation of TADA should be submitted to the House. He also said that the Government should take necessary steps against those persons who are responsible for arresting innocent people.

\textit{Related Internal Security Debates between 1991-1993}

In the background of TADA, a number of debates related to the increasing 'insecurity' in India were carried out in Parliament. It is interesting to note that these debates reflected not only the substance of the TADA debates but were also consistently rendered a 'political' colour with the political parties blaming each other for the state of affairs.

\textsuperscript{57} Ibid., c. 887.
In December 1991 the House held a lengthy three-day discussion on the Deterioration In Law and Order Situation In Various Parts of the Country with Reference to Recent Spurt In Incidents of Terrorism, Secessionism and Kidnappings. The issue was raised by Indrajit Gupta on 10 December 1991. Three major issues during the past year had prompted the discussions – the kidnapping of Romanian diplomat, Liviu Radu, in New Delhi in broad daylight, the increasingly complex situation unfolding with regards to the communally sensitive Ram Janmabhoomi/Babri Masjid issue and the escalation in terrorist attacks in Jammu and Kashmir.

Most of the members agreed that there had been serious deterioration in law and order situation during the past couple of years. Many of those involved in the discussions criticised the Congress Party for the increasing troubles in various parts of the country. S.M. Laljan Basha of the Telegu Desam, for example, said that of 44 years, the Congress remained in power for 40 years and hence 90 percent responsibility for its present situation rested with the Congress Party. They argued that regionalism, economic disparities, unemployment, favouritism, dishonesty, corruption, laxity on the part of judiciary, inaction on the part of the Government employees and so on were the result of government apathy to the affairs of the country and the reasons for the rise in terrorist tendencies, killings and kidnappings in the country. Prof. Ummareddy Venkateshwarlu of Telegu

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Desam said that in Andhra Pradesh the situation was such that while Naxalism had arisen out of exploitation and persisting poverty due to the maldistribution of economic power, the Congress Party in power instead of controlling the situation was making use of the Naxalites to remain in power.\textsuperscript{59}

The members observed critically and agreed that there was a serious increase in communal tendencies in various parts of the country. Amar Roypradhan of the FBL and E. Ahamed of the MLKSC pointed out that these tendencies were the results of propaganda let loose by some of the political parties or some of the people who were on inimical terms with some religious groups.\textsuperscript{60} The members particularly pointed out that the Bharatiya Janta Party (BJP) had been creating conditions to divide the country on religious grounds. The \textit{Ekta Yatra} taken out by the BJP on 11 December 1991, they pointed out, was an indication of such an attempt.

The security situation in Jammu and Kashmir and the Northeastern states also featured in the discussions. In both cases, the Opposition members pointed out that the aggravating situation was the result of governmental mismanagement of conflict through the use of its police/military personnel, including abuse of rights by the forces, the constant and persistent interference in the opposition-led state governments by the Centre, and the lack of a political initiative to resolve various issues. Various operations such as the recent \textit{Operation Rhino} in Assam,

\textsuperscript{59} Ibid., c. 642.
\textsuperscript{60} Ibid., c. 678.
Operation Flush Out and Operation Deliberate in Jammu and Kashmir according to many members, had achieved a certain amount of success but had resulted in gross abuse of rights of innocents, which in the long run would only breed more disgruntled elements, especially among the young unemployed youth.

Other issues that featured in the debates included the need for a comprehensive security regime such as the National Security Council that was initiated by the Vishwanath Pratap Singh regime in 1990. Amal Datta of the CPI (M) questioned the government as to why the Council was not taken up thereafter. Land reform was another issue taken up. Members pointed out that feudal tendencies particularly in rural areas was giving rise to anti-social elements, such as the Naxalites and the only way to curb such rise was to vigorously institute land reforms. The need to initiate a public debate on the security situation of the country was introduced in the House by Bheem Singh Patel of the BSP. He argued that there was a need for special meetings with eminent personalities from all fields, leaders of political parties, educationists, specialists, experts and others on the issue. Nawal Kishore Rai of the Janata Dal (U) argued that there was an urgent need to review the laws with regards various aspects of security as they had become obsolete for use in the present conditions.

61 Cheddi Paswan of the Janata Dal made a passing reference on this issue but subsequently this was taken up by a majority of the members and debated for a long period. See Lok Sabha Debates, Tenth Series, Second Session, Vol. VII, No. 15, c. 710.
62 It may be noted that commentators on the Indian legal system have also argued likewise. Many of these legal experts point out that bulk of the Indian penal laws and criminal codes have been continued since the British days even after the country got independence. See for example, Iyer, States of Emergency, pp. 67-80.
The Minister of Home Affairs, S.B. Chavan, agreed to what the members had observed. He said that there was no contradiction of the fact that large scale rigging of the elections took place and money and muscle power were being used in a big way. He said that criminalisation of politics was getting respectability and criminals were getting elected and occupied important positions and communal and caste factors were also emerging. He mentioned that the government would urgently initiate a dialogue with various extremist groups.

The anti-terrorist debate during this period was significant not only for the comprehensiveness in the issues raised but also for the critical challenge posed to governmental policies. Indicating a shift from the usual political squabble, issues such as human rights, the 'root cause' of terrorism in the Indian context, government apathy to socio-economic welfare, corruption, etc. became much more focused. This took place despite serious escalation in violence in Jammu and Kashmir and the perception that terrorist threats in Kashmir would overwhelm the anti-terrorist discourse and debate.

This period saw the government tighten its policies on Jammu and Kashmir. While the debate on TADA extension did not seem to generate much consensus, the government was able to garner enough support for its other anti-terrorist measures. For instance, on 25 February 1993, the House debated on the need to extend President’s rule under Article 356 in the state of Jammu and Kashmir for a further period of six months with effect from 3 March 1993. President’s rule had
been imposed from February 1990. The government argued that the situation in Jammu and Kashmir had not improved due to “Pakistan’s direct role in aiding and propping up militancy in the Valley and in extending the arc of terrorist violence even to the Jammu Division.” The government also said that there was massive assistance to terrorists in the state from Pakistan in the form of supply of weapons and finances and sanctuaries to terrorist elements.

Majority in the House agreed that there was the need for the extension for President’s Rule. Two issues featured prominently during the discussions. First, some members pointed out that there was a gradual attempt by Hindu communal forces to see Kashmir as an integral part of India in terms of their vision of a Hindu Rashtra. George Fernandes of the Janata Party said that this concept that was being gradually propagated could not go together as 85 percent of the population were Muslims in Kashmir and in the long run would only create a worse situation than it was. E. Ahamed of the MLKSC also made similar comments by saying that the recent propaganda by the BJP that Hindu temples were being destroyed and desecrated in Kashmir were “nothing but white lies”. He also pointed out that as a result of the renewed violence in the state, not only Hindus but Muslims were also affected and that nearly 10,000 Muslims had left the valley. Srikanta Jena of the Janata Dal said that there had to be something done about the fact that although in Kashmir “two percent people were Hindus ... and 98 percent were Muslims ... in Jammu and Kashmir Government services,

64 Ibid., c. 480.
98 per cent were Hindus and two percent were Muslims. These communal
tendencies, according to them, needed to be curbed for any successful policy in
Kashmir.

Secondly, some of the members pointed out that there was need for political
dialogue to be initiated side by side with any other measure that the government
took. Saifuddin Choudhury of the CPI (M) said that the situation in Kashmir had
come to “such a critical point” that a solution “from a political angle and not from
a law and order angle” was the only way out. Indrajit Gupta of the CPI went on
to say that if bilateral relations between India and Pakistan could bring about a
solution of the Kashmir problem, India should initiate such a dialogue.

In another instance, on 30 March 1993, the Lok Sabha discussed to “give effect”
to the South Asian Association for Regional Cooperation (SAARC) Convention
on Suppression of Terrorism. The issue in the Indian context was significant
given the growing resentment from all sections of people towards Pakistani-
sponsored terrorism in Jammu and Kashmir and the recent revelation that the Inter
Services Intelligence (ISI) of Pakistan had a hand in the Bombay blasts in which
about 300 people had died. Some of the main accused had escaped to Dubai and
later to Pakistan and the U.A.E. was seen as an ally of Pakistan. Most of the
members, while agreeing to push the SAARC agenda on terrorism forward,

65 Ibid., c. 496.
66 Ibid., c. 455.
67 George Fernades raised this issue during the discussions. See Lok Sabha Debates, Tenth Series,
Sixth Session, Vol. XX, No. 25, Tuesday, March 30, 1993, Government of India, Lok Sabha
Secretariat, c. 456.

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pointed out India's attempts would prove futile if Pakistan and to some extent Bangladesh did not give up supporting terrorism on Indian soil. Incidentally by the time this issue was being discussed in India, Pakistan and Bangladesh had not yet passed the SAARC Convention as law in their respective countries.

India's firmness on anti-terrorist measures during this period also may be ascertained from other debates that it initiated in Parliament. On 7 May 1993, a Bill further to amend the Code of Criminal procedure, 1973, in order to accommodate an agreement between the Government of India and the Government of United Kingdom of Great Britain to cooperate mutually in the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds and instruments of crime and terrorist funds was adopted by the House.68 The extradition agreement that was signed on 22 September 1992 was perhaps one of the first successful bilateral efforts by India in building up front against terrorism with another country. In this particularly agreement the "political offence exception" clause – a provision that had plagued most of the agreements of this genre – was resolved by clarifying a number of specific offences which were "not be regarded as offences of a political character."69

Most of the members agreed that the amendment was necessary given the need for India to cooperate with other nations in containing 'international' terrorism.

The escape of the main accused persons in the Bombay blasts to another country and helplessness of the authorities to arrest them due to lack of an effective agreement was seen by most of the members as necessitating such efforts. The members, however, pointed out that there was need for much more efforts to have such an agreement with neighbouring countries particularly, Pakistan, Bangladesh, Sri Lanka and Nepal because they were of much more concern to India. And in this regard, to therefore urge these states to implement the SAARC Convention on the Suppression of Terrorism.

The 1993 TADA Extension Debate

In a number of ways, the government’s other efforts at building up a consensus on its anti-terrorist measures were achieving a degree of success. The debate, however, on TADA continued to be bogged down by factors more political than fighting terrorists. On 14 May 1993 a Bill to amend the Terrorist and Disruptive Activities (Prevention) Act, 1987, for as further extension of two years was discussed. The Home Minister S.B. Chavan said that the situation had not turned “normal” and the law had to be available so long as terrorism showed its ugly face. He also said that some important changes had been proposed. Investigation would commence only if the Superintendent of Police authorised it and prosecutions would be launched only with approval of Inspector General of Police. The provisions about extra judicial confessions being admissible in Court had been deleted. In-camera trial was to be at the discretion of the Court. Remand

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during investigation under Section 167 would require judicial application of mind and the progress made in the investigation would be considered if remand was to be extended beyond 180 days.

In what may be called the first-ever serious debate on human rights abuse arising out of the application of TADA, a majority of the members questioned the government’s actions in this regard. Sayed Shahabuddin of the Janata Dal said that there had been extensive misuse of the Act. He also pointed to the fact that until now the government was yet to come up with statistics in the House. Further, he complained that now it had come to the notice of the House that the law had been extensively misused against the weaker section of the society, against the poor people, against the minorities and even against political and social workers. He also argued that the government’s position on the extension of the Act in view of renewed counter-terrorism efforts with foreign countries (in this case with the United Kingdom) did not merit the extension.

Bhagwan Shankar Rawat of the BJP brought to the notice of the other members that since May 23, 1985, of the 52,998 persons challaned only 434 persons had been punished.\(^71\) About 14,007 cases in total were filed in Punjab and only 52 persons were prosecuted. Similarly it was enforced effectively neither in Kashmir nor in Assam. Gujarat was the only state where this law was enforced. Interestingly, *Frontline* in its 23 September 1994 issue reported that Gujarat topped the list of detainees under TADA with 19,263 cases followed by Punjab.

\(^71\) Ibid., c. 410.
with 15,175 cases. He said that the law was enforced to suppress political rivals like BJP in Gujarat, but not in Kashmir where widespread terrorism had brought the valley on the breaking point.

Left parties argued that ever since the law had been brought into the statute books terrorism had only increased and the government had responded only by giving a further lease of life to TADA. Loknath Choudhury of the CPI said that the law did not address the causes of terrorism and that it was only a weapon used to repress the terrorists, which in most cases turned out to be ordinary people and in the process, while terrorists were running around scot-free, it was the ordinary citizens who were suffering the application of the law. Sudarsan Ray Chaudhuri of the CPI (M) said that there were several instances where the law had been used against political adversaries, trade unionists and common citizens with impugn. In Tripura and Rajasthan, he argued that it had been proved beyond doubt that the law had been used by the government to suppress democratic movements.

Ram Vilas Paswan of the Janata Dal remarked that the law by itself could not solve terrorism as had been seen after TADA had been implemented. He said it was necessary to know the reasons behind a person becoming a terrorist.

In what may be seen as a shift from official stance on TADA, the Home Minister S.B. Chavan replying in the Lok Sabha said:

[There seems to be a total misunderstanding of the entire application of TADA. Every honourable member seems to be under the impression that the Central Government is enacting this legislation and it is the responsibility of the Central Government.]

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Government to see that it is properly used. I must inform the House that this is just an enabling provision; there are states, which have not resorted to TADA at all. You have the power to notify whether you would like to attract the provisions of the TADA or not.\(^72\)

He also said that it was not the responsibility of the Centre to see how the states had invoked the provisions of TADA. The Home Minister also went back on what the government had said all along that there was no scope for misuse. He admitted, "I cannot possibly say that there will be no misuse... To the extent possible, we have been sending all the guidelines..."\(^73\)

The motion for the extension was adopted. By this time, however, it was clear that TADA was being grossly misused. Opposition claims that TADA was being used to target people not involved in terrorist activities was also being reinforced by reports of various Non-Governmental Organisations (NGOs). Legal luminaries and other social workers and individuals also carried out a wide coverage of the misuse in various media reports and commentaries. By the end of 1994, Amnesty International had come out with two major reports connected with TADA.\(^74\)

Statistics of state-wise arrests and prosecutions were also made available in which it was found that the highest number of detentions had come in from states that had no previous records of terrorist activities. The case in point was Gujarat. And by the end of 1994, 22 out of the 25 states in the country had invoked TADA, in

\(^{72}\) Ibid., c. 426-7.

\(^{73}\) Ibid., c. 429.

most cases, reportedly simply to circumvent the procedural safeguards available to the accused persons under ordinary criminal statutes.\textsuperscript{75}

By this time a number of judicial interventions had also taken place. There were a record 20 cases put up in the Supreme Court challenging the ‘constitutionality’ of TADA by the end of 1993.\textsuperscript{76} The Supreme Court in \textit{Kartar Singh v State of Punjab} had observed that

\begin{quote}
[W]e have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA with an oblique motive of depriving the accused persons from getting bail ... this kind of invocation of the provisions of TADA in cases, the facts of which do not warrant (it), is nothing but sheer misuse and abuse of the Act by the police.\textsuperscript{77}
\end{quote}

The Supreme Court, in this case, gave explanatory notes on certain ‘vague’ provisions, gave guidelines on how confessions were to be recorded and also on how review committees should be constituted and struck down some parts of the Act, which it found unsuitable while upholding the constitutionality of the Act.

In May 1995 when TADA was brought back into the House for discussions it was clear that the government had run out of all arguments to continue to extend the Act. TADA was allowed to lapse on 23 May 1995. The government, however, decided that all legal proceedings and all detentions extant as of 23 May 1995 were to be continued and treated as TADA detenues and under the provisions of the then revoked TADA.

\textsuperscript{75} See also Iyer, \textit{States of Emergency}, p. 237.

\textsuperscript{76} See Grover, Vrinda, \textit{Supreme Court on the Terrorist and Disruptive Activities (Prevention) Act (TADA)}, Amnesty International India, 2002.

The issue of continued detention of TADA detenues was taken up during the Budget Session in March 1997. Most members argued that the government had not done enough to speed up the TADA cases. On the other hand, it was brought to the notice of the members that fresh cases of arrests were made under the provisions of TADA.

The Union Home Minister, Indrajit Gupta replied that the government was doing its utmost to speed up the trials. The government, he argued, was following up on the Supreme Court directions, particularly the 1996 February judgment on a public interest litigation (PIL) regarding granting of bails to TADA undertrials and had issued directions to the various states and Union Territories to speed up the cases. He said that as a result of the detailed guidelines issued by the apex Court, the Designated TADA Courts had released 20,037 persons on bail as per reports till March 1997 received from the various State Governments. Till March 1997, the total number of TADA cases was 10,562, the total number of persons involved was 27,728, the total number of persons arrested was 19,344, the total number of persons arrested and under detention was 1,599, the total number of persons released on bail was 20,037 and the total number of persons absconding was 2,222.78

78 See XI Lok Sabha Debates, Session IV (Budget), Thursday, March 20, 1997, Government of India.
Post-analysis of the TADA experience made it clear that this piece of legislation was largely a political tool at the hands of the party in power both at the Centre and the states. Despite overwhelming evidences, in this regard, it was continually extended for 10 years. This happened through little seriousness given to views against the operation of the law both in the Parliament and outside. Although the extension was in some instances favoured in the light of the increasing intensity of violence, particularly in Jammu and Kashmir, in the final count, of the 76,036 people arrested and detained as on 30 June 1994, only “one per cent of these detainees were convicted of the charges against them, despite the relaxed prosecutorial burdens under TADA.” TADA represented a case of a legally sanctioned but grossly manipulated law for vested political interests.

The POTO 2001

In what may be seen as significant reversals in political fortunes and fundamental stances on anti-terrorist legislations, in 1999, the BJP government, headed by A.B. Vajpayee, came to power at the Centre and subsequently asked the Law Commission to study and recommend the revival of a ‘comprehensive anti-terrorism bill’. A number of independent studies on anti-terrorist legislations in India notes the complete shift in stances that saw the BJP and its allies supporting the very principles on anti-terrorist legislation it had opposed for the past two

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decades and the Congress opposing the same it had supported consistently. The new government's main validation was that the terrorist menace continued to threaten the security of India. The Congress opposed any law on the basis of the existence of other laws and the experiences of TADA, which had failed to control the spread of terrorism.

On 13 April 2000, the Commission came up with a report and a draft of the Prevention of Terrorism Bill 2000. The Commission announced that it had prepared the draft bill after getting inputs from two seminars it had conducted – on 20 December 1999 and 29 January 2000 – at the India International Centre. It said that people from all relevant fields had been invited to participate in the seminar and thrash out their differences on the proposed legislation.

The Commission noted that in the two seminars, while the “representatives” of various human rights organizations, universities and advocates in the human rights field “questioned the very necessity of such a legislation”, representatives of the government, including people from the Army, the police and the intelligence departments “called for a more stringent law than the one proposed.” The Commission further stated “On a consideration of the various viewpoints, the Law Commission is of the opinion that a legislation to fight terrorism is today a necessity in India. It is not as if the enactment would by itself

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80 See the introductory note by Justice B.P. Jeevan and also Chapter III dealing with “Whether the Present Legislation is at all Necessary” of the Law Commission of India, 173rd Report on Prevention of Terrorism Bill, 2000.
subdue terrorism. It may, however, arm the State to fight terrorism more effectively.”

The government, on the basis of the recommendation from the Commission introduced the Bill in Parliament in July 2000. It argued that India was increasingly seen as a “soft state”. Referring to the December 1999 hijack of the Indian Airlines flight IC814 from Kathmandu to Kandahar in Afghanistan and the subsequent release of three hardcore terrorists in exchange for the hostages, the government said that certain “terrorist groups” saw India as incapable of meeting their challenge. And hence, it reiterated that there was need for the government to arm itself to meet the challenge.

The Opposition headed by the Congress vehemently opposed the law arguing that it was susceptible to gross misuse as was the case with TADA. A number of political parties including those in the BJP-led coalition also did not favour the enactment. In view of the TADA experience and the fact that TADA detenues were still a matter of debate in the Parliament, there was still stiff opposition to any anti-terrorist law in the country. The National Human Rights Commission (NHRC) in a meeting on 12 July 2000 also stated that “there was no need for enactment of the Prevention of Terrorism Bill, 2000 or similar law and that existing laws were sufficient to deal with any eventuality, including terrorism”.

The NHRC further stated, “The proposed Bill if enacted would have the ill-effect

81 Law Commission of India, 173rd Report on Prevention of Terrorism Bill, 2000, Chapter III.
of providing intentionally a strong weapon capable of gross misuse and violation of human rights which must be avoided particularly in view of the experience of misuse in the recent past of TADA and earlier MISA of the emergency days.\textsuperscript{83}

Civil society organizations notably, the People's Union for Civil Liberties (PUCL), legal activists and commentators, academicians and other individuals also vehemently opposed the law. The law could not make it to the statute books.

The setback to the BJP government through its inability to push in this piece of legislation in Parliament created a general impression that it would take time for the country to tide over the experiences of TADA. The 9/11 attacks in the US, however, saw a complete reversal of the mood and opinions regarding anti-terrorist laws. Referring to escalating terrorist threat domestically in the attacks on objects of national importance such as the Red Fort and the Jammu and Kashmir Assembly building and the lack of an effective anti-terrorist law after TADA, on October 24, 2001, the President of India promulgated the Prevention of Terrorism Ordinance (POTO). The government, while pointing out that the events of 11 September only made it obvious for India to fully arm itself against terrorists as it had been experiencing terrorism for a much longer period and in greater intensity than the United States, also said that it was acting in line with the directives of the United Nations that had urged member states to take additional steps to tackle terrorism.

The promulgation of the Ordinance kicked off a debate under two major themes. The first was whether it was necessary and the second dealt with the manner in which it was going to be different from earlier laws that had a history of abuse. Among the political parties, three clear lines of division were visible. The Congress, Left parties and some regional parties vehemently opposed the law in any form and said that they would not support the passage of the Bill in Parliament. They argued that POTO was undemocratic, suffered from serious legal infirmities, and was liable to abuse against individuals, social groups, and the press. They said that existing legal mechanisms are sufficient to deal with the various aspects of terrorism. They particularly targeted the manner in which POTO was promulgated, that it was promulgated on the eve of the Parliament’s Winter Session and assembly elections in Uttar Pradesh and Punjab. One of the objectives of POTO, they argued was to garner Hindu votes in Uttar Pradesh. BJP leaders during its executive meeting in Amritsar, they noted, had made it clear that POTO in particular and terrorism in general would be one of its main agenda for the upcoming elections in Uttar Pradesh. It was also during this meeting that BJP party leaders had stated that all those who were opposed to POTO ran the risk of being branded as anti-nationals.

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86 See for example, “BJP All Set to Use POTO to Regain Its Credentials,” Hindustan Times, November 4, 2001.
The second category were those who neither rejected nor supported the Bill. For example, the Akali Dal chief Prakash Singh Badal stated that the leadership in Punjab was studying the Ordinance and would come up with a statement.\(^8\) The Dravida Munnetra Kazagham (DMK), a partner in the coalition at the Centre, while saying that they supported POTO did not clearly indicate if they would vote for the Bill in Parliament. It may be noted here that the AIADMK, the DMK’s chief opposition, and the ruling party in the state of Tamilnadu said that they would support the Bill. A similar line was taken by the Trinamool Congress. Trinamool Congress leader, Mamta Banerjee, although earlier, had rejected POTO, subsequently was re-inducted into the Union Cabinet. Other parties like the Telegu Desam Party and Janata Dal (U), while supporting the Bill called for detailed examination of the law to prevent abuse of power.

Replying to the Congress’ charge that POTO was being used as a political plank, Deputy Prime Minister, L.K. Advani, in an interview to the *Hindustan Times* on November 11, 2001, asserted that POTO had nothing to do with political objectives. The BJP leadership also stated that it was not the government but the Law Commission that drafted POTO without interference from any quarters.\(^9\) On the other hand, the Union Minister for Law and Company Affairs, Mr. Arun Jaitley, accused the Congress of opposing POTO to garner minority votes in the Uttar Pradesh Assembly elections.\(^9\) The Government said that the Congress was adopting “double standards” by opposing POTO when similar laws were there in

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Congress-ruled states like Maharashtra and Karnataka.\textsuperscript{91} In an attempt to allay the fears of the people regarding POTO, the BJP had asked some of its party leaders to arm themselves with facts about POTO and disseminate the same. The government also in an attempt to build up a consensus called for an all-party meeting on 4 December to resolve the issue. The Congress and its allies, however, said that they totally opposed the Ordinance and the draft legislation to replace it.

The BJP government also made it clear that if the Opposition did not support the passage of the bill, a Joint Session of both the Houses of Parliament would be convened.\textsuperscript{92} It may be noted that in a Joint Session the government had an edge over the Opposition in terms of numbers. This, to the Opposition, was seen as a “determined back-door strategy” by the government to pass the bill. More so because a Joint Session had been so far only convened twice.

In the aftermath of the 13 December Parliament building attack, the debate seemed to have turned much more in favour of the government. There was also an expectation that even the Opposition would rethink its ostensibly tough line on POTO and give the Government more ‘elbow-space’ to maneuver POTO. The Congress, however, indicated that it would not change its position. It argued that the attack took place despite the fact that POTO was in operation and despite the many warnings and indications that Parliament building might be targeted.\textsuperscript{93} The

\textsuperscript{92} “BJP on Damage Control Mission Over POTO,” Hindustan Times, November 7.
\textsuperscript{93} See Bhavdeep Kang, “Still No to POTO,” Outlook, December 24, 2001, p. 43.
government, meanwhile, argued that the attack only made the resolve to bring in
POTO stronger. POTO was repromulgated on 30 December 2001.

Even as the government was attempting to build up some kind of a consensus on
the Bill, the operation of POTO was increasingly put under serious scrutiny on
two counts. First, the prosecution case against the four accused in the Parliament
attack case – Mohammad Afzal, Shaukat Hussain Guru, Afsan Guru and S.A.R.
Geelani – on the basis of the mobile phone numbers recovered from the dead
attacker was increasingly questioned by various people. It may be noted here that
the manner in which charges were filed against these persons brought in severe
criticisms and was instrumental in the formation of a ‘defence group’ for one of
the main accused, S.A.R. Geelani, made up of noted lawyers and civil rights
activists, which subsequently led to his acquittal due to insufficient evidence. And
secondly, the slapping of POTO charges against 121 persons arrested for having
carried out the attack on the Sabarmati Coach on 27 February 2002 in Godhra,
Gujarat that killed 58 Kar Sevaks, and who happened to be members of the
Muslim community, while those arrested for carrying out the ensuing riots where
more than a thousand people were killed were booked under ordinary charges,
was seen as a case of the misuse of POTO.

Despite the raging controversy, on 26 March 2002, the Ordinance was converted
into an Act of Parliament in what was termed as a “historic” Joint Session of
Parliament. The Government argued in favour of the legislation on the following
reasons. First, that there was need for a law that would protect national security "in view of the changed circumstances" as seen in the increase in terrorist attacks on objects of national significance. The attack on the Red Fort, the Jammu and Kashmir Assembly building and the Parliament building was seen as an escalation in the terrorist threat. The Twin tower outrage, according to the Government, had created a fear psychosis in the country and said that if India was 'soft' a similar disaster was waiting to happen.

Secondly, the Government said that it was acting in line with the international community by taking additional measures to prevent and suppress terrorism as per Security Council Resolution No.1373 passed on 28 September 2001. The Minister of Home Affairs, L.K. Advani noted that stringent laws had been passed by the United States and the United Kingdom; and India, which had been facing the terrorist onslaught in more severity, needed a law much more than these countries.

And thirdly, the government said that POTA was different from TADA in that the shortcomings of TADA was made good by the Supreme Court by laying down six additional safeguards and striking off certain provisions that were found unsuitable were to be strictly adhered to in the new law. The Government also indicated that certain provisions of the law, which were controversial, could be

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94 The government referred to its earlier attempt through the Law Commission to report on the security situation of the country. The 173rd Report of Law Commission of India on Prevention of Terrorism Bill, 2000 had reported an increase in the terrorist threat in all areas.
negotiated and useful suggestions could be accommodated. But scrapping of the law because it could be abused would be disastrous to the security of the state.

Although it was clear from the beginning that POTA would be passed owing to the numerical strength of the ruling coalition with the Telegu Desam and the new ally the AIADMK adding up to the NDA strength, the Joint Session saw the indictment of the government in its handling of the Gujarat riots and its support to the Narendra Modi government. The Opposition, particularly the Congress, accused the government of remaining mute over the systematic use of POTO against the minorities in Gujarat. Congress leader, Sonia Gandhi challenged the Prime Minister as to whether he would succumb to the “internal pressures” from the Sangh Parivar and its sister organizations or whether he would protect the welfare of the people.96

Somnath Chatterjee of the CPI (M) also reflected similar sentiments when he said that under the benign protection of the Prime Minister, a state-sponsored, a political party-sponsored mayhem was carried on in Gujarat.97 He asked if there could be a more pronounced misutilisation of POTO. He asked on what basis it was not applied against the people belonging to the majority community, who had indulged in mass killings in Gujarat. Mulayam Singh Yadav of the Samata Party, another strong advocate against the law, pointed out that since terrorism in the country was clearly sponsored from the ‘outside’, POTO would not have a much

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prescriptive value, rather, it would be more readily used within the country – against the ordinary citizens and political opponents.

Even though the government had urged the use of POTA judiciously, reports coming in from various quarters have indicated that in some areas they have been systematically misused. Jharkand, the state from where maximum arrests under POTA were made (180), reportedly included school children. Various commentators have been crying hoarse over the misuse of POTA in Tamil Nadu, in the aftermath of the arrest of Vaiko, leader of the Marumalarchi Dravida Munnetra Kazhagam (MDMK), reportedly for making a statement during a public meeting of his support for the LTTE. Civil rights groups have been repeatedly arguing that POTA has been used systematically to target minority groups in Gujarat. The government, in response to these reports, instituted a Review Committee on 13 March 2003, headed by Arun Saharya, former Chief Justice of the Punjab High Court whose duty was to undertake a comprehensive review of the use of the legislation in various states and give its findings and suggestions for removing shortcomings in its implementation.

POTA also does not seem to have gone down well with the National Human Rights Commission. The Chairman of the Commission, Justice J.S. Verma, while delivering the Bodh Raj Sawhny Memorial Lecture in December 2001, stated that certain provisions of the law were “incongruous”.98 He said that the legislation had the potential of being misused by the enforcement agencies. According to

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98 “NHRC Chief: POTO may be Misused”, Hindustan Times, 6 December 2001.
him, earlier legislations like MISA and TADA did little to both control terrorism or to improve police culture. POTA was going to be no different from these laws. The Commission also in a statement said the “Commission is unanimously of the considered view that there is no need to enact a law based on the Draft Prevention of Terrorism Bill, 2000. The proposed Bill, if enacted, would have the ill-effect of providing unintentionally a strong weapon capable of gross misuse and violation of human rights.” 99

An analysis of the political debate on anti-terrorism in the Indian context, particularly in the TADA and POTA cases, suggests two things. First, the debate has revolved around political and not anti-terrorist motivations. Most issues raised during the deliberations have focused on the problems associated with the ruling-opposition party divide. This trend may have been the outcome of historical antecedents whereby the ruling party used anti-terrorist measures to target political opponents. Secondly, although anti-terrorism has been highly politicized, in both cases the ruling party did get enough elbow space to maneuver its policy decisions. Despite stiff opposition, TADA was extended for a much longer period than was originally intended. This was partly due to the escalation in the terrorist threat. The killing of former Prime Minister Rajiv Gandhi in a terrorist bomb attack and the renewed violence in Kashmir and other incidents of terrorism diluted the opposition to TADA. Similarly, POTA became much more favourable after attacks were perpetrated on the Parliament building. Although the ruling

party had to coerce its way into bringing the new law into the statute books, it received enough support from the media and other sources for its decisions after the Parliament attack was proved to have been the handiwork of foreign support and sponsorship. The increasing intensity of violence did contribute to tilting the debate in favour of stringent anti-terrorist laws during crisis periods.

For a long time the issue of human rights was limited to occasional reports by non-governmental organizations dealing with civil and political liberties and the media and not a part of the political discourse on anti-terrorism. This is evidenced from the fact that even though there were several cases of human rights violations during operationalisation of various internal security laws, the most pronounced of which was MISA, various political parties preferred to see these violations in terms of political repression. Human rights, however, became part of the official discourse during the mid-1990s when TADA was proving to be grossly misused particularly against innocents and the minorities. The ruling party had to reluctantly agree to this fact. Ever since the issue has gained ground. It was in fact the issue of human rights violations that discredited TADA. The reputation of POTA also seems to be suffering a similar fate. The POTA charge against the chief accused in the Parliament attack case was shamed when the accused were released due to lack of evidence. The slapping of POTA charges against those accused of burning the Sabarmati Express train has also evoked much interest from human rights watchers who argue that POTA was used to target members of the Muslim community when the same was not used to check members of the
majority Hindu community who were responsible for the mayhem that followed the Sabarmati incident. These incidents of violations have led many analysts to suggest that POTA may not be useful in carrying out the purpose for which it was enacted and be doomed like TADA. These recent human rights appeal have led many to believe that governmental decisions, particularly on anti-terrorism, can no longer ignore the issue of human rights. This reality, they argue, has resulted in a host of governmental initiatives, often unwittingly, to engage various groups involved in violence across the country. The new thrust of developmental packages to violence-affected areas could also have been the result of this new outlook.

The most necessary ingredient in increasing the efficacy of the struggle against terrorism is national consensus. Consensus includes the will to welcome partners and the ability to garner popular support. But this has been an area where India has been severely found wanting with no government attempting at building a national consensus and strategy. Rather, governments have pushed these laws into the statute books often through a “win-win” strategy in favour of the political party in power.

While politicizing terrorism is a malady that had inflicted not only India, in certain other democracies, it has manifested itself more in the form of clear ideological stances, and to some degree, of principles governing anti-terrorist measures and much less in the form of political disputations for electoral or power
considerations. It is in this regard that the case of the United Kingdom makes a valuable case for a comparative analysis. It may be argued that in a bi-party political structure like the United Kingdom, political party dynamics are much less severe in terms of principled contestations or power considerations or building consensus on vital national issues. But it must be noted that debates on issues can become much more inflexible in such political systems and consensus would be dependent on how much one of the parties would be ready to accommodate the rival without the pulls and pressures from other parties with diverse opinions. The following chapter will study the case of the United Kingdom in the background of the legislative experience in India.