Chapter 4
The Legislative Debate in the United Kingdom

As is the case with India, anti-terrorist legislations in the United Kingdom have not been free from the ‘politics’ associated with the use of these laws for politico-security objectives. During the early part of the Northern Ireland ‘troubles’ in the late 1960s, it was evident that the UK government tacitly supported the Unionists.¹ This was carried out through legal provisions such as the Emergency Provisions Act (EPA) 1973, which not only enhanced police powers but also brought in the British Army into Northern Ireland. Although initially these were seen as attempts to bring about ‘order’ in the growing sectarian violence, gradually these measures were seen as specifically targeting Republican activities despite the fact that Unionist paramilitaries were also increasingly indulging in violence. For instance, although there were enough evidences to suggest that the Ulster Defence Association (UDA) had been indulging in violence, it was not proscribed under the EPA 1973, when all Republican groups were banned.²

The recourse to enhanced ‘executive’ powers in matters of detention or proscription, traditionally belonging to the judiciary has also been attempts towards politicizing the fight against terrorism in Northern Ireland. The resort to ‘direct rule’ and London’s

¹ David Bonner, for example, says that there are links between the Loyalist paramilitary and the predominantly Protestant security forces although the scale of the collusion is not fully known. Bonner, David, “The United Kingdom’s Response to Terrorism: The Impact of Judicial Institutions and of the Northern Ireland ‘Peace Process’,” in Fernando Reinares, ed., European Democracies Against Terrorism: Governmental Policies and Intergovernmental Cooperation (Ashgate: Dartmouth, 2000), p. 38.
consistent attempt to go over the heads of the Northern Ireland Administration to negotiate with the Irish Republic on matters pertaining to Northern Ireland have all indicated a certain degree of 'executive authoritarianism' in managing the Northern Ireland conflict.

However, political 'squabbles' on terrorism, in terms of electoral or party considerations, has been much less pronounced than has been the case with India. On terrorism, the 'politics' during the debates have involved fundamentally the definition of terrorism as conceived by the two parties on the opposite ends of the political divide. The Conservatives see terrorism as inherently a domestic phenomenon and emanating from Catholic violence in Northern Ireland. This must be understood in terms of sectarian sentiments wherein Northern Ireland is seen by the Conservatives as intrinsically a part of the UK and Catholic activism as an attempt at dismembering it. The Labour, on the other, has a wider view of terrorism across both the sectarian divides. The emphasis by the Labour has often been more on the threat of terrorism rather than the nature of the actors although critics tend to argue against this view. The formulation of the Prevention of Terrorism Act 1974, by the Labour government, despite the enactment of the Northern Ireland-specific EPA the previous year in 1973 is suggestive of this stance.

Building a consensus on anti-terrorist legislations in the UK has, despite the above, been much more effortless than has been in India, although, critics say that the bi-party structure of the UK political system allows dissent to be easily silenced.³ In subsequent

³ Harry Street, for example, notes that the Prevention of Terrorism Act 1974 was enacted without even a semblance of a debate in Parliament and passed eight days after two bombings in Birmingham. He remarks,
debates, parties have clashed over the various aspects of the anti-terrorist laws and not on whether they were needed or not or on whether the formulation of a particular law had a political content. This has been an important aspect of the UK political debates. Core issues related to anti-terrorism have featured. Human rights, the UK’s obligations under multilateral instruments on anti-terrorist measures, origin of the Northern Ireland conflict, steps at resolution of the conflict, the sort of shifts envisaged in terms of policy decisions once there was peace in Northern Ireland, the substantial threats from ‘international’ terrorists on the UK, building sectarian harmony, the UK’s foreign policy in the aftermath of 9/11, reviews of previous anti-terrorist mechanisms and other issues have all been highlighted and substantially discussed during the debates.

The Prevention of Terrorism Act 1974 was the first in the series of periodically renewable anti-terrorist legislations in the UK. While this legislation has been widely criticized for being formulated in the most hasty manner and for its lack of focus given the already existing Northern Ireland-specific anti-terrorist law, it initiated both the debate and the nature of anti-terrorist regime in the United Kingdom.

The Prevention of Terrorism Act 1974-1989

A number of ‘urgent’ measures were formulated in the late 1960s and early 1970s to manage the growing sectarian violence. The Emergency Provisions Act 1973 replaced the Special Powers Act 1922 (SPA) under which the UK government had earlier tackled the violence in Northern Ireland. The significant aspect of the EPA’s ‘detention without trial’


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was that this power was given to the Secretary of State in London. The Offences Against the State Act 1939 was amended to create a special court without jury. It was evident that the executive was given enhanced powers over the judiciary.

All these measures, however, did little to manage the 'troubles' for the political establishment in London. On the other hand, they only added further to a rejuvenated militant republicanism in Northern Ireland. In order to leverage its further hold on Northern Ireland, in March 1972, invoking its powers under the Government of Ireland Act, the London Parliament abolished the Northern Ireland government. This only added another dimension to the problem – the Ulster Defense Association (UDA) took up arms. The United Kingdom's increasing inability to control the situation became evident. In 1972 alone, 468 people had reportedly died – the highest annual count in Northern Ireland.⁴

In early 1972, Lord Diplock was asked by the government to undertake a study to consider legal procedures to deal with the situation in Northern Ireland. On 20 December 1972, the final report titled Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland was submitted to the government. The report envisaged a comprehensive anti-terrorist legal mechanism. The Prevention of Terrorism Act 1974 (PTA) was thus conceived and this law consolidated all earlier attempts to provide a comprehensive legal answer to the growing sectarian violence. While retaining many of the tough measures contained in the earlier laws a significant


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aspect of the PTA 1974 was the power given to the executive to ‘exclude’ anyone from entering or leaving Britain or Northern Ireland.

Two aspects about the new law are worth noting. First, the newly elected Labour government passed the law on 29 November 1974 barely eight days after the Birmingham pub bombings\(^5\) on 21 November 1974 effectively shelving any political debate in Parliament. When the Opposition Conservative pointed this out, the Home Secretary Roy Jenkins replied that the law was being enacted in extremely urgent circumstances. He assured the House, however, that the harsh measures were ‘temporary’ in nature and would be eased out as soon as peace returned. “I do not think that anyone would wish these exceptional powers to remain in force a moment longer than is necessary”, the Home Secretary reportedly said.\(^6\) He also pointed that the new legal steps were in response to the increasing deteriorating situation in Northern Ireland and was needed to supplement ordinary criminal law by giving extra powers to the law enforcement agencies. The Home Secretary also assured the House that the operation of the new law would be subjected to reviews by Parliament on the basis of a report to be submitted to the government on its functioning.

Secondly, the crudely debated nature of terrorist acts, as coming within the scope of the new law, has been criticized as being specifically designed to confer “wider powers” to the Executive. Harry Street, for example, writing a year later after the passage of the Act, in 1975, argues that this was made evident in the Home Secretary’s statement in

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\(^5\) On 21 November, two bombings in pubs in Birmingham resulted in the deaths of 21 people and injury of over 180.

Parliament in November 1974 that these new powers regarding arrest and detention were
done “deliberately to protect the police.” The Home Secretary was also reported to have
admitted that “the powers that the Act proposed to confirm upon the police and the
judiciary” are draconian and “in combination they are unprecedented in peacetime.”
Street contends that the manner in which most acts coming within the ambit of the
Criminal Law Act 1967 were incorporated in the PTA 1974 with additional powers
thereby rendering redundant the Criminal Law Act. This was a clear case of the
preeminence of the executive over the judiciary in legal matters on ‘terrorism’ emanating
from Northern Ireland.

The PTA 1974 was not withdrawn as promised by the Home Secretary during its
enactment despite signs of decreasing violence. It underwent a number of re-enactments.
Despite the purportedly ‘temporary’ nature of the Act, it was superseded by a new Act in
1976. In 1982, as a consequence of vociferous demand by the Labour, a review of the Act
was carried out by Lord Jellicoe for continuation of the Act. The change that was
recommended by Lord Jellicoe was to remove “Temporary Provisions” from the Act.
This was, however, not adhered to and the Prevention of Terrorism (Temporary
Provisions) Act came into force in 1984 and was given a life of five years, subject to
annual renewal. In 1989, the act was again amended. Similarly the EPA (that eventually
became the Northern Ireland (Emergency Provisions) Act) was re-enacted on several
occasions (five times), the latest of which was the Northern Ireland (Emergency

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8 Lal, Vinay, “Anti-Terrorist Legislation: A Comparative Study of India, the United Kingdom, and Sri

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However, true to its stated policy, the government instituted a number of reviews on the operation of the PTA and changes were made accordingly. A number of critics have, however, not taken kindly to the review processes. For instance, Lord Jellicoe was expressly forbidden from considering “whether or not we need the (Prevention of Terrorism) Act, and likewise Sir George Baker, given the task of carrying out a review of the Northern Ireland (Emergency Provisions) Act 1978, was provided with terms of reference which carried the acceptance “that temporary emergency powers are necessary to combat sustained terrorist violence.”\(^9\) Despite these criticisms, the reviews did render a certain degree of legitimacy and transparency in its functioning. A review of the 1974 and 1976 Prevention of Terrorism Act was carried out by Lord Shackleton and published in 1978 and another review of the 1976 PTA was undertaken by Lord Jellicoe and published in February 1983. Recommendations by the review committees were accepted and incorporated during further re-enactments.\(^10\) The third major review of the PTA was carried out by Viscount Colville of Culross and was published in December 1987.

This review formed the basis of the PTA 1989 and also a significant shift in the focus of the series of PTA. Viscount Colville also carried out a review of the Northern Ireland (Emergency Provisions) Acts 1978 and 1987, which was published in July 1990. On the basis of this report some changes were incorporated into the Northern Ireland (Emergency Provisions) Act 1991. The 1991 Act was reviewed by JJ Rowe QC in February 1995 and its recommendations were incorporated into the Northern Ireland

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(Emergency Provisions) Act 1996. Another important aspect of these reviews was that these reviews found acceptance from both the Labour and Conservative governments. For example, Lords Shackleton and Jellicoe’s recommendations were both accepted by Home Secretary, Merlyn Rees and his 1979 Conservative successor, William Whitelaw. Despite the change of government in 1979, the Conservative Home Secretary indicated that changes in the PTA could be made “without the need for primary legislation.”

In the 1980s, both Conservative and Labour governments exhibited a much more pronounced attitude towards dealing with the political, economic, and social dimensions of the terrorist problem in Northern Ireland. David Bonner, for example, says that this focus was evident not only in the new political structures created to accommodate the conflicting traditions and identities such as the revocation of the “Direct Rule” in November 1985 and the formation of the Intergovernmental Conference, but also in a host of social welfare services such as housing allocation, providing fair employment, discrimination monitoring mechanisms and the reform in the electoral process. This also resulted in the UK’s focus to concentrate its efforts towards dealing with terrorist threats from other, particularly foreign sources. This aspect merits attention for it constituted a very important aspect of the debate on anti-terrorist policy-making from the early 1980s.

It was in the background of a number of these developments that the Prevention of Terrorism (Temporary Provisions) Act 1989 was debated and instituted. The shift in the

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focus of the current PTA was also evident. When earlier PTAs were meant to deal fundamentally with terrorist acts stemming from Northern Ireland, the PTA 1989 was extended to the whole of the United Kingdom. The stringent steps to attack terrorist finances in the 1989 PTA was indicative of the UK government’s thrust to stop terrorists from using the UK to mobilise funds. The steps taken “go beyond penalizing simple fundraising or supply”, which earlier was the case, with a definite motive to attack foreign terrorist finances.\textsuperscript{13} The 1989 legislation released persons involved in financial transactions from their legal obligation of confidence when the money is suspected to be for terrorist purposes.\textsuperscript{14} The law also created several new offences (Sections 9-13) in connection with possession of or dealing with terrorist money. Section 13(4) of the 1989 PTA gave the power to the courts to order forfeiture of suspected funds and property or restrain dealing in it or moving it out of the country. The PTA 1989 was clearly a sign of the new UK thrust to attack foreign terrorists.

The Prevention of Terrorism (Temporary Provisions) Act 1989

The Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA 1989) received Royal assent on 22 March 1989. Six key facets of the new law indicated a definite escalation in the response of the United Kingdom. They included proscription, powers of random question and search, curbing of terrorist finances and material assistance to terrorists, wider powers of arrest and extended detention without a criminal charge being brought against the suspect and a choice of process to deploy against a suspect including extra-judicial executive process.

\textsuperscript{13} Ibid., p. 64.
\textsuperscript{14} Prevention of Terrorism Act 1989, Section 12(1).
Moving the Bill for debate in the House of Commons the Lord President of the Council, Conservative leader, John Wakeham on 23 January 1989 noted:

As the House knows, the Prevention of Terrorism (Temporary Provisions) Act 1984 expires on 21 March this year. It is essential, if our society is to have adequate means with which to fight terrorism, that the current Bill receives Royal Assent on or before that date, and comes into force on 22 March.\(^{15}\)

He, however, felt that that due to shortage of time it might be necessary to pass a Guillotine Motion truncating the Report stage and Third Reading and to squash them into a single day.

There was a general agreement that the Bill was necessary although the Opposition was not happy at the prospect of the Bill getting the guillotine.\(^{16}\) Frank Dobson, Labour party front-bencher, argued that the Government could have introduced the Bill in the last Session when the House dealt with fewer Government Bills than the “first Session of any Parliament since the war”.\(^{17}\) Instead, the introduction of the Bill in this Session did not leave much time for it to be considered properly. Other Labour party members also put up similar arguments. They accused the government of deliberately curtailing debate by prompting the guillotine of the Bill.

Lord President of the Council, John Wakeham, speaking on behalf of the Conservative government reasoned that continued terrorist threats both from domestic and internal


\(^{16}\) Marjorie Mowlam, Labour Party, for example, argued that her Party was not against the Bill in general but only against certain aspects. House of Commons, Vol. 146, 30 January 1989, The UK Government, Official Report, c. 94-5.

sources and the approaching expiry of the Prevention of Terrorism (Temporary Provisions) Act 1984 pressed the government to come up with the further renewal of the PTA in urgent circumstance. He noted, “Active terrorists could move freely about the country to prepare and commit further atrocities. Moreover, if the current powers of proscription were lost, the IRA could parade through the streets of Britain, recruit members openly, and even raise funds in public.” He referred to the recent 1988 bombing of the Pan Am Flight 103 which exploded over Lockerbie killing 270 people and said that such acts confirmed the continued threat to the UK from terrorists.

Frank Dobson, following Mr. Wakeham’s announcement of the government’s intention brought into focus the question of the Conservative government’s handling of the European Court on Human Rights (ECHR) ruling on certain provisions of the PTA 1984, which contravened the multilateral Convention. This issue and the larger issue of human rights subsequent became the major theme under which the substantial part of the debate took place. He argued that the present Act that was sought to be enacted was the very same Act that the ECHR had deemed inconsistent with the multilateral convention.

In 1988, the European Court found in the case of Brogan and others v United Kingdom that detention for 4 days and 6 hours without judicial authorisation breached Article 5(3) of the Convention and the same was also found to breach the International Convention on Civil and Political Rights (ICCPR) under Article 9. The then Conservative Government responded by entering a derogation under the relevant articles of the Convention and the

18 Ibid., c. 695.
19 Article 5 of the ECHR guarantees the right to liberty and security of person. Article 9 of the ICCPR provides key procedural guarantees to ensure that no person is detained arbitrarily.
UN International Convention on Civil and Political Rights to preserve the right to detain those suspected of involvement in Irish terrorism for up to 7 days. The government had earlier considered amending the PTA to make the judiciary responsible for authorising extensions of detention but decided on the upholding the derogation under Article 15 of the Convention.

The Opposition Labour members charged the government’s handling of the Court’s ruling on three counts. First, that the Government ignored the promptings by Lord Viscount Colville of Culross, 20 when he reported to them in December 1987 on the working of the Act suggesting that the Government, in preparing the new Bill, should take into account what he mildly described as the “possibility of the Court (ECHR) upholding the opinion of the Commission that the UK provision was incompatible with the multilateral provision.” 21 Secondly, despite the promise by the Home Secretary that he would give the Government’s response to the Court's decision before the Bill left the House of Commons, this was not carried out, instead he went to the Committee and said that Britain would derogate from the court decision until he had managed to sort out some solution. 22 It became apparent later that the derogation would prevail for longer than had been originally been indicated. And thirdly, that the Government’s decision to derogate must claim to the Council of Europe that the present situation in the country was

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22 Ibid., c. 697.
‘a public emergency threatening the life of the nation’ – an emergency akin to a time of war.  

Opposition members pointed out that such response by the government to ECHR’s concerns was indicative of its general outlook on the question of human rights and civil liberties. Neil Hamilton, Labour member, accused the government of attempting an overt interference over judicial matters which bore an “uncanny resemblance” to policies in countries whose human rights records were criticised by the United Kingdom. The government’s view that the derogation applied due to the situation in Northern Ireland and not to England, Scotland or Wales was also seen as a bias against the human rights condition of the people in Northern Ireland. Most Opposition Labour members pointed out that if the derogation applied to Northern Ireland it should apply equally to all of the United Kingdom in the light of recent serious terrorist threats.

Opposition leaders also pointed out that the way in which the government derogated from the ECHR convention was an announcement to the world that the “very life of our nation is at risk.” This, they argued, would not only accord the IRA and other groups the “loathsome privilege of being acknowledged as a very dangerous threat” but also undermine the strength of the United Kingdom’s democracy. Seamus Mallon, Social Democrat and Labour leader noted the British Government’s central role in setting up the European Court of Human Rights and drawing up the European Convention and this therefore compelled it to adhere strictly to the Convention provisions. Mr. Hamilton, said

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23 Ibid., c. 697.
24 Ibid., c. 700.
25 Ibid., c. 699-700.
that this derogation would "undermine and add doubts to the willingness of other European Governments to assist us in the fight against terrorism."\(^{26}\)

Conservative member, David Sumberg, speaking on behalf of the government responded by asserting that the situation in Northern Ireland was indeed an "emergency."\(^{27}\) He also pointed to other facets of the 'new' terrorism as being experienced by the United Kingdom in acts such as the Lockerbie bombing, wherein terrorists must be considered as pure criminals rather than political offenders.\(^{28}\) Another Conservative member K.H. Hind pointed out the very aspect of the executive's claim over the judiciary of which the present government was being accused were aspects supported earlier by the current Opposition members. Mr. Hind pointed out that in an earlier debate on the Security Service Bill, Labour leader, Frank Dobson, had clearly stated in Parliament that "The protection of our liberties is too important to be left to judges."\(^{29}\) He also argued that arresting and detentions of suspects included serious intelligence and security procedures and that such procedures could not be at first hand given to the judiciary. Moreover, that prevention of terrorism within its territory was first and foremost an 'internal matter' and that the country could not risk outside interference (including ECHR provisions) in these matters.\(^{30}\)

\(^{26}\) Ibid., c. 700.
\(^{27}\) Ibid., c. 701.
\(^{28}\) It may be noted that in the aftermath of the Lockerbie bombing, 'criminalisation' became a major theme in the UK's response to terrorism, wherein a policy of treating terrorists as pure criminals rather than freedom fighters was followed. See for example, Bonner, David, "The United Kingdom's Response to Terrorism: The Impact of Judicial Institutions and of the Northern Ireland 'Peace Process'," in Fernando Reinares, ed., European Democracies Against Terrorism: Governmental Policies and Intergovernmental Cooperation (Ashgate: Dartmouth, 2000), p. 49.
David Sumberg noted that the debate in this regard was wholly unnecessary as Opposition members led by Barry Sheerman had extended full cooperation to the Bill when it was debated in Committee. Mr. Sheerman had reportedly announced then “This has been a truly co-operative Committee ... We have worked exceedingly well on a proper scrutiny of the Bill and have kept to a schedule that facilitates the timetable of the Bill that we know the Government must meet.”

The Secretary of State for the Home Department, Douglas Hurd, making the closing remarks on the issue during the Second Reading of the Bill said that “We are still involved in uphill work, and I cannot yet say whether the outcome will be successful. However, we are working genuinely to see whether a judicial piece of machinery can be found.” Until then the government had little choice but to continue its derogation from the ECHR.

While the above took up much of the debate on the 1989 PTA, a number of other issues were in focus. Marjorie Mowlam of the Labour Party pointed out three concerns of the Opposition that the government needed to consider. Her first argument was that the Bill is ineffective in tackling terrorism. On the Second Reading of the PTA 1989, the Home Secretary told the House that this was a ‘prevention of terrorism’ measure, rather than a ‘punishment of terrorism’ measure. If that was the case she asked how was it that “1,784

31 Ibid., c. 702.
32 Ibid., c. 734.
33 The government’s chief contention was that the derogation was good only for cases connected with terrorism in Northern Ireland and not with cases of ‘international terrorism’. It may be noted that later in 1993, in the Brannigan and McBride v UK case, the ECHR upheld the derogation on the premise that an emergency situation existed in the United Kingdom. Bonner, “The United Kingdom’s Response to Terrorism”, p. 55.
deaths had occurred in Northern Ireland since the first PTA came into force.\textsuperscript{35} She said, "It is unacceptable for the Government merely to point to the existence of terrorism as the justification for the Bill. The test of any legislation must be its effectiveness and what is the evidence for the effectiveness or the success of this legislation?"\textsuperscript{36}

The second reason for the opposition to the Bill was that it represented an unacceptable erosion of civil liberties. She said:

I understand that in a democratic society a balance has to be struck between individual rights and the power of the state to fight terrorism. I accept that that is a difficult balance for the Government to achieve. However, under the Act, it is far too easy for the Government to suspend the normal workings of the criminal justice system, to reduce the rights of citizens and to heap more and more exceptional powers on to the security forces. It is far more difficult, but far more effective, to address the fundamental causes of terrorism – something that the Government are not doing with this legislation. The Minister acknowledged that a military solution in itself is not sufficient. We have to address the root causes of the problems of Northern Ireland.\textsuperscript{37}

Finally she raised a serious objection to the way in which the Government was making the existing Act permanent. This, according to her indicated clear "signals to the people of Northern Ireland that the Government lack a precise or positive strategy for their future."\textsuperscript{38} And further that this was "sending a public message to the Irish people that the current level of violence is here to stay." What this meant was that "it is no longer the United Kingdom Government but the men of violence who are setting the agenda for Northern Ireland."\textsuperscript{39}

\textsuperscript{35} Ibid., c. 94-5.  
\textsuperscript{36} Ibid., c. 94-5.  
\textsuperscript{37} Ibid., c. 95.  
\textsuperscript{38} Ibid., c. 94-5.  
\textsuperscript{39} Ibid., c. 94-5.
The government made it clear that the present Act was not aimed at terrorism in Northern Ireland alone but at all sorts of terrorism, domestic and international and that it was meant to ensure the "safety of our fellow citizens." K.H. Hind, speaking for the government said, "Let us vote for it against the background of the Battersea bomb factory and the tragedy at Lockerbie." Other Labour members pointed out that the "Prevention of Terrorism (Temporary Provisions) Act prevented a seaside bombing campaign in the United Kingdom and was used some months ago to prevent the assassination outside his home of the Secretary of State for Northern Ireland." It was also reportedly the PTA that foiled the Grand hotel explosion by the IRA that attempted to wipe out the whole Government in one go.

Smaller parties such as the Social Democrats and the Ulster Unionists in the debates fully backed the government on the Bill. Robert Maclennan, Social Democrat, argued that while individual members and the Opposition Labour party had their views based on personal notions or party affiliations, the PTA 1989 enactment had much to do with Lord Colville's report in December 1987 on the need for an anti-terrorist legislation. He pointed out that Lord Colville had "looked closely at all the provisions of the Bill and their working" and "although he has differed from the Government in certain respects, notably in regard to the continuance of exclusion, he has recommended that the measures be retained."

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40 Ibid., c. 98.
Ken Maginnis of the Ulster Unionist declared “I find little in the Bill to which I or my party would object. Living as we do in Northern Ireland at the coal face, we recognise the effect that the prevention of terrorism Act has had on reducing the ability of the terrorist to operate there.” According to him if 1,784 people had died in the 15 years since the prevention of terrorism legislation was first introduced, 1,100 people died in just three years before the legislation came into force. Therefore “some good has come from the prevention of terrorism legislation over the past 15 years because the rate of deaths has been reduced by about one third.”

On making the 1989 PTA a permanent legislation, the Conservative government noted that this was “subject to positive renewal by a vote of the House. It must have continuing scrutiny.” Therefore, in principle, its permanence was dependent on the nature of the threat itself. The government also explained that there had been consistent reviews of the working of the PTA and successive enactments had been on the basis of the recommendations of these reviews. The House divided on the above issues with 235 votes in favour of the government and 134 against. It was clear that the Bill would be enacted.

The debate above has highlighted two important facets of the United Kingdom’s concerns regarding terrorism. First, the question of human rights has featured prominently, in terms of both concerns arising out of operationalisation of the law and also multilateral obligations concerning human rights. Bulk and substance of the debates on the 1989 PTA

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43 Ibid., c. 104.
44 Ibid., c. 104.
45 Ibid., c. 103.
has focused on this aspect. While the opposition to the government in lifting the derogation did not succeed, this issue subsequently became important points of reference during the enactment of the 1998 Human Rights Act\textsuperscript{46} and influenced the lifting of ‘derogation’ in the Terrorism Act 2000.

Secondly, the 1989 PTA was an attempt at the consolidation of all the earlier PTAs. The fundamental reasons for which earlier PTAs were enacted came to be increasingly questioned. The PTA had originally been enacted to respond to Northern Ireland terrorism and in the 15 years of its existence it had not fundamentally changed this focus. It became evident, therefore, that this inherently domestic outlook could not be applied to international terrorist challenges or scrutiny. It was on this issue that the opposition to the 1989 PTA was rationalised. The debate on the 1989 PTA also brought into focus the shifts in the respective stands on terrorism of the two principle opposing parties in the United Kingdom. It must be noted that, while, the 1974 PTA was introduced by the Labour, it was Conservative party that continuously extended it during its four consecutive terms when it was in power from 1979 to 1997. The Labour party’s consistent opposition to Conservative views on the nature of terrorism in the UK did compel the Conservative government to rethink its stance and policy on terrorism.

The shift in the traditional stance of the Conservatives from a Northern Ireland-centric view of terrorism to a more broader conception can be seen in the 9 January 1996 task

given to Lord Lloyd of Berwick to examine the nature of permanent powers that would be needed to combat terrorism if and when there was peace in Northern Ireland. The government also sought the approval of the draft Prevention of Terrorism (Exclusion Orders) Regulations 1996, which would resolve the UK’s contentions under ECHR commitments – a matter from which it had consistently preferred to derogate.

On 14 March 1996 the Prevention of Terrorism (Temporary Provisions) Act 1989 came back into the House of Commons for debate. While the debate was meant to extend the Act for a further period, it also saw amendments to Schedule 2 of the Act dealing with procedures under which exclusion orders were made to bring the procedure in line with European Community law following the judgment given in the Gallagher case, which asked the UK to make certain administrative and legal changes to the processes by which 'exclusion orders' are made.47

The debate that followed exposed the Conservative government’s acceptance of the changing political scenario in Northern Ireland in view of the Good Friday agreement and the hopes of a final peace, pending the surrender of arms by the protagonists of the conflict. Although the Secretary of State for the Home Department, Michael Howard, argued that the government was not “lowering down its guard against terrorism in the light of events in the past few months”,48 it was clear that the government had to overhaul its Northern Ireland-centric measures on terrorism. The government indicated its

48 On 9 March, the PIRA fired mortars at London’s Heathrow International airport in three separate attacks and on 9 February 1996, the IRA detonated a bomb in the Dockland area of London killing two and injuring about a 100.
willingness to reverse its policy on Article 5(3) of the European Convention regarding detention. It promoted the idea of an anti-terrorist legislation applicable to the whole of United Kingdom. All these shifts in the Conservative stance effectively curtailed any substantial debate in this case. Both the proposals put forth by the government – the extension of the 1989 PTA and the amendment regarding ‘exclusion orders’ – received little opposition and was overwhelmingly approved.

Significant during this debate has been the unmistakable ‘contours’ of a single comprehensive and permanent anti-terrorist legislation applicable to the entire United Kingdom. While the task of such a feasibility was put on Lord Llyod, the government’s policy of attempting to undo all ‘exclusive’ measures meant specifically for Northern Ireland and treating terrorism in its larger dimensions were indicative of this intent. It was, however, left to the Labour government to pursue this policy after it was voted to power in the 1997 elections through an overwhelming majority of 419 seats, the highest since 1945.

**Northern Ireland (Emergency Provisions) Act 1996**

Despite the changing stance of the Conservatives on terrorism as seen in the debates to extend the 1989 PTA, it has been interesting to note that it preferred to continue, without any fundamental change, the Northern Ireland (Emergency Provisions) Act 1991, when it approved the extension of the Act on 17 Jun 1996. This took place after what may be considered the most stringent opposition to the continuation of the Act in its present form by the Labour. Although the Opposition Labour declared that it would not vote against
the Bill in its final reading, the debate highlighted a number of themes questioning the continued stance of the Conservatives on terrorism and its seemingly ‘Loyalist nationalist' bias despite the normalizing political climate in Northern Ireland.

It was in the context of the number of positive developments between 1991 and 1996, specifically the 31 August 1994 declaration of ‘a complete cessation of military operations' by the IRA that the Opposition raised the issue of why the proposal for the extension of the law had failed to incorporate this new development. Marjorie Mowlam, Labour’s Front-Bench spokesman, reflecting the concerns of most of her party members, argued that the new law was a “rehash of the 1991 Act” without taking into consideration “the new development in Northern Ireland” and “the new changing nature of terrorism.”

Her party, she said did not believe that there was “need to keep emergency powers on the statute book when we do not have an emergency.” Referring to an earlier statement by the Secretary of State for Northern Ireland Affairs, Sir Patrick Mayhew, in Parliament in 1992 that there was no “need to keep emergency powers on the statute book when we do not have an emergency all the time” she said that the present was not an ‘emergency’ in any measure. She also demanded to know why certain changes proposed by John Rowe in his 1994 report on the working of the Northern Ireland (Emergency Provisions) Act 1991 was not included in the new law. This, according to her, smacked of a “slipshod” attitude of the government towards emergency legislation in Northern Ireland.

51 Ibid., c. 42.
52 Ibid., c. 42.
Opposition members made it clear that they did not oppose ‘counter-terrorism legislation’ but the ‘nature of the Bill’. They contended that the government had failed to carry out two crucial tasks before bringing the issue into the House. First, that of an appropriate review in view of the positive political developments and secondly, amendments to the 1991 Act that had been proposed by reviewers. The main point was that while a gradual transition towards political and social normalcy was perceivable, there was no concomitant scale down of earlier tough anti-terrorist measures.

The Labour party demanded of the government a number of amendments to the Act in order to balance the concerns raised by them. Ms. Mowlam, on behalf of the Opposition, pointed out that ‘internment’ did not find place in the new law as it did before. She noted that ‘internment’ which had been in the statute books for more than 25 years, while failing to effectively apprehend the ‘real’ terrorists was the “principal source of irritation between the United Kingdom and the international community.” Another Labour member Tony Worthington added that ‘internment’ had been consistently rejected by “Government’s reviewers”. “It was rejected by Lord Gardiner in 1975. It was rejected by Sir George Baker in 1984. It was rejected by Lord Colville in 1990, … It was rejected by John Rowe in 1995. It was rejected by the Government’s advisory body on human rights.”

Another aspect which most Opposition members noted was the complete absence of an attempt at phasing out the ‘Diplock Courts’ and substituting them by jury trials. Dennis

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53 Ibid., c. 44.
54 Ibid., c. 44.
55 Ibid., c. 100.
Canavan, Labour member, particularly voiced strong exceptions to this. Mr. Worthington noting that although these courts could not be done away overnight, said that his party “would have liked to discuss with the Government was the way in which one can move away from the Diplock courts” to jury courts.\textsuperscript{56}

The Opposition also took strong exceptions to the non-consideration by the government of measures/concerns proposed by the Standing Advisory Commission on Human Rights (SACHR). Kevin McNamara, Labour member pointed out:

\begin{quote}
SACHR proposed some interim measures. It said that internment, which has not been used for 20 years, should not be re-enacted; that jury trial should be restored for scheduled offences at the earliest opportunity; that the standard for admissibility of confessions should be raised to that applied to non-terrorist offences; and that the special powers under the EPA to stop, question and search people should be repealed.\textsuperscript{57}
\end{quote}

Mr. McNamara argued that instead, those powers were extended in complete disregard to human rights concerns. The SACHR considered this rebuttal as “extremely disturbing as, not only was SACHR established under the Northern Ireland Constitution Act 1973 to advise the Secretary of State, but the Commission has, in the recent past, received specific assurances from the Government that it would be consulted on such matters.”\textsuperscript{58}

Replying to the points made by the Labour party members, the Secretary of State for Northern Ireland, Sir Patrick Mayhew, on behalf of the government argued that although no major changes had been included in the proposed Act, the Act was built on the report by Mr. John Rowe QC who had made “thorough reviews of the current Act and of the prevention of terrorism legislation in recent years” and who suggested that “there is a

\textsuperscript{56} Ibid., c. 93.  
\textsuperscript{57} Ibid., c. 52.  
\textsuperscript{58} In a press notice the SACHR reportedly criticized the government in this regard. Quoted in House of Commons Debate, Volume 269, 9 January 1996, c. 51.
continuing need for a special provision for Northern Ireland, and in the form of a new emergency provisions Act.\textsuperscript{59}

Sir Mayhew said that despite the improving political climate the Bill was made necessary by the continuing character and level of cruel and criminal terrorist activity in Northern Ireland, and by the fact that the current Act expired in August. He said that the continuing threat had come in from two chief sources. First, criminal activities that had its roots in the conflict of the past had not diminished.\textsuperscript{60} And secondly, the IRA was suspected of still holding a wide array of weapons. David Wilshire, Conservative said that until the Sinn Fein actually decommissioned its weapons the question of renouncing terrorism as publicly stated by the group was rhetorical. "It is quite clear that political Sinn Fein does not yet accept the renunciation of violence – nor does it renounce terrorism, which remains part of its political armoury."\textsuperscript{61}

The Conservative government also pointed out that Lord Llyod of Berwick had been appointed to specifically study the continuing need for an anti-terrorist legislation with respect to Northern Ireland and until the report was submitted, if the present Act was not enacted the people of Northern Ireland would indeed be left without the appropriate

\textsuperscript{60} The Parliamentary Under-Secretary of State, Northern Ireland Office, Baroness Denton of Wakefield presenting a brief statistical review of the situation in Northern Ireland on 26 March 1996 in the run-up to the terrorist ceasefires of August and October 1994 said, "The ceasefires declared in 1994 saw a significant down turn in some types of terrorist activity... During 1994 in Northern Ireland there were 348 shooting incidents and 207 bombing incidents; in 1995 there were 50 and six respectively. However, during 1995 armed robberies continued at an alarming rate – 421, compared with 555 in 1994 – and the number of punishment attacks rose to 315 over the period 1st September 1994 to 17th March 1996, compared with 238 over the 18-month period." See for a brief overview, House of Lords, Volume 540, 26 March 1996, The UK Government Official Report, c. 1386-7.
\textsuperscript{61} House of Commons, Vol. 269, 9 January 1996, c. 66.
protection. The Minister of State, Northern Ireland Office, Sir John Wheeler making the concluding remarks said that the loosening of measures in Northern Ireland would to a large extent depend on the prevailing security situation. He said:

I can assure ... that all the measures – which have been substantial in the past 16 months – are reversible. They have all been undertaken on the advice of the Chief Constable and the security forces on the basis of what is acceptable in the present circumstances. Such measures can be restored, some extremely rapidly. 62

The debate on the Bill also saw some stimulating interventions from the other parties. Ulster Unionist leader David Tribe and Ken Maginnis, a leading party member, while supporting the Bill remarked that their party was concerned about the “80 to 100 tonnes of modern sophisticated weaponry” of the nationalists “while loyalist terrorists have another seven or eight tonnes.” 63 The armoury of the two consisted of explosives, heavy machine guns capable of shooting down helicopters, numerous general-purpose machine guns, SAM 7 surface-to-air missiles, anti-armour rockets, snipers' rifles and ammunition and all sorts of small arms. Those resources, according to him, were adequate to keep a terrorist campaign going for at least the next 15 to 20 years. 64 Mr. Maginnis argued that in such a situation the question of not supporting the legislation did not arise.

Alex Carlile, Liberal Democrat member, speaking on behalf of his party declared that his party would “support the Government and vote against Labour in the Lobby.” 65 However, he pointed out that this did not mean that his party totally agreed with the Government or with their approach. He noted that he was particularly concerned about the fact that the

62 Ibid., c. 106.
63 Ibid., c. 59. It must be noted that the Loyalist political parties from Northern Ireland, although by themselves do not make much of a mark in national politics, they have consistently supported any tough measures in Northern Ireland formulated by either of the two governments.
64 Ibid., c. 59.
65 Ibid., c. 67.
Standing Advisory Commission on Human Rights, which was specifically assured by the Government that it would be consulted about any legislation of this sort, was not consulted. He said, “I do not understand why the Government had to present the legislation in such a hurry. Apparently they were in too much of a hurry to fulfil that promise to the Commission.” Mr. Carlile drew particular attention for the need to introduce the European Convention on Human Rights into United Kingdom law starting with Northern Ireland and make it enforceable in local courts there. He said that this would boost confidence in Northern Ireland and allow the people to feel secure.

In this piece of Northern Ireland-specific legislation, the Conservatives’ refusal to make any fundamental change, despite its support for major changes in the 1989 PTA has made critics argue that the government continues to hold on to its sectarian bias against the Catholics. Despite relative peace, the various amendments proposed, particularly, removing internment without trial, reinduction of a number of suggestions by John Rowe QC, and the phasing away of the Diplock courts were defeated in the House with the votes dividing 206 Ayes and 295 Noes. The law retained a number of its old features and was passed subsequently. However, a certain amount of recognition to the peace efforts was accorded with the Conservative government focusing on the social and political dimensions along with the anti-terrorist measures. The government also announced its intention of integrating both the Northern Ireland Emergency Provisions Act and the Prevention of Terrorism Act into a comprehensive legal instrument that would be applicable to the entire United Kingdom and on a permanent basis, and which would remove a number of anomalies present in the current laws.

66 Ibid., c. 67.
The Terrorism Act 2000

The Terrorism Act 2000 was enacted in the background of the above changing perceptions on terrorism and the certain amount of consensus built across the two opposing parties on the need of a comprehensive anti-terrorist regime, although views on how to include Northern Ireland in the new focus was an unsettling issue. The consensus achieved was on substantial aspects of the law and came about in the focus of the new Labour government’s decision to give a new shape and direction to anti-terrorist legislations by building on the initiatives instituted by the previous government. It came into force on 19 February 2001. The Labour government incorporated a number of important features that made the law less controversial than earlier ones. These have been five fold:67

- Secondly, the Act was essentially the outcome of two important documents, Lord Lloyd of Berwick’s independent Inquiry Into Legislation Against Terrorism published in October 1996 and the government’s consultation document Legislation Against Terrorism published in December 1998, which responded to Lord Lloyd’s consultation document.68

• Thirdly, the new Act introduced judicial extensions of the detention of terrorist suspects when the earlier laws provided for ministerial extensions. This enabled the UK’s derogations from both the ECHR and ICCPR to be withdrawn.
• Fourthly, Part VII of the Act provided additional temporary measures for Northern Ireland, which were subject to annual renewal and was time-limited to 5 years. Any of the provisions in Part VII could, however, be withdrawn by an executive order at any time.
• Fifthly, under the new legislation important safeguards for those in police custody suspected of terrorist acts were provided which included the audio and video recording with sound of police interviews, the right to have someone informed of one’s detention, the right to legal advice and the right to have a solicitor present during police interviews.

These features were indicative of a number of shifts and reversals from and of earlier anti-terrorist legislations attributed chiefly to the Labour’s emphasis on a more outward looking anti-terrorist policy rather than a Northern Ireland-centric one. The ensuing debate also highlighted the new government’s attempts to include domestic terrorism issues within the overall ‘international’ milieu and as part of its foreign policy agenda.

Home Secretary, Jack Straw, supported by the Prime Minister and a number of the Cabinet members presented the Bill on 2 December 1999. Arguing in favour of the need for the new law, Mr. Straw noted that the government had done the task of soliciting the response for its policy from the public and that the new law was based chiefly on the report of Lord Llyod who was tasked by the earlier government to make an independent assessment on the ‘continuing need for an anti-terrorist legislation’ particularly in the light of permanent peace in Northern Ireland. The report, Straw pointed out, favoured a
"permanent anti-terrorist legislation in the United Kingdom, continuing beyond the end
of the emergency in Northern Ireland."\(^69\)

Mr. Straw also said that a number of comments had come in after he had circulated the
conclusions of Lord Llyod's report from the general public.\(^70\) The new law, he said
intended a new and expanded definition of terrorism designed to include ideological and
religious motivations for acts, as well as the political motivations used in the definitions
of terrorism set out in earlier anti-terrorist legislations. A provision specific to Northern
Ireland was also proposed by him.

Arguing in favour of these temporary provisions for Northern Ireland despite the wide
coverage of the new law, Mr. Straw said:

> It is the Government's hope that it will not be necessary to enact any temporary Northern
Ireland specific provisions. However, the Government has a duty to ensure that the community is protected from terrorist attack, from whatever quarter, and that the security forces have the powers they need to counter any threat. If there is a continuing threat from some groups in Northern Ireland, it may be necessary to include in the new UK-wide legislation a Part containing a limited range of powers, temporary in nature and applying only in Northern Ireland, which would continue in force until lasting peace is established there and the Army's presence is no longer required in support of the police.\(^71\)

He also said that the government believes that "this new legislation should be permanent
-- as is the case with the vast majority of criminal law ... throughout the UK to meet the
general threat faced from terrorism."\(^72\)

\(^69\) Section 5.15, Lord Llyod's report, *Inquiry Into Legislation Against Terrorism*, October 1996, cm. 3420
\(^70\) The consultation paper titled *Legislation Against Terrorism*, 17 December 1998, Cm 4178, is available at [http://www.archive.official-documents.co.uk/document/cm41/4178/4178.htm](http://www.archive.official-documents.co.uk/document/cm41/4178/4178.htm). Any comment were to be address to Organised and International Crime Directorate, Room 647, Home Office, 50 Queen Anne's Gate, LONDON SW1H 9AT before 16 March 1999. Charles Clarke, Minister of State for Home, stated that the government had received 80 responses and that the government had published a summary of the responses. See *Official Report, House of Commons*, Volume 341, 14 December 1999, c. 224.
\(^72\) Ibid.
The Bill was debated at length on 14 December 1999 during the Second Reading. Home Secretary, Jack Straw, announcing the government's intention to expand the definition of terrorism drew in major criticisms from the Opposition front benchers. Simon Hughes, Conservative leader commented that the new definition went "beyond the phrasing in Lord Lloyd's report" and the Bill's definition included not only "people who attack property for an environmental objective or for objectives connected with other general issues such as animal rights, but people who support organisations outside Governments in countries that are not democratic. All those people would now be included in the definition."  

Douglas Hogg, Conservative member made similar arguments. He wanted to know if actions of the Kosovo Liberation Army in combating the Serbs in Kosovo or, for that matter, those of the Kurds in fighting Saddam Hussein in north Iraq, fall within the scope of terrorism as defined in clauses 1 and 57.

Interestingly a number of Labour members also wanted further clarification on the nature of the definition as drafted by the Home Office. Kevin McNamara, senior Labour member particularly pointed out that the word "serious crime" as understood in the new law had dangerous consequences as this could be arbitrarily defined.  

Jeremy Corbyn,

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74 Ibid., c. 152.
75 This comment was made in response to Mr. Straw's statement that the definition of terrorist acts was being expanded in view of "heinous" acts of terrorism. Mr. McNamara wanted to know what "serious" and "heinous" meant. House of Commons, Volume 341, 14 December 1999, c. 156.
76 This debate also came up in the context of what the Home Secretary said were increasing threats from other sources. Animal rights, and to a lesser extent environmental rights activists, have mounted, and continue to pursue, persistent and destructive campaigns. Last year, for example, more than 800 incidents were recorded by the Animal Rights National Index (ARNI). These included attacks on abattoirs, laboratories, breeders, hunts, butchers, chemists, doctors, vets, furriers, restaurants, supermarkets and other shops. Some of the attacks were minor but others were not. Thankfully no one was killed but people were
Alan Simpson, David Winnick, Maria Fyfe, all Labour members pointed out certain loopholes in the manner in which the definition of terrorism was effected in the new law. A number of suggestions came up from them. They noted that this aspect had to be debated in Committee in much greater detail for a sharper and focussed definition. Mr. Winnick, for example, argued in favour of a comprehensive set of ‘safeguards’ so that the wide definition was not abused.

It was Labour MP, Alan Simpson, who came up with the most vocal disapproval of the current draft with regard to the definition. He said that this could be sorted out by meeting three challenges in Committee.\(^7\) First, the need to spell out exactly what was not covered within the framework of existing criminal laws – particularly the Police and Criminal Evidence Act – that would justifiably be included in the terrorism Bill. Secondly, the consideration of a different definition of terrorism with a particular focus on acts “directed towards the overthrowing or influencing, by force or violence, of Her Majesty’s government in the United Kingdom or any other government de jure or de facto.”\(^78\) Thirdly that “exceptional measures” had to be justified through exceptional scrutiny. He said,

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\text{[a]ny such provision ought not to be passed by the House without the House being given the duty and the opportunity to review the adequacy of the legislation if not annually, at least every five years. To do less than that would be to do a disservice not only to the society that put us in the House, but to the House itself and the principles of democratically elected and accountable Government.}^{79}\]

injured and the total damage done in 1997 has been estimated at more than £1.8 million. In previous years, the cost of the damage inflicted has been higher. For example in 1995, the cost of damage was estimated at nearly £4.5 million. See Section 3.10, House of Commons Commentary on The Terrorism Bill: Bill 10 of 1999-2000, Research Paper 99/101, 13 December 1999, p. 17.\(^7\) House of Commons, Volume 341, 14 December 1999, The UK Government Official Report, c. 204.\(^78\) Ibid., c. 204.\(^79\) Ibid., c. 204.
The reply by Mr. Straw on these points by saying that, while the government was aware of the wide definition, this was intended to set in place an “appropriate and effective range of provisions, which is proportionate to the reality of the threat that we face and of practical operational benefit.” This, however, failed to attract support from a number of both Conservatives and Labour members.

The Opposition’s other concerns have revolved around the following arguments. First, Anne Widdecombe argued that a reversal of powers in matters of anti-terrorism from the executive to the judiciary would result in a situation whereby the judiciary would inevitably be seen as part of the investigation and prosecution process, which could bring its independence into question. She said that her party was unconvinced that it is legitimately a judicial function, rather than an executive one. The second range of arguments came from Jeremy King and Fiona Mactaggart who were particularly concerned of the human rights implications of the new law. Ms. Mactaggart pointed out that she would be surprised if there were no clashes between the European Convention and the Act in the future on the question of human rights as in the past. She critically viewed government’s attempt to make the Act a permanent legislation and noted that this would be only according the terrorists a permanent place in the UK. Mr. King suggested that “there must be proper safeguards and thorough analysis of what constitutes terrorism.” Jeremy Corbyn, Conservative leader, noted that the Bill contained no provision for review. This would render the most draconian provisions to continue. He

80 Ibid., c. 165.
81 Ibid., c. 172.
82 Ibid., c. 182.
83 Ibid., c. 179.
argued that there was need to discuss this in a much greater detail when discussed in Committee.

Other parties, notably the Liberal Democrats and the Ulster Unionists, made it known that they would fully support the Bill. Ken Maginnis and Jeffrey Donaldson, on behalf of the Ulster Unionists said that they welcome the way in which the Government has sought to combine the EPA and PTA in the Bill. Mr. Maginnis remarked:

> It helps me, as someone living in Northern Ireland, to feel part of the United Kingdom. Ninety per cent of the community – the ordinary, decent people who live normal lives – do not want to feel that they are somehow pariahs within the United Kingdom because they have had to deal with the terrorism that emanates from both traditions in Northern Ireland. 84

He, however, noted that that Part II of the Bill which dealt with the Proscribed Organisations Appeal Commission was inadequately dealt with. He asked, “How will it operate? From past experience, I fear that the Secretary of State could, in a benevolent mood one day, decide that as an organisation had not been heard from for a couple of months he should end its proscription.” 85 Jeffrey Donaldson, another Ulster Unionist said, “We know that organisations are operating in Northern Ireland on both sides which have not declared ceasefires, and therefore continue to pose a threat” and therefore “I urge the Government not to rule out the possibility of re-enacting the provisions in five years if that is necessary. It may be that the threat of terrorism will remain after that period.” 86

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84 Ibid., c. 191.
85 Ibid., c. 191.
86 Ibid., c. 209.
Lembit Öpik, Liberal Democrat member said his party was particularly concerned about Part VII of the Bill dealing with an exceptional provision on Northern Ireland. He said:

"Governments are in the habit of worrying about the failings of human nature instead of celebrating its triumphs ... great triumphs have occurred in Northern Ireland in the past few weeks. The extraordinary events there show that if we have faith in people and apply normal human law, we can make enormous progress."

Mr. Öpik's major concern was whether consultation had "already taken place with the Irish Government and the Northern Ireland Assembly." He asserted, "It is important that the Irish Government and the Northern Ireland Assembly are seen to be directly involved ... perhaps even more important for the public to understand why the Bill contains separate provisions for Northern Ireland." He suggested that annual reviews of its application be conducted so that it could be repealed even before the mandatory five years lapsed. This view was, however, not shared by most other members who saw the need for Part VII although Kevin McNamara was unhappy over the way in which Part VII was included in the new law against opinions "shared by the Human Rights Commissioner in Northern Ireland, Professor Brice Dickson." Prof. Dickson's objection came from two aspects. First that Northern Ireland had been continuously under extra-judicial detention regimes for the last 70 years and that these presumably introduced to protect the Irish had been used for their intimidation and harassment. And secondly that there was the danger, in any legal system of two parallel sources (in this case, one for

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87 Part VII of the Bill is designed to enable those provisions of the EPA 1996 and 1998 to be continued in force in Northern Ireland, subject to annual renewal, for a further five years from the date on which Part VII is brought into force. These provisions include those providing for the trial of "scheduled offences" (those listed in Schedule 8 of the Bill) in non-jury "Diplock courts." House of Commons Commentary on The Terrorism Bill: Bill 10 of 1999-2000, Research Paper 99/101, 13 December 1999, p. 55.
88 House of Commons, Volume 341, 14 December 1999, c. 214.
89 Ibid., c. 215.
90 Ibid., c. 215.
91 Kevin McNamara (Hull, North) made this point. House of Commons, Volume 341, 14 December 1999, c. 173.
Northern Ireland and the other for the other constituents of the United Kingdom) that the same set of facts could result in the employment of two different systems of justice.92

What has been significant in the questions raised by the Opposition and other parties was that they did not altogether oppose the Bill. They identified certain aspects of the Bill which in their opinion went against their Party’s earlier or present stand or had direct consequences for civil liberties of the people. One particular support that the government got from the Opposition consistently throughout the debates were the provisions that was meant to control all aspects of fundraising for terrorists. Repealing the exclusion orders was also welcomed on both sides of the House. Another important point made by one of the members was that the House in attempting to introduce a UK-wide legislation made anyone living in Northern Ireland “to feel part of the United Kingdom.”93 The chief contention of the Opposition was that the Act must be approved after amendments and approval by a Special Committee.

The Home Department’s reply to the issues raised by the members came through the Minister of State, Home Office, Charles Clarke. On the question of wide definition of terrorism, Mr. Clarke referred to a recent study conducted by Prof. Paul Wilkinson who said that “There is continuing evidence that terrorist violence by animal rights extremists remains a threat in many parts of the country.”94 He said that in this regard “We are dealing not with cuddly individuals or organisations, but with serious issues.”95 He said

93 Ibid., c. 195.
94 Quoted in House of Commons, Volume 341, 14 December 1999, c. 223.
95 Ibid., c. 223.
that the nature of current animal right activism had to be considered seriously as they were equally violent.

Mr. Clarke pointed that the government was putting in place a number of 'profound safeguards' so that it did not affect the liberties of the people. The first of which being the Human Rights Act 1998 that came into effect on 2 October 2000. The safeguards here included bringing into UK domestic law all the jurisprudence of the European Court of Human Rights as well as specific articles, including Article 5, which provided for protection against arbitrary detention, and Article 6, which provided for the right to a fair trial. The other important safeguard was the decision on removing exclusion orders and internal exile from the new Act. The creation of the Proscribed Organisations Appeal Commission, according to him, was an attempt to meeting some of the problems raised by proscription. And finally, the decision to have judicial intervention in cases of detention and to get rid of executive detention, which was a euphemism for internment without trial, he argued, was not only an important safeguard but put the laws of the United Kingdom in line with the European Convention – the provisions of which earlier British laws had to derogate.

On the question of consultations with organisations outside the Parliament, Mr. Clarke said that consultations were held with the Northern Ireland Human Rights Commission (NIHRC), the Northern Ireland Assembly, the Scottish Parliament, and also with members of the financial, business and banking community because these organisations

were to be "most affected by our proposals".\textsuperscript{97} He said that the NIHRC had made serious efforts to draft alternative clauses in response to the invitation from him and that they acknowledged the "importance of addressing the problem of international terrorism, but sought a better definition than the one offered by the Government."\textsuperscript{98} Labour leader, Jack Straw replying to Roseanna Cunningham, Scottish National member, said that six organisations representing Scottish interests offered responses to the Government consultation paper \textit{Legislation Against Terrorism} and their views, along with those of all other contributors, were taken into account in preparing the Terrorism Bill and that officials from the Home department were in regular contact with officials from the Scottish Executive about the contents of the Terrorism Bill.\textsuperscript{99} Mr. Clarke also said that members of the business community has favourably responded and the Home Office had taken their concerns and incorporated into the Bill. For example, Mr. Clarke pointed to the inclusion in paragraph (4)(b) of the provision which stated that an institution can offer the defence that it has not complied with the requirement as per the Bill because to do so "was not reasonably practicable."\textsuperscript{100}

Conservative spokesman, Simon Hughes, during the closing moments of the debate pointed out that despite the fact that the Bill did not address all the concerns of his party it contained "some good provisions" and hence "we will not go into the Lobby against the Government tonight."\textsuperscript{101} He pointed out in clear terms that although his party would not go against it, the Bill did not have the support of the Conservative party because the

\textsuperscript{99} Ibid., c. 414W.
\textsuperscript{100} Ibid., c. 331.
suggestions made by the party were not fully incorporated into the final draft of the Bill. The debates closed with 210 Ayes and 1 Noes in favour of the final reading before it went to the House of Lords.

The House of Lords, meeting to debate on the Terrorism Act on 6 April 2000 also delved into issues similar to those in the Commons. The general agreement was that four principles should govern the new law. They were: first, legislation against terrorism should approximate as closely as possible to the ordinary criminal law and procedure. Secondly, additional statutory offences and powers may be justified, but only if they are necessary to meet the anticipated threat, and they must then strike the right balance between the needs of security and the rights and liberties of the individual. Thirdly, the need for additional safeguards should be considered alongside any additional powers. And fourthly, the law should comply with the UK's obligations under international law.

It was Lord Llyod of Berwick, the architect of the new law who brought into attention the need to reconsider the arrest provisions under Clause 40(1)(b)\textsuperscript{102} for two reasons. First, that the subsection did not create an offence and secondly that the power of arrest went beyond what is permissible under the European Convention on Human Rights. He pointed out that since the Terrorism Act was debated and formulated under the shadow of the Human Rights Act 1998, as soon as the Act came into force, the provision would invite a number of challenges. He said:

Thus my fear is that as soon as the Human Rights Act comes into force we shall be back again discussing this arrest power unless the Government can see their way ... to

\textsuperscript{102} Clause 40(1)(b) deals with 'arrest without warrant'.
introduce an amendment which would make it an offence to prepare an act of terrorism.\footnote{103}

The general support for the Bill in the Lords by the Conservatives may be summed up in Lord Glentoran’s speech, who, speaking on behalf of the party said:

The Conservative Party has never shirked its duty in government or in opposition to take the toughest stand against terrorism and to give the police and Armed Forces the powers they need to protect the public ... We support the Bill ... I hope that the Minister is right when he assures us that the Bill will not fall foul of the ECHR ... We accept the recommendations of the noble and learned Lord, Lord Lloyd, in his review of the anti-terrorist legislation ... We too are not happy with the definition of terrorism as it stands and look forward to discussing in Committee how it might end up ... We also fully support the Northern Ireland temporary provisions – the so-called Diplock courts – as a wholly exceptional arrangement ... unfortunately, the situation is such in Northern Ireland that those provisions should be retained.\footnote{104}

The Terrorism Act 2000 received all the necessary support for its passage. This may be attributed to a number of factors. Fundamentally, the Act was a continuation of the initiation for a comprehensive anti-terrorist law by the previous Conservative government. Therefore, in principle, both the Conservatives and the Labour were not opposed to bringing about such a law. The disagreement was on certain provisions that the Opposition Conservatives understood were fundamental reversals of its long-held policies particularly those pertaining to the Prevention of Terrorism Act, which it continuously upheld and upgraded. The government’s major changes in the new law in the backdrop of improvement in the conflict situation in Northern Ireland were also welcomed by all. The enactment of the Human Rights Act 1998 and the government’s assertion that this constituted an important safeguard against infringement of the liberties of individuals in the context of the new law also rendered the Terrorism Act a certain human rights appeal effectively curtailing opposition in this regard. Worth noting also in

\footnotetext{103}{\textit{House of Lords}, Volume 612, 6 April 2000, The UK Government Official Report, c. 1446.\footnotetext{104}{Ibid., c. 1479-80.}}
Labour, to render the United Kingdom's fight against terrorism an international appeal and focus. Although the Terrorism Act 2000 incorporated a number of provisions aimed at controlling 'international' terrorism, it was the Anti-Terrorism, Crime and Security Act 2001 that exposed the overt 'internationalist' intentions of the UK government.

**Anti-Terrorism, Crime and Security Act 2001**

The Anti-terrorism, Crime and Security Bill 2001, meant to address UK concerns in the aftermath of the 11 September 2001 attacks on the World Trade Centre and the Pentagon in the United States, received Royal assent on 14 December 2001. A number of features made the Bill both controversial and distinctive from earlier anti-terrorist laws in the United Kingdom. The most notable controversies involved the reversal to executive certification of detention powers and the inclusion of provisions that necessitated derogation under Article 15 of the European Convention of Human Rights – both of which had been removed from earlier anti-terrorist laws by the Terrorism Act 2000, passed the previous year. Needless to say, these two issues provoked the most heated arguments in the debates prior to the passage of the Bill. The distinctive features of the new law included provisions for security arrangements relating to weapons of mass destruction, noxious substances, pathogens and toxins, and the nuclear and aviation industry. Provisions to cut off terrorist funding, streamlining immigration procedures, and the extension of police powers available to relevant forces were other features added in the new Bill. The Anti-terrorism, Crime and Security Bill 2001 was a significant shift in anti-terrorism as compared to earlier laws in the United Kingdom.
The Secretary of State for the Home Department and Labour leader, David Blunkett, presenting the Bill in the House of Commons on 19 November 2001 justified the Bill saying, "no one could not have dreamt of the act that took place on 11 September." It may be noted that barely a month after 9/11, the Prime Minister, Tony Blair in a statement in Parliament announced:

We are also looking closely at our national legislation. In the next few weeks, the Home Secretary intends to introduce a package of legislation to supplement existing legal powers in a number of areas. It will be a carefully-appraised set of measures: tough, but balanced and proportionate to the risk we face. It will cover the funding of terrorism. It will increase our ability to exclude and remove those whom we suspect of terrorism and who are seeking to abuse our asylum procedures. It will widen the law on incitement to include religious hatred. We will bring forward a bill to modernise our extradition law.

Mr. Blunkett, referring to an item in *The Times* of 15 September that reported, "Despite fine promises and emergency legislation, Britain is still home to hundreds of extremists who have made this country one of the centres for the violent transnational network that inspired and encouraged the barbarism in New York and Washington", he said that the UK faced an urgent situation and the government had to stand up to face the challenge. He also announced that the new situation required of the UK to derogate from the European Convention (ECHR) under Article 15 so that additional powers of detention could be given to the appropriate authority. He pointed out that in the face of unprecedented terrorist threats, the UK was given two choices, either to seek derogation from the Convention on the basis of an ‘emergency’ or withdraw from the Convention.

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altogether. He said that his government has decided to seek the necessary derogation rather than withdraw.

This announcement by the Home Secretary of State invited a number of critical responses from the Opposition. Conservative leaders, Simon Hughes, Frank Dobson and Douglas Hogg, while noting serious concern about the way in which the government had tried to 'urgently' enact the new law, argued that the need to derogate had to be discussed in greater detail. The three impressed upon the Secretary that the decision to derogate had to pass two tests, first, that the country faced a 'real' emergency situation and second that 'additional safeguards' had to be approved so that the law was not abused. 108 Mr. Hughes said, "At the moment, those safeguards are not in the Bill, which is a strong reason for making sure that we do not derogate at this stage from the Human Rights Act and the ECHR." 109 He also said that his party was proposing a number of amendments in this regard which he hoped the government would consider.

The aspect of derogation became a major theme in the debates because it was linked to Part 4 of the new Bill which dealt with 'immigration and asylum' and provided for indefinite detention of a person certified as an international terrorist by the Home Secretary. The debates focused on the dilemma in respect of persons who were suspected of being international terrorists but who could not be placed on trial due to the sensitivity of the evidence and the high standard of proof required, and could not be extradited, or deported to their country of origin, because they would be subjected to torture or

108 Frank Dobson made this point. See House of Commons, Volume 375, 19 November 2001, c. 52.
109 Ibid., c. 60.
inhuman and degrading treatment.\textsuperscript{110} If extradition/deportation was carried out, for the UK, this would be a derogation from Article 3 of the European Convention on Human Rights, which imposed an absolute obligation on the part of the member states not to deport a person who faces a grave risk to his life.

While a number of the Opposition members were not convinced that Part 4 had adequate safeguards with regard to ‘indefinite detention’ of the suspected international terrorists and/or their extradition or deportation, the Home Secretary, David Blunkett, said that the UK had created the Special Immigration Appeals Commission (SIAC) specifically to face such circumstances.\textsuperscript{111} The Special Immigration Appeals Commission was initially created by the Special Immigration Appeals Commission Act 1998, in order to allow appeal to an independent tribunal in UK in case of an immigration decision (such as refusal of leave to remain, or the decision to deport an individual) was based on national security or political grounds.

Douglas Hogg, Conservative member, however, pointed out that Special Immigration Appeals Commission was not an adequate safeguard for two reasons.\textsuperscript{112} First, because the Commission was “entitled to withhold from the detained person particulars of the reason why he is detained” and secondly because the “Law Officers of the Crown can appoint a representative for that person who is expressly stated not to be responsible to the person

\textsuperscript{112} Ibid., c. 27.
whose interests he is appointed to represent.” Other Opposition members also made similar remarks suggesting that the need to derogate from the Conventon underlined the necessity of first building in adequate safeguards in the new Bill. The Opposition suggested that decision in this regard be made after a careful consideration of the amendments that they were making.

The other major themes around which substantial debate took place have been on issues concerning, first, the creation of an offence with regard to ‘incitement to religious hatred’ under Part 5 of the Bill. This provision was meant to safeguard the Muslim community in the UK in the aftermath of the ‘hate’ against them perpetrated after the 11 September event in the United States. Secondly, issues relating to weapons of mass destruction, security of substances that could be used by terrorists such as toxins and pathogens and aviation security, which a bulk of the Opposition members considered was necessary and needed to be included within the scope of anti-terrorist laws.

On ‘race and religion’ the new law intended to extend the racially aggravated offences contained in the Crime and Disorder Act 1998 to cover offences aggravated by religious hostility. It also amended the provisions of the Public Order Act 1986 concerning incitement to racial hatred to include cases where the hatred is directed against groups abroad. The Opposition Conservative members made three principle arguments. First, that such provision might criminalise too wide a range of behaviour, including legitimate theological and artistic expression engaging with religious themes. Secondly, that

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113 Ibid., c. 272.
114 See for a number of these point, Privy Counsellor Review Committee, Anti-Terrorism, Crime and Security Act 2001 Review: Report, 18 December 2003, p. 70.
legislation in this field attempts to regulate behaviour touching on matters of personal faith or religious belief and consequently raises serious problems of principle, as well as practical problems of evidence. Thirdly that any such measure should be considered in a wider context, including such matters as the law of blasphemy and other religious offences. The Opposition members, however, suggested they might support it if it was not included as part of the government's anti-terrorism policy.

A number of Labour members including the Home Secretary, supporting the measure, said that current laws relating to racial hatred had the effect of protecting some religious groups but not others (including Muslims). Mr. Blunkett argued that this measure intended to make it clear that all religious groups should be protected against the effects of religious hatred and discrimination. Gerald Kaufman, Labour, a member of the Committee on the new law, also noted that while religious intolerance had existed in the UK for decades, 11 September had made the nature of the tension between the religions much clearer. He proposed that the Bill should be treated as an important element in the UK’s fight against terrorism and included in the new law. He argued that 11 September had made it clear that ‘race and religion’ were very much part of the terrorist strategy.

The Home Secretary noted that the provision, while attempting to send a message to the international community, particularly the Muslims, that the UK’s fight against terrorism was not directed in any way towards them was also a measure intended to reassure the

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115 House of Commons, Volume 375, 19 November 2001, c. 35.
116 Ibid., c. 685.
minority communities living in the UK.\textsuperscript{117} To this, however, Opposition members, particularly George Osborne and Sir Patrick Cormack said that on the other hand, the introduction of the provision had only proved otherwise. They pointed to the submissions made to the Select Committee on Home Affairs by a number of Muslim organisations, including the Muslim College, the Muslim Council of Britain, the Association of Muslim Schools, the Muslim Parliament and the Union of Muslim Organisations, all of which said, “The extension of incitement legislation at this particular time is unlikely to protect Muslims. We have grave reservations about the introduction of legislation at this particular time.”\textsuperscript{118} Mr. Blunkett noted, however, these groups had responded at a time when they had not seen the Bill. He pointed out that, on the other hand, the Muslim Council of Britain issued a statement recently saying that it “supports the present proposals.”\textsuperscript{119} This aspect of the Bill was returned by the House of Lords with some amendments and deletions of clauses and approved as per the Lords changes.

The other major theme on which the debate took place has been regarding provisions in Parts 6, 7 and 8 relating to weapons of mass destruction, security of pathogens and toxins, security of nuclear industry and further amendments to the aviation security regime. Part 6 included the offence of transferring biological weapon agents outside the UK and also claim jurisdiction over actions by UK persons abroad. Part 7 created a security regime for pathogens and toxins requiring laboratories to report on biological agent holdings and also gave the police powers to inspect the facilities. Part 8 created a new regulatory regime for the nuclear industry, strengthening provisions against the disclosure of

\textsuperscript{117} For a detailed comment on this by the Home Secretary see House of Commons, Volume 375, 26 November 2001, c. 703.
\textsuperscript{118} Ibid., c. 705.
\textsuperscript{119} Ibid., c. 705.
sensitive information relating to nuclear sites and extending the jurisdiction of the United Kingdom Atomic Energy Constabulary.

There was general agreement that the Bill should include the above provisions except during a point made by Conservative member Robert Key, who said “Part 6, which covers weapons of mass destruction, and part 7, also give me great concern” although he did not elaborate on it.\textsuperscript{120} Opposition front bencher, Dominic Grieve, speaking on behalf of his party said:

\begin{quote}
We accept that some of the Home Secretary's proposals seem to constitute a measured and sensible response to the emergency that has arisen. Indeed, I have listened to some of the points made by hon. Members, and few have reservations about part 6 on weapons of mass destruction or part 7 on the security of pathogens, or about the extra protection for the nuclear industry in part 8.\textsuperscript{121}
\end{quote}

These issues were clubbed together in the debates after appropriate amendments were considered on 26 November 2001. And the need to include them as part of the Bill was overwhelmingly voted with 334 in favour and 55 against. On the issue of security of pathogens and toxins, for example, the debate was limited to asking what would such security entail in terms of infrastructural support and costs. Labour member Tam Dalyell, for instance, wanted to know “What estimate has been made of the extra costs of undertaking those types of security arrangement”?\textsuperscript{122}

The question of ‘encroachment on civil liberties’ featured particularly when the issue of enhanced police powers under Part 10 was debated. The Opposition was quick to point

\textsuperscript{120} Ibid., c. 78-79.  
\textsuperscript{121} Ibid., c. 110.  
out that while the government had earlier taken into confidence the Opposition by saying that the new law was specifically meant to respond to the various aspects of 11 September, the issue of enhancing police powers was uncalled for. Clause 88 of the new law amended the Terrorism Act 2000 to allow fingerprints to be taken from a person detained under the Act to ascertain their identity. Clause 89 covered searches, examinations and fingerprinting in England and Wales, and the provision was repeated in Clause 90 with reference to Northern Ireland. James Paice, Conservative member, argued that the Bill was not the appropriate vehicle for the granting of those powers. He said that if the Government intended to introduce the powers more widely, they should advance the arguments for that in a ‘White Paper’ to include the powers in the Police Reform Bill which was expected to be debated in the House in the near future.123

Liberal Democrat member, Norman Baker, also drew the attention of the House to the comments of the Joint Committee on Human Rights, which had considered these clauses. He said that the Committee had said in its report, “We are concerned about such provisions relating to the powers of the police being hurried through Parliament as part of a Bill which purports to be aimed primarily at taking emergency measures in respect of terrorism.”124 Further the report concluded by stating: “We regard the provisions relating to police powers contained in clauses 88 to 92 of the Bill as being in need of additional safeguards and mature consideration, and accordingly draw them to the attention of each House.”125 The amendment that was debated intended to specify the provisions under Part 10 to be used only in a terrorist investigation by inserting the words “in connection

123 Ibid., c. 744.
124 Ibid., c. 746.
125 Ibid., c. 746.
with a terrorist investigation". This was meant to specify the powers under these clauses only in the case of arrests or searches that was connected with a terrorist offence. Although the issue was debated at length, the amendment was defeated with 199 Ayes and 330 Noes. In this regard the Opposition’s main concern was that police powers would be too wide and that even ordinary citizens not connected with terrorist activities could be held under the Act. They also argued that when the law was specifically meant to counter the threats arising out of ‘international’ sources, this provision was fundamentally aimed at domestic sources.

It may be necessary to mention here the reaction of the non-governmental bodies in the UK to the Bill. The human rights community in the UK came up with the most stringent attack on the new law. As early as 16 November, Human Rights Watch in London came up with a commentary saying, “We are dismayed by UK proposals that would permit the arbitrary detention of persons suspected of terrorist activity, as well as the denial of the right to seek asylum, the exclusion, and indefinite detention of certain individuals without adequate safeguards contrary to the 1951 Refugee Convention.” They particularly pointed out at the Home Secretary David Blunkett’s statement on 12 November that said that the UK would officially declare a “state of emergency” thus permitting it to derogate from certain provisions of the ECHR. They argued that Blunkett had assured the public that the declaration was a legal technicality – necessary to ensure that certain anti-

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126 John Burnett, Liberal Democrat member made this point. See House of Commons, Volume 375, 26 November 2001, c. 750.
terrorism measures that contravene the ECHR and the ICCPR of which the UK was a signatory could be implemented – and not a response to any possible imminent terrorist threat.

It may be noted that both the ECHR and the ICCPR has provisions that allow a member signatory to derogate “in time of war or other public emergency threatening the life of the nation” in the case of the ECHR and “in time of public emergency which threatens the life of the nation...[and] to the extent strictly required by the exigencies of the situation” in the case of the ICCPR. Other issues that the human rights body pointed out as affecting the civil liberties of the people were the provision that allowed the Home Secretary to certify a ‘suspected international terrorist’, extended immigration detention that allows the UK to detain a suspected terrorist who could not be deported and right to seek asylum that had been diluted in the new law.

The Anti-Terrorist, Crime and Security Act 2001 was a significant shift in the focus towards anti-terrorist policy-making in that it was specifically meant to respond to purely ‘international’ terrorism. Although during the debates a number of members raised questions pointing out that the Terrorism Act 2000 could have been amended to respond to these new concerns, the government argued that the attack in the US was unparalleled and the UK had to do its most to preempt such an attack on it. The Home Secretary, Mr. Blunkett noted that time and again in interviews and video recordings, Osama bin Laden had clearly spelt out his determination to attack the civilian populations, not only of the US, but also of those working with it.

129 Article 15 of ECHR and Article 4 of ICCPR.
Although most parliamentarians allowed the Act to be passed without a hitch, a number of critics and commentators from outside the government subsequently attacked the government’s passage of the Bill without adequate discussions. They also viewed critically the justifications offered by the government and said that the new Act made it almost evident of the new UK thrust to play a greater role in international affairs on an ‘anti-terrorism’ agenda.

A critical analysis of the debates and the subsequent anti-terrorist policy-making in the United Kingdom highlights four important elements.

First, the ‘politics’ surrounding the debates and legislation has revolved around the UK government’s policy of holding on to Northern Ireland as an integral part of the United Kingdom. For instance, the Terrorism Act 2000 that envisaged a changed anti-terrorist focus had a special provision for Northern Ireland, which, in effect, did not fundamentally change the government’s hold on Northern Ireland.

Secondly, there has been a consistent escalation in anti-terrorist measures in the United Kingdom. This has happened despite the deescalation in domestic violence and the fact that the United kingdom has been among the countries that has faced negligible international terrorist incidents. Although this is not to say that the UK is not a potential terrorist target in the future, the mannerism in which anti-terrorist measures have been brought about raises questions about the UK government’s real intents. For example, in
Europe, post-9/11, the UK was the only government that found it necessary to derogate from the European Convention when states like Spain, France and Italy faced a much graver terrorist threat. Critics have questioned the increasing acceptance of United States 'unilateralism' when the traditional stand of the UK has been that of multilateralism to various global issues.

Thirdly, the importance accorded to rights and liberties in the operationalisation of the laws have been clearly underlined in the UK debates. This has happened not only through the emphasis on aspects of the law that would impinge on rights of the citizens, specifically carried out through a number of reviews, but also the international monitoring of the human rights conditions in the UK, particularly through the ECHR instrument.

Fourthly, the ability to build consensus on vital issues on anti-terrorism in the United Kingdom can be attributed to the attempts by the government (Labour or Conservative) to accommodate Northern Ireland within the normal democratic processes. Significant has been the mid-1990s 'easing' measures which included the lifting of broadcasting restrictions, the revocation of exclusion orders on Sinn Fein leaders, removal of army personnel from the streets of Northern Ireland, stoppage of house searches, the decline in the number of detentions under the PTA and the increase in the remission rate for prisoners in Northern Ireland, which was initiated by the Conservative government but continued by the Labour. The first results of the political initiatives were the ceasefire both by the republican and the loyalist groups, which ultimately resulted in the Good

\footnote{See, for example, Bonner, "The United Kingdom's Response to Terrorism", pp. 62-3.}
Friday Agreement in April 1998. It was clear that these were serious attempts made by the UK government to resolve the contentious issues between the warring parties through the political process.

Further, the United Kingdom’s introduction of a number of social and economic measures which included a special annual package of ‘peace money’ from the European Union has had a positive impact on violence. A RAND study on the impact of social and development measures on conflict in Northern Ireland ascertained that the annual funds amounting to approximately $917 million since 1997, is helping create a “middle class and business elite” who are beginning to play a “prominent role in Republican-Loyalist conflict mediation, facilitating nascent cross-community linkages through joint denominational initiatives such as ‘city vision’ processes in Belfast and Londonderry”.

Further these funds have reportedly been largely successful in erasing the economic disparities between Catholic and Protestant communities and strengthened the newly formed local conflict management groups.

The United Kingdom’s perception of the terrorist threat and its response, while exhibiting procedural similarities to that of India, have displayed significant disparities in the nature of the debates and the subsequent policy making and decisions. For instance, the series of PTAs found little implementation in Scotland or Wales revealing a focused definition of terrorism and thereby resulting in better acceptance and less controversy. The Terrorism Act 2000 removed a number of anomalies, which had been at the core of the ideological

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132 Ibid., p. 13.
conflict between the two principle parties. In India, TADA, the first comprehensive anti-terrorism law enacted to respond to the Punjab violence and later to Kashmir, was much less focused, thereby resulting in its massive abuse. And despite this, it was allowed to continue for a much longer period than was intended.

Despite the roots of a number of terrorist concerns in the UK being traced to an external country, this aspect has featured very little in the debates. The UK has preferred to discuss any core contentions with the Irish Republic through the diplomatic route and rely more on its democratic processes and institutions to respond to the Northern Ireland crisis. In India, there is tacit acceptance that Pakistan lies at the heart of its terrorist concerns and hence, often, democratic procedures and institutions have been weighed down with this perception. Pakistan has been given an overtly important role in Indian domestic and foreign affairs as is evident from the Indian debates wherein anti-terrorism laws are consistently pushed into the statute books because of 'Pakistani-sponsored terrorism', even at the expense of the rights and liberties of its citizens.

In the realm of human rights and civil liberties, the United Kingdom has subjected its laws to multilateral monitoring. India is yet to fully accede to ICCPR, thereby, consistently inviting criticisms from various quarters. The impact of anti-terrorism laws on rights and liberties is yet to become a matter of independent and serious appraisal and policy-relevant research and implementation in the Indian context.
In the post-9/11 period, however, it has not been difficult to draw a number of similarities in the two cases, wherein there has been an unambiguous trend towards linking domestic anti-terrorist concerns to foreign policy issues and the international milieu. The respective governments have argued that the changing nature and scope of international terrorism and the dangers that the two faced from both direct and indirect terrorist acts have compelled them to take recourse to new measures. Critics have, however, challenged this and argue that the changing international geo-political environment has to a large extent motivated the two to link the 'new' threat perception to certain political imperatives in the foreign policy realm. While the 11 September attacks in the United States has been an unprecedented terrorist attack on civilians by any measure, a number of critical opinions have regarded the event as a ‘window of opportunity’ for certain regimes in the international arena for promoting their political and internationalist agenda by cashing in on the episode. The United Kingdom and India have both been at the heart of this controversy. The following chapter will examine the debates involving both the government and the general public to ascertain, in both cases, if the response to 9/11 has been in the context of the ‘new threat to democracies’ or if their proactivism has a strong political/internationalist content as argued by the critics.