Terrorism manifests itself in the exploitation of political, economic and social tension. It thrives in the minds of men, who choose a path of rapid change by violent and extreme means.

The function of law is to provide a means to accommodate various interests of its citizens. Its importance lies in the general will of the community. Law has a limited capacity to change rapidly. A few individuals want to accelerate this change, and adopt violent methods to send their message across. Many times, criminals turn to terrorism in order to force society to meet their demands.

Various countries use different strategies to combat terrorism. This is an important feature of the democratic process in the modern welfare state. The legal response of States, to terrorism is a combination of the power of the state to use its enforcement machinery (i.e., legislative, judicial and the skilled police and security force) combined with various provisions of human rights
law. The duty of the State to provide for the security and welfare of its citizens is of paramount importance. Besides the general principles of law recognized by civilized countries, are the various conventions, protocols and bilateral agreements of States both at the international and regional level. Contemporary international law on terrorism deals with the present day situation even though there is no definition of terrorism at the international level.

There exists a responsibility on States to see that their domestic legal systems reflect the provisions of international principles recognized by the world body.

Great changes are taking place all over the world due to globalisation. This brings into sharp focus an emerging new World order, where all will have to exist in peace. Therefore international co-operation is required to solve various issues that threaten peace and security. Terrorism basically is an attack on the legal order, human rights and fundamental freedoms, where the innocent civilian is hurt, injured or killed and facilities are destroyed.

1 The principles of "aut dedere aut judicare" i.e., extradite or prosecute is slowly being recognized by the international body.
Terrorism is an old problem with new challenges. Effective strategies are being worked out by States to bring their domestic legislation in compliance with their international obligations. In order to achieve this they require to effect institutional arrangements, legislative enactments, procedural changes and empower regulatory bodies. All must work together under the justice remedial system.

As terrorists plan their attack they take notice of the loop holes in the law, tax scrutiny arrangements, bureaucratic oversight and the unexpectedness of the violence coupled with the expected wide media coverage, often helping to publicise their cause and grievances.

Although there is no easy solution to the problem, efforts are on at the domestic level to tackle this problem in every possible manner.

A) TERRORISM IN INDIA

The causes underlying terrorism in India are attributed to a variety of factors such as political apathy, misuse of religious institutions, unemployment, poverty, failure to seek and receive justice apart from foreign intervention.

According to Bassionni "the terrorist is an ideologically motivated offender who rejects the legal characterization of his acts as criminal and who may regard the prospect of a prison term or his life as a small price to pay".\(^3\)

With various challenges a country faces in matters of internal security, India too felt it necessary to combat terrorism within her borders. Terrorist activities intensified from cross-border, to insurgent groups interlinked with organized crime, money laundering, illegal arms trafficking and drug dealing. With the reach and methods of modern terrorists becoming interlinked with international terrorism, the modern state had to accept the challenges ahead. Legislation and the criminal justice system have been used to create a legal regime within which the government has tried to suppress and prevent terrorist acts.

The Indian initiative to meet with international obligations is both unique and noteworthy. India has supported various policies and proposals of the United Nations. Many of the Conventions and Protocols enacted at the International level are found in various domestic legislations. They will be evaluated analytically in the light of their significance on terrorist activities in India.

After 9/11, India witnessed a terrorist attack on the Jammu and Kashmir Assembly in Srinagar. In the last days of December the most shocking event took place, a terrorist attack on Parliament House, New Delhi. The next year the Swaminarain Temple at Gandhinagar was attacked. After which the Raghunath Temple in Jammu also was attacked by terrorists. This brought to light the extreme means terrorists would use to make their point. As civilians lost their lives and public property was destroyed, a shocked nation had to take immediate steps to combat terrorism in all its forms – holding of hostages, suicide bombers, attacks on public places and other strikes that created terror in the minds of the citizens.

The Government of India has taken various preventive measures by enacting provisions to control and curb terrorism and other acts connected with the same.

The Explosives Act\(^4\) regulates the manufacture, possession, use, sale (transport, import and export) of explosives. This enactment contains a definition of the word “explosive”\(^5\) which is important and is in use till date. The Central government is empowered to make rules and regulations

\(^4\) 1884 India was under Colonial Rule

\(^5\) Act 2 (d)
concerning its manufacture or prohibition of the same. Under the provisions, the government has powers of inspection, search and seizure in matters regarding manufacture of explosives. As the enactment was of limited scope it was later amended keeping in mind the changing demands of the 20th Century.

The Explosives Substances Act⁶ was brought into being to amend the law relating to explosive substances. Under this new provisions were incorporated to include “any materials for making explosive substances, or machine, apparatus etc.

Also “Special Category”⁷ of explosive substance” was deemed to include other chemicals like TNT and other compounds. A broader and more comprehensive meaning was given to the term “explosive substance”.

Further, penal provisions were attracted for making or possessing explosives, or such substances. These provisions extended to abettors also.

⁶ 1908 India was under Colonial Rule
⁷ Ibid
This is an important legislation, which is relevant today and stands unamended or modified. Various States have added some amendments\(^8\) while accepting the main provisions.

Further efforts were made in the interests of the nation and its territorial sovereignty. Taking into account the unlawful activities of certain individuals, associations and groups, with homogeneity of purpose and large numbers, are capable of enforcing their views by violent means. Keeping this in mind the government enacted “The Unlawful Activities (Prevention) Act in 1967. It provided for the effective prevention to stop groups adopting terror tactic to hurt and harass innocent civilians. The larger purpose of such unlawful activities have been to disrupt the sovereignty and territorial integrity of India. In many bomb blast incidents the activities of certain groups have been clearly established.\(^9\) It is left to the Central Government to declare the activities of these groups / individuals as unlawful.\(^10\) Also the Central government can prohibit unlawful associations from using its funds i.e., money, security or credit.\(^11\)

\(^1\) W. Bengal for example
\(^9\) The Coimbatore blasts for example.
\(^10\) Under Sec. 3 of the Act.
\(^11\) In 1968 the Government brought into being the Unlawful Activities (Prevention) Rules.
The Government of India over the years looked into every aspect of terrorism and terrorist activity. Realising that arms and ammunition are used in such acts, the government brought into being “The Arms Act.” The word ammunition includes sockets, grenades, bombs, missiles, other explosive or fissionable materials, liquid or gas, machinery or other ingredients. Arms include sword, knife, spear, firearms and other deadly weapons.

Under this enactment the possession of firearms or ammunition, unless licenced according to procedure is an offence. Arms sale is also prohibited. The underlying idea is to prevent violence in society by vested interests. Arms and ammunition would add to the violence. Such acts are taken very seriously by the Central Government and the offenders could face a strict sentence under the criminal justice system. In recent times the Purulia arms drop was taken seriously by the government.

Various powers and procedures are enumerated according to the rule of law. The police and magistrates are the competent authorities. Persons possessing and found to be in control of premises where arms and ammunition are found are liable under the Act.

12 This was brought about in 1959.
13 Lathi is not an arm under the enactment.
14 In West Bengal, Arms were ostensibly to abet a war against the State government by local vested interests. Ibid, Sec. 10
These measures are to control and combat domestic terrorism. The attack and assassination of political leaders, religious places and pilgrims has often occurred in India. In Karnataka the bandit Veerappan is said to have large quantities of arms and ammunition which he used to repel attacks by the Special Task Force (STF).15

International measures are not sufficient to deal with the modern menace of terrorism. The member States of the U.N. are expected to play an important role by enacting enabling domestic legislation pursuant to their international obligations.

India too faced a serious of such hijackings. The first hijacking was in 1970. When an aircraft was taken to Lahore. The hostages were released and the plane was blown up. The Pakistan authorities took no steps to prevent the aircraft from being blown up.16

Next in 1976 another aircraft was hijacked to Lahore. This time the plane and passengers were returned. Then in 1981 again a plane was hijacked to Lahore. The hijackers were arrested and faced criminal proceedings. In 1984 again the same act was committed. However all of them are said to be

15 It is opined that he wishes to carve out a Tamil “Elam” (State).
16 The hijackers were not punished.
Living an easy life in Pakistan. The Air India “Kanishka” disaster was another sad event in the history of Indian Aviation.17

Mindful of the steps taken by the U.N. India enacted legislation to give effect to the conventions. India is a party to all these three Conventions of the U.N.

1) To give effect to the Tokyo Convention – The Tokyo Convention Act was enacted in 1975.

2) To give effect to the Hague Convention. The Anti-hijacking Act was enacted in 1982, and

3) To give effect to the Montreal Convention, The Suppression of Unlawful Acts against the Safety of Civil Aviation Act was brought into being in 1982.

Under the Anti-hijacking Act any person who uses force or threat of force or intimidation or seizes the aircraft commits the offence of hijacking, it is punishable with life imprisonment. Further the act of using force or violence is also liable for the same punishment.

17 When flight IC-814 was hijacked to Kandahar, Afghanistan, three hard core terrorists were released in exchange for the passengers and crew.
The Act was primarily brought about to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft.

This Convention is one among the various measures considered by the U.N. to combat terrorism. Besides the terror and violence disrupting society, it has been noted that other illegal activities are closely associated with terrorism. By suppressing these activities, governments can control and prevent terrorism. Illicit trafficking in narcotic drugs is another means of financing terrorist activity in the world.

The government enacted the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act in 1988. This not only would control the trade in illicit traffic in narcotic drugs, but also curb the activities of persons involved in such trade.

The cultivation of the coca, cannabis or poppy plant production, manufacture or sale, export, import of narcotic drugs and psychotropic substances\(^8\) is prohibited other than those permitted by the Central / State Government.

\(^8\) Sec 2 (3) of the Act, 1988.
The activities prohibited also include financing directly or indirectly, abetting or harbouring persons involved in such activities. In such cases persons may be detained for long periods, three months and longer in order to prevent such persons from engaging in the illicit trade of narcotic drugs. Similar provisions exist in the Jammu and Kashmir Ordinance of 1988. This is an important area said to be within the Golden Triangle\textsuperscript{19} ie, area where the drug is manufactured and sent abroad.

Because of its various obligations it was necessary for the government to tackle terrorism within its boundaries with deterrent domestic legislation. The upsurge of religious fanaticism, secessionist movements and other political factors were responsible for the increase in numbers of violent acts. In the last decade approx. 20 thousand people have been killed because of terrorist activity in Jammu and Kashmir alone. However much of such killings went unreported in the international press. This reached a flash point in the Dec. 13, 2001 attack on Parliament. This was a limit to the endurance of the nation.

Anti-terrorism legislation existed in India, long before the nations of the world took proper cognizance of such acts.

\textsuperscript{19} Pursuant to the enactment some amendments were made in the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
B) EMERGENCY, MISA - TERRORISM

During the emergency years 1975-1977, the Maintenance of Internal Security Act or MISA was promulgated. Persons suspected of anti-social acts could be detained as "terrorists". Under this enactment persons could be detained under suspicion. In the name of 'enemy of State' the Police exercised extraordinary powers. Protestors, political opponents, trade union leaders, journalists, even students were detained in jails. Blank warrants were known to be issued by Magistrates to the political elite in some cases.

The National Security Act provided for detention in certain cases. The Government could detain persons in order to prevent them from acting in a manner prejudicial to the defence of the country, including expulsion of foreigners. It was also used to prevent anyone from acting in a manner "prejudicial to the maintenance of public order". Amongst other things, preventive detention was the order of the day in the name of preserving "law and order" in society. The detainee was treated severely by law and the enforcement officials. Many thousands languished in jails without trial or legal representation. The general public felt threatened and intimidated. Under emergency the State assumes vast powers which bureaucrats exercised

\( ^0 \) Sec. 3. MISA maximum period was twelve months.
\( ^1 \) 1980
at will. Most of the political leaders were in jails. The Government took these steps in order to protect the security of India.

Further measures came into force in 1986 under the National Security Guard Act. This came about for the constitution and regulation of an armed force of the union for combating terrorist activities. This was primarily to protect States against internal disturbances.

The security guard consisted of "an armed force of the Union called the National Security Guard for combating terrorist activities with a view to protect States against internal disturbances".22

Most of the offences are in relation to terrorists and their activities — and are punishable with the death penalty. The acts include correspondence or communications with terrorists23, directly or indirectly assisting terrorists with money, arms and ammunition24 or knowingly commits acts calculated to imperil the success of the security guard. Further the officers and those under the purview of the Act are expected to behave in accordance with the provisions of law. They are expected to be duty conscious and any lapse such

22 See. 4 of the Act.
23 Ibid, Sec 15 (b)
24 Ibid Sec 15(c)
as permitting escape of a person in custody is to be met severely. Procedure is laid down for custody and trial of the offender.

There is a close nexus between law and order, public order and security of State. The importance of these acts can be evaluated by its reach upon society. These acts have far reaching consequences upon the security of State in the light of the increasing number of terrorist activities directed against the government.

Preventive detention is used by Governments in the interests of society and many nations adopt such measures in national interest.

Problems arose in the State of Punjab. In order to cope with the serious tense situation, the government took many decisions including the suspension of Art 21 for two years in 1987. The Sikh Nationalists agitated for an independent “Khalistan”.

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25 Unbecoming conduct is dealt with severely.
26 Used in Britain against the Members of the IRA by the Margaret Thatcher Government.
27 50th Amend to the Constitution. During this period the Security forces were said to have unfettered powers.
C) TADA AND TERRORISM

In order to curb these terrorist activities the government enacted the Terrorist and Disruptive Activities Act (TADA)\textsuperscript{28}. Besides the vast powers conferred on the authorities under the Act, Special designated courts were established to try such offenders.

Under TADA trade unionists, Muslims, Sikhs, Dalits and political opponents were detained. They languished in jails for long periods, without a trial between 1987 to 1995 approx. 76,000 persons were arrested. The rate of conviction is less than 2% about 17,600 are said to be “terrorists”. However during this period terrorists activities reduced considerably.

Due to immense political pressure internationally, and domestically TADA lapsed in 1995, yet many were being charged under it – a retroactive effect. Over the years many such detinues were released on bail. Under TADA persons could be detained without charge or trial on mere suspicion of belonging or suspected of having links with militant groups. The Police had wide powers of search and seizure. In Punjab a person could be detained for upto 2 years in judicial custody.

\textsuperscript{1} 1987 during the tenure of late Sri. Rajiv Gandhi
Terrorism has been defined with a wide meaning, sec 3 deals with punishment for terrorist acts, whoever-

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire arms or other lethal weapons or poison or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies or detains any persons and threatens to kill or injure such person in order to compel the government or any other person to do or abstain from doing any act;
is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) or voluntarily does an act / aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.

Punishment for disruptive activities is also under the purview of the act. It covers acts, speech or media coverage leading to disruption of the sovereignty and territorial integrity of India.  

Courts were designated and if convicted, the person could forfeit his property to the Government. Mere possession of a fire arms for example, was a punishable offences irrespective of motive or means to participate in any disruptive activity.

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29 Includes the words advocates, advises or suggests.

30 Similar provisions existed under the Measures to Combat Terrorism of the U.N.

31 Sec. 5 of Act, 1995.
As an enactment to combat terrorism brought about by the government of India, it is necessary to evaluate the working of this legislation in order to examine its efficiency. It was said to be an extraordinary legislation meant for an extraordinary situation. Detention upto one year without any formal charge was difficult to accept even in troubled times. Bail was dependent on the accused proving his innocence of the offence under TADA. Admission to a Police Officer was admissible evidence. Also the media could be ordered not to publish any of the proceedings in Court. Burden of proving his innocence was placed on the accused.

However in its provisions as well as in its application the enactment proved unsatisfactory to the Indian public. More harm was done, and the provisions of the constitution and law were contravened. It struck at the very roots of a democratic polity. Pressure mounted on the Government to repeal this legislation. It was unsuitable to combat terrorism as its indiscriminate use had angered the public. Equality before the law and equal protection was a far cry from the harsh provisions of this enactment. The NHRC and others like Sri. K.P.S. Gill, the then Director General of Punjab Police, Ved Marwah, Commissioner of Police, Delhi and NGO's like the People's Union for Democratic Rights supported the demand for its repeal.
Democratic liberties of an informed polity are important factors to be taken into consideration before passing any legislation of such importance. International terrorism had a profound effect on the domestic scene. Nations were asked to take all necessary steps to eliminate terrorism. Every method should be used to combat it so as to eradicate it both nationally and internationally.

However a new aspect was introduced into our criminal jurisprudence with the enactment of the Prevention of Terrorism Act.

This was preceded by The Prevention of Terrorism Ordinance (POTO) 2001. This was due to the fact that Parliament was not in session and it was expedient to enact legislation to prevent and deal with terrorist activities.

Any act which creates terror in the people by the use of bombs, dynamite, explosive substances or lethal weapons, poisons or noxious gas or chemicals (biological or otherwise) which is likely to cause death, injuries or damage to civilians or to property of the Government or threatens to do so to compel the Government to do or abstain from doing an act commits a terrorist act.
Also included are members of any association declared unlawful under the Unlawful Activities (Prevention) Act, or aids or promotes or is in possession of any arms or ammunition capable of mass destruction is also considered a terrorist.

Further the 'proceeds' of terrorism are also declared illegal with the forfeiture clause in accordance to U.N. guidelines. Terrorist organizations are also included in the purview of the Act. Support of any kind of terrorist organization also attracts penal provisions. Special Courts are designated by the Government. Confessions to Police Officers and interception of communication are also mentioned. The Schedule appended contains a list of terrorist organizations.

However as the government was unable to introduce the Prevention of Terrorism Bill, 2001 to replace the Ordinance. The Prevention of Terrorism (Second) Ordinance, 2001 was promulgated by the President. There was some changes and banned organizations added to the list in the schedule.

With the challenges before the Government in the maintenance of its internal security, the upsurge of terrorist activities, including cross-border terrorism continued. Insurgent groups in many parts of the country also got busy in spreading dissent and unrest. The close links between terrorist activity
and organized crime became apparent to the authorities. Terrorism had acquired global dimensions and posed a threat to international peace and security. Modern communication systems and technological advances in arms and ammunition, and other changes pose a serious threat to the Government. International obligations had to be brought within the frame work of domestic legislation for the rule of law to be effective. In the light of these conditions, it was necessary to bring such activities within the purview of the criminal justice systems. The Dec. 13, 2001 attack on Parliament sent shock waves across the country and the world. The prevailing circumstances necessitated the promulgation of the Prevention of Terrorism Act in 2002.

D) POTA – TERRORISM

The Prevention of Terrorism Act was enacted as a comprehensive legislation to deal with terrorism and to incorporate provisions under the law to help convict the offenders. It has a scheme of investigation prosecution and trial, and incorporates various methods, that are not found in any other legislation.

Sections 3-17 deals with the definition of “terrorist act”. It concerns penalties and punishment for knowingly facilitating the commission of a terrorist act. It also deals with the powers of the Investigating Officer. “Intent
to aid any terrorist" is punishable. Unauthorised possession of arms, ammunition, hazardous explosive substances, lethal weapons or biological or chemical substances is a punishable offence. The two kinds of acts under scrutiny are, terrorist acts and disruptive activities. The Act provides for enhanced punishment. Sections 18 – 22 deals with the power of the Government to declare any organization as terrorist. A very general mention is made.

Sections 23-35 established an alternative system of codes and procedures. Special Courts are empowered to take cognizance of the case. Judges are entitled to hold office after superannuation. Powers of summary trials are mentioned. Important provisions relating to "witness protection" have been incorporated. This is an important development. In the past many did not come forward to testify because of fear. Now the authorities are expected to provide protection to the witnesses. Further, the identity can also be kept secret.

Certain confessions made to Police Officers can be used in evidence. This is to strengthen the hands of the law and secure a conviction.

Sections 36 to 48 deal with interception of communications. This is newly brought about. In the age of communication technology terrorists use
the latest methods and techniques. Sometimes important information is received that helps in the investigation of the case. However a review committee safeguards the right of the individual at the same time. Most modern anti-terrorist legislation enacted by the States also contain such provisions. Many times witnesses do not come forward to testify and vital information cannot be placed before the courts by the prosecutors.

Sections 49-64 deals with the technical aspects that are required to complete investigation under this Act. The powers of the Government to prevent mis-use of powers is stated. The rights of the accused, preparation of charge sheet, bail provision etc. The police custody extends for 30 days whereas the period of judicial custody is six months. The presence of the legal counsel of the accused during interrogation is also provided for. In many cases the Court can draw an adverse inference if the accused refuses to co-operate with the investigating authorities. Safeguards against abuse of power is provided for under this enactment.

This has strengthened the credibility and independence of the law enforcement agencies. It brings to the forefront the view that there is no place for a terrorist in a democratic polity.

The schedule to the Act enlists Terrorist Organisations.
E) SCHEDULE (OF BANNED) TERRORIST ORGANISATIONS


The Act was amended last year.
Simranjit Singh Mann V. Union of India\textsuperscript{33} In this case, the constitutionality of POTA was discussed. The Punjab and Haryana High Court referred to the situation the country was facing regarding terrorism. It observed that parts of the country have “continued to remain disturbed” for a long time.

The jurisdiction was extended to acts committed on ships and aircrafts registered in India. Punishment in the form of penalty, forfeiture and sentence was provided for.

Terrorist acts are defined and therefore the person who commits the act is the offender\textsuperscript{34} i.e., terrorist. Those in unauthorized possession of arms are presumed to be linked with terrorist activity. It has not been possible to define terrorism\textsuperscript{35}. Further the proceeds of terrorism are held to be illegal and hence the forfeiture to the State.\textsuperscript{36}

Taking into account the serious nature of the offence under the new Act, support of any kind is prohibited to terrorists. Special counts are set up to try these cases.

\textsuperscript{33} 2002 Cri. L J 3368
\textsuperscript{34} Sec. 3 (1)
\textsuperscript{35} Hitendra Vishnu Thakur Vs. State of Maharashtra 1994, 4 SCC, 602 at 618
\textsuperscript{36} Analogous to TADA
A feature of this enactment is the protection given to a witness. There is similar to the provisions of other countries. Given the nature of offences, many times witnesses fear to give evidence. Hence these provisions have been incorporated.37

Similar are the powers of police officers with their foreign counterparts. A confession made to a Police Officer and recorded by electronic or other means is accepted as evidence in court38. A voluntary confessional statement would help the investigating and prosecuting authorities to meet the ends of justice.

As insurgent groups, militant outfits and others keep in touch with their members, electronic communications become a vital link in investigations. In order to detect such offences the police may intercept communications. Although this makes inroads into the rights39 of the citizens, it is imperative that the State be permitted to do so in the interests of welfare of its citizens40.

37 Sec 30 of the Act. Many do not come forward. Others turn hostile.
38 Sec. 32, Ibid
39 Right to Privacy
40 Secs 36 to 48
Amendment of Section 60 – In section 60 of the Prevention of Terrorism Act, 2002 (15 of 2002), after sub-section (3), the following sub-sections shall be inserted, namely:–

(1) Without prejudice to the other provisions of this Act, any Review Committee constituted under Sub-Section (1) shall, on an application by any aggrieved person review whether there is a prima facie case for proceeding against the accused under this Act and issue directions accordingly.

(2) Any direction issued under sub-section (4)

(i) by the Review Committee constituted by the Central Government shall be binding on the Central Government, the State Government and the Police Officer investigating the offence; and

(ii) by the Review Committee constituted by the State Government shall be binding on the State Government and the Police officer investigating the offence.

(6) Where the reviews under sub-section (4) relating to the same offence under this Act, have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State
Government under sub-section (1) any direction issued by the Review Committee constituted by the Central Government shall prevail.”

Explanation: For the purposes of this Schedule, serial numbers 24 and 25 shall be deemed to have been included with effect from the date of publication of S.O. No.1194 (E) dated the 5th December, 2001. This is an important legislation enacted by the government in order to combat terrorism and protection is given to the Government and its officers discharging their duties from any prosecution or legal proceedings:

“No suit, prosecution or other legal proceeding shall lie against the Central or State Government or any officer or authority of the Central or State Government on whom powers are conferred under the Act . . . .”

Further “no suit prosecution or legal proceedings shall lie against any serving member or retired member of the armed or para military forces in respect taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism” 41

41 Sec. 57 of POTA
Keeping in mind our international obligations the Government of India after much deliberations brought in being the Prevention of Money Laundering Act.

The provisions aim to prevent the legitimizing of money earned by criminal activities. This is done either by investing in movable or immovable properties. Organised crime and terrorism is funded by criminal acts. Eg. Narcotics trade and other substances. The huge profits are then spent for training terrorists, arms supply, bribe money or cash paid to the family of suicide bombers.

The need for law on the subject of money laundering has been the focus of the world body. Terrorist outfits and militants are known to use proceeds from such acts to finance their operations. Many such "legal organizations" have been set up to invest the money generated from illicit activities. Crimes such as murder and extortion are involved in money laundering. It is intended to deprive persons or an organizations of property which is related to specific crimes.

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42 U.N. Convention S-17/2 adopted by General Assembly in 1990
44 Illicit trafficking in drugs, arms and ammunition and its prosecution.
45 As mentioned in Schedule.
Direct involvement or assisting or attempting to do so makes the offender guilty of the offence. Any process or activity connected with the proceeds of crime and projecting it as untainted is also covered under the Act.46

According to the provisions an attempt is made to stop the transaction that is based on the proceeds of a criminal act. The consequences of such transaction could be to spread terror or arm militants. Money laundering derived from certain specific offences are mentioned in the Act. (1) The Indian Penal Code, (2) Immoral Traffic (Prevention) Act, 1956, (3) The Arms Act, 1959, (4) Narcotic Drugs and Psychotropic Substances Act, (5) Prevention of Corruption Act.

The punishment for the crime of money laundering is strict (3 years to 7 years rigorous imprisonment plus fine). In case of a drug related crimes punishment is still severe. The authorities are vested with the powers of search and seizure on the basis of information received.

Similar to the U.N. Convention for the Suppression of Terrorism Financing. Under the provisions of the Act financial institutions are expected to maintain records of all transactions and furnish the same. This is

46 Sec. 3 of the Act, 2002.
mandatory. Customer identities must be maintained. This would help the investigating authorities if need be and deter the commission of such activities. The offences are cognizable and non-bailable.

Under the act, the offender is prosecuted, property confiscated pending trial and upon conviction, confiscation of the property\footnote{However a major drawback is that smuggling does not come under the purview of the Act. Also in Parallel Economy in India, R. Dutt.} can be ordered.

The Indian Government has kept abreast with developments in science and technology. New communication systems and digital technology have had a profound effect all over the world. Computers are used in a big way by all, even militants and terrorists. Information can be stored, retrieved and sent to all corners of the world in a matter of minutes. The Information Technology Act, 2000 envisaged a legal regime for Computers and Software Technology. E-commerce brought a major changes within a short span of time. Terrorists use such technology in their international transactions and also within the country. With a proper legal regime the Government can monitor transactions of large amounts coming into the country or leaving the country.
G) CYBER SPACE – TERRORISM

Cyber crimes are on the rise. Tampering with computer source codes or hacking into the system to access or delete or destroy information is an offence under the law. The one area which is difficult to control is often referred to as Cyber space.

The nations defence and intelligence systems rely on computers. Banking institution rely on computers for their transactions. Large amounts of money are transferred using computer systems. The governments of various countries are becoming increasingly aware and concerned about attacks from individuals and groups with intention to commit international crimes, such as terrorism and gathering intelligence information on issues of national security.

Cyber crimes are also international in character. The International Criminal Police Organisation INTERPOL is in contract with its 178 member states and facilitates the exchange of information concerning international crimes and criminal investigations. It is in close co-operation with regional

48 Sec. 65 of the Act.
49 Sec. 66 of the Act.
organizations like the OAS and G-8. Presently its efforts lie in the worldwide co-ordination of efforts in law enforcement and such IT crimes.

The Rome Convention recognizing the need to combat unlawful acts against the safety of maritime navigation established jurisdiction over such offences. India taking her international commitments seriously, enacted the Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act.  

In view of the escalating acts of terrorism worldwide, endangering the life at sea the government enacted provisions to give effect and to ensure the smooth implementation of the International Maritime Organisation Convention and the Protocol. It covers offences against ships, fixed platforms, cargo of ships, navigational facilities etc.

Under Sec. 3 a number of acts are mentioned, which are offences and punishable as per law.

51 This enactment was to give effect to the International Maritime Organisation Convention for the above mentioned and the Protocol. This was brought about in 2002 by the government.
They cover offences relating to:-

1) Committing violence against a person on board a fixed platform.
2) Destruction of a fixed platform or a ship or cargo.
3) Seizure of control or threat to do so.
4) Destroys / damages navigational facilities.
5) Communicates information, which he knows to be false, thereby endangering the safety of navigation.
6) During commission of an act if it causes death of any person, it will be punished with death sentence or for lesser offences a term of imprisonment.

Designated Courts can try such offences. Bail can only be given in certain cases. In keeping with international obligations, provisions relating to extradition are also mentioned. With the recovery of arms, explosives threat of force, evidence as to use of bombs, fire arms explosives etc, the Designated Court may presume that the accused had the intention of committing such offence unless the contrary is proved.

This is clearly indicative of the serious nature of such acts and of the need to combat terrorism in all its forms.
H) STATE LAWS – TERRORISM:

Terrorism has touched every activity of life internationally and nationally. Within the country militancy, insurgent groups and terrorist organizations have posed a threat of peace and security of the country.

Operating from various bases within the country they have used various forms and issues to attack innocent civilians. Death and destruction follows as a consequence of every one of their acts.

Scooter attacks, suicide bombers and religious fanatics have unleashed terror and violence on aircraft ships, trains, cities, shopping malls and in religious places. From Punjab to Pathankot in Jammu and Kashmir, Mumbai to Guwahati terror tactics were used to subjugate civilians and the government.

Indian States are obliged to protect human rights and fundamental freedoms under the constitution. This extends to exerting social control in all spheres of life among all sections of society. Many terrorist regimes have international links. All States of the Indian Union are under intense pressure to tackle this modern menace and use all necessary measures to combat it in the interests of society.
After independence, terrorism emerged in different forms, Naxilism in Bengal, Bihar and Andhra Pradesh insurgency in Jammu and Kashmir, militancy in Punjab.

I) JAMMU AND KASHMIR:

From the time of the British withdrawal from India, the State of Jammu and Kashmir ruled by Raja Hari Singh, witnessed an upsurge of militancy. The uncertainty after the British withdrawal had left the state divided one under Pakistani occupation and the other accession. It is only after the Pakistan army entered the State that Raja Hari Singh had acceded to India. In a short span of time Pakistan started its crusade against India.

Militancy increased and many organizations spoke of the right to self determination. In the wake of this demand many of the cadres of terrorist organizations came to be called “freedom fighters”. A new generation of Muslim youth took to fighting with Indian troops and security forces. However the emergence of Bangladesh posed setback to these plans. The predominantly Muslim leadership were keen on fostering a new spirit of Islamic Fundamentalism. The crisis in Afghanistan increased the supply of arms in the region and helped in militarising the entire region.

Meanwhile the U.N. forces deployed along the Line of Control observed the developments in the region. The banks in Jammu and Kashmir were looted, development activities came to a virtual standstill in the state and terrorist violence escalated. Terrorist violence escalated to such a large extent, Governor Jagmohan noted that, “subversive and terrorist activities continue unabated”.53

From religious platforms, the leaders and the Moulvis gave the general public political advice. Civil society was impoverished in every sense. Tourism which was the main backbone for the development and finance of the State, declined.

With foreign tourists being abducted and killed, the numbers of tourists visiting the State dwindled, yet the violence continued unabated. Organisations like the Jamaat-i-Islami, the Islamic Students League and others continued with their agenda, targeting the government and innocent civilians. The international press was least interested in this part of the world54.

By ideological indoctrination and by force, the militants established their presence and terrorism turned into subversive warfare.

53 Ibid. p 25
54 The western media was more interested in the Arab Israeli conflict.
The funds from the trade of narcotic drugs gave rise to the fear of use of chemical and nuclear weapons of mass destruction. The training camps along our borders imparted training to the youths against India.

The arms and ammunition sent by the U.S. and other countries via Pakistan to various groups in Afghanistan, or for their own forces was diverted by the militants in Pakistan and Kashmir for self use. The arms to be used against Russian forces occupying Afghanistan were used against India. The U.S. government was aware, but no policy decision seems to have been made to safeguard Indian Interests. Pakistan was dependent on U.S.A. to a large extent and had appeased the government by keeping quiet over the U.S. base of Diego Garcia in the Indian Ocean. Narco-terrorist activity increased in the Kashmir Valley. The porous border in Kashmir and Poonch sector made it easy for terrorists to bring in RDX explosive and target areas in India. Many countries preferred to turn a blind eye to these events, even as the U.N. Conventions made it obligatory on member States to use all means to combat terrorism.

"Khursheed Salman, Beyond Terrorism, New Delhi, USB Publishers Distributors Ltd., 1995, p 69. The Kashmiri Pandits spoke of genocide, but all western nations turned a blind eye!"
The Islamic militancy adopted terrorist strategies in order to force the government to cede Kashmir to Pakistan. They have chosen the path of violent revolution. Hindus and other minorities are sought to be eliminated. This has compelled the government to deploy military and security forces in the State Groups fought with each other to gain an upper hand. Political leaders, important members of society, doctors and others were shot dead to create fear in the minds of the public. Many Kashmiri Pandits were forced to flee the Valley. The exodus of Hindus from the State was followed by widespread attacks on places of worship – they were either blown up or burnt down.

In order to maintain law and order and combat terrorist activity in the State. The Government promulgated. The Armed Forces (Jammu and Kashmir) Special Powers Act. The aim was to give special powers, when it came to dealing with the situation in Jammu and Kashmir.

With the deployment of armed forces, special powers had to be conferred on them to enable them do discharge their duty in the disturbed areas of the State.

56 1990 – At about this time, Yasin Malik (JKLF) committed acts of terror – the daughter of India’s then Home Minister was kidnapped – said to be engineered by Yasin Malik.
Any officer of the armed forces was given the authority (1) to fire upon any person contravening the law after giving due warning. This extreme was taken after giving due consideration. (2) to destroy an arms dump or fortified position (3) arrest without warrant (4) enter premises without warrant to recover any person believed to be wrongfully detained or possess stolen property or explosives, arms and ammunition, and (5) stop, search and seize a vehicle. 57

The property of arrested persons, which has been seized is to be made over to the police. 58 These powers are conferred as it is necessary to prevent terrorist activities or striking terror in the people or section of people. 59

However the situation took a serious turn as terrorism continued unabated – including cross border terrorism. In order to suppress the disorder and restore public confidence the government had brought into being the Jammu and Kashmir Disturbed Areas Act in 1992. The government had to protect the civilian population as well as the police who are entrusted the maintenance of law and order.

57 The Armed Forces Special Powers Act, Sec. 4.
58 Ibid, Sec. 6
59 Ibid., Sec. 3
The enactment contains similar provisions as the previous one. Subinspectors are empowered to (1) fire upon persons if the occasion warrants it. (2) destroy arms dumps (3) and powers of search and seizure. The property seized from arrested persons must be made over to the police. Legal action lies against the person in respect of acts committed under the provisions of the enactment.

The politico-legal process of normalization of this region torn by strife, and militancy, needs all the support it can get to restore civil society, combating terrorism is the only way the government can achieve this and by stopping the external aid to terrorists in the region. Strict domestic control and the will of the world body will put Kashmir on the road map to development and peace.

This however is not an easy task as the Taliban, and the militant groups especially the Al-Qaeda are known to operate in the region. Osama Bin Laden is said to be some where in this region. This puts pressure on the international community to stop finances, arms and ammunition from reaching this region of the world.

Pak must stop cross border terrorism. The training camps must be dismantled.
PUNJAB:

All contemporary political systems are facing the problem of domestic militancy and insurgent attacks on aircraft, ships, local trains, market places, religions places, pilgrims, diplomats and public figures. Governments have to deal with them adopting various measures at their disposal. Radical nationalist groups such as the Irish Republican Army created history with their terrorist activities. This was emulated across the globe with serious consequences.

Punjab has been a strategically important region of India covering an area of approx 50,000 Sq.Kms. It is said to have the best canal irrigation system in the world. The Green Revolution took place in Punjab. In the 1980's the Sikh terrorists unleashed a wave of terror in the name of the “Panth”. They wanted a separate state- Khalistan. Sikh fundamentalism has socio-political roots, which grew over the years. The post-partition period contributed to the Sikh movement.

Religious fundamentalist Sikhs indulged in violent acts that left a mark in the world. The Akali Dal and its, “highly separatist terrorist campaign”\(^1\), unleashed a wave of terror in the State asking for an independent “Khalistan,

\(^1\) Jain Sharada, Politics of Terrorism in India, New Delhi, Deep and Deep Publication. p. 160.
The "nirankars" also played an important role. In the politics of terrorism Sant Jarnail Singh Bhindranwale was a prominent figure who unleashed terror in his campaigning for Khalistan. Youths were encouraged to join militant gangs who moved freely with guns. Hindus were murdered in large numbers. These terrorist killings took place in order to divide the population. The law and order machinery was severely strained in the early 1980's.

By 1984 the intelligence agencies had information that, from across the border efforts were being made to ferment communal riots in Punjab, Jammu and Kashmir and Bihar. All attempts to find a non-military solution failed. Operation Blue Star took place in June 1984 in the Golden Temple Complex. In the gun battle that lasted 24 hours, hundreds of civilians and army personnel were killed. Army action was the only option left to flush the terrorists out of the Golden Temple.

The anti-Sikh riots after the death of Mrs. Indira Gandhi left the community shocked by the violence. Many terrorist outfits came into being. Terrorism entered Uttar Pradesh and Rajasthan because many terrorists had fled to nearby States. The "Punjab terrorism has been on of the most lethal of all terrorist campaigns active in the world in 1980's."\(^{62}\)

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\(^{62}\) Ibid p 192
Sikh terrorists are believed to be responsible on the bomb that went off over the Atlantic aboard an Air India Aircraft various other international incidents took place in U.S. and elsewhere.

To suppress terrorist acts and disorder in the disturbed State of Punjab, the government brought into being the Punjab Disturbed Areas Act, 1983. The aim was to restore order in the State torn apart by communal violence.

The provisions included the power to fire upon or use force against any person, who acts in contravention of law and order if necessary. Also included is the prohibition of carrying of arms and ammunition or explosive substances. Powers also include the destruction of arms dumps or any structure used as a training camp for armed persons. Officers acting under these provisions are exempt from any legal proceedings.

The tense situation and the terrorist attacks on civilians, brought the situation before the international community viz that it was similar to attacks of the Irish Republican Army.

329 Passengers and crew were on board.

64 The Punjab Disturbed Areas Act 1963, Sec. 4

Ibid. Sec. 5
The Army under General Sundarji and the Police under Director General of Police J. Riberio did their best to bring the situation to normal. The use of force by the State to repel such attacks gained acceptance by the Government and the public. Non-aggressive methods could no longer be employed in the face of pre-calculated terrorist attacks.

Sikh terrorism had taken on international dimensions. Sikhs abroad in U.K., U.S.A. and Canada surprisingly involved themselves in such secessionist activities which took place in developed countries. Although these organizations were active on their soil, yet no action was taken by the respective governments. The lack of interest and controlled these organization to freely air the views and make speeches against the Government of India. Anti-Indian Sikh activities in Canada took the shape of fund raising in Canada for terrorist operations in India, Sikh extremists took shelter in these countries, while governments turned a blind eye. The bomb that exploded aboard the "Kanishka" (Air India) aircraft that crashed mid-air was said to be placed in Canada by terrorists.

Other extremist leaders operated from U.K. where a soft attitude was adopted. The Babbar Khalsa had an office in the U.K. and openly propagated violence in Punjab.
Inspite of the various efforts taken by the U.N. to eliminate terrorism, the member nations of the world did not co-operate with one another and exchange information or prevent provocative speeches on their soil against other nations. Most countries adopted different approaches to deal with terrorism.

The international arms bazaar makes available the most lethal and latest weapons to these terrorists. One such centre was said to be at Darra Adam Khel near Peshawar. This is also known for the sale of narcotics, which move freely from trader to trader to reach the international market. Finances were made available for purchase of weapons. Many such centers exist all over the world. Foreign agents, smugglers networks, extortion money from organized crime added to the gravity of the situation in Punjab. Fake encounters by the Police added to the militancy. Peace loving youth fled their homes and took up arms.

The spell of terror had an impact on the economic, social and administrative set up in Punjab. At times the action by the government was condemned in the international press as 'human rights' violations. With militancy laid to rest, the State started investing in industries with aid from the

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66 Another arms bazaar is said to be in Singapore.
Centre, constitutional governance has overcome the dissent and call for ‘Khalistan’, which cannot become a reality. In a pluralist society like ours, with various reforms in the administrative, economic and social areas, terrorism can be eliminated. Problems must be sorted out at the grass root level. However, as a consequence of these terrorist acts and militant groups, the “rule of the gun that was said of Punjab can now be said of Kashmir and Assam.”

K) KARNATAKA:

As multifarious challenges from terrorist acts are faced by the States, Governments need to tackle the problem from all sides.

Karnataka State faced various problems with crime syndicates operating from the State. Also the bandit Veerappan posed a threat to law and order. The Karnataka Control of Organised Crimes Act, 2000, was brought into being to prevent, control and cope with criminal activity by organized crime syndicates or gangs.

Organised crime is defined as continuing unlawful activity by an individual singly or as a member of a crime syndicate using violence or the

67 Crimes are on the increase in a City like Bombay.
68 Sec 2 (e) of the Act.
threat of violence intimidation, coercion or other unlawful means with the object of deriving economic benefits for himself or any other individual promoting insurgency.

An organized crime in this context refers to two or more persons, singly or collectively as a syndicate indulge in activities of organized crime.

The offence carries severe penalties according to the provisions of the enactment – death, life imprisonment or fine depending on the nature and gravity of the crime. Harbouring a member of the gang, or attempts to conceal a member of an organized Crime Syndicate also carries punishment for five years or life. Mere membership of such a syndicate is seriously dealt with according to law. Property acquired from the commission of such organized crimes or from funds thereof is liable for forfeiture.

Persons possessing unaccountable wealth, who are members of such syndicate (movable or immovable property) can be punished by imprisonment of ten years plus fine. The property is forfeit to the State Government\textsuperscript{69}, after Special Courts try such cases. These Courts may award punishment for any other crimes punishable by law\textsuperscript{70}. It is empowered in Special circumstances to pardon a person who may be in possession of important evidence.

\textsuperscript{69} Sec. 21 Ibid
\textsuperscript{70} Ibid Sec. 7
The police are authorized to intercept oral / electronic or wire communication. Rules for the same are clearly stated, as under the Act it is admissible evidence.\textsuperscript{21}

A major part of such activity is said to take place on cellular phones. The phone operator can be directed to delink or deactivate any such phone calls. This is a new provision incorporated to enable the law enforcement authority to investigate such crimes.

- These interceptions must be done according to the procedure established by law and should not be misused. If any information is intentionally disclosed the police officer is liable under the provisions of the Act.
- Further it is presumed that the unaccounted wealth of a person so acquired from illegal activities eg. Kidnapping is presumed to be for ransom.
- In certain cases confessions made to a Police Officer is admissible evidence. This is a departure from the procedure followed in other criminal investigations.

\textsuperscript{1} Sec 4 Ibid
Taking into consideration the gravity of the situation, provision is made for the protection of witnesses, by,

1) In Camera Proceedings
2) Change of place
3) Withholding of name and address of the witness and
4) Proceedings in Court cannot be published.

This is done in public interest and for the safety of the witnesses.

Due to terrorist activity in Mumbai and Karnataka, organized crime syndicates are known to be working in these States. Money laundering, kidnapping, extortion, killings smuggling and other illegal acts, bring in large finances. They may be channeled to terrorist groups for their operations. The enactment seeks to combat and control such unlawful acts. By controlling and preventing domestic terrorism, international terrorism can be eliminated to a large extent.

L) THE NAXALITE MOVEMENT – IN ASSAM, BIHAR, KERALA AND ANDHRA PRADESH:

A peasant uprising led by armed communist revolutionaries at Naxalbari in 1967 was the inception of militancy in the North East. Intolerable conditions, economic oppression and social humiliation are said to
be the factors contributing to the rise of the poor and underprivileged people to militancy. The Naxalite Movement (from Naxalbari) symbolizes the attack on institutions and established social order.72

This movement started with the peasants of rural India and spread to areas wherever there was poverty and squalor. Industrial recession and lack of policies to tackle unemployment and poverty led the CPI (M-L) to hold power in such areas. Large industrial houses and their policies dominated the Indian Economy. The Naxalite Movement had serious consequences, it soon spread to Assam, Bihar, Kerala and Andhra Pradesh.

In 1967 at Levidi in the Parvathipuram Agency area in Andhra Pradesh two tribals were shot dead by the agents of the landlords. This heralded an area of militancy in the state. What began as a struggle for lands and the right to harvest by the tribals developed into a militant struggle against the state. Guerrilla squads were formed and training camps were organized to teach the villagers how to handle guns. In Andhra Pradesh Nagi Reddy co-ordinated efforts to make the government notice the real problems of the people.

In the uprising against the feudal landlords and the money lender, people were terrorized, or driven away from their homes. The Naxalite brand

72 Banerjee, In the Wake of Naxalbari, Calcutta, Subarnarekha, 1980, p.34
of communism was firmly entrenched in Indian Society. The "annihilation programme" was directed against the Police, BSF and CRF. Thus started violence and counter violence with jail breaks and seizure of arms and ammunition from police stations.\(^3\)

Arson, looting, seizing of land and other acts continued, in Bihar, Orissa, Telengana and West Bengal. The State governments use force to quell these acts. Extra judicial methods were employed. Fake encounters were common, many died in police custody.

From economic crisis, unemployment problems and social injustices, the disillusioned youth were forced to take up arms against the ruling elite. The young drop outs found other avenues, they often collected donations for "Pujas" at gun point.

Some social policies of the government attempted to appease the rural poor, but the deep rooted discontent is still present in society. It appeals to the poor and dispossessed sections of society.

\(^{1}\)Ibid p 285

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Naxalbari was a watershed in the recent history of India. It operates in the tribal areas of Andhra Pradesh, Chhattisgarh, and Jharkhand. Armed warfare became the weapon for such movements, in Punjab, Kashmir, and Assam.

Although socio-economic reforms have been introduced by the government like land re-distribution, increase in pay of daily wage workers, etc., the problems still continue. According to official statistics over 1,700 people have been killed by Naxalites in the last three decades, 207 were from Scheduled Castes, 1994 were tribals and 983 were from the backward class. In recent years there has been a change in their ideology – today there are retaliatory attacks on government officers, institutions and even MNC's. The Peoples War Group recruits from poor peasants and are confirmed to isolated pockets where they challenge the administration.

The attack on the former Chief Minister Chandrababu Naidu by the P.W.G. hardened the Governments stand against the PWG. The spate of violence and counter violence has affected the lives of ordinary citizens. The

75 Ibid 2116
76 The attack on the Coca Cola Plant in A.P. caused more damage than imagined. Corporate houses pulled out of A.P. because of the violence.
'encounter' killings are often said to be another way by which the State gets radical groups like the P.W.G. to surrender. Such members of the PWG are recruited by the Police to flush out other members.

In order to deal with organized crime and extreme violence, the State government of Andhra Pradesh enacted, the Andhra Pradesh Control of organized Crime Act, 2001. This was brought about because of the lacunae in the legal process, which had the effect of neutralizing the entire legal process and enforcement machinery. Illegal criminal activities such as extortion killings, smuggling in contraband, illegal trade in narcotics, money laundering etc, bring in large finances which are used to fund other illegal acts. Narco-terrorism also thrives beyond national boundaries. These gangs use modern communications and technologies that are superior when compared to the enforcement agencies of the State government.

The activities brought under the provisions of the Act include activities or organized crime and organized crime syndicates.

The definition covers a wide range of activities by such syndicates. Punishment in serious matters includes death or life imprisonment. This is awarded to the offender (accused), the abettor and anyone conspiring or knowingly facilitates the commission of organized crime. Anyone harbouring
or concealing any member of a crime syndicate also can be punished. Possession of unaccountable wealth is also mentioned, which may be movable or immovable property. Such property can be forfeit to the State. The Police are empowered to ask for approval to intercept electronic communications (cellular phones).

These powers make vast inroads into the right of privacy and other freedoms enshrined in the Constitution. However this is necessary in the interest of society. Strict controls and procedures are specified in such matters. The Police Officer who intercepts such communications cannot disclose the information except under the conditions mentioned in the enactment.

Special rules of evidence are also provided for under this enactment. A confession recorded by a Police Officer in a free atmosphere is admissible in Court as evidence.

Considering the serious nature of organized crime, special provisions are framed to protect the witness. The burden of proof rests the accused to prove his innocence.
The over-riding effect of this Act makes it an effective legislation that would enable law enforcement officials and the criminal justice system to prosecute and punish such offenders and their accomplices.

The Government of Andhra Pradesh went a step ahead to combat this menace by bringing about the Andhra Pradesh Public Security Rules, 2000. Under the provisions an Association could be declared unlawful, its buildings sealed, properties, securities, funds etc forfeited in certain cases.

The very fact that many States have enacted legislation to tackle organized crime, is evident of the will of the government in controlling these activities. Various legislations promulgated, have loop holes, which enable the offenders to use them to their benefit in the ordinary criminal justice system.

The U.N. in many of its declarations has asked member State to criminalise such offences under domestic legislation, this would lead to trial and prosecution of the offender according to the rule of law.

Bihar and Maharashtra amongst others have enacted similar legislation, extortion, ransom killings, abduction of public officers, unlawful dealings with arms ammunition, drugs, smuggling etc., bring in large revenues. There is a
possibility that such funds are used to spread terror in the attack on soft targets.

M) UNITED LIBERATION FRONT OF ASSAM (ULFA)

Another militant group is the ULFA. Its area of operations is confined to Assam. Their primary aim is to keep “foreigners” out of Assam. Their ideology is one of spreading insurgency in the North – East. Paresh Barwah and Anup Chetra developed this ideology, which has contributed to the growing unrest in the region. The youth are trained in guns and in the use of force against the State. Their strategy lies in kidnapping for ransom eg. managers of tea estates. Sometimes they are returned alive after the ransom is paid. The ULFA wishes to cut out a separate State of Assam. Laldenga of Mizoram\textsuperscript{7} uses the same tactics to spread terror in the North East. As the State administration is unable to sort out issues the population lives in fear and terror. Ambushes and encounters are common.

Assam is a State situated in the North East of India of about 78,500 Sq. Km. The revolutionary struggle is on for “Liberation” of the State. Militancy has overrun the State since 1979. Like the movement for “Khalistan” in Punjab, the ULFA believes that they are ‘freedom fighters’. They also

\textsuperscript{7} Mizo National Front
perceive it as a struggle for their identity, which they lost during partition. The influx of foreigners entering the state creates the problems, which they are facing.

Assam is a backward State; the little resources it possesses, is perceived to have been exploited by colonists. The struggle is of armed self defence of the oppressed people asserting their right to self determination. According to them the Government of India has ruthlessly used armed force, opting for a military solution of their problem.

There have been large scale human rights violations by the armed forces. The ULFA recognize that only those born of Assamese parents belong to the State all others are “foreigners”. This has led to a break down of the law and order machinery. The area of operations extend up to Bhutan, Meghalaya and Arunachal Pradesh – all backward and hilly areas with forests and estates. Most of their ‘aid’ and money laundering operation are carried on in Bhutan—near the Nalbari District of Assam.

By 1986 they had established links in Myanmar where the training camps are set up. ULFA is said to have established links with some organizations in Pakistan, Afghanistan and Bangladesh.
These countries are interested in supporting militancy and insurgency hoping to create law and order problems for the government. Surprising the ULFA has invested its finances in commercial activities in Bangladesh, from where income is generated to support their operations and terrorist activities. The funds, arms, ammunition and support from Pakistan has been an ongoing process.

The government has sent in troops to try control the situation and seal escape routes along the borders frequented by these terrorists. Kidnapping and extortion is another method often used by them. Illegal trade in narcotics is ‘Business’ which is used to fund them. With links extending to China, this area is a hot bed of militant operations. The State government has used its resources to bring the situation within control, but still much needs to be done.

The lack of identity with India creates a dangerous situation with national allegiance being an unknown factor in such region (The same was noticed in Aksai Chin).

78 The Muslim United Liberation Tigers of Assam and the United Liberation Front of Assam are said to be the suppliers of aims.
The extreme poverty of the region even though rich in resources, poses serious issues for the Government. Extortion, kidnapping and killings continue in the region. Further steps must be taken by the State administration if law and order is to be restored in this troubled State.

In 2001, the ULFA demanded a plebiscite in respect of its independence from India favouring a political solution. According to the militant outfit more than 10,000 lives were lost due to the insurgency in Assam in the last twenty years.

In recent times the ULFA has blown up railway tracks, oil pipelines, attacked passengers from Bihar and observed bundhs. Candidates from outside the State have been abused and beaten to prevent them from taking up employment in Assam.

Over the years the ULFA Cadres have operated from camps in Bhutan and have attacked India from there. However the Royal Bhutan Army is said to have cracked down on about thirty such camps within the country recently. (Operation All-Clear, 2003).

Recently Myanmar has also cracked down on terrorist organizations in the country, mounting attacks on India, Bangladesh is yet to follow suit.

In the light of these events and the signing of the SAARC Treaty on Terrorism, the nations of the region have decided to co-operate to fight terrorism, Member States were called upon to deal with such matters by enacting national legislation.

New strategies need to be devised to tackle this problem. The public must be educated in the effects of terrorism, on the country. Development and production are of little consequence to insurgents, militants and terrorists. Every terrorist may be a criminal but every criminal cannot be called a terrorist.
A Russian volunteer carries a child after commandos stormed the school at Beslan on Friday — Reuters

More photos at www.newindpress.com
SECTION -B

TERRORISM – RECENT TRENDS

Terrorism is a historical phenomenon, slowly emerging from the shadows to gain “prominence” both nationally and internationally. Confusion is further created by the political connotations of this problem confronting all governments around the globe. The failure of the international community to take an effective initiative to combat terrorism adds to the seriousness of the issue. Legislative efforts are currently being considered to deal with terrorism. The recent spurt of violent activities taking place has shocked the conscience of the world. Opposing views on terrorism are given by many countries largely relying on their political preferences. The rise of religious extremism has added another dimension to terrorism. Ideological perceptions have created deep differences between the nations and in their understanding of this multinational problem. Seemingly the headquarters of international terrorism has shifted from the western nations to our sub-continent. The alliance of Osama Bin Laden with the Taliban and the remote inaccessible areas of Pakistan is well known. Modern technologies, large finances and new

innovative methods are factors that have contributed to the success of terrorist activities both nationally and internationally.

The success of the 'Jihadis'\(^2\) in forcing the armies of the former Soviet Union out of Afghanistan added to the seriousness the world was facing. This gave an impetus to such organizations. Eg. Al-Qaeda to force Governments to bow to their dictates. This paved the way for future tactics. Mobile terrorist organizations with various territorial affiliations moved freely with finances and the freedom of movement. The western world did not react strongly when they set up training camps in Kashmir and lead to proxy war in this region. The U.S. only reacted when acts of terrorism targeted civilians ships and structures of the U.S. eg. The destruction of embassies in Dar-es-Salaam, Nairobi and the World Trade Centre.

The 9/11 incident is now considered to be an attack of terrorists on democracy and democratic governments, the world over. Political measures need to be enunciated both by like minded Governments and the U.N. Security Council. The attack on the Pentagon and other targets posed adverse consequences for India. On the 13\(^{th}\) of December 2001 the Indian Parliament was attacked. This marked a new dimension of terrorism in India and abroad.

\(^2\) Islamic revolutionaries – terrorists.
Terrorism had entered a new and violent phase. Religious fundamentalism gave way to calculated acts of terror with devastating financial losses to governments.

The aim was to cripple the progress of the nation both economically and politically.\(^3\) The goal is now clearly defined and the methods employed with devastating consequences. Osama Bin Laden from "somebody else's problem" became a wanted person from the West to the Middle East and finally in South Asia. Law Enforcement Agencies are now faced with a more serious problem curtailing and suppressing terrorist acts. The war on terrorism is often referred to as the first war of the 21\(^{st}\) Century. The need of the hour is a strategic programme of action to suppress and combat terrorism.

The war on terrorism and non-proliferation took a different turn when Pakistan was granted Major Non-Nato Allay (MNNA) status by the US. This status of Major Non Nato Allay is a significant move by the US keeping in mind her interests in South Asia. For decades the US has had a very special relationship with Pakistan. Billions of dollars of aid has flowed into Pakistan, or at given times billions of dollars are written off as the country is unable to meet its commitments.

\(^3\) The new target of terrorism is the State itself.
After the 9/11 attack, the US has been keen to expand her activities and to effectively combat terrorism in the world. In the operation to rout out the Taliban and the Al-Qaeda from Afghanistan, there had been a multilateral approach with Nato allies. However Britain was the only nation with a large member of forces stationed close by who was able to provide immediate assistance under US leadership.

Whether it was Kosovo or Libya, the war on terrorism and non-proliferation requires international cooperation of all nations. MNNA status has been accorded by the US to twelve other countries spread across the globe. These like Japan, Israel and Jordan have an important relationship with the US. Some are important as they act as a buffer state for geo-political reasons.

The significance of this new status would pose serious consequences for the South Asian region. Military aid, training and equipment would be readily available. At any instance the US could intervene in regional matters that should be of no concern to it. Nato interests which are limited to the Euro Atlantic region would now spread to the Indian Ocean and Arabian Sea. International politics takes on a different dimension with America leading Nato military forces in the region, ostensibly to support and prop up the regime in Pakistan.
For the leadership in Pakistan, this would increase the reliance of the administration on the US to decide issues of regional interest. This is no doubt a reward for past services keeping future expansionist policies in mind. Pakistan had all along supported the US military base in Diego Garcia, leading to the militarisation of the Indian Ocean, despite protest from the countries of the region. Presently, to oust the Al-Qaeda leadership in Afghanistan, the US needs a non-Nato ally to go where no American has ever gone before from Afghanistan to Iran and Iraq.

South Asia, with its progressive democracies represents great potential, especially India, to became a powerful nation to be reckoned with in the near future. Her nuclear capability, military might and the strides made in space, represents, a change in the balance of power in South Asia which could significantly effect the Middle East and South East Asia, both regions of immense interest to the US.

What seems to have been brushed aside is the fact that the camps which train terrorists are located in Pakistan. The arms bazaar is across its border. The flourishing trade of illegal arms smuggling and trafficking in narcotic drugs has Pakistan at the epicenter of activities. Military rule and terrorist threats to American interests are on the backburner, while a new strategic
alliance is forged. The international scene for the 21st century politics is set, amidst the backdrop of the Indian Ocean.

However, the role of the US during the war in the former East Pakistan is not forgotten. The administration is all set to combat any developments in the region, with US owned stockpiles, military equipment and other items now made accessible in Pakistan. Obviously it means that the Americans are here to stay. This ushers in a new era of South Asian politics.

Nato was established in 1949, primarily to protect Europe against a possible attack from the former USSR. Now as that threat does not exist anymore, the Nato had to re-define its role in the changed international scenario. The fight on terrorism, non-proliferation and illegal trafficking in drugs has been the concern of the international community for decades. Over the years Nate has increased its membership from the original twelve, to other countries from Eastern Europe. Further it also has a dialogue with some countries eg., Mediterranean States and Russia. Ukraine was invited to join the alliance because of her strategic importance.

In its efforts to combat terrorism Nato has supported the US by aid and logistical support, especially after 9/11. However its role in Afghanistan was limited. Although fourteen NATO members took part in the military
operations against the Taliban – Operation Enduring Freedom, it was largely under US leadership. The UN mandated international Security Assistance Force has been under the command of Nato members.

The recent Madrid bombings\textsuperscript{\textit{84}} and the decision to withdraw Spanish troops from the Iraq has significantly affected Nato efforts. In the light of threats if more states were to re-consider their stand on terrorism and weapons of mass destruction the efforts of the international community in this regard would be counter productive. Efforts to equip this alliances to operate outside the Euro-Atlantic region have been set in motion. At the Prague Summit the alliance adopted various measures to deal with terrorism.

The new status of her neighbour poses serious consequences for India. This will affect defence expenditure and increase budget allocation, giving an impetus to the arms race. Non-proliferation of nuclear weapons would have to be re-evaluated in the light of military arms and equipment (under US or Nato control) present in Pakistan. The events that occur in Afghanistan, profoundly affect Indian conditions.

\textsuperscript{84} A set of ten bombs were placed on trains that exploded during the morning rush hour, killing hundreds of commuters.
Terrorism, both state sponsored and cross border, takes place regularly in Jammu and Kashmir. This would encourage further militant and insurgent activities. During the Soviet presence in Afghanistan, many missiles meant to be used by the army were used in Jammu and Kashmir. Militant organizations like the ULFA could expand their activities expecting help and funding like the contras in Nicaragua. The trade in narcotics which is used to fund terrorist activities may hopefully be controlled by presence of Nato members.

Recently it was reported in the Press that a "Global Terrorist Summit" was held in Pakistan, in March this year. This has brought into focus the second line of Al-Qaeda leadership. The meet was said to be attended by the terrorist "elite" of the world. Analysts are of the view that this may a forerunner for further terrorist strikes in the world. It is feared that this may be a planning session for another 9/11 attack.

All violence is terrorism. In recent times the victims of terrorism are innocent civilians. This is yet another tactic used by terrorists to force governments and multinational organizations to accede to their demands ie., terrorist blackmail. After the beheading of a U.S. national by a terrorist group in Iraq protesting over U.S. presence in their country, three Indian nationals

\[5\text{ Deccan Herald 16.8.2004.}\]
(truck drivers) were being held hostage in Iraq. They were later released after the ransom was paid.

The terrorist demands included a large ransom and the pull out of the Kuwait, Gulf Link Transport firm from Iraq. The Government of India all along has taken a stand against the presence of U.S. led forces in Iraq. Despite this three Indians are living under the fear of death. The victims of terrorism – hostages have often faced life threatening situations; from hostages abroad hijacked aircraft, embassy staff, to soldiers fighting a war, and in present times innocent civilians going about their daily jobs. Countries and Governments alike have to deal with it – Spain, U.S.A. Philippines and now India. The media plays a vital and important role, which is exploited by terrorists for their own narrow ends. The fear generated by terrorism adds to the social costs faced by Governments in present times. The terrorist of today revels in violence and thus sends a powerful message across. He is educated, trained and skilled in various methods and is paid a high salary. Some consider him a "freedom fighter", ready to lay down his life for a cause. Some terrorist organizations like the Harkat ul Ansar and the Lashkar-e-Taiba are said to

86 The New Indian Express 9.8.2004
87 Filipino nationals were also threatened if the forces did not move out of Iraq. Approximately 1500 school children and adults were held hostage in a Beslan (Russia) school by terrorists demanding an independent Chechnya. More than 350 died. The New Indian Express, 4.9.2004
operate with the most modern communication systems, a publicity cell, trained people and a large number of recruits. Palestinian groups enjoy state support to some extent. Terrorism today is;

1) a transnational enterprises.

2) with modern technology

3) which may lead to a conventional war in the future if left unchecked.

4) co-operation between terrorists and organized crime is noticed.

5) and is fast spreading across to areas least developed with a high illiteracy rate.

6) it has transformed over time from a proxy war, to a war like situation facing most Governments of today.

7) this is because inter-States differences give rise to counter strategies and competition to achieve their desired objectives.

8) the attempt to effect radical change must be combated at the earliest.

9) it is a challenge to the authority of the state.

Efforts are on at the United Nations to implement effective measures to combat terrorism. The International Atomic Energy Agency (IAEA) has taken important steps to prevent nuclear weapons from being stolen and used.

\textsuperscript{8} Ibid at 81
by terrorists. It has taken on the important role of reinforcing national efforts in detecting and preventing the smuggling of nuclear material. Small quantities are capable of making a nuclear device. This could pose significant consequences for the world community – by exposing the population to the dangers of radiation and other economic damages. The physical protection of nuclear material is thus necessitated. It is common knowledge that because of this threat, and its antecedent dangers that led the U.S. government to justify its action against Iraq. However, anti-terrorism practices and policies of many countries pose a greater threat to the enjoyment of human rights. Anti-terrorism measures need to be addressed within the framework of law. Sometimes the world “terrorism” has been used to discriminate against refugees, asylum seekers and other vulnerable groups. Governments must work within their respective mandates to monitor and implement counter-terrorist measures in order to prevent its abuse.

As the number of terrorist activities arise around the globe, terrorists find new ways and means to deal with governments and anti-terrorist measures. As governments take steps to suppress and combat terrorism, terrorists in order to strike fear in governments hit “soft targets” to make their point. On Sept. 9, 2004 a car bomb exploded near the Australian embassy in

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89 U.N. Newsletter – Editor, Vol. 58, No.27, 5
Jakarta (Indonesia) killing eight and injuring over a hundred and sixty people. The Jemaah Islamiyah a South Asian terror network with close links to the Al-Qaeda is suspected to be behind the attack. The scale and magnitude of the threat that confronts us is well known. In the light of the same Governments need enhance their role by criminalising and condemning the act of terrorism.

The effects of terrorism are felt by all sections of society. Innumerable prescriptions to eliminate terrorism no longer holds good, it is time to act together to combat terrorism effectively.

90 The New Indian Express, Sept. 9, 2004
91 Legislative efforts are on to create an international crime of terrorism.
Binalshibh, who was arrested in Karachi and taken to the United States for his alleged role in the September 11, 2001 attack on the World Trade Centre.