CHAPTER-VII

STATUTORY SAFEGUARDS AGAINST

TERRORISM

A. Introduction

Terrorism has become a menace to humanity and it has practically spread all over the world. The former United State President Bill Clinton pointing out the magnitude of the problem said that “terrorism has a new face in the 1990s. Today terrorists take advantage of greater openness, the explosion of information and the weapon technology. The new technology of terror and their increasing availability, along with the increasing mobility of terrorists, raise chilling prospects of vulnerability to chemical, biological and other kinds of attacks. This is a threat to human kind.¹

Atal Bihari Vajpayee, Former Prime-Minister of India, said his country supported the current campaign against the terrorist networks in India & Afghanistan and hoped for its early and successful solution. He urged the international community to work towards establishing a broad based, representative and neutral government in the country, so that a political vacuum could be avoided at the end of the military campaign and terrorism could be effectively dealt with.²

Dr. Mammohan Singh, Prime Minister of India speaking at the passing out parade of the 58th batch of IPS (Indian Police Service) probationers at the Sardar Vallabhbhai Patel National Police Academy, said “terrorism is a most dangerous threat today”. He also pointed out that there were several strains of terrorism present and asked the probationers to keep abreast of developments in this regard. He further said “Today’s terrorists are most sophisticated, have transnational linkages and have adequate resources.” He cautioned that there are required both

¹ Remarks by the President of US to the opening session of the 53rd United Nations General Assembly see http://www. State.govt/
² Remarks by the Prime Minister to the 56th session of the United Nations Generally Assembly on November 10, 2001.
knowledge and determination, if, we are to succeed against these elements.” He also asked police personnel to gear up to meet challenges to internal security.”

The modern nation states has come under a severe challenge as a result of rising trends in terrorism today. The recent spurt in terrorist incidents across the world, especially the September 11, 2001 attacks and growing recognition of a burgeoning danger have prompted a number of countries to pass anti-terror laws to meet new contingencies. The spurt in anti-terror legislation appears to reflect a measure of surprise among the governments around the world as the magnitude and the character of the new wave of terrorist activities go up. Do we really need the anti-terror laws to check this menace? The answer is that yes, we really need the anti-terror laws to check it.\(^4\)

To check terrorism, legislation has been consistent with the jurisprudential history of the states and special laws had been enacted from time to time to deal with special situations arising out of terrorism, India’s record is no exception. The first preventive detention law was introduced by the British in 1793, and was aimed solely for the purpose of detaining anybody who was regarded as a threat to the British settlement in India. The East India Company in Bengal subsequently enacted the Bengal State Prisoner’s Regulation, which was to have a long life as regulation 111 of 1818. It was opposed to all the fundamental liberties. In 1908, the government passed the following Acts:

(ii) The Explosive Substances Act, 1908
(iii) The Indian Press Act, 1908
(iv) The Criminal Tribes Act, 1908
(v) The Prevention of Seditious Meetings Act, 1908.


\(^4\) Walter Lacquer, *No End To War*, New York: Continuum, p. 11.
The aim of these legislations were to break the back bone of the revolutionary movements by curbing meetings, printing and circulation of seditious materials and propaganda, and to detain suspects.

Further, the Foreigners Ordinance of 1914 enacted for the purpose to restrict the entry and movement of foreigners in India. The defence of India Act, 1915 was also enacted. On the recommendation of Justice Rowlatt Chairman of the committee appointed to curb seditious movements in India, the Rowlatt Act also known as the Anarchical and Revolutionary Crimes Act, 1919 was passed giving the unbridled powers to the colonial government to arrest and imprison suspects without trial and crush civil liberties.

Terrorism has claimed more lives in India than anywhere else in the world. More than one hundred thousand persons have fallen victims to terrorism in various parts of the country. In the country side, innocent persons, government officials, police men, security forces and wealthy persons are kidnapped in large number and killed. Banks are attacked and cash is looted Railway lines are damaged Houses are gutted. They (terrorists) dictate every aspect of life and establish own people courts, pass death sentences and executes orders of their courts. In the North-East region of India not only hundreds of people are being massacred almost daily in the inter-tribal wars but non tribals living there for generations are being killed, in large numbers and their properties also are being looted, destroyed and forced to leave their home at gun point.

Today, the questions are persistently asked by the sensitive member of the society how long time will it take the government or its enforcement agencies to terminate terrorism in Jammu and Kashmir and other affected states? Law is an important instrument for regulation of human conduct and behaviour. To deal with the problem of terrorism the government has passed a number of laws.

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These are as follows:

(i) The Inflammable Substances Act, 1952

(ii) The Arms Act, 1959

(iii) The Arms Rules, 1962

(iv) The Unlawful Activities (Prevention) Act, 1967


(vii) The Assam Preventive Detention Act, 1980


(ix) The Anti Hijacking Act, 1982


(xii) The Chandigarh Disturbed Areas Act, 1983.


(xiv) The Terrorist and Disruptive Activities (Prevention) Act, 1985


(xix) The Prevention of Terrorism Act, 2002. (POTA)


All these laws were passed to meet the special situation most of them were directed against the major menace of terrorism. A few of them have been termed as anti-terrorism laws to curb the terrorist activities in India.

These may be discussed as follows:

(a) Object: It was enacted to provide for the speedy trial of certain offences in terrorist, affected areas and for matters connected with it.

(b) Interpretation Clause: The Terrorist Affected Areas (Special Courts) Act, 1984 extends to the whole of India except the state of Jammu and Kashmir and it had come into force on 14th day of July 1984.

"Terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential for the community or in damaging property with a view to

(i) putting the public or any section of the public in fear or

(ii) affecting adversely the harmony between different religious racial, language or regional groups or castes or communities or

(iii) coercing or overawing the government established by law.

The Central Government may declare a terrorist affected area where activities of terrorist are happened and may constitute such area into a Single Judicial Zone or into as Many Judicial Zones as it may deem fit. A notification, in this regard specifying the area would be issued.

(c) Special Courts: Special Courts with wide powers are established under this Act to deal with the offences relating to terrorist activities. The establishment, composition, power and Jurisdiction of these courts is briefly explained as under:

(i) Establishment of Special Court: The Central Government may, for the purpose of providing for speedy trial of scheduled offences committed in a judicial zone, establish, by notification a Special Court in the such judicial zone (a) within such judicial zone or (b) the Central Government having regard to the exigencies of the situation prevailing in such judicial zone considers it expedient

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7 Received the Assent of the President on August 31, 1984; published in the Gazette of India (extra), part III, section 1, dated Sept. 1, 1984 and now repealed.
8 The Terrorist Affected Areas (Special Courts) Act, 1984, Section 1.
9 Ibid.
10 Id. Section 3.
so to do, any place outside such judicial zone but within the state in which such judicial zone is situated.\(^{11}\)

If the State Government is of opinion that it is expedient to establishment to a judicial zone, or two or more in the state, an Additional Special Court outside the state, for purpose of the speedy trial. It may request the Central Government to establish to such judicial zone or zones as an Additional Special Court outside the State and the Central Government may, after taking information furnished by the respective State Government and making such inquiry, establish, by notification, an Additional Special Court at such place outside the state.\(^{12}\)

(ii) **Place of Sitting of Special Court** :- A Special Court may, if it considers it expedient or desirable so to do, sit for any of its proceeding at any place other than the ordinary place of its sitting in the state in which it is established. It is also provided that the Public Prosecutor may certify to the Special Court to held its trial at some other place for the protection of the accused or in the interest of justice. The Special Court may, after hearing the accused, make an order to that effect, if the Special Court thinks fit to make any order.\(^{13}\)

(iii) **Jurisdiction of the Special Court**:- The jurisdiction of Special Court shall be judicial zone or part of a terrorist affected area which would be triable only by the Special Court for such judicial zone in the state. It is also provided that the cases, earlier involved before declaration of the terrorist affected area, would be transferred to the Special Court having the jurisdiction under this section and it shall be proceed with such cases from the stages at which they were pending at that time.\(^{14}\)

If any judicial zone in a State, the Central Government having regard to the provisions of sub-sec(2) of section 4 and facts and circumstances of the case and all other factors, is of the opinion that such offence should be tried by the

\(^{11}\) Id section 4(1).  
\(^{12}\) Id section 4(2).  
\(^{13}\) Id section 6.  
\(^{14}\) Id section 7(1).
additional Special Court established in such judicial zone outside the state, the Central Government may make a declaration to that effect. Provided that no such declaration shall be made unless the State Government has forwarded a report in writing to the Central Government.\textsuperscript{15}

A declaration made under sub-section (2) of section 7 shall not be called in question in any court.\textsuperscript{16} Where any declaration is made in respect of any offence committed in a judicial zone in a state of any prosecution is pending, immediately before such declaration in any court shall be stand transferred to such additional Special Court and the proceeding shall be proceeded with such case from the stage at which it was pending at that time.\textsuperscript{17}

(d) Composition and Appointment of Judges of Special Court

(i) Composition :- A Special Court shall be presided over by a judge. There may be any Additional Judge or Judges. Judge of the Special Court may from time to time order in writing provide for distribution of the business of the Special Court among himself, Additional Judge or Judges for purpose of expedient disposal of business.\textsuperscript{18}

(ii) Appointment :- The Judge or Judges of the Special Court shall be appointed by the Central Government with the concurrence of the chief justice of the High Court.\textsuperscript{19}

(iii) Removal :- A person who has been appointed as judge or an Additional Judge of a Special Court shall be removed after attainment of age of superannuating under the rules applicable to him in the service to which he belongs.\textsuperscript{20}
(e) Public Prosecutors

(i) Appointment: The Central Government shall appoint a person as a Public Prosecutor for every Special Court. The government may also appoint one or more Additional Public Prosecutor or Additional Public Prosecutors provided that a special Public Prosecutor for any case or class of the cases may be appointed by the Central Government.\(^{21}\)

(ii) Qualification of Public Prosecutor: A person, who shall be appointed as Public Prosecutor or an additional or as special public prosecution should be in practice as an advocate for not less than 7 years or has held any post, for a period of not less than 7 years under the union or state, requiring special knowledge of law.\(^{22}\)

(iii) Acquaintance: Every person who has been appointed as a Public Prosecutor or an Additional Public Prosecutor or a special public Prosecutor under this shall be deemed to be a Public Prosecutor within the meaning of clause (4) of section 2 of the Code of Criminal Procedure 1974.\(^{23}\)

(f) Powers and Procedure of the Special Courts

(i) Cognizance of offences: A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a public report of such facts.\(^{24}\)

(ii) Summary Trial: Where an offence is punishable with imprisonment for a term not exceeding three years or with fine or both, inspite of any thing contained in sub-section of section 260 or 262 of the Criminal Procedure Code, the Special Court may try the offence in the summary way in accordance with procedure laid

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\(^{21}\) Id section 9(1)

\(^{22}\) Ibid

\(^{23}\) Id section 9(3)

\(^{24}\) Id section 10(1)
down in sections 263 to 265 of the Code. Provided that when it appears to the Special Court that nature of the case is undesirable to try it in a summary way, the court shall recall any witnesses who may have been examined and proceed to hear the case according to the provisions of the Code. It is further provided that any conviction in a summary trial under this section shall be lawful.

(iii) Equivalent Power to Court of Session: A Special Courts shall have all the powers of a Court of Session and shall try such offence as were a Court of Session so far as may be in accordance with the procedure prescribed in the code for the trial before a Court of Session

Every case before an Additional Special Court, subject to other provisions of this Act, shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

(iv) Trial of Other offences: A Special Court may also try any offence other than the scheduled offences with which the accused may be charged at the same trial of the offence.

(v) Conviction: If, in the course of any trial under this Act, it is found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a scheduled offence, convict such person for such offence and pass any sentence authorized by law for the punishment there to.

(g) Transfer of Cases: Powers of Supreme Court

(i) Power of Supreme Court: The Supreme Court may, in the interest of justice under this section, order that any particular case be transferred from one Special Court to another Special Court.

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25 Id section 10(2) Section 260 provides power to try summary and Section 262 provides procedure for summary trials.
26 Ibid.
27 Id section 10(4)
28 Id section 10(5)
29 Id section 8(1)
30 Id section 8(2)
31 Id section 11.
(ii) **Power of Special Court** :- Where in opinion of the Special Court the offence is not a scheduled offence and it has no jurisdiction to try such offence may transfer it to any court having jurisdiction, and the court to which the case is transferred may proceed, as if, it has taken cognizance of offences.\(^{32}\)

(h) **Protection of witnesses**

(i) **Proceeding in Camera** :- All proceedings, before a Special Court, shall be conducted in camera. It is also provided that where the Public Prosecutor applies that such proceeding or part should be conducted in camera may be held in the open court by order of the court.\(^{33}\)

(ii) **Keeping the Identity and Address Secret** :- A Special Court may, on an application made by a witness or Public Prosecutor, take such measure for keeping the identity and address of the witness as secret.\(^{34}\)

(iii) **Without Prejudice** :- The subsection 2 of section 12 should be followed without prejudice by the Special Court.\(^{35}\)

(iv) **Punishment** :- Any person who contravenes any direction issued under subsection (2) of section 12 shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.\(^{36}\)

(i) **Appeal**

(i) **Appeal to Supreme Court** :- An appeal shall lie as a matter of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.\(^{37}\)

(ii) **No Appeal or Revision by other court** :- Except as aforesaid, no appeal or revision shall lie to any court from any judgment sentence or order of a Special Court.\(^{38}\)

(iii) **Appeal within Prescribed Time** :- Every appeal under this section shall be preferred within a period of 30 days from the date of the judgment, sentence or

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\(^{32}\) id section 13.  
\(^{33}\) id section 12(1).  
\(^{34}\) id section 12(2).  
\(^{35}\) id section 12(3)  
\(^{36}\) id section 12(4)  
\(^{37}\) id section 14(1)  
\(^{38}\) id section 14(2)
order appealed from.\textsuperscript{39} It is also provided that the Supreme Court may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that an appellant had sufficient cause for not preferring the appeal within the period of 30 days.\textsuperscript{40}

\textbf{(j) Miscellaneous provisions}

(i) \textbf{Modification of provisions} :- A Special Court may modify any offence scheduled according to provision of the code. And it can take the cognizance of offence within the meaning of clause (c) of section 2 of code.\textsuperscript{41}

(ii) \textbf{Follow of Procedure of Section 167 of Criminal Procedure Code}: The procedure shall be followed when investigation is not completed in twenty four hours and death sentence would be awarded after completion of procedure.\textsuperscript{42}

(iii) \textbf{Application of section 438 of code} :- The Section 438 of the code shall be applied in relation to any case involving the arrest of any person on the accusation of having committed a scheduled offence in a terrorist affected area.\textsuperscript{43}

(iv) \textbf{Release on Bail} :- A person who is not an accused of a scheduled offence shall, if is in custody, be released on bail on his own bond according to the provisions of the code.\textsuperscript{44}

(v) \textbf{Limitation of Bail} :- The limitations on granting the bail specified in sub-section (5) are in addition to the limitations under the code or any other law for the time being in force on granting of bail.\textsuperscript{45}

(vi) \textbf{Abolition of Certain Special Courts} :- The Central Government may, by notification in the official Gazette, where the area comprising a judicial zone has ceased to a terrorist affected area and no cases are pending before a Special Court
or an additional Special Court established in such judicial zone, abolish such of Special Courts or additional Special Court.  

(vii) Overriding Effect of the Act :- The provisions of this Act shall have effect inspite of any thing contained in the code or any other law, and the provisions of the code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions of the code, the Special Court shall be deemed to be a court of a session.  

In particular and without prejudice to the generality of the provisions contained in subsection(1), the provisions of sections 326 and 475 of the code shall apply to the proceedings before a Special Court and for this purpose any reference in those provisions to a Magistrate shall be construed as a reference to the Special Court.

(viii) Presumption :- In the Indian Evidence Act, 1872, after section 111 the following section shall be inserted namely :-

111A presumption as to certain offences (i) where a person is accused of having committed any offence specified in the sub-section (2) in (a) any area declared to be disturbed area under any enactment, for the time being in force, making provisions for the suppression of disorder and restoration and maintenance of public order, or (b) any area in which there has been, over a period of more than one month, extensive disturbance of public peace, and it is shown that such person had been at a place in such area at a time when fire arms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

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46 Id section 15A.
47 Id section 16(1)
48 Id section 16(2). Section 326 provides the conviction or commitment on evidence partly recorded by one Magistrate and partly by another and Section 475 provides the delivery to commanding officers of persons liable to be tried by court martial.
49 Id section 20(1).
The offences referred to in sub-section (1) are as follows:

(a) an offence under section 121, 121A, 122, 123 of the Indian Penal Code (45 of 1860).\(^{50}\)

(b) criminal conspiracy of attempt to commit or abetment of an offence under section 122 or section 123 of Indian Penal Code.\(^{51}\)

(k) Critical Appraisal of the Act: The Terrorist Affected Areas (Special Court) Act, 1984 was passed with view to control violence and disruptive activities by terrorists. The Act is made applicable throughout the territory of India except the state of Jammu and Kashmir. The Act provides for the establishment of Special Court in terrorist affected areas. The court shall be presided over by a person to the rank of Session Judge or Additional Session Judge. There are radical changes in the procedure followed by these courts in the trial of offences. The court may follow the summary procedure in the major trials with a view to dispose of the matter in a speedy manner. The court are given wide powers and proceedings of the court shall be held in camera. The identity and address of witnesses are to be kept secret. The right to appeal has been restricted and there will be only one appeal which will lie in the Supreme Court. The right to revision before the High Court is provided. Further, Section 111A of the Indian Evidence Act after amendment, has been made applicable to the offenders under the Act, which provides presumption in favour of commission of offence in these areas under certain circumstances. Resultantly, the burden of proof is also shifted negatively on the accused. However, this Act was repealed and replaced by the TADA, 1987

\(^{50}\) Id section 20(2). Section 121 provides waging or attempting to wage war or abetting waging of war, against the Government of India. Section 121A provides conspiracy to commit offences punishable by section 121. Section 122 provides collecting arms etc with intention of waging war against the Government of India. Section 123 provides concealing with intent to facilitate design to wage war.

\(^{51}\) Ibid.

(a) Objects and Reasons:

The Terrorist and Disruptive Activities (Prevention) Act, 1985 was enacted in May 1985, after repealing the Terrorist Affected Areas (Special Courts) Act, 1984, in the background of escalation of terrorist activities in many parts of the country at that time. This Act was extended to the whole of India including the State of Jammu and Kashmir and also to the citizens of India living outside India and this was enforced for a limited period of two years expecting to control and prevention of threat of terrorism within such period. But the problem of terrorism remained unabated. This Act was due to expire on the 23rd May, 1987. Since both the Houses of Parliament were not in session and it was very necessary to take immediate action, the President promulgated the Terrorist and Disruptive Activities (Prevention Ordinance 1987) on May 23 1987. It came into force with effect from the May 24, 1987.

The Ordinance included all the provisions of the 1984 Act subject to following charges:

(i) punishment for terrorist and Disruptive Activities was made more deterrent,

(ii) the Central Government has also been empowered to continue Designated Courts.

The main object of this Act was to combat and cope with the continuing menace of terrorism. It is also proposed that persons who are in possession of arms and ammunition as specified in the Arms Rules, 1962 unauthorisedly in an area to be notified by the State Government, shall be punishable with imprisonment for a term which shall not be less than 5 years but it may be extended to imprisonment for life and fine. It is further provided that confession made by a person before a police officer not below the rank of a Superintendent of Police (SP) and recorded by such police officer either in writing or on any mechanical device shall be used or admissible in a trial of such person for an offence under the proposed legislation or any rules made there. It is also provided that the Designated Court
shall presumed that the accused had committed an offence unless contrary is
proved, where arms and explosives or any other substances recovered from the
possession of the person/persons, or the evidence were found by the expert of
finger printer, or where a confession has been made by a co-accused that the
accused had committed the offence or where the accused had made a self
confession of offence to any other person except a police officer all there shall be
presumed evidences by the Designated Court. Further; in case of a person who
has been declared as a proclaimed offender in a terrorist case, in this regard
identification of such person shall be made by the evidences, by witnesses on the
basis of his photograph or by the test of identification of the parade. The
Designated Courts are empowered to try offences in a summary way in
accordance with the procedure prescribed in the Code of Criminal Procedure
(b) Interpretation Clause :- The Terrorist and Disruptive Activities (Prevention)
Act, 1987 was enacted for prevention of and for coping with Terrorist and
Disruptive Activities and for matters connected therewith or incidental thereto. In
this Act some important clauses have been discussed which are as under:

(i) “Designated Court” means a Designated Court constituted under
section 9 of this Act,.

(ii) “Disruptive Activity” has the meaning assigned to it in section 4.

(iii) “Notified Area” means such area as State Government may, by
notification in the official Gazette, specify.

(iv) Public Prosecutor ‘means Public Prosecutor or an Additional Public
Prosecutor or a special Public Prosecutor appointed under section 13
and includes any persons acting under the directions of the Public
Prosecutor.

52 The Terrorist and Disruptive Activities (Prevention) Act, 1987, Section 2(c)
53 Id. Section 2(d)
54 Id Section 2(f)
55 Id Section 2(g)
(v) "Property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title and interest in, such property or assets, derived and obtained from the terrorist act and includes succeeds of terrorism.  

(vi) "Terrorist Act" has the same meaning assigned to it in sub-section (1) of section 3 and the expression “Terrorist” shall be construed accordingly.

(vii) "Abet" means the communication or association with any person or class of persons who is engaged in assisting any manner terrorists or disruptionists.

(c) Punishment for Terrorist and Disruptive Activities

(i) Punishment for Terrorists Activities:

(a) Whoever with the intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of people or to adversely affect the harmony amongst different sections 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 poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature 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 detains any person 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, commits a terrorist act.
(b) Whoever commits a terrorist act, shall if such act has resulted in the death of any person be punishable with death or imprisonment for life and shall also be liable to fine. In any other case such act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.\textsuperscript{60}

(c) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable to fine.\textsuperscript{61}

(d) Whoever harbours or conceals, or attempts to harbours or conceal any terrorist shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable to fine.\textsuperscript{62}

(e) Any person who is a member of a terrorist gang or a Terrorist Organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which shall not be less than to 5 years but which may extend to imprisonment for life and shall also be liable to fine.\textsuperscript{63}

(f) whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable to fine.\textsuperscript{64}

(ii) Punishment for Disruptive Activities :-

(a) Whoever commits or conspires or attempts to commit or abets, advocates, advises, or knowingly facilitates the commission of, any disruptive

\textsuperscript{60} Id section 3(2).
\textsuperscript{61} Id section 3(3).
\textsuperscript{62} Id section 3(4).
\textsuperscript{63} Inserted by the Terrorists and Disruptive Activities (Prevention) Amendment Act, 1993, section 4.
\textsuperscript{64} Supra n. 52 Section 3(6).
activity shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable to fine.65

(b) “Disruptive activity” means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever which questions, disrupts or is intended to disrupt.

c) whether directly or indirectly, the sovereignty and territorial integrity of India or which is intended to bring about or supports any claim, whether directly or indirectly, for cession of any part of India or the succession of any part of India from the Union. The “cession” includes the admission of any claim of any foreign country to any part of India.

The “Succession” includes the assertion of any claim to determine whether a part of India will remain within the Union.66

d) It is hereby, without prejudice to the generality of the provisions of subsection(2), declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which (a) Advocates, advises, suggests, incites, or (b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any person bound by oath under the constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.67

e) Whoever harbours or conceals, or attempts to harbour or conceal any disruptionists shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable to fine.68

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65 Id section 4(1)
66 Id section 4(2)
67 Id section 4(3)
68 Id section 4(4)
(d) Possession of Unauthorized Arms and Explosive Substances

(i) Where any person is in possession of any arms and ammunition specified the Arms Rules 1962 or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable to fine.  

(e) Enhanced Penalties

(i) Giving aid to any Terrorist or Disruptionist: Any person with intent to aid any terrorist or disruptionists, contravenes any provision of, or any rule made under the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908, or the Inflammable Substances Act, 1952, such person shall be, punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(ii) Contravention of Provisions of Act: Any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order, shall be deemed to have contravened that provision, and the provisions of sub-section (1) shall have effect subject to the modification that the reference to imprisonment for life shall be construed as a reference to imprisonment for 10 years.

(f) Conferment of Powers

The Central Government has been conferred with wide powers under this Act. These are as under:

(i) Power of Central Government: The Central Government may, if it considers necessary or expedient to do so for the prevention of, and for coping with, any offence under section 3 or 4 or for any case or class or group of class under section 3 or 4. In any state or part of, may confer, on any officer of the Central Government, power exercisable by a police officer under the code of Criminal

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69 Id section 5. See also the Arms Rules, 1962, Schedule (Column 2, 3 and 111-a).
70 Id section 6(1)
71 Id section 6(2).
Procedure such state or part or as the case may be, the power of arrest, investigation and prosecution of persons before any court. 

(ii) Legal Obligation of Officer: All officers of the police and all officers of the Government are under a legal obligation to assist the officer of the Central Government; The provisions of the code shall, so far as may be and subject to such modifications made in this act, apply to the exercise of the powers by an officer under sub-section (1).

(g) Attachment; Seizure and Forfeiture of Property

(i) Power of Investigating Officer Regarding Attachment of Property: If an officer investigating has reason to believe that any property in relation to which an investigation is being conducted is a property derived or obtained from the commission of any terrorist act and includes proceeds of terrorism he shall, with the approval of the Superintendent of Police, make an order seizing such property and where it is not practicable to seize the property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Court and a copy of such order shall be served on the persons concerned. It is also provided that the investigating officer shall duly inform the Designated Court within 48 hours of the attachment of such property and the said court shall either confirm or revoke the order of attachment so issued.

(ii) Forfeiture of Property of Convicted Person: Where a person has been convicted of any offence punishable under this Act or any rule made thereunder, the Designated Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both belonging to the accused and specified in the order, shall stand for forfeited to the government free from all encumbrances.
(iii) Attachment of Property of Accused During the Period of Trial: Where any person who is accused of any offence under this Act or any rule, it shall be open to the Designated Court trying him to pass an order that all or any properties, moveable or immovable or both belonging to the accused, shall, during the period of such trial, be attached, and where such trial ends in conviction, the properties so already attached shall stand for forfeited to the government free from all encumbrances.

(iv) Declaration of Proclamation for Appearance: The declaration of Proclamation may be made in following conditions:

(a) where upon a report in writing made by a police officer or an officer, any Designated Court has reason to believe that any person who has committed an offence punishable under this Act or any rule, has absconded or is concealing himself so that he may not be apprehended, such court may, inspite of any thing contained in section 82 of the code of Criminal Procedure publish a written proclamation requiring him to appear at a specified place and time not less than 15 days but not more than 30 days from the date of publication of such proclamation.

(b) The Designated Court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable, immovable or both, belonging to the proclaimed person, and the provision of sections 83 to 85 of the code of Criminal Procedure shall apply to such attachment as if such attachment were made under that Code.

(c) If, within 6 months from the date of the attachment any person, whose property is, or has been, at the disposal of the government under sub-section(2) of section 85 of the Code, appears voluntarily or is apprehended and brought before the Designated Court by whose order the property was attached or the court to which court is subordinate, and proves to the satisfaction of such court that he did
not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the time specified therein, such property or if the same has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying there from all costs incurred in consequence of the attachment, be delivered to him.\(80\)

(v) **Forfeiture of Share of Company** : where any shares in a company stand forfeited to the Government under this Act, then the company shall notwithstanding anything contained in the Companies Act 1956 or the Articles of Association the Company, forthwith register the Government as transferee of such shares.\(81\)

(h) **Designated Courts**

(i) **Constitution of Court** :- The Central Government or a State Government may, by notification in the official gazette, constitute one or more Designated Courts for such area or areas, or for such case or class or group of cases as may be specified in the notification.\(82\)

(ii) **Transfer of Cases** :- Where a notification for constituting a Designated Court for any area, or areas or for any case or class or group or cases is issued by the Central Government under this Act and same court has also been constituted by the notification by the State Government for the same area, areas, case, cases or group or groups, under the same Act, the Designated Court by the Central Government shall have jurisdiction to try the offences committed in the above mentioned areas and all pending cases before any Designated Court constituted by the State Government shall stand transferred to the Designated Court constituted by the Central Government.\(83\)

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80 Id section 8(3c)  
81 Id section 8(4)  
82 Id section 9(1)  
83 Id section 9(2)
(iii) **Questions of Jurisdiction** :- Where any question arises as to the jurisdiction of any Designated Court, it shall be referred to the Central Government and whose decision shall be final.  

(iv) **Presiding Officer of the Court** :- A Designated Court shall be presided over by a judge to be appointed by the Central Government or as the case may be, the State Government, with the concurrence of the Chief Justice of the High Court.

(v) **Appointment of Additional Judge** :- The Central Government or as the case may, the State Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judge or Judges to exercise jurisdiction in a Designated Court.

(vi) **Qualification of Judges** :- A person shall not be qualified for appointment as a judge or an Additional Judge of a Designated Court unless he is, immediately before such appointment, a Session Judge or an Additional Session Judge in such State or in any others state.

(vii) **Removal of Doubts** :- For removal of doubts, it is provided that the attainment by a person appointed as a Judge or an Additional Judge of a Designated Court of the age of superannuation under the rules applicable to him in the service to which he belongs shall not affect his continuance as such judge or Additional Judge.

(viii) **Distribution of Business** :- Where any Additional Judge or Additional Judges is or are appointed in a Designated Court, the judge of the Designated Court may, from time to time, by general or special order in writing provide for the distribution of business of the Designated Court among himself and the Additional Judge or Judges and also for the disposal of the urgent business in the event of his absence or the absence of any Additional Judge.
(ix) **Place of Sitting** :- A Designated Court may, on its own motion or on an application made by the Public Prosecutor, sit for any of its proceedings at any place, other than its ordinary place of sitting. It is also provided that nothing in this section shall be construed to change the place of sitting of a Designated Court constituted by a State Government to any place outside that State.

(x) **Jurisdiction of Courts** :- Every offence punishable under any of provision of this Act or any rule made there under shall be triable only by the Designated Court within whose local jurisdiction it was committed or, as the case may be, by the Designated Court constituted for trying such offence under sub-section (1) of section 9 of this Act. But, having regard to the exigencies of the situation prevailing in a State, the Central Government that—

(a) the situation prevailing in such state is not conducive to a fair impartial or speedy trial or;
(b) it is not likely to be feasible without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the judge of the Designated Court or any of them or;
(c) it is not otherwise in the interests of justice. It may, with the concurrence of the Chief Justice of India, transfer any case pending before a Designated Court in that state to any other Designated Court within that state or in any other state.

Where the whole or any part or any part of area within the local limits of the jurisdiction of a Designated Court has been declared to be, or forms part of, any area which has been declared to be a Disturbed Area under any enactment for the time being in force making provision for the suppression of disorder and restoration and maintenance of public order, and the Central Government is of opinion that the situation prevailing in the state is not conducive to fair, impartial or speedy trial within the state, of offences under this Act or the rules made

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90 ld section 10.
91 ld section 11(1)
92 ld section 11(2).
thereunder to which such Designated Court is competent to try, the Central Government may, with the concurrence of the Chief Justice of India, specify, by notification in the official gazette, in relation to such court, a Designated Court outside the State (Specific Court) and thereupon:

(a) It shall be competent, at any time during the period of operation of such notification, for such local court to exercise any jurisdiction in respect of, or try, any offence under this Act or the rules made thereunder,

(b) The jurisdiction which would have been, but for the issue of such notification, exercisable by such local court in respect of such offences committed during the period of operation of such notification shall be exercisable by such Specified Court.

(c) All cases relating to such offence pending immediately before the date of issue of such notification before such local court shall stand transferred on that date to such Specified Court.

(d) All cases taken cognizance of by, or transferred to the specified court under clause (b) or clause (c) shall be dealt with and tried in accordance with this Act (whether during the period of operation of such notification or thereafter) as if such offences had been committed within the local limits of the Jurisdiction of the Specified Court or, as the case may be transferred for trial to it under sub-section(2).93

(i) Powers and Procedure of Designated Court

(i) Power in Respect of Other Offences :- When trying any offence, a Designated Court may also try and other offence with which the accused may, under the code, be charged at the same trial if the offence is connected with such other offence.94

If, in the course of any trial under this Act of any offence it is found that the accused person has committed any other offence under this Act or any rule made

93 Ibid.
94 Id section 12(1)
there under or under any other law, the Designated Court may convict such person for such other offence and pass any sentence authorized by this Act or such rule or, as the case may be, such other law, for the punishment thereof.\(^{95}\)

(ii) Cognizance of any Offence :- A Designated Court may take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of the facts which constitute such offence or upon a police report of such facts.\(^{96}\)

Where, an offence triable by a Designated Court, is punishable with imprisonment for a term not exceeding three years or with fine or both, the Designated Court may, try the offence in a summary manner in accordance with the procedure prescribed in the Criminal Procedure Code. It is also provided that when, in the course of a summary trial under this sub-section it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence. Further provided that in the case of any conviction in a summary trial under this section it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.\(^{97}\)

(iii) Equivalent Power to Court of Session :- A Designated Courts shall, for the purpose of the trial of any offence, have all powers of the a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for trial before a Court of Session.\(^{98}\) Every case transferred to a Designated Court under subsection (2) of section 11 shall be dealt with, as if, such case has been transferred under section 406 of the Criminal Procedure Code to such Court.\(^{99}\) A Designated Court may, if

\(^{95}\) Id section 12(2)
\(^{96}\) Id section 14(1)
\(^{97}\) Id section 14(2)
\(^{98}\) Id section 14(3)
\(^{99}\) Id section 14(4)
it thinks fit and for reasons to be recorded by it, proceed with the trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.100

(j) Public Prosecutor

(i) Appointment:- For every Designated Court, the Central Government or as the case may be, the State Government, shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors. It is also provided that the Central Government or a the case may be, the State Government may also appoint for any case or class or group of cases a special Public Prosecutor.101

(ii) Qualification for Public Prosecutor :- A person shall not be qualified to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years or has held post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.102

(iii) Recalling as Public Prosecutors : Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (4) of section 2 of the Criminal Procedure Code, and the provisions of the Code shall have effect accordingly.103

(iv) Trial by Designated Court to have Precedence :- The trial under this Act of any offence by a Designated Court shall have precedence over the trial of any other case against the accused trial in any other court not being a Designated Court and shall be concluded in preference to such other case such other case shall remain in abeyance till the matter is disposed of by the Designated Court.

100 id section 14(5)
101 id section 13(1)
102 id section 13(2)
103 id section 13(3)
(v) **Transfer of Cases to Regular Courts** :- Where, after taking cognizance of any offence, a Designated Court is of opinion that the offence is not triable by it, shall transfer the case for the trial of such offence to any court having jurisdiction under the Code of Criminal Procedure and the court to which the case is transferred may proceed with the trial of the offences as if it had taken cognizance of the offence.104

(k) **Confessions**

(i) **Confessions to Police Officers** :- A Confession made by a person before a police officer not lower in rank than Superintendent of Police and recorded by such police either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person105 or “co-accused, abettor or conspirator” for an offence under this Act or rules made there under. This is notwithstanding the provisions of the Indian Evidence Act, 1872.106

(ii) **Informed Confession** :-The police officer shall, before recording any confession under section (1) of section 15 of this Act, explain to person making it that he is not bound to make a confession and that if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making believes that it is being made voluntarily.107

(l) **Protection of Witnesses**

(i) **Proceedings to be Held in Camera** :- All the proceedings or any part thereof, under this Act may be held in camera by the Designated Court either on its own motion or on the request of the Public Prosecutor.108

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104 Id section 18.
105 Id section 15(1)
106 Inserted by The Terrorist and Disruptive, Activities (Prevention) Amendment Act, 1993 Section 6.
107 The Terrorist and Disruptive Activities (Prevention) Act, 1987 Section 15(2).
108 Id section 16(1)
(ii) To keep Secret Identity: A Designated Court may, on an application made by a witness in any proceedings before it, or by the public Prosecutor in relation to such witness or on its own motion take such measures as it deems fit for keeping the identity and address of any witness secret.\textsuperscript{109}

Further without prejudice to the generality of the provisions of sub-section (2), the measures which a Designated Court may take includes:

(a) the holding of the proceedings at a place to be decided by Designated Court.

(b) the avoiding of the mention of the names and address of the witnesses in its orders or judgments or in any records of the case accessible to public.

(c) The issuing of any directions for security that the identity and addresses of the witnesses are not disclosed.

(d) That it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.\textsuperscript{110}

(iii) Punishment: Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to Rs. 1000/-.\textsuperscript{111}

(m) Appeals

(i) Appeal to Supreme Court only: An appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.\textsuperscript{112}

(ii) No Appeal, no Revision by other Courts: Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Designated Court.\textsuperscript{113}

\textsuperscript{109} Id section 16(2)
\textsuperscript{110} Id section 16(3)
\textsuperscript{111} Id section 16(4).
\textsuperscript{112} Id section 19(1)
\textsuperscript{113} Id section 19(2)
(iii) **Period for Appeal**: Every appeal under this section shall be preferred within period of 30 days from the date of the judgment, sentence or order appealed from. It is also provided that the Supreme Court may entertain an appeal after the expiry of said period of 30 days, if, it is satisfied that the appellant has sufficient cause for not preferring the appeal within the period of 30 days.\(^{114}\)

(n) **Miscellaneous Provisions**

(i) **Modification of Certain Provisions of the Criminal Procedure Code**: Every offence punishable under this Act or any rule made there under shall be deemed to be a Cognizable Offence within the meaning of clause (c) of section 2 of the Code, and ‘cognizable case’ as defined in that clause shall be construed according.\(^{115}\) Further, Section 21 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made, subject to the modification that the reference to “the State Government” therein shall be construed as a reference to “the Central Government or the State Government as the case may be”.\(^{116}\)

Similarly, Section 164 of the code shall apply in relation to a case involving an offence punishable under this Act or any rule made there under, subject to the modification that the reference in sub-section (1) thereof to “Metropolitan Magistrate or Judicial Magistrate” shall be construed as a reference to “Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate or Special Executive Magistrate”.\(^{117}\)

Section 167 of the code shall apply in relation to a case involving an offence punishable under this Act or any rule made subject to the modifications.\(^{118}\)

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\(^{114}\) Id section 19(3)

\(^{115}\) Id section 20(1)

\(^{116}\) Id section 20(2)

\(^{117}\) Id section 20(3). See also Supra n 43. Section 164 provides recording of confessions and statements.

\(^{118}\) Id section 20(4).
It shall apply according to the code under this Act or any rule made subject to modification.\textsuperscript{119}

These sections shall be applicable under this act according to the code.\textsuperscript{120}

It shall apply under this Act according to the code.\textsuperscript{121}

No person reused of an offence punishable under this act or any law, rule made there under shall, if in custody, be released on bail or on his own bond unless :-

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release and (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.\textsuperscript{122}

The limitation on granting of bail specified in sub-section 8 are in addition to the limitations under the code or any other law for the time being in force on granting of bail.\textsuperscript{123}

(o) Cognizance of Offence

(i) No information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.\textsuperscript{124}

(ii) No court shall take cognizance of any offence under this Act without the previous sanction of the inspector General of Police, or as the case may be, the Commissioner of police.\textsuperscript{125}

\textsuperscript{119} Id section 20(5). Section 268 provides that power of State Government to exclude certain persons from operation of power to require attendance of prisoners.

\textsuperscript{120} Id section 20(6). Section 392 provides that Procedure where judges of the Court of Appeal are equally divided.

\textsuperscript{121} Id section 20(7). See also Supra n 44.

\textsuperscript{122} Id section 20(8)

\textsuperscript{123} Id section 20(9)

\textsuperscript{124} Id section 20A(1)

\textsuperscript{125} Id section 20A(2)
(p) Presumption as to Offences

In a prosecution for an offence under sub-section(1) of Section 3, if it is proved:

(a) that the arms or explosives or any other substances specified in Section 3 were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or

(b) that by the evidence of an expert the finger prints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with commission of such offence, then the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offence.126

Further, in a prosecution for an offence under sub-section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence under that section, the Designated Court shall presume, unless the contrary is proved, that such person has committed the offence under that sub-section.127

(q) Identification of Accused :- where a person has been declared a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of a test identification parade.128

(r) Saving Clause :- Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the law relating to the naval, military or air forces or other armed forces of the Union.129

For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Designated Court shall be deemed to be a

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126 ld section 21(1)
127 ld section 21(2)
128 ld section 22.
129 ld section 23(1)
court of ordinary criminal justice. Further, Where an order purports to have been made and signed by any authority in exercise of any power referred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872 shall presume that such order was so made by that authority.

(s) **Overriding Effect** - The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

(t) **Protection of action Taken under this Act** - No suit prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority on whom powers have been conferred under this Act or any rule made thereunder, for a anything which is in good faith done or purported to be done in pursuance of this Act or any rules made there under or any order issued under any such rule.

(u) **Power for Making Rules** - The Supreme Court may, by notification in the official Gazette, make such rules, if any, as it may deem necessary for carrying out the provision of this Act relating to Designated Court.

The Central Government may, by notification, also make the rules for carrying out the provisions of this Act including the following matters namely:-

(a) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas.

(b) the entry into, and search of: (i) any vehicle, vessel or aircraft, or (ii) any place whatsoever, reasonably suspected of being used for committing the

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130 Id section 23(2)
131 Id section 24.
132 Id section 25.
133 Id section 26.
134 Id section 27.
135 Id section 28(1)
offences referred to in section 3 or section 4 or for manufacturing or storing anything for the commission of any such offence.

(c) The arrest and trial of persons contravening any of the rules or any order there under.

(d) The punishment of any person who contravenes or attempts to contravene or abets or attempts to abet the contravention of any rule made there under will be imprisonment for a term which may extend to seven years or for a term which may not be less than 6 months but which may extend to 7 years or with fine or with imprisonment as aforesaid.

Seizure and detention of any property in respect of which such contravention attempt or abetment as is referred to in clause (c) has been committed.\textsuperscript{136}

(v) Critical Appraisal of the Act :- After repeal of Terrorist Affected Areas (Special Courts) Act, 1984, the Parliament enacted the Terrorist and Disruptive Activities (Prevention) Act, 1987 in view of escalation of terrorist activities in many parts of the country including the state of Jammu and Kashmir. Therefore, in the first instance the provisions of TADA, 1985 were made applicable throughout territory of India including Jammu and Kashmir. The Act provides for the establishment of Designated Courts in the notified areas for dealing with the cases of terrorists. The Designated Courts so established will be presided over by the Session Judge or a person having equivalent position. These Designated Courts have been given wide powers and can try the other offences also in the notified areas. The courts may follow the summary procedure, proceedings of the court are to be held in Camera in order to keep identity of the witnesses secret. There is no provision of appeal or revision from the orders of the Designated court, however, a single appeal will lie as matter of right in the Supreme Court.

\textsuperscript{136} Id section 28(2).
against all orders not being interlocutory order on both issues of facts as well as law.

The informed confessions made before the police officers not below the rank of Superintendent of Police has been made admissible under the Act. There are provisions in the Act which provides for the presumption by the Designated Court of Commission of certain offences specially where recovery of arms and explosives etc have been effected. The Act also provides severe punishment for terrorist and disruptive activities and in the matters of possession of unauthorised arms etc. There are provisions in the Act which also provides for the attachment, seizure and forfeiture of property of the accused and declaration of a person as a proclaimed offender in case of non-appearance etc. For the proper enforcement of the Act, the Central Government and the State Government are given wide powers. The provisions of the Act shall have overriding effect. However, this Act was repealed and replaced by a special law in the name of the Prevention of Terrorism Act, 2002 to fight against the terrorism and organized crimes specially in view of attack on India Parliament in December, 2001.

3 The Prevention of Terrorism Act, 2002

(a) Introduction
The anti-terrorist laws are enacted to break the backbone of the terrorism because India has been suffering from this menace since 1980. The philosophy behind these special laws seems to destroy network of the terrorists to check terrorists activities. The President of India on October 24, 2001 promulgated the prevention of Terrorism Ordinance, 2001, for the prevention of and for dealing with terrorist activities. Since the Parliament was not in session at that time and the President was satisfied that the circumstances existed which rendered it necessary for the President of India to promulgate the ordinance. The said Ordinance could not be passed in the Parliament during the earlier session because of attack on the Parliament on December 13, 2001 and subsequent adjournment of the session. On December 30, 2001 the President promulgated
the Prevention of Terrorism (second) Ordinance, 2001, for giving the continued effect to the provisions of the Prevention of Terrorism Ordinance, 2001. To replace the said Ordinance, the Prevention of Terrorism Bill was introduced in the Parliament and the same was passed at the joint sitting of Parliament on March 26, 2002, and was assented to by the President on March 28, 2002 and it is called as the Prevention of Terrorism Act, 2002.

It is a special law to fight against terrorism and organised crime. It places the onus of proof negatively the on the accused, thereby presuming guilt. One important salient feature of this Act is that confessions made to a police officer under certain conditions are admissible, which is a deviation from current Indian law, which allows confessions to be admitted as evidence only if they are made voluntarily in an appropriate court according to the provisions of the evidence Act. Terrorism includes acts committed with any lethal weapons. Under this Act, offences include inviting support for a terrorist organization, addressing a gathering of terrorism sympathizes and assisting in arranging a meeting where support is expressed for a Terrorist Organisation or its activities. Under the provisions of this Act, suspects can be detained for three months without the charges being brought against them and three more months if allowed by a special judge, A police officer can request the court to order samples of handwriting, fingerprints, footprints, bloods, saliva, semen and hair of a suspect be taken. Refusal to give sample may have adverse effect in trial.

This Act also provides some safeguards in order to avoid its misuse. The Confessions made to the police must be recorded within forty-eight hours before a Magistrate, who will send the accused for medical examination if there is a complaint of torture and police officers can be prosecuted for abusing their authority and compensation can be paid to the victims and a legal representative of the accused maybe allowed to be present at the time of interrogation.

The provisions of this Act extend to whole India and also apply to the citizens of India outside India, persons who are in service of the Government.
wherever they may be and persons on ships and aircrafts registered in India, wherever they may be. As per provisions of this Act, any person who commits an offence beyond India which is punishable under this Act shall be dealt with according to the provisions of the Act in the same manner as if such act had been committed in India. The properties of Terrorist Organisation and their sympathizes can be seized and forfeited under this Act.

(b) Object :- This Act was passed for purposes of prevention of and for dealing with terrorist activities and matter connected therewith.

(c) Interpretation clause :- The meaning of various terms used in the Act is defined in this Act. These are as under:

(i) "Designated Authority" means such officer of the Central Government who is not below the rank of the Joint Secretary to the Government or such officer of the State Government not below the rank of the Secretary to the Government or as case may be as notified by the Central Government or the State Government by notification.

(ii) "Proceeds of Terrorism" means all kinds of properties which have been obtained or derived from commission of any act of terrorist or have been acquired through funds traceable to a terrorist act and include cash irrespective of person in whose name such proceeds are standing or in whose possession they are found. The definition of the term 'Property' and "Terrorist Act" used in this Act will be same as provided in the terrorist and Disruptive Activities Act, 1987.\(^\text{137}\)

(iii) "Special Court" means the Special Court as constituted under section 23 of this Act.

(d) Salient Features

(i) Terrorist acts :- Definition of terrorist act is very wide. It says that any person who with intent

(a) to threaten the unity, integrity, security or sovereignty of India or

\(^{137}\) See Supra nn. 56-57. (Interpretation clause)
(b) to strike terror in the people or any section of the people
(c) does any act or uses any thing, bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals, biological or other hazardous nature substances or
(d) likely to cause death or injuries to any person or persons or
(e) loss 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
(f) equipment intended to be used for defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or
(g) detains any person or 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.
(h) continues member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 or
(i) voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any un licenced fire arms, ammunition, explosive or other instrument or substances capable of causing mass destruction and commits any act resulting in loss of human life or
(j) causes grievous injury to any person or causes significant damage to any property; such acts shall be considered as terrorist act.138

(ii) Different Punishment: The provision of sub-section 4, 5, and 6 of section 3 of this Act, 2002 are same or ditto of sub-section, 5 and 6 of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 but punishment is

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138 The Prevention of Terrorism Act, 2002 section 3(1). the sub-section 2 and 3 of the section 3 of this Act are ditto of the sub-section 2 and 3 of the section 3 of The Terrorist and Disruptive Activities (Prevention) Act, 1987
different. In sub-section 5 of section 3 of this Act, 2002 states that person shall be punishable with imprisonment for a term which shall not be less three years which may extend to imprisonment for life and shall also be liable to fine. In sub-section 5 of section 3 of this Act, 1987 provides that person shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh (10,00000) or with both: 139

(a) Punishment for Threatening to Witness :- When any person threatens, to, any person or other person who is/are a witness or witnesses, with violence or wrongfully restrains or confines the witness or witnesses or any person may be interested as witness or does any other unlawful act with the said intent, shall be punished with imprisonment may extend to 3 years and fine. 140

(b) Punishment for Possession of Certain Unauthorized Arms :- when any person is having certain kinds of arms or ammunition as specified in the columns 2 and 3 of category I of III of schedule 1 to the Arms Rules, 1962 unauthorised by in a notified area or is in possession of any bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area. Such person shall be deemed to be guilty of terrorist act and will be punished with imprisonment for a term which may extend to life or with fine which may extend to rupees ten lakh (10,00000) or with both. 141

(c) Enhanced Punishment :- The provisions of section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 are similar with the provisions of the section 5 of this Act there punishment is different. In

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139 See Supra nn. 59 - 68 see also sub-section 5 of Section 3 of this Act.
140 Supra n. 138 Section 3(7).
141 Id section 4.
this Act, person shall be punishable with imprisonment for a term which may extend to imprisonment for life and shall be liable to fine.142

(d) **Holding of Proceeds of Terrorism** :- Any person who holds the possession of proceeds of terrorism shall be prosecuted and punished in accordance with the provisions of this Act. Such proceed shall be liable to be forfeited by the Central Government or State Government as the case may be according to the provisions of this Act.143

(e) **Issuance of Notice Before Forfeiture** :- Before forfeiture of proceeds of terrorism, a notice shall be issued or given to the person holding or in possession of proceeds. Such person shall also be informed the grounds of forfeiture reasonable an opportunity of being heard shall also be given.144 However, order of forfeiture of proceeds of terrorism shall be made :- If he is a bonafide transferee of such proceeds for volume without knowing that these are proceeds of terrorism.145

The Special Court shall be competent to make an order in respect of property seized or attached. It may direct it to be sold, if, it, is a perishable property. It may also nominate any officer of the Central or State Government as the case maybe, in respect of proceeds of terrorism, to perform the function of administrator of such property.146

(iii) **Investigation Regarding the Proceeds of Terrorism** :- An officer, not below the rank of Superintendent of Police, maybe appointed for making investigation regarding the proceeds/properties of terrorism or an offence committed under this Act. When such officer has reason to believe that any property is being hold or possessed by any person may, with the prior approval in writing of the Director General of Police (DGP) of the State in which such

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142 Supra nn. 68, 69.
143 Supra n. 140. Section 6(1)(2).
144 Id section (1).
145 Id section 11(2).
146 Id section 9(3).
property is situated, seize or make an order of such property.\textsuperscript{147} A copy of such seizure shall be produced before the Designated Authority which may serve notice on the person concerned, if any doubt in this regard may be removed according to the provision of this Act.\textsuperscript{148}

(iv) Information to the Designated Authority: An investigating officer shall have to duly inform the Designated Authority within 48 hours of the seizure or attachment of such kind of property.\textsuperscript{149} The Designated Authority may confirm or revoke the order of seizure or attachment so issued. It may also provide an opportunity to make a representation to a person whose property is being attached.\textsuperscript{150} Where immovable property attached by the investigating officer, it shall be presumed that have been produced before the Designated Authority as and when such officer notifies his report and places it before the Designated Authority for disposal.\textsuperscript{151}

(v) Seizure of Cash: The investigating officer may seize and detain any kind of cash according to this Act. If, he has reasonable grounds for suspecting that such kind of cash is intended to be used for purposes of terrorism. The cash seized shall not be retained beyond 48 hours of time of seizure and would be produced before the Designated Authority. The Designated Authority may pass an order allowing its retention beyond 48 hours under this Act. The cash means and include coins and notes in any currency, postal orders, traveller's cheques, banker's drafts and such other monetary instruments as the Central Government or, State Government, as case may be, may specify by on order made in writing.\textsuperscript{152}

(vi) Forfeiture of Property of Terrorists: The properties of the certain persons/terrorists may also be forfeited by the Central Government or State

\begin{itemize}
\item[\textsuperscript{147}] Id section 7(1).
\item[\textsuperscript{148}] Id section 7(2).
\item[\textsuperscript{149}] Id section 7(3).
\item[\textsuperscript{150}] Id section 7(4).
\item[\textsuperscript{151}] Id section 7(5).
\item[\textsuperscript{152}] Id section 7(6).
\end{itemize}
Government as case may be if any such persons are accused of any offence under this Act on the orders of Special Court.\textsuperscript{153} An additional punishment may also be awarded by the Special Court to any of such persons.\textsuperscript{154}

(vii) Claim or Objection by Third Party :- The Designated Authority may entertain any claim or objection made by the third party to the seizure of any property under this Act. The Designated Authority shall make an investigation regarding such claims or objection.\textsuperscript{155} If, it is found that the claim or objection is reasonable or the claimant or objector establishes that the property is not liable to be forfeited under this Act, the notice issued for forfeiture shall be withdrawn or modified accordingly. It is also provided that the Designated Authority refuse such investigation if it is found that such claim or objections are made to cause unnecessary delay in the proceeding of the court.\textsuperscript{156}

(viii) Appeal Regarding Forfeiture of Property :- Any aggrieved person by an order of forfeiture under section 8 of the Act may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the Special Court, who passed the order appealed against is situated.\textsuperscript{157} An order is modified or annulled by the High Court and the person is acquitted, the property which has been forfeited shall be returned to him in case if it is not possible to return the forfeited property as the same had been sold by the Central Government then the price alongwith interest shall be paid to the concerned person.\textsuperscript{158}

(ix) Power of Civil Court :- The Designated Authority shall have all the powers of a Civil Court for making a full and fair enquiry into the matter before it.\textsuperscript{159}
(e) Terrorist Organisations

(i) Declaration of a Terrorist Organisation :- The Central Government under this Act, has been empowered to declare any organisation as a Terrorist Organisation if such an organisation commits or participates in acts of terrorism prepares for terrorism, promotes or encourages terrorism or is otherwise involved in terrorism. Such an organisation may call as a Terrorist Organisation. The Central Government has declared the following organisations as Terrorist Organisation :-

(a) Babber Khalsa International (BKI)
(b) Khalistan Commando Force (KCF)
(c) Khalistan Zindabad Force (KZF)
(d) International Sikh Youth Federation (ISYF)
(e) Laskar-e-Taiba/Pasbain E-Ahle Hadis (LeT/PeAH)
(f) Jaish-E-Mohammed/Tahrık-E-Furqun(JeM/TeF)
(g) Harkat-ul-Mujahideen/Harkat-ul-Ansar/Harkat-ul-Jehad-E-Islami
   (HuM/HuA/HuJel)
(h) Hizb-ul-Mujahideen/Hizb-ul-Mujahidden Pir Panjal Regiment
   (HuM/HuM PPR)
(i) AL-Umar-Mujahideen (AuM)
(j) Jammu and Kashmir Islamic Front (JKIF)
(k) United Liberation Front of Assam (ULFA)
(l) National Democratic Front of Bodoland (NDFB)
(m) People’s Liberation Army (PLA)
(n) United National Liberation Front (UNLF)
(o) People’s Revolutionory Party of Kanglipeak (PREPAK)
(p) Kanglipeak Communist Party (KCP)
(q) Kangleir Yad Kanba Lup (KYKL)
(r) Manipur People’s Liberation Front (MPLF)
(s) All Tripura Tiger Force (ATTF)
(t) National Liberation Front of Tripura (NLFT)
(u) Liberation Tigers of Tamil Eelam (LTTE)
(v) Students Islamic Movement of India (SIMI)
(w) Deendar Anjuman (DA)
(x) Communist Party of India (Marxist Leninist) People’s War, All Its Formations and Front Organisations.
(y) Maoist Communist Centre (MCC), All its Formations and Front organisations.\(^{160}\)

(ii) **Denotification of a Terrorist Organisation** :- An application may be made by an organisation or any person affected by inclusion of the organisation in section 18 as a terrorist organization for its denotification.\(^{161}\)

(iii) **Power of Central Government** :- The Central Government may make rules to prescribe the procedure for admission and disposal of an application under this section.\(^{162}\)

(iv) **Application to Review Committee** :- The Central Government may accept or refusal the application of the applicant. Where in case of refused the applicant may apply for a review to the Review Committee constituted by the Government under sub-section (1) of section 60 within one month from the date of receipt of the order by the applicant.\(^{163}\) The Review Committee may allow an application for review against refusal to remove an organisation from the schedule (section 18), if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review.\(^{164}\)

(v) **Punishment**

(i) **Member of Terrorist Organisation**

(a) commits an offence under this Act,

\(^{160}\) Id section 18.
\(^{161}\) Id section 19(1)(2)
\(^{162}\) Id section 19(3)
\(^{163}\) Id section 19(4)
\(^{164}\) Id section 19(5)
(b) belongs or professes to being to a Terrorist Organisation\textsuperscript{165}
(c) invites supports for a Terrorist Organisation,\textsuperscript{166}
(d) arranges, manages or assists in arranging or managing a meeting to a support a Terrorist Organisation\textsuperscript{167}
(e) to further activities of a terrorist organization,
(f) to address a person who is involved in activities of a terrorist or addresses a meeting for the purpose of encouraging support for a Terrorist Organisation.

The punishment for these activities may be for a term not exceeding 10 years or with fine or both.\textsuperscript{168}

(ii) Funding or Monetary Assistance to Terrorist Organisation: Any person who

(g) Invites another or provide fund/money or other property for a Terrorist Organisation.
(h) Intends that it should be used or has reasonable cause to suspect that it may be used, for the purposes of terrorism.
(i) Receives money or other property
(j) Provides money or other property
(k) Knows or has reasonable cause to suspect that it will or may be used for the purpose of terrorism.

If a person founds guilty of such offences then he may be punished with imprisonment for a term not exceeding 14 years or with fine or both.\textsuperscript{169}

(f) Special Courts

(i) Comparison of TADA with POTA: The provisions regarding Special Courts are similar to the Terrorist and Disruptive Activities (Prevention) Act, 1987 so far as special courts are considered. But the word "Special" is used in

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{165} id section 20(1)
\item \textsuperscript{166} id section 20(1)(b)
\item \textsuperscript{167} id section 20(2).
\item \textsuperscript{168} id section 21.
\item \textsuperscript{169} id section 22.
\end{enumerate}
\end{footnotesize}
place of word “Designated” in the Prevention of Terrorism Act, 2002, The word “Special Court has been used instead of word” “Designated Court”. There is no major changes in other provisions of Act, 2002.170

(ii) Place of Sitting :- The section 10 of the Terrorist and Disruptive Activities (Prevention) Act 1987 is related to the place of sitting of the “Designated Court” while section 24 of this Act is also relating to the place of sitting of the “Special Court”. The section 24 of this Act is similar to the section 10 of the Act, 1987.171

(iii) Jurisdiction of Special Courts :- The sub-section 122 of section 25 of this Act is similar or ditto to the sub-section 18(2) of section 11 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. However, the sub-section 3 of this Act is different to the sub-section 3 of section 11 of the Act, 1987, which provided that the Supreme Court or the High Court, as case may be, may act under this section either on application of the Central Government or a party interested and any such application may be made by own motion also.172

(iv) Power in Respect of Other Offences :- The section 26 of this Act is related to the power of the Special Courts with respect to other offence. This section is similar to section 12 of the Terrorist and Disruptive Activities (Prevention) Act, 1987.173

(v) Procedure of Court :- The section 29 of this Act is related to the procedure and powers of the Special Courts which is similar to the section 14 of the Terrorist and Disruptive Activities (Prevention) Act, 1987.174

(vi) Power of Special Courts to Direct for Samples :- When a police officer investigating a case requests the courts of a Chief Judicial Magistrate Chief Metropolitan Magistrate, in writing for obtaining samples of handwriting, fingerprints, photographs, blood, saliva, semen, hair, voice of any accused person, reasonably suspected to be involved in the commission of an offence under this

170 Id. Section 23. See also Supra nn. 80-87.
171 See Supra n. 88.
172 See Supra n. 140 section 25(3)
173 See Supra nn. 92-93.
174 See Supra nn. 94-98.
Act, it shall be lawful for the court of a Chief Judicial Magistrate or the court of
Chief Metropolitan Magistrate to direct that such samples be given by the accused
person to the police officer either through a medical practitioner or otherwise as
case may be if any accused person refuses to give samples, the court shall draw
adverse inference against the accused.\textsuperscript{175}

(vii) \textbf{Trial by the Court} :- The section 31 of this Act is ditto of section 17 of the

(viii) \textbf{Power of Transfer of Cases to Regular Courts} :- The section 33 of this
Act is also ditto of the section 18 of the Terrorist and Disruptive Activities
(Prevention) Act, 1987, which has already been discussed.

(ix) \textbf{Confessional Statements} :- The sub-section 1 and 2 of section 32 of this Act
is similar and ditto of the sub-section 1 and 2 of section 15 of the Terrorist and
Disruptive Activities (Prevention) Act, 1987. which has already been discussed.
The sub-section 3 of the section 32 provide that the confession shall be recorded
in an atmosphere free from threat or inducement and shall be in the same
language in which the person makes it.
The person from whom a confession has been recorded shall be produced before
the court of a Chief Metropolitan Magistrate or court of a Chief judicial
Magistrate along with the original statement of confession, written or recorded on
mechanical or electronic, device within 48 hours.\textsuperscript{176} The Chief Metropolitan
Magistrate or the Chief Judicial Magistrate, shall, record the statement, if any,
made by the person so produced and get his signature or thumb impression and if
there is any complaint of torture, such person shall be directed to be produced for
medical examination before a medical officer not blow the rank of Assistant Civil
Surgeon and thereafter, he shall be sent to judicial custody.\textsuperscript{177}

(x) \textbf{Transfer of Pending Proceeding to the Special Court} :- After constitution
of the Special Court all the pending proceedings shall stand transferred to that

\textsuperscript{175} \textit{Ibid.}
\textsuperscript{176} \textit{id section 32(4)}
\textsuperscript{177} \textit{id section 32(5)}
court on the date on which it is constituted. It shall have all powers and procedures provided under this chapter.  

(xii) Public Prosecutors: Section 28 of this Act relating to the Public Prosecutors is ditto to section 13 of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

(xii) Protection of Witnesses: Section 30 of this Act is ditto of the section 16 of the Terrorist and Disruption Activities (Prevention) Act, 1987.

(g) Appeal: An appeal, against the judgment, sentence or order, not being an interlocutory order, of a Special Court, shall lie to the High Court both on the facts and on law. Every appeal shall be heard by a bench of two Judges of the High Court. Except as above said, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court. Notwithstanding the provisions of Code of Criminal Procedure, 1973, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

Every appeal shall be preferred within the period of 30 days from the date of judgment, sentence, or order. The High Court may entertain an appeal after he expiry of the said period if it is satisfied that the appellant has the sufficient cause for not preferring the appeal within the period.

(h) Interception of Communication in Certain Cases: Under section 36 of this Act, provides for interception of communication in certain case which is as under

(i) Electronic Communication: It means and includes, any transmission of signs, signals, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part, by a wire, radio, electromagnetic; photo electronic
or photo optical system that affects in land of forcing commerce but does not include

(a) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit
(b) any wire or oral communication
(c) any communication from a tacking device
(d) any communication made through a tone only paging device.

(ii) Intercept :- It means the aural or other acquisition and recording of the contents by wire electronic or oral communication through the use of any electronic, mechanical or other device.

(iii) Oral Communication :- It means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication.

(iv) Wire Communication :- It means any aural transmission made in the whole or part through the use of facilities for the transmission of communication by the aid of wire, cable or other like connection between the point of the origin and the point of connection, between the point of origin and the point of reception and such term includes any electronic storage of such communication.

(v) Application for Authorization of Interception of Wire, Electronic or Oral Communication :- An application may be submitted by a police officer not below the rank of the Superintendent of Police supervising the investigation of any terrorist act under this Act, to the competent authority for an order authorizing or approving the interception of wire, electronic or oral communication when he believes that such interception may provide, or has provided evidence of any offence involving a terrorist act. The application shall be submitted to the competent authority with following information:

\[\text{id section 38(1)}\]
(a) the identity of the investigating officer duly recommended by the Head of Deptt.

(b) A statement of facts and circumstances relied upon by the applicant to justify his belief that an order should be issued that

(i) details as to the offence of terrorist act that has been, is being or is about to be committed

(ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted.

(iii) a particular description of the type of communication sought to be intercepted

(iv) the identity of the person, if known, committing the terrorist act whose communications are to be intercepted

(c) A statement of the period of time for which the interception is required to be maintained if the nature of the enquiry is such that the authorization of interception should not automatically terminate after the described type of communication has been first obtained.

(d) A particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter,

(e) Where the application is for the extension of an order, a statement setting forth the results thus obtained from the interception, or a reasonable explanation of the failure to obtain such results. The competent authority may also required the applicant to furnish an additional oral or documentary evidence in support of his application.

(vi) Decision on Application by the Competent Authority :- the competent authority may reject the application or issue an order on the basis of facts submitted by the applicant. While approving or authorizing the interception of

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185 Id section 38(2)
186 Id section 38(3)
187 Id section 39(1)
188 Id section 39(1)
any wire, electronic or oral communication, the competent authority shall specify that—
(a) identity of the person
(b) nature and location of the communication facilities or place where authority to
intercept is granted
(c) a particular description of type of communication and a statement of a
particular offence to which it relates.
(d) identify of the agency authorised to intercept the communications and the
person authorizing the application (e) the period of time which interception is
authorized, including a statement as to whether or not the interception shall
automatically terminate after the described communication has been first
obtained.\textsuperscript{189}
(vii) Submission of Order to Review Committee :- The competent authority,
after passing the order of interception, immediately within 7 days, shall submit a
copy of the same to the Review Committee along with all the relevant papers,
record and own findings for consideration and approval of the order by the
Review Committee.\textsuperscript{190} After approval by the Review Committee, it shall direct to
a provider of wire or electronic communication service, landlord, custodian or
other person to furnish to the applicant all information, facilities and technical
assistance necessary to accomplish the interception uninterruptedly and with a
minimum of interference with the services that such service provider, landlord,
custodian or person who is providing to the person whose communications are to
be intercepted.\textsuperscript{191}
(viii) Duration of Order of Interception :- Duration of this order shall be 60
days and such period shall begin on the day immediately preceding the day on

\textsuperscript{189} Id section 39(2)
\textsuperscript{190} Id section 40(1)
\textsuperscript{191} Id section 40(2)
which the investigating officer first begins to conduct an interception under the order or 10 days after issuance of order or whichever is earlier.\textsuperscript{192}

(ix) Extension of order :- The extension of order may be granted by the competent authority after making an application for this purpose if it thinks fit or necessary.\textsuperscript{193}

(x) Execution of Order as Soon as Possible :- Every order of extension shall be executed as soon as practicable and conducted. It shall terminate on expiry of the period of said order or extension.\textsuperscript{194}

(xi) Authority Competent to Carry out Interception :- An interception may be conducted in whole or in part by a public servant, who is acting under the supervision of the investigating officer authorized to conduct this interception.\textsuperscript{195}

(xii) Submission of Progress Report to Competent Authority :- The progress report shall be submitted to the competent authority who issued the order showing the progress such report shall be made at such intervals as the competent authority may require.\textsuperscript{196}

(xiii) Interception of Communication in Emergency :- An order of interception of communication in emergency may be issued, if, an officer not below the rank of Additional Director General of Police (ADGP) or a police officer of equivalent rank who reasonably determines that

(a) an emergency situation exists that involves the immediate danger of death or serious physical injury of any person or conspirational activities threatening the security or interest of the state or conspirational activities, characteristic of a terrorist act that requires a wire, electronic or oral communication to be intercepted before an order from the competent authority authorizing such interception can be obtained with due diligence; or

\textsuperscript{192} Id section 41(1)
\textsuperscript{193} Id section 41(2)
\textsuperscript{194} Id section 41(3)
\textsuperscript{195} Id section 42(1)
\textsuperscript{196} Id section 42(2)
(b) other reasonable grounds on which an order should be issued under this section.\(^{197}\)

**XIV** Protection of Information Collected :- An information collected in this regard shall be protected and recorded on tape or wire or other comparable device in such manner as to protect the recording from editing or other alternations.

**XV** Submission to Competent Authority :- Immediately upon expiration of the period of order or extension order, such recording shall be submitted to the authority and sealed under his direction and be kept in the custody of such person or authority as the competent authority orders. Such recording shall not be destroyed without the order of the competent authority. Such recording may be kept in custody for 10 years.\(^{198}\)

**XVI** Collected Information Admissible in Evidence :- An information collected shall be admissible as evidence against the accused in the court during the trial of a case.\(^{199}\)

**XVII** Punishment for Disclosure of Interception Communication :- Any police officer who intentionally intercepts, endeavours to intercept use or procures, discloses endeavors to discloses to any other person;

(a) to intercept any wire, electronic or oral communication.

(b) to sue any electronic, mechanical or other device to intercept any communication.

(c) the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception.

(d) to any other authorized person the contents of any wire electronic or oral communication.

(e) continues the interception of communication after issue of an order of rejection by the competent authority.

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\(^{197}\) Id section 43.

\(^{198}\) Id section 44(1)(2)

\(^{199}\) Id section 45.
(f) continues the interception of wire, electronic or oral communication after issue of an order of disapproval by the review committee, shall be punishable with imprisonment for a term which may extend to one year and with fine upto rupees 50,000/-.

(xviii) Annual Report of Interception :- An annual report of interception shall be prepared with full details by the respective Government that how many applications received, granted approval, rejected, number of convictions, number of interception in emergency, number of prosecution launched etc. The annual report shall be laid by the Government before the State Legislature within the 3 months of completion of every clander year. In case of Central Government, such report shall be laid down before each House of Parliament within 3 months of completion of every clander year.

It is however, provided that if the State Government or Central Government is of opinion that the inclusion of any matter in the annual report would be prejudicial to the security of the state/country or to the prevention or detection of any terrorist act, the State/Central Government may exclude such kind of matter from the annual report.

(xix) Appointment of Competent Authority :- The Central or the State Government, as case may be, appoint an officer not below the rank of Secretary to the Government in case of State and not below the rank of Joint Secretary to the Government in case of Central Government, to be the competent authority.

(xx) Review Committee :- It is constituted by the Central Government or State Government, review the every order passed the competent authority within the 10 days after its receipt and decide whether the order was reasonable or unreasonable, approvable and disapprovable etc.

(xxi) Nature of Offences :- All the offences shall be Cognizable under this Act.
(xxii) **Investigation Officer**: The police officers not below the rank of Deputy Superintendent of Police (DSP) or a police officer of equivalent rank shall be competent officer to investigate the offences under this Act. In case of Metropolitan areas of Mumbai, Kolkata, Chennai etc. the police officer not below the rank of an Assistant Commissioner of Police (ACP) shall be competent officer to investigate any offence punishable under this Act.\(^\text{204}\)

(xxiii) **Procedure of Arrest**: A police officer while arresting a person shall prepare a Custody Memo. The arrestee shall be informed of his right to consult a legal practitioner as soon as he is brought to police station. An Information about his arrest shall be immediately communicated to his family members or relatives by telegram, telephone or by any other means and this fact shall be recorded by the police officer under the signature of the person arrested. He shall be permitted to meet the legal practitioner representing him during the course of interrogation.\(^\text{205}\)

(xxiv) **Punishment to Police Officer for Corrupt Action**: Any police officer who exercises his powers corruptly or maliciously, knowing that there are no reasonable grounds for proceedings, shall be punishable with imprisonment which may extend to 2 years or with fine or with both.\(^\text{206}\)

(xxv) **Compensation to Affected Person**: Any person who has been corruptly or maliciously proceeded against under this Act, may be awarded compensation. The court may also such compensation shall be paid by the officer, authority or government as it deems fit.\(^\text{207}\)

(xxvi) **Impounding of passport and Arms licence**: The passport and arms licence of a person, who has been charge-sheeted for having committed any offence under this Act, shall be impounded by the order of Special Court as it may deem fit.\(^\text{208}\)

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\(^{204}\) Id section 51.
\(^{205}\) Id section 52.
\(^{206}\) Id section 58(1).
\(^{207}\) Id section 58(2).
\(^{208}\) Id section 59.
(i) Review Committees:

(i) Constitution: One or more Review Committees may be constituted by the Central Government or the State Government as case may be under this Act.²⁰⁹

(ii) Composition of Committee: Every such review committee shall consist of a Chairperson and other members not exceeding three.²¹⁰

(iii) Qualifications: The qualifications for members may be prescribed by the respective governments.

(iv) Appointment of Chairperson: The Chairperson of the Review Committee shall be a person who is or who has been judge of the High Court. The appointment shall be made by the appropriate government. However, in case of sitting judge, the concurrence of the chief justice of the concerned High Court is mandatory.²¹¹

(v) Function of the Review Committees: The Review Committee 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. Such review shall be made without prejudice by the committee.²¹²

Any direction issued by the review committee constituted by the Central Government, would be binding on the Central Government, the State Government as well as the police officer investigating the offence.²¹³ Where the review relating to the same offence, have been made by a review committee constituted by the Central Government and a review committee constituted by the State Government, the orders of review committee constituted by the Central Government shall prevail.²¹⁴

²⁰⁹ Id section 60(1).
²¹⁰ Id section 60(2).
²¹¹ Id section 60(3).
²¹² Inserted vide The Prevention of Terrorism (Amendment) Act, 2003, w.e.f. 27.10.2003, section 60(4).
²¹³ Id section 60(5).
²¹⁴ Id section 60(6).
If the review committee is of opinion that there is no prima-facie case for proceeding against the accused, the proceedings pending against the accused can be deemed to have been withdrawn from the date of such direction.\textsuperscript{215}

(vi) Power of High Courts Regarding Making Rules :- The High Court may make such rules deems necessary for carrying out the provisions of this Act regarding the functioning of Special Courts within their respective territories.

(vii) Power of Central Government to Make Rules :- The Central Government may also make rules for carrying out the provisions of this Act from time to time.

(j) Critical Appraisal of the Act :- The Prevention of Terrorism Act, 2002 was passed with a view to fight against terrorism and organised crimes specially in view of terrorist attack on parliament in December, 2001 replacing the TADA, 1987. The Act is a special law to control terrorist activities. The punishment for terrorist activities is stringent. The Act provides for punishment in cases of possession of unauthorized arms and holding of proceeds of terrorism also. There are provisions in the Act which gives wide powers to the Government to forfeit and transfer the property of terrorist to government. Further, the Government can declare any organization as a terrorist organization under the Act, if, it is found to assist, sponsor and support the terrorist activities directly or indirectly. The special courts have been established under the Act with wide powers and jurisdiction to try the matters connected with the terrorist activities. The court can follow special and summary procedure in certain cases. The protection has also been given to the witnesses. The investigation agencies have been conferred wide powers in the matters of investigation including, arrest, recording of confessional statements, taking of samples of blood, hair etc of the accused. The interception of information of wire, electric, oral and any other mode is also provided. The Act provides that the accused shall be presumed to be guilty under certain circumstances where recoveries are made from the accused or where he is found involved in the prohibited activities in restricted areas. The Act has

\textsuperscript{215} Id section 60(7).
overriding effect and the ordinary courts are debarred to interfere by way of injunctions or stay etc.

The UPA government, after coming in power, has repealed this Act and passed the new Act i.e. “The Unlawful Activities (Prevention) Amendment Act, 2004” which is partly similar to the old Unlawful Activities (Prevention) Act, 1967 and the earlier Act, i.e. the Prevention of Terrorist, Act, 2002, as amended in 2003.

4. The Unlawful Activities (Prevention) Amendment, Act 2004

(a) General :- The previous Act was passed by the N.D.A. Government as a special law to deal with terrorist activities. But, it was repealed by the United Progressive Alliance (UPA) government after coming into power. According to the Government, there had been allegations of gross misuse of the provisions of this Act. These allegations were further supported by the Governments of some States. It has also been observed in the various quarters that the Act has failed to serve its intended purpose and as a result, there had also been persistent demand this Act should be repealed. Maharashtra state, Home minister Mr. R.R. Patil supported the Central Government’s decision to repeal the Prevention of Terrorism Act, 2002. Mr Mirhir Desai, civil rights lawyer also said that it (POTA) should be repealed immediately, instead of allowing it to lapse. Ultimately, the United Progressive Alliance (UPA) Government repealed the Act. The decision of the new government has been welcomed by the civil rights activist advocate Majeed Memon, who represents many POTA accused in the Mumbai bomb blasts cases. He said that we have been fighting from many days against POTA. We feel such laws are on-slaughter on the civil liberties of the common person and are highly vulnerable to misuse. They give undue powers to the policemen and innocent people’s rights are abused.216

Earlier, several civil right organisations have intensified their fight against the anti-terrorism law, demanding its immediate abolition. The Activists of the Peoples Union of Civil Liberty (PUCL) and the Jan Hastakshap, another civil rights organisation urged the Man Mohan Singh Government to abolish POTA at the earliest to prevent its further “misuse.” Addressing a seminar organised by the Jan Hastakshap at the Gandhi Peace Foundation, socialist leader Surindra Mohan and noted author Rajindra Yadav said all civil right organisations should intensify their movement against draconian laws like POTA. Referring to the police encounter in Gujarat in which a 18 years old girl student, Ishrat Raja was killed, the PUCl Leader N.D. Panchauli demanded that besides repealing the POTA all cases registered under the Act should also be closed. The Jawahar Lal Nehru University’s Professor (Dr.) Imtiyaz Ahmed demanded an independent inquiry by a High Court Judge into Ahmedabad encounter.217

The government also resolved not to compromise in the fight against terrorism which poses a serious threat to our national security as well as international commitments. To give effect to the above objective, the Unlawful Activities (Prevention) Amendment Ordinance, 2004 was promulgated on 21.9.2004. It was passed by the Lok Sabha on December 6, 2004 and by Rajya Sabha on December 9, 2004. At present the Unlawful Activities (Prevention) Amendment Act, 2004 is in force.

It extends to the whole of India including the State of J. & K. This Act is an amendment of the principal Act (The Unlawful Activities (Prevention) Act, 1967). Under this Act every person shall be liable to punishment for every act or omission irrespective of the fact that whether the offence is committed in India or abroad. Any person, who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of the Act as if such act had been done or committed in India. The provisions of this Act shall apply

also to the citizens of India outside the India, persons whose are in the service of Government on ships and aircrafts and registered in India. The government re-enforced the principal Act with some important amendments along with the Unlawful Activities (Prevention) Rules. This Act may be called "The Unlawful Activities (Prevention) Act, 1967 as amended by the Unlawful Activities (Prevention) Amendment Act, 2004.

(b) Object :- This Act was reviewed and re-enforced to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith.

(c) Interpretation clause :- Some important definitions have been given under section 2 of this Act. These are as under:

(i) 'Association' means any combination or body of individuals

(ii) 'Cession' of a part of the territory of India’, includes admission of the claim of any foreign country to any such part.

(iii) 'Court' means a criminal court having jurisdiction, under the Code, of Criminal Procedure to try offences under this Act.

(iv) 'Designated Authority' means such officer of the Central Government now below the rank of Joint Secretary to that government or such officer of the State Government not below the rank of Secretary to that government, as the case may be, may be specified by the Central Government or the State Government, by notification in the official gazette.

(v) 'Proceed of Terrorism' means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organisation.
(vi) 'Property' means property of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property and includes cash and bank account.

(vii) 'Secession of a part of the territory of India, from the Union' includes the assertion of any claim to determine whether such part will remain a part of the territory of India.

(viii) 'Terrorist Act' means act mentioned in section 15 of this Act.

(ix) 'Terrorist Gang' means any association, other than Terrorist Organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act.

(x) 'Terrorist Organisation' means an organisation listed in the schedule or an organisation operating under the same name as an organisation so listed.

(xi) 'Tribunal' means the tribunal constituted under section 5 of this Act.

(xii) 'Unlawful Activity' means activity committed by words, either spoken or written or by signs or by visible representation or otherwise by individual or association which is intended or supports any claim to bring about on any ground whatsoever, the cession of apart of the territory of India or the session of a part of the territory of India from the union, or which incites any individual or group of individuals to bring about such cession or secession or which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India or which causes or is intended to cause disaffection against India.218

(xiii) 'Unlawful Association' means any association which has for its objects any unlawful activity, or of which the encourages or aids persons to undertake any unlawful activity or which the members

218 The Unlawful Activities (Prevention) Amendment Act, 2004. Section 2
under take such activity or which has for its object any activity which is punishable under section 153-A 219 or section 153-B 220 of the Indian Penal Code or which encourages or aids persons to undertake any such activity or of which the members undertake any such activity. It is provided that it shall apply to the State of J & K.

(d) Unlawful Associations :- For the convenience of study we can divide this part of the Act as under:

(i) Declaration of an Unlawful Association :- The Central Government, if deems fit, may declare any association as unlawful association. 221

(ii) Grounds of Unlawful Association :- The grounds, on which any association is declared, unlawful, shall be mentioned in the notification and to be declared by notification and such notification should be published in the official gazette. 222

(iii) Effect of Notification :- The notification shall be effective after the confirmation of or by the Tribunal. The Central Government has also been empowered to declare such association with immediate effect be recorded in writing and he same would be notified. 223

(iv) Publication in Newspapers :- The Notification shall be published in not less than one daily newspaper in addition to the official gazette and such news paper must have wide circulation in the concerned state.

(v) Mode of Service of Notification :- The notification must be served on the concerned association by any of the following modes:-

(a) By affixing a copy of the notification to some conspicuous part of the office, if any, of the association or,

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219 Section 153-A of I P C states promoting enmity between different groups on grounds of religion race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony.

220 Section 153-B of IPC provides imputations, assertions prejudicial to national integration.

221 Id section 3(1)

222 Id section 3(2).

223 Id section 3(3)
(b) By serving a copy of the notification, where possible, on the principal office-bearers, if any of the association.

(c) By proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on.

(d) As other manner prescribed.  

(vi) Reference of Notification to Tribunal: After declaration of any association as an unlawful association, the Central Government, (within 30 days from the date of the publication of the notification), shall have to refer the notification to the Tribunal for adjudicating whether or not there is sufficient cause for declaring the association as unlawful.

(vii) Notice to the Association Affected: On receipt of such reference, the Tribunal shall call upon the association affected by written notice for showing cause and the concerned association may submit its reply within 30 days from the date of service of such notification.

(viii) Holding of Enquiry: After receipt of reply of the show cause the Tribunal shall hold an inquiry and would decide whether or not there is sufficient cause for declaring the association to be unlawful within a period of 6 months from the date of the issue of the notification. It may confirm the declaration or cancel the same.

(ix) Operation of Notification: A notification of declaration of an association as unlawful duly made and confirmed by the Tribunal shall remain in force for a period of 2 years from such date on which the notification became effective.

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224 Id section 3(4).
225 Id section 4(1).
226 Id section 4(2).
227 The procedure of Enquiry is given in section 9 of the Act.
228 Id section 4(3).
229 Substituted by Unlawful Activities (Prevention) Amendment Act, 2004, S. 6 for s. 10.
(x) Cancellation of Notification: The Central Government may either on its own motion or on the application of any person aggrieved, at any time, cancel the notification.230

(xi) Prohibition of use of Funds of an Unlawful Association: The Central Government may, by making an inquiry and by order in writing, prohibit to such person from paying, delivering, transferring, or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with other money, securities or credits which may come into his custody after making an order. A copy of such prohibition shall be served upon the person who has been prohibited for using of such funds.231

(xii) Search of Premises: The Central Government may endorse a copy of it for investigation and such prohibitory order will be considered a warrant of search. The investigating officer, thereafter can enter into the premises, examine the books of such person, search for moneys, securities or credits and may also make inquiries from any person or agent or servant of such person.232

(xiii) Serving of Copy of the Prohibitory Order: The copy of such order shall be served to such person according to the procedure provided in Code of Criminal Procedure, 1978. Where the person to be served is a Corporation, Company, Bank, or other Association, then it shall be served to Secretary, Director, Registrar, or other officer or person concerned with the management or by leaving it or sending it by post addressed to the Corporation, Company, Bank or other Association at their registered office or where there is no registered office, at the place where it carries on the business.233

(xiv) Undertaking for not Using the Funds from Aggrieved Person: An undertaking for not using the funds for the purpose of unlawful association from any person aggrieved, shall have to be given within 15 days from the date of the

230 Ibid.
231 Id sec 7(1).
232 Id sec 7(2)
233 Id section 7(3).
service of such order to the Court of the District Judge within the local limits of whose Jurisdiction such person resides or carries on business or personally works for gain.234

(xv) Notification About places: The Central Government may notify any place which is used for purpose of such unlawful association including a house or building or part of building, or tent or vessel.235

(xvi) Articles Memo: The District Magistrate, within the local limits of whose jurisdiction such notified place is situated, may authorize any officer, in writing, to prepare a list of all articles (other than wearing apparel, cooking vessels, beds and beddings tools artisans, implements of husbandry, cattle, grain and food stuffs and such other articles which considered to be a trivial nature) found in such notified place in the presence of two respectable witnesses.236

(xvii) Prohibiting Order: The District Magistrate may order prohibiting any person from using all articles or any of the mentioned in the memo.237

(xviii) Entry in the Notified Place: No person can, without the permission of the District Magistrate, enter in or on the notified place. However, a person can enter in or upon the notified place after the permission from the District Magistrate.238 Which may be conditional, and such person has to comply with such condition mentioned in the order of District Magistrate.239

(xix) Search of Person: The Central Government may authorize any police officer not below the rank of a Sub-inspector or any other person as it thinks fit to make search of any person entering, or seeking to enter, or being on or in the notified place and may also detain such person for the purpose of search except females.240

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234 Id section 7(4)
235 Id section 8(1)
236 Id section 8(2)
237 Id section 8(3)
238 Id section 8(4)
239 Id section 8(5)
240 Id section 8(6)
(xx) Removal of Person from Notified Place: When any person contravene of an order made by the District Magistrate in the notified place, such person may be removed by any officer or by any other person whose have been authorized by the Central Government.\textsuperscript{241}

(xxi) Application for Setting Aside the Order: Any person aggrieved by this notification may make an application for setting aside the order, to the District Magistrate and the District Magistrate must give an opportunity of being heard to such person.\textsuperscript{242}

(e) Establishment of Tribunal

(i) Constitution of Tribunal: As and when necessary, the Central Government may constitute a Tribunal to be known as the "Unlawful Activities (prevention) Tribunal" consisting of one person who shall be appointed by the Central Government.\textsuperscript{243}

(ii) Appointment of Judges: No person shall be appointed as presiding officer of the tribunal unless he is a Judge of a High Court.\textsuperscript{244}

(iii) Filling the Vacancy: The Central Government shall appoint another person in absence of the Presiding Officer of the Tribunal, in accordance with the provisions of this section, to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.\textsuperscript{245}

(iv) Appointment of Subordinate Staff: The Central Government shall make available to the Tribunal the subordinate staff necessary for discharging of its functions under this Act.\textsuperscript{246}

(v) Expenses of Tribunal: All expenses incurred in this connection by the Tribunal shall be met out of the Consolidated Fund of India.\textsuperscript{247}

\textsuperscript{241} Id section 8(7)
\textsuperscript{242} Id section 8(8)
\textsuperscript{243} Id section 5(1)
\textsuperscript{244} Ibid.
\textsuperscript{245} Id section 5(2).
\textsuperscript{246} Id section 5(3)
\textsuperscript{247} Id section 5(4)
(vi) **Procedure of Tribunal** :- The Tribunal shall have all the powers to regulate its procedure in all matters arising out of the discharge of its functions including the place or places at which it will held its sittings.\(^{248}\)

(vii) **Powers of Tribunal**:- The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit including:

(a) the summoning and enforcing the attendance of any witness and examining him on oath.

(b) the discovery and production of any document or other material object producible as evidence.

(c) the reception of evidence on affidavits.

(d) the requisitioning of any public record from any court or office.

(e) the issuing of any commission for the examination of witnesses.\(^{249}\)

(viii) **Proceeding of Tribunal** :- All the proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of section 193 and 228 of the India Penal Code, 1860 which provides the punishment for false evidence and section 228 international insult or interruption to public servant sitting in Judicial Proceeding and the Tribunal would be deemed to be a Civil Court for the purposes of section 195of Code of Criminal Procedure it provides prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(f) **Offences and Punishments**

(i) **Punishment for Member of an Unlawful Association** :- Where an association is declared unlawful under of this Act,

(a) a person, who is and continues to be a member of such association, or

(b) takes part in the meetings of such association or contributes to, or

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\(^{248}\) *Id section 5(5)*  
\(^{249}\) *Id section 5(6).*
(c) receives or solicits any contribution for the purpose of such association or in any way assists the operations of such association, shall be punishable with imprisonment for term which may extend to two years and shall also be liable to fine and

(d) a person, who is or continues to be a member of such association, or

(e) 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 or such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine. In any other case, shall be punishable with imprisonment with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life, and shall also be liable to fine.

(ii) Penalties for Dealing with Funds of an Unlawful Association :- Any person, who deals with the funds of an unlawful association after passing a prohibitory orders this Act shall be punishable with imprisonment for a term which may extend to 3 years or with fine or both. The court may also impose an additional fine to be recovered from the accused.

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250 Id. section 10, prior to Amendment of the unlawful Activities (Prevention) Act, 1967. The section 10 of this Act provides whoever is and continues to be a member of an association declared unlawful by a notification issued under section 3 which has become effective under sub-surtusion (3) of that section, or take part in meetings of any such unlawful association or contributes to or receives or solicits any contribution for the purpose of, any such unlawful association or in any way assists the operations of any such unlawful association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

251 Id. section 11.
(iii) **Punishment for Use of Articles** :- When any person uses any article in contravention of a prohibitory orders shall be punishable with imprisonment for a term which may extend to 1 year and also liable to fine.\(^{252}\)

(iv) **General Contraventions** :- When any person knowingly or willfully effects or attempts to effect entry into a notified place in contravention of orders made under of this Act, shall be punishable with imprisonment for a term which may extend to 1 year and also liable to fine.\(^{253}\)

(v) **Punishment for Unlawful Activities** :- Any person, who takes part in or commits or advocates, abets, advises or incites the commission of any kind of unlawful activity, shall be punishable with imprisonment for a term which may extend to 7 years, and also liable to fine.\(^{254}\) If any person assists any unlawful activity of any association, shall be punished for imprisonment which may be extended to 5 years or fine or both.\(^{255}\)

(vi) **Cognizable Offences** :- Under this Act, Every offence shall be cognizable offence and the police officer may arrest an offender without warrant.\(^{256}\)

(g) **Punishment for Terrorist Activities**

(i) **Terrorist Activities** :- Terrorist Activities under this Act includes intentional acts committed with a view :-

(a) To threaten the unity, integrity, security or sovereignty of India or;

(b) To strike terror in the people or any section of the people in India, in any foreign country or,

(c) To do any act by using bombs, dynamite or other explosives substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether

\(^{252}\) Id section 12(1)  
\(^{253}\) Id section 12(2)  
\(^{254}\) Id section 13(1)  
\(^{255}\) Id section 13(2)  
\(^{256}\) Id section 14.
biological or otherwise) of a hazardous nature in such manner as to cause or likely to cause, death of, or injuries to any person or persons or

(d) To loss of, or damages to or destruction of property or destruction of any supplies or services essential to the life of the community in India or in any foreign country or

(e) To causes damage or destruction of any property or equipment used or intended to be used for Defence of India or in connection with any other purposes of the Government of India, any State Government or any agencies or

(f) To detain any persons and threatens to kill or injure such person in order to compel the Government in India or the State Government or a Foreign Country or any other person, to do or abstain from doing any act, etc.  

Such persons shall be punishable with death or imprisonment for life, and shall also be liable to fine in case if such act has resulted in death of any person.

In any other case, the punishment will be imprisonment for a term which shall not be less than 5 year but which may extend to imprisonment for life, and shall also be liable to fine.

(ii) Punishment for Raising Fund for Terrorist Act:- Whoever raises fund for purpose of committing a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(iii) Punishment for Conspiracy :- Any person or whoever conspires or attempts to commit or advocates, abets advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a

257 Supra n. 218. Section 15.
258 Ibid.
259 Id section 16(1).
260 Id section 17.
terrorist act, shall be punishable with a minimum five years imprisonment and may be extended up to life imprisonment with fine.

(iv) Punishment for Harbouring :- Persons who voluntarily harbours or conceals or attempts to harbour or conceal any person knowing that such person is a terrorist, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life with fine.261

(v) Punishment for being Member of a Terrorist Gang or Organisation :- Any person who is a member of a terrorist gang or a Terrorist Organisation which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life and also liable to fine.262

(vi) Punishment for Holding proceeds of Terrorism :- Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund, shall be punished with a 3 years imprisonment which may be extended imprisonment for life with fine.263

(vii) Punishment for Threatening Witnesses :- Whoever threatens any witness or any other person in whom such witness may be interested with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other kind of unlawful act with intent to cause any of the said acts, shall be punished with imprisonment which may extend to 3 years and shall also be liable to fine.264

(viii) Enhanced Penalties :- Any person who, with intent to aid any terrorist, or contravenes any provision of, or any rule made under the Explosives Act, 1884 or the explosive substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959 or is in unauthorized possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare shall be punished

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261 Id section 19.
262 Id section 20.
263 Id section 21.
264 Id section 22.
with imprisonment for a term which shall not be less than five years but it may extend to imprisonment for life and shall also be liable to fine.\textsuperscript{265} In other cases, where a person with intent to aid any terrorist, attempts to contravene or abets or does any act preparatory in contravention of any provision of any law or rule specified above shall be punished with imprisonment for life.\textsuperscript{266}

(h) Forfeiture of Proceeds of Terrorism

(i) Proceeds of Terrorism: No person shall hold or be in possession of any proceeds of terrorism.\textsuperscript{267}

(ii) Power of Government Regarding Forfeiture: Proceeds of terrorism, whether held by a terrorist or by any other person (whether or not such person is a terrorist) shall be liable to be forfeited by the Central Government or State Government as the case may be as in terms of various provisions of the Act.\textsuperscript{268}

(iii) Attachment and Seizure of Proceeds of Terrorism: When an investigating officer is investigating an offence committed under this Act has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with prior approval (in writing) of the Director-General of Police (DGP) of the concerned state in which property is situated, make an order seizing such kind of property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.\textsuperscript{269}

\textsuperscript{265} \textit{Id} section 23(1) see also \textit{supra} nn. 68, 69. See also \textit{The Prevention of Terrorism Act}, 2002. Section 5.

\textsuperscript{266} \textit{Supra} n. 258; section 23(2).

\textsuperscript{267} \textit{Id} section 24(1) see also section 6 of POTA, 2002.

\textsuperscript{268} \textit{Id} section 24(2) see also same section of POTA, 2002.

\textsuperscript{269} \textit{Id} section 25(1).
(iv) **Information to the Designated Authority** :- The investigating officer shall duly inform the Designated Authority within 48 hours of the seizure or attachment of such property.  

(v) **Review of Order of Seizure** :- The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of 60 days from the date of such production. It is also provided that an opportunity of making a representation to the person, whose property is being seized or attached, shall be given.  

Submission of Seizure memo regarding the properties attached or seized by the investigating officer, to the Designated Authority shall be construed as production of property under this Act.

(vi) **Seizure and Detention of Cash** :- The investigating officer may seize and detain any cash if he has reason to believe or has reasonable grounds of suspecting that such cash is intended to be used for the purpose of terrorism or it forms the whole or part of the resources of a Terrorist Organisation.

(vii) **Production of Cash Seized before Designated Authority** :- The cash seized by the investigating officer shall be released within period of 48 hours from the time when it is seized unless the matter is submitted to the Designated Authority. Such authority may pass orders allowing its retention beyond 48 hours. The cash means and includes here the coins or notes in any currency or postal orders, or travellor’s cheques, or banker’s drafts and such other monetary instruments as the Central Government or, State Government may specify.

(viii) **Appeal against Attachment** :- Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the Court within a period of 30 days from the date of receipt of the order, and the court may either confirm the

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270 Id section 25(2) see also sub-section 3 of section 7 of The Prevention of Terrorism (repeal) Act, 2002.
271 Id section 25(3).
272 Id section 25(5) see also sub-section(6) of section 7 of the POTA, 2002.
273 Ibid.
order of attachment of property or seizure so made or revoke such order and release the property.\(^{274}\)

(ix) **Forfeiture of Proceeds of Terrorism** :- Where the court has confirmed the seizure order of proceeds of terrorism, proceedings for its forfeiture may be initiated whether or not the person, from whose possession such proceeds had been seized, is prosecuted or proceed against under this Act.\(^{275}\) However, a show cause notice, before forfeiture, must be given to the person holding or in possession of such proceeds. A reasonable opportunity of making representation along with opportunity of being heard must be afforded to such person.\(^{276}\) Further no order of forfeiture of proceeds shall be made of section 27, if such person establishes that he is a bona-fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.\(^{277}\)

In other cases, the court shall be competent authority to make an order in respect of the property seized or attached for selling or disposing of such property if it is a perishable property. It may also direct that the property may sold according to the provisions of section 459 of the Cr.P.C. The court may also direct for nominating any officer of the Central Government or the State Government in case of other property to perform function of the administrator of such property.\(^{278}\)

(x) **Appeal** :- Any aggrieved person may appeal against order of forfeiture of proceeds of terrorism within one month from the date of the receipt of such order to the High Court within whose jurisdiction, the court which has passed the order appealed against is situated.\(^{279}\)

(xi) **Release of Property** :- Where an order of under this Act, is modified or annulled by the High court or where in a prosecution instituted for any offence the

\(^{274}\) Id section 25(6).

\(^{275}\) Id section 26.

\(^{276}\) Id section 27(1) see also section 9 of the POTA, 2002.

\(^{277}\) Id section 27(2).

\(^{278}\) Id section 27(3). Section 459 provides power to sell perishable property.

\(^{279}\) Id section 28(1) see also section 10 of the POTA, 2002.
person against whom an order of forfeiture has been made is acquitted, such property shall be returned to him and if it is not possible for any reason to return the such property, the price shall be paid to him as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed. However, this order shall not affect, other proceedings launched against the accused.280

(xii) Claims of Third Party :- When any claim or objection is made or preferred by the third party to the seizure or attachment of any property/under section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection. It is also provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designated to cause unnecessary delay.281 Where on appeal, any claimant or objector establishes that property specified in the notice issued under section 27 is not liable to be forfeited the said notice shall be withdrawn or modified accordingly.282

(xiii) Power of Designated Authority :- The Designated Authority shall have all the powers of a Civil Court required for making a full and fair inquiry into the matter before it.283

(xiv) Certain Transfers to be Null and void :- Transfer of property which is proceeded against shall be null and void under this Act, the Designated Authority or the court as the case may be otherwise decided.284

(xv) Forfeiture of Property of Other Persons :- Where any person who is accused of an offence under this Act it shall be open to the court to pass order that all or any of the properties, movable or immovable or both belonging to such

280 Id section 28(2).
281 Id section 30(1) see also sub-section (1) of 12 of the POTA, 2002.
282 Id section 30(2).
283. Id section 31.
284 Id section 32.
person during the time of trial, shall be attached, if property is not already attached.\textsuperscript{285} If such person has been convicted, the court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, shall stand forfeited to the Central Government or the State Government free from all encumbrances.\textsuperscript{286}

(i) **Terrorist Organisations**

(i) **Declaration of a Terrorist Organisations** :- The Central Government may declare an organisation as Terrorist Organisation in the Schedule attached with Act.\textsuperscript{287} Further, the Central Government may also remove an organisation from the schedule or amend the schedule in some other way as it deems fit.\textsuperscript{288} The Central Government shall exercise its power under this section in respect of an organisation only if it has reason to believe that such organisation is involved in terrorism activities.\textsuperscript{289}

(ii) **Grounds** :- An organisation shall be deemed to be involved in terrorism only on the following grounds that if it\textsuperscript{290} :-

(a) commits or participates in acts of terrorism;
(b) prepares for terrorism;
(c) promotes or encourages terrorism or
(d) is involved in terrorism.

A notification, for declaration of an organization as Terrorist organisation as well as any addition or removal of any name of Terrorist Organization in the schedule shall be published in the Official Gazette by the Central Government.

(iii) **Denotification of a Terrorist Organisation** :- For denotification, an application may be made to the Central Government. Such application shall be by any person affected by inclusion of the organisation in the Schedule as Terrorist

\textsuperscript{285} \textit{id section 33(1)}.  
\textsuperscript{286} \textit{id section 33(2)}  
\textsuperscript{287} \textit{id section 35(1)}  
\textsuperscript{288} \textit{ibid.}  
\textsuperscript{289} \textit{id section 35(2).}  
\textsuperscript{290} \textit{id section 35(3) see also section 18 of the POTA, 2002.}
Organisation. These applications shall be disposed of by the Central Government in accordance with the rules and procedure to be prescribed in this behalf.

The Central Government has notified the 32 organisations as Terrorist Organisation which have been operating in the various parts of our country. Some of them are as under:

1. Al Bdar (AB)
2. Jamiat-ul-Mujahideen (JuM)
3. Al-Quida (AQ)
4. Dukhtaran-e-Milla (DeM)
5. Tamil Nadu Liberation Army (TNLA)
6. Tamil National Retrieval Troops (TNRT)

(iv) Review: Where an application has been rejected by the Central Government, may be applied by the aggrieved party for review to the Review Committee constituted by the Central Government in this behalf within one month from the date of receipt of the order of such rejection by the applicant.

The Review Committee may allow an application for review and order to remove the name organisation from the Schedule, in the light of the principles of judicial review. The Central Government shall after receiving the certified copy of order, make an order removing the name of an organisation from the schedule.

(v) Constitution of Review Committee: The Central Government shall constitute one or more Review Committees for the purposes of review of applications. Every such committee shall consist of a chairperson and such other members not exceeding three and possessing such qualifications as may be

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291 Id section 36(2)
292 See Supra n. 160. For detail see also section 18 of the POTA, 2002.
293 Id section 36(4)
294 Id section 36(5)
295 Id section 36(7)
prescribed. A chair person of the Committee shall be a person who is or has been a judge of a High Court, who shall be appointed by the Central Government and in the case of appointment of the sitting judge, the concurrence of the Chief Justice of the concerned High Court shall be obtained.

(vi) Membership of Terrorist Organisation: An Offence: Any person who associates himself, or professes to be associated, with a Terrorist Organisation with intention to further its activities, commits an offence relating to membership of a Terrorist Organisation except where the person charged is able to prove that the organisation was not declared as a Terrorist Organisation at the time when he became a member or began to profess to be a member. Further, he has not taken part in the activities of the organisation at any time during its inclusion in the schedule as a Terrorist Organisation.

Any person who commits the offence relating to membership of a Terrorist Organisation, shall be punishable with imprisonment for a term not exceeding 10 years, or with fine, or with both.

(vii) Support to Terrorist Organisation: Any person who supports a Terrorist Organisation with intention to further the activities of a Terrorist Organisation, invites support for the Terrorist Organisation or support is not or is not restricted to provide money or other property within the meaning of section 40 or who with intention to further the activity of a Terrorist Organisation, arranges, manages or assists in arranging or managing a meeting which he knows is to support the Terrorist Organisation, or to be addressed by a person who associates or professes to be associated with the Terrorist Organisation or who with intention addresses meeting for the purpose of encouraging support for the Terrorist Organisation.

\[296\] Id section 37(1) (2) see also section 60 of the POTA, 2002.
\[297\] Id section 37(3) ibid.
\[298\] Id section 38(1).
\[299\] Id section 38(2).
shall be deemed to be guilty. Any such person shall be punished with imprisonment for a term not exceeding 10 years, or with fine or with both.

(viii) Raising Fund for Terrorist Organisation : An Offence :- Any person who raises fund for a Terrorist Organisation or for activities of a Terrorist Organisation or invites another person to provide money or other property to be used, or has reasonable cause to suspect that it might be used for the purposes of terrorism, or receives money or other property for purpose of terrorism or provides money or other property and knows or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism shall be deemed to be guilty. Such person shall be punished with imprisonment for a term not exceeding 14 years, or with fine or both.

(j) Miscellaneous Provisions

(i) Continuance of Association :- An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to be continue so long as any actual combination for the purposes of such association continues between any members.

(ii) Power to Delegate :- The Central Government may delegate the power to be exercised by it under this Act to the State Government or any person who is subordinate to the State Government. A notification shall be published in the official gazette regarding it by the Central Government.

(iii) Power of Investigating Officer:- No police officer below the rank of DSP, ACP or equivalent shall be appointed as investigative officer for investigation of the offences under chapter IV & V of the Act.

(iv) Protection of Witnesses :- For protection of witnesses, the proceedings under this Act, may be held in camera, if the court so desires. On an application
made by a witness or by the Public Prosecutor on behalf of witness or its own motion. The Court may keep the identity and address of such witness as secret.\textsuperscript{307}

The court may also take following measures for their protection;

(a) the holding of the proceedings at a place to be decided by the court;
(b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;
(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed
(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.\textsuperscript{308}

Further, any person, who contravenes any of the direction issued by the court in this behalf shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.\textsuperscript{309}

(v) Cognizance of Offences :- No court shall take cognizance of any offence under this Act, without the previous sanction of the Central Government or the State Government as the case may be or any officer authorized by the Government in this behalf.\textsuperscript{310}

(vi) Admissibility of Evidence Collected Through the Interception of Communication :- The evidences collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 or the Information Technology Act, 2000 or any other law for time being in force shall be admissible as evidence against the accused in the court during the trial of a case. It is provided that the contents of any wire, electronic or oral communication intercepted or evidence derived shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any

\textsuperscript{307} Id section 44(2).
\textsuperscript{308} Id section 44(3) see also sub-section (3) of section 30 of POTA, 2002.
\textsuperscript{309} Id section 44(4) see also sub-section (4) of section 30 of POTA, 2002.
\textsuperscript{310} Id section 45.
court unless each accused has been furnished with a copy of the order of the competent authority under aforesaid law, under which the interception was directed, not less than 10 days before trial, hearing or proceeding. However, this requirement of 10 days time may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused a copy of such order in the prescribed time and that the accused shall not be prejudiced by the delay in receiving such order.\(^{311}\)

(vii) **Bar of Jurisdiction** :- No proceeding taken under this Act by the Central Government or the District Magistrate shall be called in question in any Civil Court in any suit or application or by way of appeal or revision and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under this Act. No Civil Court or other authority shall have, any jurisdiction, powers or authority in relation to the matters referred to in section 36 of this Act.\(^{312}\)

(viii) **Protection of action Taken in Good Faith** :- No suit, prosecution or other legal proceeding shall be lie against the Central Government or State Government or any officer or authority, any serving or retired member of the Armed Forces or Para-Military Forces for any action taken or to be taken in good faith in course of any operation directed towards combating terrorism.\(^{313}\)

(ix) **Impounding of Passport, Arms and licence of Person Charge-sheeted**:- The passport and the arms licence of a person, who is charge-sheeted under this Act for having committed any offence, shall be deemed to have been impounded for such period as the court may deem fit.\(^{314}\)

(k) **Critical Appraisal of the Act** :- The Unlawful Activities (Prevention) Act, 1967 was passed basically for effective prevention of certain unlawful activities of individuals and associations with a view to impose reasonable restrictions in

\(^{311}\) Id section 46.

\(^{312}\) Id section 47.

\(^{313}\) Id section 49.

\(^{314}\) Id section 51.
the interest of sovereignty and integrity of India on freedom of speech and expression, right to assemble peaceably and without arms, right to form associations or unions. It was an ordinary law and remained in force up to 2003. In 2004, the law has been radically amended to include the terrorist activities in its ambit and scope. The chapter IV and Vth in the amendment Act have been specially inserted for purposes of prevention, control and abatement of terrorism and terrorist activities. The Central Government has enforced the amendment ordinance in 2004 the Prevention of Terrorism Act 2002 was repealed on the grounds of gross misuse. Although, the POTA was replaced but the Government stated that it shall not compromise in fight against terrorism and national security. In view of United Nations Security Council Resolutions 1373 dated Sept. 28, 2001 and also the challenge of terrorism at national and global level, the Unlawful Activities (Prevention) Amendment Act, 2004 was enforced. The Act is made applicable throughout India including Jammu and Kashmir. Under this Act, every person shall be liable for every act or omission contrary to the provisions of the Act irrespective of the fact that whether the offence is committed in India or abroad. The Governments have been given wide powers to declare any organization as a “terrorist organization”. The Act also provides for the forfeiture of proceeds of terrorism and property of terrorist etc. The enforcement agencies are empowered under the Act to intercept and communication for the purposes of collection of evidence in certain cases. The witnesses are protected under the Act. The Act provides for the establishment of Special Tribunals with special powers including holding of summary trial in certain cases. Severe punishment have been prescribed under the Act for terrorist activities, raising funds for terrorists activity, conspiracy, harbouring, being member of terrorist organization, gang, holding proceeds of terrorism, aid or abetment to terrorism etc. The ordinary Civil Courts are debarred to interfere in the matters under this Act and the provisions of the Act shall have overriding effect.
B. Review

Law is considered as an important instrument of social change. Sometimes, it becomes compulsory to enact hard laws to deal with the hardened people in public interest and to protect the life and properly of individuals and the public. Since, the problem of terrorism has challenged the very existence of state, therefore, the state under compelling circumstances has enacted certain special laws for the prevention, control and abatement of terrorism. Some of these laws are mentioned below:

(i) The Inflammable Substances Act, 1952
(ii) The Arms Act, 1959,
(iii) The Unlawful Activities (Prevention) Act, 1967
(v) The Arms Rule, 1962,
(vi) The National Security Act, 1980,
(vii) The Assam Preventive Detention Act, 1980,
(viii) The Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982,
(ix) The Anti-Hijacking Act, 1982,
(x) The Armed Forces (Panjab, Chandigarh) Special powers Act, 1983
(xi) The Panjab Disturbed Areas Act, 1983
(xii) The Chandigarh Disturbed Areas Act, 1983
(xiii) The Terrorist Affected Areas (Special Courts) Act, 1984,
(xvi) The National Security (Amendment) Ordinance, 1984,
(xv) The Terrorist and Disruptive Activities (Prevention) Act, 1985
(xvi) The National Security Guard Act, 1986,
(xviii) The Criminal Courts and Security Guard Courts Rules 1987,
(xix) The Special Protection Group Act, 1988,

All these laws has been passed to meet the special situations. Most of them are directly against the major threat of terrorism.

The Terrorist Affected Areas (Special Court) Act, 1984 was passed with view to control violence and disruptive activities by terrorists. The Act is made applicable throughout the territory of India except the state of Jammu and Kashmir. The Act provides for the establishment of Special Court in terrorist affected areas. The court shall be presided over by a person to the rank of Session Judge or Additional Session Judge. There are radical changes in the procedure followed by these courts in the trial of offences. The court may follow the summary procedure in the major trials with a view to dispose of the matter in a speedy manner. The court are given wide powers and proceedings of the court shall be held in camera. The identity and address of witnesses are to be kept secret. The right to appeal has been restricted and there will be only one appeal which will lie in the Supreme Court. The right to revision before the High Court is provided. Further, Section 111A of the Indian Evidence Act after amendment, has been made applicable to the offenders under the Act, which provides presumption in favour of commission of offence in these areas under certain circumstances. Resultantly, the burden of proof is also shifted negatively on the accused. However, this Act was repealed and replaced by the TADA, 1987.

After repeal of Terrorist Affected Areas (Special Courts) Act, 1984, the Parliament enacted the Terrorist and Disruptive Activities (Prevention) Act, 1987 in view of escalation of terrorist activities in many parts of the country including the state of Jammu and Kashmir. Therefore, in the first instance the provisions of TADA, 1985 were made applicable throughout territory of India including Jammu and Kashmir. The Act provides for the establishment of Designated Courts in the notified areas for dealing with the cases of terrorists. The Designated Courts so
established will be presided over by the Session Judge or a person having equivalent position. These Designated Courts have been given wide powers and can try the other offences also in the notified areas. The courts may follow the summary procedure, proceedings of the court are to be held in Camera in order to keep identity of the witnesses secret. There is no provision of appeal or revision from the orders of the Designated court, however, a single appeal will lie as matter of right in the Supreme Court against all orders not being interlocutory order on both issues of facts as well as law.

The informed confessions made before the police officers not below the rank of Superintendent of Police has been made admissible under the Act. There are provisions in the Act which provides for the presumption by the Designated Court of Commission of certain offences specially where recovery of arms and explosives etc have been effected. The Act also provides severe punishment for terrorist and disruptive activities and in the matters of possession of unauthorised arms etc. There are provisions in the Act which also provides for the attachment, seizure and forfeiture of property of the accused and declaration of a person as a proclaimed offender in case of non-appearance etc. For the proper enforcement of the Act, the Central Government and the State Government are given wide powers. The provisions of the Act shall have overriding effect. However, this Act was repealed and replaced by a special law in the name of the Prevention of Terrorism Act, 2002 to fight against the terrorism and organized crimes specially in view of attack on India Parliament in December, 2001.

The Prevention of Terrorism Act, 2002 was passed with a view to fight against terrorism and organised crimes specially in view of terrorist attack on parliament in December, 2001 replacing the TADA, 1987. The Act is a special law to control terrorist activities. The punishment for terrorist activities is stringent. The Act provides for punishment in cases of possession of unauthorized arms and holding of proceeds of terrorism also. There are provisions in the Act which gives wide powers to the Government to forfeit and
transfer the property of terrorist to government. Further, the Government can declare any organization as a terrorist organization under the Act, if, it is found to assist, sponsor and support the terrorist activities directly or indirectly. The special courts have been established under the Act with wide powers and jurisdiction to try the matters connected with the terrorist activities. The court can follow special and summary procedure in certain cases. The protection has also been given to the witnesses. The investigation agencies have been conferred wide powers in the matters of investigation including, arrest, recording of confessional statements, taking of samples of blood, hair etc of the accused. The interception of information of wire, electric, oral and any other mode is also provided. The Act provides that the accused shall be presumed to be guilty under certain circumstances where recoveries are made from the accused or where he is found involved in the prohibited activities in restricted areas. The Act has overriding effect and the ordinary courts are debarred to interfere by way of injunctions or stay etc.

The UPA government, after coming in power, has repealed this Act and passed the new Act i.e. “The Unlawful Activities (Prevention) Amendment Act, 2004” which is partly similar to the old Unlawful Activities (Prevention) Act, 1967 and the earlier Act, i.e. the Prevention of Terrorist, Act, 2002, as amended in 2003.

The Unlawful Activities (Prevention) Act, 1967 was passed basically for effective prevention of certain unlawful activities of individuals and associations with a view to impose reasonable restrictions in the interest of sovereignty and integrity of India on freedom of speech and expression, right to assemble peaceably and without arms, right to form associations or unions. It was an ordinary law and remained in force up to 2003. In 2004, the law has been radically amended to include the terrorist activities in its ambit and scope. The chapter IV and Vth in the amendment Act have been specially inserted for purposes of prevention, control and abatement of terrorism and terrorist activities. The Central Government has enforced the amendment ordinance in 2004 the
Prevention of Terrorism Act 2002 was repealed on the grounds of gross misuse. Although, the POTA was replaced but the Government stated that it shall not compromise in fight against terrorism and national security. In view of United Nations Security Council Resolutions 1373 dated Sept. 28, 2001 and also the challenge of terrorism at national and global level, the Unlawful Activities (Prevention) Amendment Act, 2004 was enforced. The Act is made applicable throughout India including Jammu and Kashmir. Under this Act, every person shall be liable for every act or omission contrary to the provisions of the Act irrespective of the fact that whether the offence is committed in India or abroad. The Governments have been given wide powers to declare any organization as a "terrorist organization". The Act also provides for the forfeiture of proceeds of terrorism and property of terrorist etc. The enforcement agencies are empowered under the Act to intercept and communication for the purposes of collection of evidence in certain cases. The witnesses are protected under the Act. The Act provides for the establishment of Special Tribunals with special powers including holding of summary trial in certain cases. Severe punishment have been prescribed under the Act for terrorist activities, raising funds for terrorists activity, conspiracy, harbouring, being member of terrorist organization, gang, holding proceeds of terrorism, aid or abetment to terrorism etc. The ordinary Civil Courts are debarred to interfere in the matters under this Act and the provisions of the Act shall have overriding effect.

It is a true fact that terrorism is growing very fast instead of decreasing. India has been facing it since many decades. About eighty thousand (80,000) innocent people have been killed and lakhs of people injured due to violence relating to terrorist activities. Between 1992 to 2003 at least 21,497 civilians and 7,046 security forces personnel have been killed in terrorist attacks, while 26,072 terrorists have also been killed in counter offensive.\(^{315}\)

\(^{315}\) http://www/legal policy/terrorism in India/ saficherian/
Since 1947, there have been over 300 different government in the states in the Indian Union. It appears that there have been weaknesses of the governments for not properly implementing the laws which had been passed by the Parliament. Jammu and Kashmir is a major theatre of terrorist conflict in the country and its past record of convictions of arrested terrorists under any law has been a dismal. The Jammu and Kashmir Chief Minister Mr. Farooq Abdullah took a policy decision not to implement the POTA, 2002, in the state. It was motivated move and a populist approach. The enforcement agencies also did not take much interest to implement it, in the initial stage. They said that POTA is, of course, far from perfect. Many State Governments also did not properly implement not only the POTA, but also other laws passed by the parliament due to some political differences. The Government of Manipur, Karnataka, Panjab, Assam, Tripura and Madhya Pradesh also have said that POTA would not be used in their states.

Regrettably, political indulgence and high-handedness have constantly undermined the implementation of counter-terrorism laws and have infinitely complicated the terrorism debate. There has also been the lack of political consensus on the implementation of anti-terrorism laws. Further misuse of the counter-terrorism laws by the enforcement agencies is also a reason for not controlling the terrorism. There have been certain cases of gross abuse of TADA and POTA in certain states. Among the aspects that have most frequently come under the criticism is the abuse of such laws to carry out the arrest of the political opponents and a wide range of activists who are not covered by the intent and purpose of such laws TADA was used far more often against those persons who were not covered by definitions of the terrorism or terrorist. According to a review of the arrests made under POTA over the first year of its operation, it appears that the Act was in poor light. According to the Union Home Minister,

316 Ibid.
318 Supra n. 6.
the total number of those arrested and put in jail across the country under POTA was 257. Further, the POTA was extensively used in Jharkhand State instead of Jammu and Kashmir. This newly created State has the distinction of detaining the highest number of persons under POTA, i.e., at 113, as against 104 detained in Jammu and Kashmir. Those detained in Jharkhand were a 12 year old child and an eighty one (81) year old man. Others in the POTA list are Delhi with 20 detainees, in Uttar Pradesh and Tamil Nadu detainees were 10 each. These facts reveal that anti-terrorism laws were abused. The Prevention of Terrorism Act (POTA) has been used in 10 states. In addition to POTA, most of the States also have Special Acts with similar provisions. It was also found that POTA has been used against Juveniles, old people, members of Dalit and Adivasi communities, members of minority communities, journalists, women and political opponents and those who are struggling for socio-economic rights. Many of there cases have come to light through human right organisations and their networks functioning across the country. In 2003, a revolutionary Telugu Poet, Arvind Babu, was booked under POTA in Andhra Pradesh. Babu was subjected to severe mental torture during interrogation and was pressurized to sing a confessional statement in which he admitted his links with the banned People’s War Group (PWG). An assessment made by Human Rights Organisations suggest that of the 240 people arrested under POTA in 2002, 239 were Muslims and one was a Sikh. In 2002, a case of POTA was slapped on Ropnn Kharia, 17 year old resident of Toli village in Gumbla District, of Jharkhand and her only mistake was that she was sole educated woman in her village and train women to resist patriarchal oppression.

In another reported incident Nagendra Sharma, a reporter of a Hindi daily in Palamau war arrested under POTA, in February 2002. He had only been

320 Ibid.
321 “POTA Victims to Depose at People Tribunal” (The Hindu March 10, 2004).
covering the activities of the banned organisations. In 2001, the U.P. Government had arrested 25 Dalits and adivasis in Sonebhadra District of Uttar Pradesh.\textsuperscript{322} Mr. Vaiko and other 8 leaders of the M.D.M.K. party were booked under POTA for making a statement of sympathy and support for the LTTE’s ideology adopted by them. But, fortunately, the Review Committee found no prima facie case against them and therefore let free.\textsuperscript{323}

The Police and Security Forces is the main instrument for combating the terrorism. These instruments seems to have become very ineffective and appears to become helping hand to the terrorism instead of combating or controlling it. Many police and security force officials have been arrested for helping hands of the terrorists. They have been supplying the arms, weapons, ammunition and important information to the terrorists from time to time. For instances, three Army Jawans have been arrested in the border district of Poonch on charges of operating as over ground workers (OWGs) of the Lashkar-e-Toiba outfit. The arrested soldiers were identified as Lance-Naik Mohammad Shakeel, Sepoy Abdul Haq and Mohammad Sharif, of the Jammu and Kashmir Light Infantry (JKLI). They were working for the terrorists for past three years.\textsuperscript{324} Three more policemen have been arrested on the charges of stealing AK-47 rifles from the police stores and supplying these to ultras in the Kishtwar area of the Doda district. More so, two policemen were arrested for stealing two AK-47 rifles and ammunition for supplying to terrorists from Makhana. Those arrested have been identified as Special Police Officer (SPO) Mohammad Yousuf, Head Constable Nissar Ahmed and Sepoy Ashiq Hussain. During the interrogation SPO Mohammad Yousuf admitted that he was carrying the weapons for delivering it to the Lashkar-e-Toiba terrorists.\textsuperscript{325}

\textsuperscript{322} Ibid.
\textsuperscript{323} No Prima-Facie Case against Vaika : Saharya Penal” The Hindu (New Delhi) April, 9, 2004.
\textsuperscript{325} “Three Cops held for Stealing AK-47 rifles for LeT” The Tribune (New Delhi) August 2, 2005.
In a joint operation, the Military Intelligence (MI) and the Intelligence Bureau (IB) had arrested one Arif Lakhani and his three accomplices from the Armoured Corps Training School and Center in Ahmednagar. Two of the accomplices have been identified as Om Powdi and Jagirdar. They have obtained the information about IAF's two sensitive communication bases in Nasik as well as pictures of the strategic naval establishment at Jamnagar and detailed maps depicting the internal layout of some Army Units.326

A Head constable of the Jammu and Kashmir Police was arrested for his alleged links with terrorists who master minded attack on temple at Ayodhya in 2005. The Head constable, Mohammad Sharif, was arrested in the border district of Rajouri on specific information that he had links with the Pakistani terrorists. His wife and he was allegedly using the telephone to contact the Jaish-e-Mohammad terrorist sitting in Pakistan. There were allegations that the head Constable was also a conduit for transferring Hawala money to terrorists. In another incident the police raided the Bhatandi locality and arrested Kalam Shah, Ahish Kumar, A Ahmed and Vicky after recovering 2 kg of Brown Sugar from them. During interrogation, the police came to know that they were also engaged in printing fake currency. The police raided the printing laboratory and seized the equipment.327

Not only the enforcement agencies have been helping hands of the terrorism but also many politicians, engineers, doctors, actors, academicians and even general public directly or indirectly have been working for the terrorists. For instance, many politicians have been remained in figure for having relations with the terrorists and Terrorist Organisations. Sanjay Dutt actor, had been arrested for keeping the AK-47 rifle in his residence in Bombay 1993 when terrorists blasted the city. In 2006 Bombay blast cases, many prominent and educated persons of the city have been charged for terrorist activities and support to terrorists. In

327 "Captivating Links with Terrorist held" The Tribune September 7, 2006.
December 13, 2001, attack on Parliament of India one Professor SAR Gilani was arrested for helping the terrorists. In August, 2006, the police arrested four persons for having links with the Jammu and Kashmir terrorist group Hizbul Mujahideen. The Police recovered 4.5 Kg. RDX, 2 AK-47 rifles, 4 Magazines and 32 bore pistols from them. These were to be supplied to the militants. In a society where politicians, actors, academicians and doctors are known for the contempt of their own professions, how can we expect a police men to be judicious? Intelligence agencies also play a vital role like the police and security forces for combating terrorism. Its role in law and order situations is also important. These agencies have not been working efficiently due to the interference by the politicians. Many a times, many sensitive reports about the terrorism submitted by these agencies have been ignored by the authorities, resultantly, the terrorism is spreading very fast. Further, the negligence of our own National Security Guards and the Crisis Management Group leads to the hijacking of IC 189. Latter on, the Government of India has to release the dreaded terrorists like Azhar Mahmood. On December 13, 2001, five terrorists attacked on the Parliament and near about 16 security men injured and some killed. Some people who were involved in this attack were arrested. The main accused Mr. Mohammad Afzal was awarded the capital punishment but the capital punishment has not been executed till now. The case of pardon is still under consideration. The lenient attitude of the Government has proved too costly for the nation. Moreover, the untreated grievances and denial of rights of individuals leads to horizontal and vertical growth of terrorism and this gives birth to insurgency like

331 Amiya Samanta "Neglected Intelligence "The Tribune (New Delhi) February 17, 2002.
332 Ibid.
in Sri Lanka. All this is the result of untreated and spoiled grievances of Individuals and small groups.\textsuperscript{333}

Although, we have passed special laws and established special courts.\textsuperscript{334} The procedure is also summary. But these courts are not different in any manner from the traditional Criminal Courts in the matters of delay and pendency.\textsuperscript{335} as is evident from the decisions of Bombay Blast Cases of 1993. The judgment of the court has come after a period of 14 long years in 2007 only.

Blatant Corruption is widespread in all field of administration and at all levels from the ministers down to peons. When the honest intelligence agencies report that a number of well-trained and well-armed terrorists or insurgents have crossed from Pakistan into India and an alert is sounded along the Indo-Pak border. Such intelligent agencies think that they have done their duty by sending a wireless massage to the government. But, another top dishonest person u. bureaucratic make most of government instructions almost futile. It is hard fact that lakhs of Bangladeshi nationals with fake travel documents or no documents are in India. Similarly the Panjab, Rajasthan-Pak border has been a heaven for smugglers. There is no doubt that the lower-ranking police officers have been posted at the border and such officers get their small amounts for each illegal entry. Many policemen, security forces and other persons also supply the important information and weapons to the dreaded terrorists and their organisations and get a huge amount. Many top persons also harbour such dreaded terrorists and get the huge amounts. Therefore, there is no fault in the legislations but in the system that implements the laws. There is also fault in our honesty. We have become greedy. Due to this, we have been supplying our important information to the outfits. Finally, it may be stated that it is not impossible to wipeout the problem of Terrorism unless the things are radically changed.

\textsuperscript{333} Ibid. See also Major Gen Samay Ram (Retd.) "Tackling of Insurgency and Terrorism" (2002) p. 31.
\textsuperscript{334} "Judicial delay" http://www.indolink.com/Analysis/a/01/02 054653 Pnp.
\textsuperscript{336} Ibid.