CHAPTER-X
CONCLUSION AND SUGGESTIONS

Terrorism is not a new phenomenon in the world. It is as old as the civilization of mankind itself and has existed in all ages in one form or other which might be known as anarchists, revolutionaries, fundamentalist and dissidents against the established authority or even ruling tyrants having no tolerance or dissent. Today, terrorism is widespread and there is hardly any country which has escaped from its wrath. Its object is to overawe, create a sense of fear, insecurity and loss of confidence in the minds of people at large, on one hand and to disturb Governments and to prevent their smooth functioning on the other hand. It has emerged as a global problem in the late 1960s. International terrorism assumed a new dimension with the assault on the World Trade Center and the Pentagon on September 11, 2001. It was a biggest single terrorist strike in the history of terrorism with the largest number of causalities and the maximum economic damage. Nearly 5,000 people were killed and property worth about twenty billion dollars was damaged. It marked the beginning of the first major war of the 21st century. The President of America W. Bush and former Home Minister of India Shri Lal Krishan Advani said that terrorism has emerged as Global problem and every state should fight collectively against the terrorism.

India has been witnessing the most serious terrorists threat in its long history particularly in Jammu, Panjab and other states. Hardly a day passes when there is no casualty. Alan O'day defined the terrorism in his book “Dimension of Terrorism” as “terrorism is the international generation of massive fear by human beings for the purpose of securing and maintaining control over other human beings.” It means terrorists want to establish their regime over the human being

1 Supra, chapter II nn 1 5, 8.
2 Supra, chapter II nn. 5, 14.
3 Supra, chapter VI n. 2.
4 Supra, chapter II n. 3.
by creating the terror in the mind of human beings.\(^5\) The aim of terrorists,\(^6\) insurgents,\(^7\) extremists\(^8\) and Guerrillas\(^9\) in addition to other things include to erode the support to the ruling Government, to harass the opponent rather than to dealt them, to overthrow the ruling regime and to exploit the masses. About 80,000 people are estimated to have lost their lives in violence and mayhem let loose by them at the instigation of and with the active material support from across the border. Apart from the loss of human lives and extensive damage to public property India has lost a Prime Minister an Ex-Prime Minister, a Chief Minister and a Former Army Chief.\(^{10}\)

A. Conclusions - On the basis of the study some conclusions have been drawn. These are discussed, in brief, as under:

(i) No Consensus on Universal Definition of Terrorism :- No universal definition of terrorism has been accepted so far due to international politics.\(^{11}\) Whether a particular act of violence is termed terrorism or not, is little relevance to a Government. This has been considered as the biggest hurdle to deal with the terrorism. The universal definition of terrorism is most important since the subsequent legislations of all the states would need to incorporate the common laws to deal with terrorism. What has been done so far by the states to deal with terrorism seems to be useless because the problem of terrorism is becoming more and more complicated.\(^{12}\) As a large number of offences that affect the daily life of civilians, fall outside the definition of terrorism while these offences are punishable under the various International Conventions and International laws.\(^{13}\)

\(^5\) Supra, chapter II n. 108.
\(^6\) Supra, chapter II n. 13.
\(^7\) Supra, chapter II nn. 31,32.
\(^8\) Supra, chapter II n. 24.
\(^9\) Supra, chapter II n. 85.
\(^10\) Supra, chapter VI n. 1
\(^12\) Ibid.
\(^13\) Supra, chapter V nn. 92, 102, 110, 117.
These laws, exempt freedom fighters and those seeking 'self determination' from their ambit. The movement of South West Africa peoples organisation and Palestine Liberation organisation which were defined as struggle against colonial domination, fall outside the ambit of terrorist laws.\textsuperscript{14} A definition of terrorism may be adopted which might be free from all prejudices and which should include all kinds of violence and offences including counterfeiting, agreements, conspiracies and offences aimed at imposing social and religious ideas. There is urgently needed a universal definition of terrorism to curb the menace of terrorism.\textsuperscript{15} The Supreme Court of India said that United Nations members had failed to evolve a consensus on the definition of terrorism as it was seen in some parts as a fight for freedom. The court further said that lack of clear definition is the major obstacle in taking counter measures against the menace of terrorism. If, the definition of terrorism was restricted to an attack on civilians or non-military installations, any attack on soldiers and their houses could not be included within its meaning. Terrorist activity travels beyond the effect of an ordinary crime and therefore, is not capable of being punished under the ordinary penal law of the land. The court pointed out and said "the old adage" one man's terrorist is another man's freedom fighter is still alive.\textsuperscript{16}

(ii) Different Factors Responsible :- A number of different factors have been found responsible for emergence of terrorism. These are as under:

(a) Socio economic Factors
(b) Political Frustrations
(c) Regional Disparities

The Socio-Economic Factors include widespread Unemployment, Illiteracy, Poverty, Population, wrong policies of the Government, allowing of earning of the huge money, humiliation of people and deprivation of fundamental freedoms and basic rights of the people.

\textsuperscript{14} Supra, chapter V n. 95.
\textsuperscript{15} Supra, chapter II nn. 132,133
\textsuperscript{16} Supra, chapter IX nn. 1, 3.
It is a hard fact that socio-economic condition of the people of the affected states have been very miserable and they are being exploited and deprived from the basic necessities. The economic inequality and widening gap between the rich and poor has also lead to terrorism. It is claimed that "terrorism has emerged due to oppression of poors by the rich". The discriminated, deprived and frustrated people demand a "separate homeland" or a "separate state". When a large sections of the pluralistic society are deprived from their participation in democracy then they lead to terroristic activities. They are compelled to think that their aspirations are being ignored and neglected by the Government. Ted Robert Gurr said that political ignorance and continuous violence could result into terrorism.

The another factor is regional disparities. It is a highly inflammable factor which exists in many parts of the world. Regional disparities mean "progressive deprivation" when the regional people are deprived from the "value capabilities" then they revolt against the authorities and demands to justice. If, their reasonable demands are ignored persistently it lead to terrorism. Terrorists are not born but created by the particular sociological, economic and political conditioning process. To curb the problem of terrorism, it is necessary that reasonable and justified demands of the people should be accepted as soon as possible.

(iii) Different Forms of Terrorism :- Terrorism has many forms which may be classified as international terrorism, state terrorism, state sponsored terrorism, regional terrorism, political terrorism, religious terrorism, urban terrorism, ideological terrorism, counter terrorism, individual terrorism, biological terrorism, suicidal terrorism, and transnational terrorism. Terrorist use different
techniques to terrorise the people including hijacking, kidnapping, assassinating, blackmailing, ransom, killing, bombing, suicide bombing, and explosive, etc.\textsuperscript{23}

All above mentioned forms of terrorism are not existing in one country. There are many countries which sponsor terrorism and are also funding to terrorist groups. The techniques of terrorists are supposedly same. They kidnap the popular, noted and political personalities and compel the respective Government to meet out their demands. Some of them also kidnap such person for getting the money for exchange or release of the kidnapped person.\textsuperscript{24} There are many examples where the terrorists demanded a huge money for exchange or release of the kidnapped person from the respective authority. If, their demands are not accepted, they kill the kidnapped person.\textsuperscript{25} In December 1999, terrorists hijacked the Indian Aircraft Flight 1/c 814 from Kathmandu airport and took to Kandhar in Taliban. They demanded the release of three hardcore terrorists who were in the Indian jail in exchange for hostages. The Government has to release the three terrorists.\textsuperscript{26} Such types of activities are being done by the terrorists not only in India but also all over the world.\textsuperscript{27} It is true that terrorists stay in five star hotels instead of bushes, jungles and valleys so that no one may suspect them.\textsuperscript{28} Terrorist loot the banks, armouries and create the sense of insecurity among the people.\textsuperscript{29}

(iv) Funding to Terrorists :- The United States Departments annually issues a list of the states which are providing funds, weapons and other assistance to terrorist groups. In 2000, it declared the six countries namely Iran, Iraq, Libya, North Korea, Sudan and Syria as terrorism sponsoring States. According to the United States, these countries arrange to provide various kinds of support to various terrorist groups. The support includes an amount of funding, training.

\textsuperscript{23} \textit{Supra}, chapter IV nn. 114, 129, 133, 140, 145.
\textsuperscript{24} \textit{Supra}, chapter IV. See also \textit{Supra} nn 22-33.
\textsuperscript{25} \textit{Supra}, chapter IV n. \textit{Ibid.}
\textsuperscript{26} \textit{Supra}, chapter IV n. \textit{Ibid.}
\textsuperscript{27} \textit{Supra}, chapter IV n. 253.
\textsuperscript{28} \textit{Supra}, chapter IV nn. 150,152
\textsuperscript{29} \textit{Supra}, chapter IV nn. 156,157.
weapons, explosives and some sanctuary etc.\textsuperscript{30} According to a report the Black September Organisation had received US $ 7 million for executing its attack on the Israeli athletes at the Munich Olympic games. The Lashker-e-Toiba and Jaish-e-Mohammed have been created by the Pakistani Intelligence agencies and are fully financed by it.\textsuperscript{31} According to another source, smaller terrorist groups which operate in Jammu and Kashmir and other States get Rs. 4 to 7 lacs per month and larger groups receive Rs. 20 to 30 lac per month.\textsuperscript{32} In addition to funds, they also receive the communications equipment, weapons, explosives, food, trekking kits, guides and porters.\textsuperscript{33} The Inter Service Intelligence of Pakistan also arrange passports in various names for terrorists. These terrorists are also trained in the camps organized by ISI.\textsuperscript{34} The Pakistan is also providing a safe heaven to terrorists and Taliban as well as Al-Qaida leadership.\textsuperscript{35}

(v) Limitations of International Conventions: Terrorism has become a major problem at international level.\textsuperscript{36} It is no more confined to a few terrorist acts, such as hijacking or taking hostages, but become all-embracing. It has become a political tool in the hands of nation states, which they use with great impugnity. To check the problem and to protect its innocent victims, attempts have been made by the United Nations at various levels and few conventions pertaining to specific crimes, like hijacking or internationally protected people have been adopted.\textsuperscript{37} The regional conventions have also come-up viz the European Convention on Suppression of Terrorism and the South Asian Association for Regional Cooperation. These conventions, however, are limited in their scope and

\textsuperscript{30} Supra chapter IV n. 30.
\textsuperscript{31} Supra, chapter IV n. 150.
\textsuperscript{32} Supra, chapter IV n. 151.
\textsuperscript{33} Supra, chapter IV n. 152.
\textsuperscript{34} Supra, chapter VI n. 142.
\textsuperscript{35} Supra, chapter VI n. 32-38.
\textsuperscript{36} Supra, chapter V n. 3, 4.
\textsuperscript{37} Supra, chapter V n. 92.
subject matter and are apparently ineffective to tackle the problem of terrorism which is wide spread and dangerous.\textsuperscript{38}

Moreover, these conventions suffer from many deficiencies. \textsuperscript{39} The Untied Nations Resolutions, which reflect the customary international law on many aspects of terrorism, is considered as an expression of opinion, with no binding force. \textsuperscript{39} The United Nations Resolutions also have remain ineffective in the absence of any enforcement machinery and sanction for their violation.

\textbf{(vi) Impediments in Combating International Terrorism}:- There have been certain factors which hamper the fight against international terrorism. There is lack of extradition treaties between the states.\textsuperscript{40} The states provide the Asylum directly or indirectly to persons who are perpetrators of terrorist activities. Due to this they escape from the trial and punishment.\textsuperscript{41} Dr. Dhalakia rightly said that there should not only be effective provisions for the purpose of extradition but also international terrorism must not be considered as an ordinary offence.\textsuperscript{42}

There should be universal jurisdiction of all states over the crimes of international terrorism and exemplary punishment be awarded for the terrorists and other persons who are involved in terroristic activities.\textsuperscript{43} There has also been lack of universal and unequivocally condemnation of terrorism in all its forms and manifestation whether resorted by an individual or by a group or by state, or by members of international or national terrorist community. One state condemn of terrorists acts, while other state praise and supports. \textsuperscript{44}

\textbf{(vii) Violation of Human Rights}:- Kashmir is considered as a heaven on the earth. The Muslims and Hindus have lived an exemplary life of tolerance and

\textsuperscript{38} \textit{Supra}, chapter V n. 93-103.
\textsuperscript{39} \textit{Supra}, chapter V n. 142.
\textsuperscript{40} \textit{Supra}, chapter V n. 116.
\textsuperscript{41} \textit{Supra}, chapter V n. 117
\textsuperscript{42} \textit{Supra}, chapter V n 115
\textsuperscript{43} \textit{Ibid}
\textsuperscript{44} \textit{Ibid}. 
accommodation.\textsuperscript{45} In fact Kashmir with its composite culture and secular credentials has been a foremost example of India’s syncratic heritage. It is ironical that the same Kashmir has become victim of divisible violence perpetuated by the obscurantist forces. Today, the terrorism has engulfed the whole province of Jammu and Kashmir. Due to terrorism, there is gross violation of human rights in Kashmir. The incidents of kidnapping, rape, custodial deaths, and killings are increasing day by day.\textsuperscript{46} According to an estimate nearly 2,50,000 Kashmiri Pandits and over 50,000 Kashmiri Muslims have left their houses and are living in the refugee camps in Delhi and other parts of the country.\textsuperscript{47} According to another estimate about 50,000 people have lost their lives in war of violence.\textsuperscript{48} The Kashmiri refugees further allege that no proper arrangement and facilities are provided to them in the camps. They are living entirely in inhuman conditions where even sanitary and medical facilities are not available. In other parts of the country also the condition of the terrorist affected victims is same and their basic rights are being violated not by terrorists, insurgents and naxals but also by enforcement agencies.\textsuperscript{49}

Many innocent persons have been arrested and tortured by the Police and the Para-Military Forces. Shri Arvind Singh Bagga\textsuperscript{50} illegally arrested and tortured by the police officer. The court directed the Government to compensate the victims for illegal arrest, harassment and torture. Shri Praful Kumar Sinha\textsuperscript{51} died due to the police atrocities. There are a number of other persons also whose human rights have been violated openly by the enforcement agencies.\textsuperscript{52}

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\textsuperscript{46} Supra, chapter VI n. 9.
\textsuperscript{47} Supra, chapter VI n. 10.
\textsuperscript{48} Supra, chapter VI n. 40.
\textsuperscript{49} Supra, chapter VI nn. 387-388.
\textsuperscript{50} See Arvind Singh Bagga v. State of UP, AIR 1995 SC 117.
\textsuperscript{51} See Praful Kumar Sinha v. State of Bihar, 1997(3) SCC 100 1997 Cr. LJ 874.
\textsuperscript{52} Supra chapter VI n. 148.
\end{flushleft}
There have also been many cases of disappearance of the persons. In Manipur, in 1998, a 15 years old student was dragged by the military forces from his study room on mere suspicion of having links with militants. He was heard begging them to spare his life as he was to take his matriculation exams. But, all was useless. He never came back in his house. The Army washed off their hands claiming that he had escaped from their custody.\textsuperscript{53}

In another case, a woman about 50 years old was raped and killed by the security forces personnel during the search operations. The Director General of Assam Rifles Lt. Gen. Bhupinder Singh admitted it. The commission report also revealed that she was sexually abused before being killed.\textsuperscript{54} Currently, in Manipur alone about 20 men and women have been found killed in the mysterious circumstances.\textsuperscript{55}

(viii) Killing of Hindi speaking persons :- In the recent past, the Karbi Longri North Cachar Hills Liberation Front and other outfits in Assam have killed more than 50 innocent people and have injured about 100 Hindi speaking migrants workers in Assam in the name of ethnic cleaning. This is a dastardly act and have wide ranging repercussions.\textsuperscript{56}

(ix) Abuse of Anti-Terrorist Laws:- It is hard fact that the Anti-terror laws have been used against the political opponents, members of minority communities, journalists, members of Dalit and Adivasi communities, women, juveniles, old people and persons who are struggling for socio-economic rights. Many of such cases have come to light through human rights organisations and their networks functioning across the country.\textsuperscript{57} The TADA was used far more often against those have nothing to do with terrorism. According to the Union Home Ministry,

\begin{itemize}
\item \textsuperscript{53} Supra chapter VIII n. 149.
\item \textsuperscript{54} Supra, chapter VIII n. 150.
\item \textsuperscript{55} Supra chapter VII n. 321.
\item \textsuperscript{56} "Six mere Hindi speaking workers killed" The Tribune (New Delhi) August 13, 2007.
\item \textsuperscript{57} According to, recent report about 10,000 persons are missing since 1989 in J & K out of which a number of persons were taken into custody by the police/enforcement agencies. See Sharma by presents of missing persons" The Tribune (New Delhi) July 30, 2007.
\end{itemize}
the total number of those arrested and put in Jail across country under the POTA was 257.58 The data indicates further that it is not in the terror wracked state of Jammu and Kashmir that the POTA has been extensively used, but in Jharkhand out of them 239 were Muslims and other Sikh and Dalits. Nearly 200 people were arrested under the POTA in Jharkhand alone in February 2002. They included children and an old man.59 In 2002, a case of POTA was slapped on Ropni Kharia, a 17 year old resident of Tali village in Gumla district, Jharkhand. Her crime was only to educate and train other women to resist patriarchal oppression. In another reported incident, Nagendra Sharma, a reporter of a Hindi daily in Palaman was arrested under the POTA in February 2002.60 In Andhra Pradesh, in 2003, a revolutionary Telgu Poet, Arvidnd Babu was booked under the POTA. He was subjected to severe mental torture during interrogation and was forced to sing a confessional statement in which he admitted links with the banned People’s War Group (PWG). In Uttar Pradesh, 25 Dalits and Adivasis were arrested under the POTA.61

(x) Supply of Weapons and Assistance to Terrorists:- The Enforcement Agencies are the main instrument for combating the terrorism and to maintain law and order. But, it appears that the Enforcement Agencies have become ineffective to maintain law and order and to control the serious situations. Today, Enforcement Agencies are supplying weapons and ammunitions to the terrorists instead of controlling the terrorism. Many Security Forces Personnel have been arrested on the charges of supplying the weapons to terrorists. A few instances of such incidents are as under:

On July 25, 2006, three Jawans who were working for the Lashkar-e-Toiba were arrested in the Poonch District, Jammu and Kashmir. They were supplying the weapons and ammunitions to the terrorists.62

58 Supra, chapter VII n. 322.
59 Supra, chapter VII n. 323.
60 Supra chapter VII n. 324.
61 Supra chapter VII n. 325.
62 Supra, chapter VII n. 326
On August 1, 2006, three policemen were arrested on charges of stealing AK, 47 rifles from the police stores and supplying them to ultras in the Kishtwar area of Doda district. The arrestees were identified as SPO Mohammad Yousuf, head constable Nissar Ahmed and Sepoy Ashiq Hussain.63

On August 3, 2006, in Joint operation, the Military Intelligence (MI) and the Intelligence Bureau (IB) arrested three Jawans for having links with terrorists groups. They were identified as Arif Lankhani, Om Powdi and Jagirdar. They were ready to supply some important information pertaining to the Armoured Corps Center, Ahmeadabad.64

On September 6, 2006, a head constable of the Jammu and Kashmir police was arrested for his alleged links with terrorists who master minded attack on the temple at Ayodhya in 2005. He was identified as Mohammad Sharief. In addition to other things he was charged for supplying the money and weapons to terrorists i.e. Jaish-e-Mohammad group.65

Recently, Orissa’s Inspector-General of Police (IGP) Sanjeev Marik was suspended for alleged links with criminals from Bihar.66

There are also many noted politicians who have been arrested while supplying the assistance/weapons to the outlawed ULFA/terrorists. The Chhattishgarh Police arrested Vinayak Sen Vice President of People’s Union for Civil Liberties (PUCL). During the search, hundred of incrimanting documents and several letters written by Narayan Sanyal, a top Naxalite ideologue, were recovered from his residential premises. The police had made charges against him under Unlawful Activities (prevention) Act, 2004 and Chhattisgarh Special Public Security Act, 2005.67

63 Supra, chapter V II n.327
64 Supra chapterV II n.328.
65 Supra chapterV II n. 329.
66 IG suspended for links with criminals The Tribune (New Delhi) May 19, 2007.
Recently, twelve members of banned insurgent groups were arrested and pistols, ammunition, rifle-parts and extortion notes seized from the official residences of three MLAs of the ruling Congress and the home of a former legislator during a search. Eight cadres of the Kanglei Yaol Kanna Lup (KYKL) were arrested from the home of Congress MLA W. Brajbidhu Singh in the high security Babupara area, where only ministers and legislators live. Information revealed recovered that militants were taking shelter there, DGP Y. Joy Kumar Singh said that "A dis-assembled M-16 rifle, two 9 mm pistols, ammunition and extortion letters addressed to businessmen were seized from the septic tank of a toilet in the MLA's residence.

A cadre each of the Kangleipak Communist Party (KCP) and the People's Liberation Army (PLA), both banned groups, were arrested from the official residence of another Congress MLA K. Meghachandra Singh.

A cadre of the People's Revolutionary Party of Kanglepak (PREPAK) and a KCP member were arrested from the homes of Congress MLA Bijoy Koijam and former MLA N. Sovakiran. Cases have been registered against the three MLAs and the former legislator.68

Many Government/Non-Government Organisation (NGOs) are also providing the funds to outlawed ULFA /terrorists. Many cases have been reported in this regard. According to the figures tabled in Lok Sabha, 4 cases in 2004, 12 in 2005 and 16 in 2006 have been reported.69

It is also reported that the common people are also providing the strategic assistance and support to the outfits. Further, police have arrested several persons for their alleged links with terrorist groups and have recovered huge amount of

68 12 militants held from MLAs' houses. The Tribune (New Delhi) August 17, 2007.
arm and ammunitions from their possession. These weapons were to be supplied to the terrorist outfits for their operation, in J & K, Panjab and other states.

(xii) Delay in Cases: - Offences relating to terrorist activities constitute a serious threat to the life of individuals and to the security and stability of the state. Despite this the conviction rate is only two percent. The courts are overburdened and recent estimates indicate that there are around 3.1 million pending cases in 21 high courts and 20 million in subordinate courts in the country.

As far as the trials of the insurgents and terrorists are concerned, these are also unreasonably delayed as is evident from Bombay Blast, Hyderabad Blast and Parliament Attack cases. Recently, some of Magistrates and Judges are also found susceptible to corruption like the police. The jail officers and officials free the prisoners after taking the bribe. Lack of evidence or no evidence help the terrorists and others to escape from punishment.

(xiii) Ineffective Intelligence Network: - Ineffective intelligence network also hamper operations against terrorism. It is generally due to the secretive organisation of the terrorists, fear of reprisals against informers and lack of coordination and co-operation among the various intelligence agencies working at the local regional and central levels.

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70 Lalit Mohan, "Four Hizbul Men held at Madhopur" The Tribune (New Delhi) August 20, 2006. See also "ISI SPY held with photos of military station" The Tribune (New Delhi) August 18, 2006. See also "Four Persons were held at Bhatinda" (The Tribune (New Delhi) Sept. 6, 2006.
71 Supra, chapter VII n. 337.
72 Supra, chapter VII n. 338.
73 Supra, chapter VII n. 334.
74 Supra, chapter VII n. 335.
(xiv) Misuse of the Intelligence Agencies: Intelligence agencies also play a vital role like the police and security forces for combating the terrorism. Its role in law and order situations is also very important. These agencies have not been working efficiently due to undesirable interference by the politicians. Mostly, these are misused at the instance of high ups. Many times, many sensitive reports are ignored by the authorities, resultanty, giving the terrorists an opportunity to strike.75

(xv) Political Motivation in Dealing with Terrorism: Lack of political will is also considered as an important reason to control terrorism. Terrorism in North East and Panjab are the main instances of it. The political parties only care for their vote-banks and not the terrorism.76 Terrorism can not be checked without the strong and efficient machinery. The graph of terrorist activities is continuously going up but there seems to be no impact on the authorities. Many state Intelligence Agencies and National Agencies are supplying the false statistics regarding the terrorist activities to befool the public.77

Further, since 1947, there have been over 300 different Governments in the states, in Indian union. It appears that the anti-terrorist laws are not properly implemented by these Governments due to political interests. Jammu and Kashmir is a major theatre of terrorist violence in the country and its past record of convictions of arrested terrorists under any law has been a dismal.78 The Jammu and Kashmir Chief Minister Mr. Farooq Abdullah took a policy decision not to implement POTA in the initial stage. He 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 Union Parliament due to political differences. There has also been the lack of political consensus on the implementation of the anti-terrorism laws.79 In a shocking development, on June

75 Supra, chapter VII n. 336.
76 Supra, chapter VII n. 335.
77 Supra, chapter VII n. 336.
78 Supra, chapter VII n. 320.
79 Supra, chapter VII n. Ibid.
4, 2003, the Jammu and Kashmir Government decided that it would not invoke POTA in the state and the detenues who had no serious cases against them would released. The Governments of Manipur, Karnataka, Panjab, Assam, Tripura and Madhya Pradesh also refused to enforce POTA in their respective States.\(^\text{80}\) The Maharashtra Government passed the Maharashtra Control of Organised Crime Act, (MCOCA), 1999, in view of the growing menace of organised crime. Organised Crime' bears an uncanny resemblance to terrorism as neither phenomenon is confined by international borders, both organised crime and terrorism involve murder, kidnapping, arson, robbery, burglary, extortion, dealing in narcotics or dangerous drugs, intimidation and violence.\(^\text{81}\)

The Maharashtra Control of Organised Crime Act (MCOCA) 1999 has been an extra-ordinary law in Maharashtra, with the conviction rate of 78 percent in the past years. POTA and MCOCA have unique resemblance. For instance, both Acts have identical provisions with respect to procedures and powers of special court-section 9 of the MCOCA and section 29 of the POTA;\(^\text{82}\) Authorisation of interception of wire, electronic or oral communication section 14 and 16 of the Maharashtra Central of Organised Crime Act, 1999 and Section 36 to 48 of the Prevention of Terrorism Act, (repealed) 2002.\(^\text{83}\) Certain confessions made to police officer to be taken into consideration-section 18 of the Maharashtra Control of Organised Crime Act, 1999 and Section 32 of the prevention of Terrorism Act, (repealed) 2002,\(^\text{84}\) protection of witnesses-section 19 of the MCOCA and Section 30 of the POTA (repealed) 2002,\(^\text{85}\) forfeiture and attachment of property-section 20 of the MCOCA and Section 6, 7 8 of POTA.\(^\text{86}\) There can be no doubt that, if, a clear anti-terrorism strategy involving the police, the executive and the judiciary could be formulated and executed on a national

\(^{80}\) Supra, chapter VII. Ibid.

\(^{81}\) Supra, chapter VII 321.

\(^{82}\) Supra, chapter VII 155.

\(^{83}\) Supra, chapter VII nn. 176-199.

\(^{84}\) Supra, chapter VII 165.

\(^{85}\) Supra, chapter VII 143.

\(^{86}\) Supra, chapter VII nn. 143, 147 and 153.
scale, the successes of MCOCA could be replicated under the POTA. From this example it has become clear that there has been fault in system. There is urgently needed that all the political parties should give priority to the national interest against the political interest.

(xvi) Judicial Response:- The Supreme Court, expressing concern over the growing tendency among the hardened criminals to take advantage of the situation in military infested parts of the country and wearing the clock of terrorism, said that any such attempt by anti-social elements had to be dealt with sternly. The court is of the firm opinion that no lenient view should be taken while dealing with terrorist cases. The court further said that police and Para-Military Forces in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situations, communal riots, political turmoil, terrorists activities and others increasing number of underworld armed gangs and criminals. Many hardcore criminals like terrorists, extremists, drug peddlers, smugglers who have organized gangs have taken strong roots in the society. To provide them human rights would lead to difficulties in detection of crimes and terrorists activities committed by such categories of hardened criminals. It is felt in quarters that in the process of protection of their fundamental freedoms and human rights, such criminals may go scot-free and without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis, the society, would suffer. The concern of the court is genuine and problem is real. Therefore, it is strongly felt that terrorists in the present scenario, are not entitled for any kind of right or concession.

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87 Ibid.
In Balkar Singh case, the court convicted accused person for possession of unauthorized arms and ammunitions. In S.K. Shukla case, the court held that unauthorized possession of bomb, dynamite, hazardous explosive and lethal weapons capable of mass destruction shall be punishable irrespective of fact that the area is notified or not.

In Ranjit Singh case, the Supreme Court held that accused should be granted some time to think over the matter before making the confessional statement. It is obligatory upon the concerned officer to grant reasonable time to the accused to think over and what time should be granted would depend upon the facts and circumstances of case. In Bihari Manjhi case, the court held that the confessional statement recorded by the police officer when he went to the scene of occurrence to apprehend the accused in presence of Superintendent of Police, will not be admissible in evidence as the statement cannot be said to be recorded under section 15 of the TADA Act. In Devender Pal case, the court held that confessional statement cannot be used against the accused unless it is voluntary.

In Bharat Chagan Lal Raghani case, the court said that confessional statement recorded shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having the jurisdiction over the area where such statement has been recorded. In Ashiq Hussain Faktoo case the court again said that confessional statements should be voluntary. Further, such statement must be recorded by the competent officer and the accused should be informed that such statement could be used against him as evidence. Such statement must be shown

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89 Supra, chapter IX, n. 33. See also Balkar Singh v. State of Panjab, 1993 Cri. LJ 1646.
91 Supra, chapter IX n. 130. See also Ranjit Singh v. State of Panjab, 2002 Cri. LJ 4694 (SC).
92 Supra, chapter IX n. 129. See also Bihari Manjhi v. State of Bihar, 2002 Cri. LJ 2539 (SC).
93 Supra chapter IX n. 132. See also Devender Pal Singh v. State N.C.T. Delhi, Cri. LJ 2034 (SC).
94 Supra, chapter IX n. 134. See also State of Maharashtra v. Bharat Chagan Lal Raghani, 2002 Cri. LJ 944 (SC).
95 Supra, chapter IX n. 137. See also Central Bureau of Investigation v. Ashiq Hussain Paktoo 2003 Cri. LJ 1292.
and read to the accused. Moreso, the accused must be asked whether he wants to add or subtract any thing in it. It was also held that it should be recorded in the language of the court as far as possible.

In Bharatbai case,96 the court held that it is not necessary that the confessional statement should be written by hand. It may be written by the type writer or computer or may be dictated by the competent officer. The writing of certificate and making of memorandum under the rule 15(3) is mandatory. In Mohad Yasin Malik case,97 it was held that the confessional statement made to the police officer is not admissible in evidence since it was not recorded as per the prescribed procedure in the Act of 2002. In Lal Singh case,98 the court held that the confessional statement of co-accused under certain circumstances can be relied upon. The co-accused was warned by the recording officer before recording the statement of consequences of making such statement and time was also given to him to think over the matter carefully.

In Jayawant Dattaraj Suryarao case,99 the court again said that confessional statement made by the accused and recorded by the police officer under the Act, is substantive piece of evidence and can be used in trial against accused, co-accused, abettor and conspirator etc. for offences punishable under this Act.

In N. Ansari case,100 a writ petition was filed by the petitioner under Articles 226, 227 of the Constitution of India against the search to be made under section 7 of POTA, 2002. The court refused to maintain the writ petition of the petitioner. In Murli Ram Chandrapurawswami case,101 a writ petition was filed.

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97 Supra, chapter IX n. 144. See also Mohad Yasin Malik v. State, 2005 Cri. LJ 275.
100 Supra, chapter IX n. 105.
for withdrawal of the prosecution. The Supreme Court dismissed this and said that it is not maintainable. In *Nissar Ahmed Dar case*, the court held that detention was not vitiated on the ground that no bail application has been made. In *Deedar Anjuman case*, the Supreme Court dismissed the petition of the accused as he was involved in the activities which were prejudicial to the security, harmony and the secular fabric of the country. The Government declared his "association" as "unlawful association" under the Unlawful Activities (Prevention) Act, 1967.

In the matters of bail, the law is well settled. The apex court has made it clear while interpreting the scope and ambit of anti-terrorist laws on a number of occasions that the appropriate court in the matters of bail would be the Designated Court which is ceased of the matter. Such Special Courts would have the exclusive jurisdiction. No other court should interfere ordinarily even in appeal unless such appellate court finds grave injustice or abuse of judicial process in a particular case.

B. Suggestions

To deal with the highly complex problem of terrorism, insurgency and Naxalism, some important suggestions are offered. These may be divided into following two parts

(i) International Level (ii) National Level

(i) International Level

(a) As terrorism has emerged as a global phenomenon, therefore there is urgent need to evolve a universal definition of terrorism. In absence of such a definition it has become very difficult to impose liabilities on States which are sponsoring or otherwise providing assistance or support to terrorist activities. The Supreme Court of India has also said in this context, that failure on the part of United Nations...
Nations to evolve a consensus on the definition of terrorism has complicated the issue on both at national as well as international level. Moreso such definition of terrorism must be free from all prejudices and must include all kinds of violence including even the counterfeiting, agreements, conspiracies and offences aimed at imposing social and religious ideas. Further, it is suggested that such definition of terrorism must be comprehensive to cover all offences and preparatory acts as well as agreements or conspiracies which are hatched with or without motive by an individual or group of individuals or by a state against the life, liberty, or physical integrity of persons or against Government or private property for the purpose of expressing, propagating or carrying out political, social or religious ideas or to cause a change of public authority or to alter the international relations through violence or threatening by violence.

(b) A world over list of terrorist organisations should be prepared. Such organisations must be declared as unlawful organisations. No country should allow such organisations to operate and the violators should be punished severely. (c) States must take appropriate measures to ensure that the weapons of mass destruction should not fall in the hands terrorists outfits. (d) States should refrain from organizing, instigating, facilitating, financing, assisting or participating in the commission of terrorist activities. The violations in this behalf must be seriously viewed by the United Nations and severe sanctions must be issued against such states. (e) States should adopt the extradition treaties toward each other state so that persons involved in terrorist activities may be extradited and punished as soon as possible. (f) The fund of the terrorists should be confiscated. Any person or agency which finance the terrorists should be severely punished.
(g) An International Criminal Court should be established with exclusive jurisdiction over international crimes, particularly those which fall within the definition of terrorism.

(h) Strict control should be imposed on the movements of terrorists and strict vigil must be kept on passport, identity card and other authentic documents.

(i) An exemplary punishment should be awarded to terrorists.

(j) States should universally and unequivocally condemn the strikes of terrorists in all forms and manifestation, whether resorted by an individual or by a group or by state, or by member of international community.

(k) States should not provide the safe heaven to terrorists, offenders and others.

(l) States must enact anti-terrorist laws at the local levels and should ensure effective implementation of such laws.

(m) A well-trained intelligence cell should be established for monitoring the terrorists activities both at local as well as international level. These cells must have a system of co-operation and coordination so that information relating to terrorists design could be forwarded to the concerned states which could take remedial measures in advance.

(n) States must ensure speedy trial of cases relating to terrorists.

(ii) National Level

(a) The more tougher anti-terrorism laws should be enacted

(b) Severe punishment should be given to terrorists for their activities.

(c) The Government should make proper coordination between the various agencies which are engaged in anti-terrorist operations.

(d) The Government should set up the special training camps for police, paramilitary forces and others which are employed in anti-terror operations.

(e) The Government should create Special and Forces to counter terrorism.

(f) The Government should create special separate cell for captured terrorists and their disposal.
(g) The Government should provide the sophisticated weapons to the Police and Para-Military Forces which are fighting against terrorism insurgency and Naxalism etc.

(h) The Government must ensure that the officers with clean records only should be deployed in anti-terrorist operations. Inefficient and corrupt officers/officials should be kept at bay.

(i) The Government must not interfere in the working of security forces, police and other intelligence agencies.

(j) The Government should redress quickly the genuine grievances of the public in the affected areas.

(k) Government officers/officials involved in the smuggling of arms, explosives etc to terrorists must be severely dealt with.

(l) The Government should prevent and discourage the unnecessary visitors at airports, railway stations and bus stands (including those who come in hordes to receive VIPs.

(m) The Government should make effort to normalize the relations between police forces and civilians. It will generate confidence among the people and they would not only repose trust on the local police force but also help the administration to counter terrorism. The authority cannot curb or prevent the terrorism without support of masses.

(n) The Government should make all efforts to eradicate corruption in administration and Para-military Forces which is responsible for growth of terrorism.

(o) The Government should encourage the civilians to provide the information if any, about terrorists to the nearest police stations.

(p) The Government should provide the essential commodities and relief to the terrorist affected people immediately.

(q) The Government should motivate the youth of villages for counter-terrorism operations. They should be provided basic training for it.

(r) The Government should constitute, Special Economic Intelligence cell to obtain hard and actionable inputs on terrorist funding.
(s) The Government should provide the UAVs to anti-Naxal Para-Military Forces to obtain intelligence on movement of Ultras.

(t) Every State must provide adequate Security network around the religious places, places of historical and strategical importance.

(u) Officers and officials of enforcement agencies deployed in affected areas if found guilty of human rights violation must not be spared and should be severely punished.

(v) Enforcement Agencies must create the healthy environment among the masses.

(w) The co-ordination between the various wings of police, CBI and CID should be encouraged and a monthly meeting among the heads of these organisations should be called to discuss important issues relating to terrorists.

(x) The Government should not open more and more routes to Pakistan is constantly engaged in a proxy war with us.

(y) The establishment of a Central Investigating Agency for Investigation of certain crimes with inter-state and National ramifications including terrorism, organised crimes sedition, human trafficking, assassination of major public figures, acts threatening national security and serious economic offences must be established.

(z) The Arms Forces Special Protection Act (AFSPA) 1958 as applicable north-east states may be withdrawn.

(aa) The problem of Kashmir should be solved by dialogue and negotiations between India, Pakistan and the political leaders the State of Jammu and Kashmir by mutual understanding and faith.

The president A.P.J. Abdul Kalam, while identifying the threat of low-intensity proxy-war i.e. terrorism as a disturbing feature of national life, offered several suggestions to the Government to combat the menace. These are as under

(a) The Government should launch a ‘National Campaign’ for the eradication of terrorism and should formulate a special law to provide security to the citizens. He further advocated a comprehensive integrated system of security which should have several components like economic and energy security.

(b) The Government should launch a national awakening about terrorism among the citizens.

(c) The Government should transcend individual differences of opinion and address the sense of unity.

(d) The Government should formulate a Citizens Security Bill and an Energy Independent Bill along with the adoption of a resolution that India will be transformed into a safe, prosperous, happy and socio-economically developed nation before 2020.

(e) Stressing the need for evolving a ‘National Campaign to Eradicate Terrorism (NCET)’ he maintained that such a campaign would facilitate working together of the “intelligence and security and machinery both at the state and central level to achieve the desired objectives besides acting as an alert and dynamic movement which would prevent hotels and homes from being used as a shelter by terrorists and extremists. Such a campaign ought to have a mission-oriented management structure along with people’s participation to be effective.

(f) The states should consider the introduction of National Identity Cards and the implementation of the National e-governance Grid for all Government-to-Government, Government to citizen, business to citizen transactions within two year’s time.

(g) He also maintained that accelerated development had to be integrated with peace missions, adding that economic security of border regions would itself become complementary to territorial security required in these zones. More specially, he said areas close to international borders and line of control (LOC) be used for economic activities. At the same time, he emphasized the need for social development in difficult areas or affected areas which could be in the form of
sports and educational complexes and healthcare institutions in the identified zones.

(h) He referring to the threat of extremist groups in the North-East, said that this requires immediate coordination and counter measures, including effective negotiations for the restoration of normally and economic development within the next three to five years.

(i) He further called for the involvement of the public in the fight against terrorism, said that “Every Citizen, every group, every religion and every political and executive system should allow the law to function without interference”.

(j) He also appreciated the suggestion of the Chief Justice Y.K. Sabharwal for speeding up justice by way of steps like two shifts in the courts and use of information technology. He also outlined a “peace mission” for speeding up the peace process essential for the development and prosperity of the state. The “peace mission” will have four major components namely, an economic zone near the line of control (LOC), social development in difficult areas, a state-level movement to eliminate terrorism and citizen security.” On social development he said social, religious and other institutions could start educational and health care institutions in the state that could reach trouble spots quickly and provide humanitarian assistance to the affected people as was done during the time of Mahatama Gandhi.

(k) It was also suggested that the Central and State Governments should introduce a minimum two-year compulsory NCC training in colleges and schools to promote discipline among students to counter terrorism.

(l) The state Government should authorize law enforcement agencies to help free the state from terrorists in a “mission made approach” and create a conducive environment for return of Kashmir migrants.

(m) The police should consider for the creation of open police control van patrolling services in small towns and crowded areas.
There is urgent need to develop highway police tracking and surveillance system and also helicopter-based surveillance system for early detection of trouble spots and render assistance.

It was further suggested that the area close to the LOC should not be used for cultivation. The state and central Government should also consider for allotting part of the land on lease basis in consultation with the army for horticulture and agriculture utilization.

Every war ends in peace as peace is more stable thing. Man by nature loves peace. Therefore, it is hoped that days are not far when we will have normal and peace in different parts of the country and the world.