CHAPTER IV

PREVENTION OF TERRORISM THROUGH LAW

Dealing with the menace of terrorism more effectively, countries have come up with anti- terror legislations as and when required. At the international level International Instruments have been adopted by the United Nations for prevention of terrorism. Keeping pace with time and requirement India has also brought in laws to tackle the danger and has ratified some of the International Conventions relating to terrorism and implemented the international norms by bringing in acts, statutes and ordinances to deal with the problem. The anti terrorism laws contain quite a few extraordinary provisions not found in ordinary laws in force in India. The terrorism, which has derogatory connation and which falls in the category of tyranny and genocide, has to be tackled on a war footing for the protection of the State and its people, and thus can hardly be feasible if normal laws applicable in normal times are used to tackle an abnormal situation created by terrorism.

INTERNATIONAL LEGAL REGIME OF TERRORISM

The General Assembly of the United Nations[1] has, on behalf of the international community, adopted various resolutions on prevention of terrorism. It has:

i. expressed its alarm that acts of terrorism in its forms and manifestations aimed at the destruction of human rights have continued despite national and international efforts;

ii. bore in mind that the essential and most basic human rights is the right of life;

iii. also bore in mind that terrorism creates an environment that destroys the right of people to live in freedom from fear;

[1] Resolution No.A/56/164; http://www.un.org/law/terrorism/index.html, visited on 5.08.07.

iv. expressed serious concern about the gross violation of human rights perpetuated by terrorist groups, adding that such acts cannot be justified under any circumstances;

v. emphasized the importance of Member states taking appropriate steps to deny safe havens to those who plan, finance or commit terrorist acts by ensuring their apprehension and prosecution or extradition;

vi. reiterated its unequivocal condemnation of the acts, methods and practices of terrorism, in all its forms and manifestations, as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilising legitimately constituted Government, undermining plurality civil society and having adverse consequences for the economic and social development of states;

vii. condemned the incitement of ethnic hatred, violence and terrorism;

viii. called upon States to take all necessary and effective measures in accordance with the relevant provisions of international law, including international human rights standards to prevent, combat and eliminate terrorism in all its forms and manifestations where ever and whenever committed; and

ix. urged the international community to enhance cooperation at regional and international levels in the fight against international terrorism, in accordance with relevant international instruments, including those relating to human rights, with the aim of its eradication.

A. Security Council's Counter terrorism Committee:

"We strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security."[2]

[2] 2005 World Summit outcome: http://www.un.org/terorism/ga.html, visited on 5.08.07.

By the draft resolution on "*Measures to eliminate international terrorism*", the Assembly, deeply disturbed by the persistence of terrorist acts worldwide, reiterated its call upon all States to adopt further measures to strengthen international cooperation in combating terrorism and to remind them of their obligations to ensure that perpetrators were brought to justice.

Under other provisions of the text, the Assembly's *Ad Hoc* Committee on Terrorism was asked to report to the Assembly at its current session in the event of the completion of the draft comprehensive convention on international terrorism. Otherwise, it would convene on 5, 6 and 15 February 2007. The Ad Hoc Committee would also continue to discuss the question of convening of a high-level conference on international terrorism, under United Nations auspices.

As background, finalizing the text of the draft comprehensive convention on international terrorism has proved difficult and elusive. Among the substantive differences is the question of which activities ought to be excluded from the scope of application of the draft convention, in particular, the activities covered by international humanitarian law or other fields of international law.

The various exclusionary elements are addressed in draft article 18. However, since the year 2000, divergent views have persisted among delegations on the formulation of specific exclusions, particularly those relating to activities of armed forces during armed conflicts and those concerning activities of military forces in peacetime.

Since its establishment in 1996 under General Assembly Resolution[3], the Ad Hoc Committee has negotiated several texts resulting in the adoption by the Assembly of three treaties; the International Convention for the Suppression of Terrorist Bombings; the International Convention for the Suppression of the Financing of Terrorism, and the International Convention for the Suppression of Acts of Nuclear Terrorism.

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[3] Document GA/L/51/210, http://www.un.org/unodc/resolution_1998-01-09_1html, visited on 5.08.07.

B. Highlights of Draft Resolution on International Terrorism

By the draft resolution on "*Measures to Eliminate International Terrorism*"[4], the Assembly would also call on States and appropriate international organizations to implement the United Nations Global Counter-Terrorism Strategy of 8 September 2006, without delay. The Terrorism Prevention Branch of the United Nations Office on Drugs and Crime in Vienna would be asked to continue its efforts to enhance the capabilities of the United Nations in the prevention of terrorism and to assist States to become parties to, and implement the relevant international conventions and protocols relating to terrorism.

By other terms of the text, the Assembly would reiterate its call upon States to refrain from financing, encouraging, providing training for supporting terrorist activities, and to ensure that perpetrators of terrorist acts were brought to justice.

The Assembly would reaffirm that international cooperation, as well as actions by States to combat terrorism, should be conducted in accordance with the Charter principles, international law and relevant international conventions.

C. Action on Text[5]

In explanations of position before action on the draft, some delegations expressed concern about "taking note" in a preamble paragraph of some organizations listed in relation to initiatives to combat terrorism. Speakers said that the list should have been published earlier, so that the organizations could be studied.

Many, including Qatar, the United Arab Emirates and Algeria, objected to the inclusion of at least one known military group on the list. Iran's representative said the paragraph containing the list was not helpful. While he

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[4] http://daccessdds.un.org/doc/UNODC/LTD/N06/607/31/PDF/N0660731.pdf ?,Open Element, Document A/C.6/61/L.17, visited on 5.08.07.

[5] *Ibid.*

would not block consensus on a resolution to fight terrorism, he would dissociate his delegation from the paragraph.

Syria's delegate said the paragraph had been intended to include intergovernmental organizations only, but now all kinds of groups had been listed. However, "taking note" did not mean "endorsement", and having a group listed in the paragraph did not give it legitimacy. He also said that the publication "International Instruments on Terrorism", referred to in the text should be printed in all official languages.

Similarly, Cuba's delegate recalled that, during negotiations, the decision had been made to list only international organizations. Late additions to the list should not set a precedent, but listing an organization did not mean it was recognized as fighting terrorism.

Adding his voice to those who would have liked to see the list earlier, Egypt's representative called for a clarification of criteria by next year for such listing, adding that, while the listed organization could be political or even economic, it should not be military.

Pakistan's representative said the work on the paragraph had been difficult and suggested that some groups could not be listed without breaking consensus. The Committee went on to approve the draft resolution, without a vote. Speaking after its approval, Tunisia's representative referred to a League of Arab States voluntary code of ethics on combating international terrorism, an initiative backed by the African Union, the Non-Aligned Movement and the Organization of the Islamic Conference. He would mention the code in the future.

D. Action on Committee's 2007 work programmes

Also without a vote, the Committee approved the draft decision on its provisional programmes of work for the Assembly's sixty-second session[6]

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[6] http://daccessdds.un.org/doc/UNODC/LTD/N06/606/86/PDF/N0660686.pdf ?,Open Element, Document A/C.6/61/L.19, visited on 5.08.07.

entitled "*Revitalization of the work of the General Assembly*".

According to the text, the Committee, starting on 8 October, would consider 13 agenda items, including a report of the United Nations Commission on International Trade Law[7] measures to eliminate international terrorism, and diplomatic protection.

Other topics include the rule of law at the national and international levels; report of the International Law Commission, and administration of justice at the United Nations. The Committee is scheduled to conclude its work on 16 November 2007.

In explanation of position after the approval of the draft decision, Syria's speaker pointed out that, while there was the possibility of adjusting the work programmes in the light of what might occur at the resumed session in March 2007, the adoption of the work programmes should be at the beginning of the new session for maximum openness. Also, the Committee worked on the basis of consensus and transparency, but some delegations were presenting draft resolutions in their national capacities without addressing the concerns of others. He, therefore, called for drafts to be coordinated through the Chair.

The Chairman said the draft decision just adopted had been available since 10 November. It was a provisional draft work programmes. The next bureau, to be elected in June, would hold consultations on it. There had been no exceptions to the consensus nature of the Committee's work methods. It was a prerogative of every delegation to submit drafts for consideration.

2. League of Nation

Terrorism has been on the international agenda since 1934, when the League of Nations, predecessor of the United Nations founded during the June

[7] United Nations Commission on International Trade Law.

1945 San Francisco Conference[8], took the first major step towards discussing a draft convention for the prevention and punishment of terrorism. Although the Convention was eventually adopted in 1937[9], it never came into force.

3. United Nations Charter, 1945

The problem of international terrorism in general, has been under consideration of General Assembly since 1972. On September 23, 1972, the Assembly recommended the following item to be included in the agenda and brought before the Sixth Committee:

> *A measure to prevent International Terrorism, which endangers takes innocent human lives or jeopardizes fundamental freedoms. Study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievances, and despair and which cause some people to sacrifice human lives, in an attempt to effect radical changes*[10].

On its recommendations the General Assembly on December 18, 1972 adopted a resolution[11] wherein it was decided to establish an *Ad hoc* Committee on International Terrorism of 35 countries. The Committee held its first session in 1973 without achieving any positive results. However, the Committee submitted its report to the Assembly. The latter was unable to consider the item for want of time until the thirty- first session held in 1976. In 1976, the Assembly adopted a resolution wherein it invited the *Ad hoc* Committee to work in accordance with the mandate originally entrusted to it. By the same resolution, the Assembly also invited States to submit their observations as soon as possible to the Secretary-General so as to enable the Committee to perform its mandate more efficiently, and it requested him to transmit to the Committee an analytical study of those observations. The *Ad hoc* Committee met in 1997 and submitted a report to the Assembly without any further progress. In 1979 Session, the *Ad hoc* Committee

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[8] 60th Anniversary of San Francisco Conference, http://www.un.org/aboutun/sanfrancisco/ visited on 5.08.07.
[9] Definition of Terrorism, http://www.unodc.org/unodc/terrorim_definition.html visited on 5.08.07.
[10] U.N.Doc A/AC 6/418, at 5.
[11] General assembly Resolution 3034 XXVII, 18th December 1972.

worked out general recommendations relating to practical measures of co-operation for the speedy elimination of the problem of international terrorism. These recommendations reflected a common view of fundamental importance. On the recommendations of the *Ad hoc* Committee, the General Assembly on December 17, 1979 adopted a resolution[12] wherein the act of terrorism was condemned and it urged all States, unilaterally and in co-operation with other States as well as relevant United Nations' organs to contribute to progressive elimination of the causes underlying that kind of terrorism. By the resolution, the Assembly called upon all States to fulfill their obligations under International law to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organised activities within its territory directed towards the commission of such acts. Since 1979, no further progress has been made in the following years excepting the endorsement of the resolution adopted in 1979[13].

The *Ad hoc* Committee in the year 2002 restarted negotiations on a comprehensive international treaty on terrorism. . The Committee began deliberation on difficult topics to tackle including those dealing with a definition of terrorism and its relation to liberation movements, possible exemptions to the scope of the treaty, in particular regarding the activities of armed forces, and how to advance the level and types of international cooperation to combat terrorism. However, no convention has been concluded as yet. The United Nation Charter was a landmark in this unique legal development.[14]

4. Universal Declaration of Human Rights, 1948[15]

Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of the world in

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[12] General assembly Resolution 34/145, December 17, 1979.
[13] General assembly Resolution 38/130, http://www.un.org/Overview/rights.html,visited on 5.08.07.
[14] Soli J. Sorabji, *U. N. and Human Rights* (scope for improvement) Newspaper – Indian Express Dated 5th Oct. 1997.
[15] Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.

which human being shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspirations of the common people.[16] The Universal Declaration of Human Rights permits enactments of laws by the States to impose reasonable restrictions on the rights and freedoms of an individual for the purpose of protecting the rights and freedoms of the people in general[17].

> *"In the exercise of his rights and freedoms, every one shall be subject to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirement of morality, public order and the general welfare of the democratic society."*[18]

Imposing reasonable restrictions on the rights and freedoms of unscrupulous elements constituting a serious threat to the public order on account of their involvement in activities causing destruction of life, liberty and property of other fellow beings, these laws, far form being at variance with the Universal Declaration of Human Rights, are very much in consonance with its provisions in *Article* 29.

These anti terror laws do not deny any person equality before law or equal protection before laws, which are guaranteed by *Article* 7of the Universal Declaration of Human Rights, reads as follows:

> *"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination"*[19]

Terrorism it self involves violation of Human Rights and the anti terror laws have been enacted to protect the Human Rights of the people trampled upon by the terrorists with impunity. As provided by the in Universal Declaration of Human rights:

> *"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act*

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[16] Preamble to the Universal Declaration of Human Right, 1948.
[17] R.C. Jha, *Anti- terror laws Vis-à-vis Human Rights*, IBR Vol. 21 (1) 1994, at 82-83.
[18] Para 2 of Article 29 of UDHR.
[19] Article 7 of UDHR.

aimed at the destruction of any of the rights and freedoms set forth herein."[20]

There fore when terrorists perpetrate acts of terrorism, they destroy the rights and freedoms of a fellow human being or a group of fellow human being in contravention of the principles enshrined in the Universal Declaration of Human Rights.

In times of emergency, the Universal declaration of Human Rights does not prohibit enactment of more stringent laws to tackle the problem of terrorism[21]. Justice V. R. Krishna Iyer rightly describes the importance of Universal Declaration on Human Rights as follows:

> *The trinity of values underlying the System of equal justice constitutes the bedrock of the burgeoning world legal order. Justice, Social, Economic and Political, is the first fundamental – paramount human right- to secure which to every person is the tryst with destiny the United Nations and its member nations have made by unanimously passing the Universal Declaration of Human Rights.*[22]

5. International Covenant on Civil and Political Rights, 1966

Implicit in the concept of Rule of law is the recognition of the need to strike balance between liberty and public order and since the law provides this balance, the anti- terrorist laws emerge as the dividing line between chaos and order. In the context of the serious threat to the human rights by the terrorist, these laws should be looked upon as defenders of rights and freedoms rather than as destroyers. International Covenant on Civil and Political Rights[23] unlike Universal Declaration on Human Rights does not prohibit enactment of more stringent laws to tackle the problem of terrorism. A reference may be made, in this respect to the provisions contained in *Article* 4 of the International Covenant of Civil and

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[20] Article 30 of UDHR.

[21] Universal Declaration of Human Rights, General Assembly Resolution 217A (III), U.N. Doc A/ 810 at 71 (1948).

[22] V. R. Krishna Iyer, *Human Rights And Inhuman Wrongs,* (Ed. 1990), D. K. Publishers Distributors (P) Ltd., New Delhi at 16.

[23] *Article* 1of General Assembly Resolution 2200 A (XXI) of December 16, 1966.

Political Rights, which defines rights in great detail than Universal Declaration as follows:[24]

1. *In time of public emergency which threatens the life of the nation and existence of which is officially proclaimed, the parties to the present covenant may take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin.*
2. *No derogation from Article 6,7,8 (paragraph 1 and 2) 11,15, 16, and 18 may be made under this provision"*

The only rights which may never be suspended or limited even in emergency situation in terms of *Article* 4 of the Covenant, being right to life,[25] freedom from torture[26], freedom from enslavement or servitude[27] protection from imprisonment for debt[28], freedom from retroactive penal laws,[29] the right to recognition as a person before the law,[30] and freedom of thought, conscience and religion[31]. *Article* 14 of the International Covenant on Civil and Political Rights[32] states:

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[24] *Article* 4 of *ICCPR, http://www.ohrchr.org/english/law/ccpr.htm, visited on 5.08.07.*

[25] *Article* 6 of *ICCPR says: Every human being has the inherent right to life. This shall be protected by law. No one shall be arbitrarily deprived of his life.*

[26] *Article* 7 of *ICCPR says: No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subject without his free consent to medical or scientific experimentation.*

[27] *Article* 8 of *ICCPR says: No one shall be held in slavery; slavery and the slave trade in all form shall be prohibited.*

[28] *Article* 11 of *ICCPR says: No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.*

[29] *Article* 15 of *ICCPR says: No one shall be guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of lighter penalty, the offender shall benefit thereby.*

[30] *Article* 16 of *ICCPR says: Everyone shall have the right to recognition everywhere as a person in the eye of law.*

[31] *Article* 18 of *ICCPR says: Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public o private, to manifest his religion or belief in worship, observance, practice and teaching.*

[32] *Article* 14 of *ICCPR, http://www.ohrchr.org/english/law/ccpr.htm,visited on 5.08.07.*

All persons will be treated equal before law without any discrimination in civil and criminal cases, the press and public has been kept on public interest, presumption of innocence is given to the accused of criminal charges, human rights guarantees in full equality, rehabilitation of juvenile, right to review and appeal is allowed to all accused.[33] *When it is found that there was miscarriage of justice he has to be pardoned and finally the right against double jeopardy.*[34]

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[33] *Article*14 (1) to (5) of ICCPR 1 says: *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3.In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a)To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b)To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c)To be tried without undue delay; (d)To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e)To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f)To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g)Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such, as it will take account of their age and the desirability of promoting their rehabilitation

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

[34] Article14 (6) and (7) of ICCPR says:

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

6. United Nations and Regional Conventions on Terrorism

A. Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo. 1963[35]

The Convention was adopted in Tokyo on September 14, 1963. It came into force on December 4, 1969 affects to the acts effecting in- flight safety. It authorises the aircraft commander to impose reasonable measures including restrain, on any person he or she has reason to believe, has committed or is about to commit such an act, when necessary to protect the safety of the air craft. It requires the contracting states to take custody of offenders and to return control of offenders and to return control of the aircraft to the lawful commander.[36]

The Tokyo Convention as stipulated under *Article* 1[37] Clause (i) covers: (a) offences against penal laws; (b) acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board. The applicability of the Convention ha been elaborated in clause (ii) which provides that 'the Convention shall apply in respect of offences committed or acts done by a person on board any aircraft registered in a Contracting State, while that aircraft is in flight or on the surface of the sea or of any other areas outside the territory of State.' Clause (iv) exempts the application of the Convention to aircraft in military, customs or police services.

Tokyo Convention suffers a number of deficiencies[38]. Firstly, the Convention neither defined the term hijacking nor made an effort to deal with the offence itself presumably because the act of hijacking was not regarded as a crime. It simply lay down that what would be consequences if the hijacking takes place. Secondly, the Convention did not extend to domestic airlines (except when

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[35] http://www.unodc.org/unodc/terrorism_convention_aircraft.html visited on 5.08.07.
[36] Y. Lakshmi G. Rao, *Terrorism and its Impact on Human Rights,* AIR (J) 2002, at 183-187.
[37] http://www.unodc.org/unodc/terrorism_convention_aircraft_seizure.html visited on 5.08.07.
[38] *Supra* note 36 at 183-187.

the airlines pass over the high seas but linking cities of the States of registration). Thirdly, there was an absence of the provision regarding clearly formulated principle of inescapable punishment. The offender may be taken into custody by the Contracting State, which may initiate criminal proceeding or extradite the offender, but neither action is mandatory. *Article* 16 makes it clear that the Convention does not create an obligation to grant extradition. Fourthly, exclusive rights to fight commanders have been given for protecting the aircraft and for imposing restrains on the offenders are to the some extent unjustifiable, because of these defects. The convention was not able to suppress hijacking effectively.

B. Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) 1970[39]

The Hague Convention was adopted and signed at Hague, on 16December 1970 to deal with aircraft hijackings[40]. This convention makes it an offence for any person on board an aircraft in flight to unlawfully seize or exercise control of that aircraft by force or threat or any other form of intimidation. It require the parties to convention to make hijacking punishable by severe penalties and if the have the custody of the offenders, either to extradite the offender or submit the case for prosecution.

The Convention under *Article* 1[41] defined the offences, which may be covered by the Convention. It says that '*any person who on board an air craft in flight: (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or (b) is an accomplice of a person who performs or attempts to perform any such act, commits an offences*'. Thus, in addition to actual wrongdoer, his accomplice also would be deemed guilty of offences under the Convention. The Convention under *Article* 2[42] requires each contracting state to make the offence punishable by severe penalties.

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[39] http://www.unodc.org/unodc/terrorism_convention_aircraft.html visited on 5.08.07.
[40] *Ibid* note 29.
[41] http://www.unodc.org/unodc/terrorism_convention_aircraft_seizure.html visited on 5.08.07.
[42] *Ibid.*

The convention applies to international as well as domestic fights. Further, the Convention applies in case of forced landing. *Article* 7[43] of the Convention made it imperative for the Contracting States in the territory of which the alleged offender is found, if it does not extradite him, to submit the case, without any exception whatsoever to its component authorities for the purpose of prosecution. The authorities must take their decision on the same manner as in the case of any ordinary offence of a serious nature under the same manner as in the case of ordinary offence of a serious nature under the law of that State. But the Convention does not provide prosecution as obligatory. The competent authorities will decide about prosecution in each case individually.

The Convention also stipulates regarding the extradition of offenders. *Article* 8[44] says that '*the offence shall be deemed to be included as extraditable offence in any existing extradition treaty*,' and it shall be an obligation of the contracting States to include the offence as an extraditable offence in every future treaty. Thus, the Convention may be considered as constituting an extradition treaty in respect of the offence amongst the Contracting Parties. The provision implies that the offences of hijacking shall not be deemed to as a political offence. The offender will have to be extradited even if the offence has been committed for political gains. From the above provision it might be looking as if the hijacker shall be extradited if the case is not submitted for prosecution. But it is not so. The convention provides that '*extradition shall be subject to other conditions provided by the law of the requested State'*. In other words, extradition has to be made in accordance with the existing law of extradition of the requesting State. A question arises as to whether those States wherein there is no provision in existing law for extradition of the person committing crimes with political motives would extradite the hijackers, if the hijacking has been done to acquire political gain. Such States perhaps would decline extradition to the hijacker. Since hijacking in most of the cases are politically motivated, a number of States under the

[43] *Ibid.*
[44] *Ibid.*

provisions of existing law shall not extradite them and the purpose of the Convention for their extradition shall be forfeited.

Provisions of the Convention show that the Convention is devoted largely to the problem of hijacking of aircraft[45]. However, the scope of the Convention is not as wide as it should be. For instance, firstly, the Convention protects only an aircraft in flight. Secondly, Convention protects an aircraft in flight only in the event of it being an object of an act of seizure. Thirdly, an act is qualified as an offence only when a person on board this particular aircraft commits it. Fourthly, the Convention does not provide any relief for the damage caused to the passengers and goods. Fifthly, the Convention failed to recognise, like the Tokyo Convention, that hijacking is a crime under International law. Merely treating the various acts of hijacking as offences is not likely to serve any useful purpose. However, the Convention is a firm improvement in the law of aircraft hijacking.

C. Convention for the Suppression of Unlawful Acts Against the Safety of Aviation (Montreal Convention), 1971[46]

The Convention was the Montreal Convention of 1971. It makes it an offence for any person unlawfully and intentionally to perform an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of that aircraft or to place an explosive device on the aircraft. It requires the parties to punish offences by severe penalties and either extradite or prosecute the offenders[47].

The Convention under *Article* 1[48] lays down that any person who commits intentionally an act of violence against a person on board an aircraft in flight that act is likely to endanger the safety of that aircraft; or destroy an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which

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[45] http://www.unodc.org/unodc/terrorism_convention_aircraft_seizure.html Object of the Convention, visited on 5.08.07.
[46] http://www.unodc.org/unodc/terrorism_convention_civil_aviation.html ,visited on 5.08.07.
[47] *Supra* note 36 at 183-187.
[48] http://www.unodc.org/unodc/terrorism_convention_civil_aviation.html ,visited on 5.08.07.

is likely to endanger its safety in flight. Destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight, communicates information which he knows to be false thereby endangering the safety of an aircraft in flight.[49]

These provisions show that the Montreal Convention is directed against not only to unlawful acts but also to acts done with intention against a person on board an aircraft in flight if that act is likely to endanger the safety of the aircraft in flight. Other provisions of the Montreal Conventions regarding prosecution and extradition are identical to that of the Hague Convention.

D. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents (New York), 1973[50]

The General assembly on December 13, 1973 adopted in New York. The Convention came in to force on February 20, 1977. It defines an internationally protected person as a Head of State, Minister for Foreign Affairs, representative of official of a State or an international organisation that is entitled to special protection from. The Convention requires parties to criminalize and punish attacks against State Officials and Representatives. It defines Internationally Protected persons as head of State, a Minister for Foreign Affairs, a

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[49] Article 1of Convention for the Suppression of Unlawful Acts Against the Safety of Aviation, *'(i) any person commits an offence if he unlawfully and intentionally: (a) performs an act of violence against a person on board an aircraft in flight that act is likely to endanger the safety of that aircraft; or (b) destroy an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or (c) places or causes to be on an aircraft in services, by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which is likely to endanger its safety in flight; or (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or (e) communicates information which he knows to be false thereby endangering the safety of an aircraft in flight. Article 1 clause (2) A person also commits an offence if he (a) attempts to commits any of the offences mentioned in paragraph I of this Article; or (b) is an accomplice of a person who commits or attempts to such offences.'*

[50] http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf, visited on 5.08.07, *See* also General Assembly Resolution 3166XVIII, December 14, 1973.

Representative or Officials of a State or an International Organization who is entitled to special protection under international law from grave attacks like intentional murder or kidnapping or violent attacks upon official premises or private accommodation or means of transport of such persons[51].

The Convention[52] urges each party to criminalize and make punishable by appropriate penalties, which take into account their grave nature:

> *The intentional murder, kidnapping, or other attack upon the person or liberty of an internationally protected persons; a violent attack upon the official premises, the private accommodations, or the means of transport of such person; a threat or attempt to commit such an attack and an act 'constituting participation as an accomplice.*

Although the '*principle of inviolability of the diplomat and diplomatic missions, the principle of protection of consular officers and premises and the inviolability of the representatives of the sending State and that of the members of diplomatic staff of a special mission as well as the premise of that mission is envisaged by the provisions of the earlier conventions*,'[53] the present Convention was adopted to specify the range of persons and objects, the commission of an act of violence against whom, or threat of such an act or attempt at committing one, or acting an accomplice in any such act.[54]

E. International Convention Against the Taking of Hostages Known As Hostages Convention. New York, 1979[55]

This convention is also known as Hostages Convention adopted in New York on December 7, 1979. In number of instances terrorists commit such offences, which involve the taking of Hostages for achieving the personal or

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[51] *Supra* note 36 at 183-187.

[52] Convention on the Prevention and Punishment of crimes Against Internationally Protected Persons, 1035 U. N. T. S. 167, 13 I.L.M 41, entered in to force Feb. 20,1977.

[53] See *Articles* 22 and 29 of the Vienna Convention on Diplomatic Relations of 1961; *Articles* 33 and 40 of the Vienna Convention on Consular Relations of 1963, and *Articles* 25and 29 of the Convention on Special Missions of 1969.

[54] Palok Basu, *Law Relating to Protection Human Rights Under the Indian Constitution and Allied Laws*,(2002) Modern Law Publication, at 596- 597.

[55] International Convention Against the Taking of Hostages, G. A. Res. 146(XXXIV), U.N.GAOR, 34th Session, Supp. No. 46, at 245, UN.Doc.A/34/46 (1979), entered in to force on June 3, 1983.

political ends. The Preamble to the Convention clearly laid down that '*taking hostages is an offence of grave concern to the international community*' and that '*it is urgently necessary to develop international co- operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking hostages and manifestation of international terrorism.*' It requires Parties to the convention to make the taking of hostages punishable by appropriate penalties, to prohibit certain activities to be committed within their territories and to carry out extradition proceedings[56]. The Convention provides that 'any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an international inter- governmental organisation, a natural or juridical person, or a group of person, to do or abstain from doing any act explicit or implicit condition for the release of the hostage commits the offence of taking of hostages within the meaning of this Convention. The Convention under *Article* 8[57] stipulated that the State Party in territory of which the alleged offender is found shall, if it does not extradite him, be obliged to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of the State. This is therefore, in line with one of the major principles of the convention machinery to assure inescapable punishment for the crimes committed through 'extradition or prosecution.'

F. International Convention on the Physical Protection of Nuclear Material, known as (Nuclear Material Convention) Vienna. 1980[58]

This convention is also known as Nuclear Material Convention and was adopted in Vienna in 1980. It obliges the State Parties to criminalize the unlawful possession, use, transfer etc., of such nuclear material or theft of such material or

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[56] *Supra* note 36 at 183-187.

[57] International Convention Against the Taking of Hostages, G. A. Res. 146(XXXIV), U.N.GAOR, 34th Session, Supp. No. 46, at 245, UN.Doc.A/34/46 (1979), entered in to force on June 3,1983.

[58] http://www.iaea.org/Publications/Documents/Infcircs/Others/inf274rl.shtml, visited on 5.08.07.

threat to use the nuclear material to cause death or serious injury to any person or substantial property damage. It also requires the State parties to ensure the protection of such material during transportation within their territory or on board their ships or aircrafts[59]. *Article* 2 of this Convention shall apply to nuclear material used for peaceful purpose while in international nuclear transport, with the exception of *Article* 3 and 4 and paragraph 3 of *Article* 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport. Apart from the commitments expressly undertaken by States Parties in the *Article*s covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.[60]

G. Convention for the Suppression of unlawful Acts Against the Safety of Maritime Navigation, 1988[61]

It was adopted in Rome in 1988 and applies to terrorist activities on ship.[62] According to the Convention any person commits an offence if that person unlawfully and intentionally:[63]

When a person with use of force seizes the ship, commits violence on board and endangers life and property, by his false communication

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[59] *Supra* note 36 at 183-187.

[60] http://www.iaea.org/publications/Documents/Infcirs/Others/inf274rl.shtml, visited on 5.08.07.

[61] http://www.unodc.org/unodc/terrorism_convention_maritime_navigation.html, visited on 5.08.07.

[62] *Supra* note 36 at 183-187.

[63] Article 3, of Convention for the Suppression of unlawful Acts Against the Safety of Maritime Navigation, 1988, http://www.unodc.org/unodc/terrorism_convention_maritime_navigation.html, visited on 5.08.07.

endangers life and property and kills or hurts any person shall be held guilty under this Convention.[64]

According to *Article* 6 of the Convention each state party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in *Article* 3 when the offence is committed.[65]

H. Protocol For the Suppression of unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988[66]

The convention was adopted in the year 1988 to extend the requirements of this Convention to fixed platforms such as those engaged in the exploitation of offshore oil and gas. *Article* 2[67]any person commits an offence if that person unlawfully and intentionally:

When a person with use of force seizes the platform, commits violence on the board of fixed platform and endangers life and property, by his false communication endangers life and property and kills or hurts any person shall be held guilty under this Convention.[68]

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[64] Article 3, of Convention for the Suppression of unlawful Acts Against the Safety of Maritime Navigation, 1988, provides: *a. seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; orb. performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or c. destroy a ship or causes damage to a ship if that act is likely to endanger the safe navigation of that ship; or d. places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or e. destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of that ship; or f. communicates information which he knows to be false, thereby endangering the safe navigation of that ship; or g. injuries or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).*

[65] *Ibid.*

[66] http://www.unodc.org/unodc/terrorism_convention_platform.html, visited on 5.08.07.

[67] *Ibid.*

[68] Article 2 of Protocol for the Suppression of unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf says:

a. *seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation; or*
b. *performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety ; or*
c. *destroy a fixed platform or causes damage to it which is likely to endanger its safety; or*
d. *places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform, or likely to endanger its safety; or*
e. *injuries or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (d).*

According to *Article* 3 of the Protocol each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in *Article* 2 when the offence is committed against or on board a fixed platform while it is located on the continental shelf of that State; by a national of that State.[69]

I. Protocol For the Suppression of unlawful Acts of Violence at Airports Serving International Civil Aviation, 1988[70]

The convention was adopted at Montreal in1988 to extend the provisions at above Convention to encompass terrorist acts at airports.[71] A protocol supplementary to the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) was adopted on February 25, 1988 by the International Conference on Air Law held at Montreal. The Protocol stipulated severe penalties for unlawful international acts of violence against persons at an airport serving international civil aviation which causes or are likely to cause serious injury or death or destruction or serious damages to the facilities or disruption of the service at such airport. Severe penalties are also foreseen for an attempt or complicity in the commission of such offences. Parties to the Protocol would be the expected to establish their jurisdiction over the offence not only if the offence is committed in their territory but also when the alleged offence is present in their territory and the offence was committed elsewhere. They would have the choice either to extradite the offender to the State where act was committed or present the case to their own authorities for the purpose for prosecution.

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[69] *Ibid.*
[70] http://www.unodc.org/unodc/terrorism_convention_airport.html, visited on 5.08.07.
[71] *Ibid.*

J. Convention on the Making of Plastic Explosives for the Purpose of Detection, 1991[72]

The convention was adopted in Montreal in 1991. The convention was brought use of unmarked and undetectable plastic explosives by the terrorists.[73] The International Convention on Air Law adopted the Convention on the Marketing of Plastic Explosive for the purpose of Detection in a conference held in February – March 1919 at the Montreal Head quarter of the ICAO. As on September 17, 2001, the Convention had 67 States Parties. The Convention requires countries to prohibit and prevent the manufacture in their territory of unmarked explosive, as well as movement of such explosive into or out of their territory. All plastic explosives have to be marked by the manufacturers with any one of four 'detection agents' agreed upon by the conference. The Convention also provided that within three years, plastic explosive stock not specifically held for military or police activities are to be destroyed, used or rendered ineffective. Those military or police function are to be similarly disposed of within 15 years. An International explosive Technical commission, set up by the Convention[74], will assess developments in plastic explosive manufacturing, marking and diction, keep the international community informed and propose amendments to the technical annex to the Convention. The entire law of aircraft- hijacking at present is regulated by the Conventions. They have been successful in containing to some extent the aircraft hijacking. It is evident from a number of acts. While in 1969, eighty-nine aircrafts were hijacked, in 1979 the number was only twenty- seven and the average at present comes to thirty a year. Concentrated States efforts to apprehend and prosecute offenders pursuant to he Hague and Montreal Conventions have a positive effect. However, act of hijacking has not been suppressed altogether. It is submitted that in order to suppress hijacking first and the immediate task before those States which have not yet become parties to

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[72] http://ens.miis.edu/pubs/inven/pdfs/pepxplo.pdf.html.visited on 5.08.07.
[73] *Ibid.*
[74] International controls to regulate plastic explosives adopted in Montreal, UN Chronicle, June, 1991, http://findarticles.com/p/articles/mi_m1309/is_n2_v28/ai_10977833, visited on 50.8.07.

above conventions is to ratify or accede to the Conventions. Secondly, suggestion for the creation of International Court of Criminal Justice or an international Tribunal may also be given. Such a Court is likely to defend the interests of all people and nations. Thirdly, co-operation amongst the States is of foremost import aspect in curbing the Hijacking. Co-operation is required in returning the aircraft, crew and passengers as soon as possible and in providing facilities and assistance in resuming the air flight without causing much delay. Fourthly, the principle of prosecution or extradition is required to be strictly followed. In case of prosecution, punishment is required to be serious and a wide publicity should be given so that it may have deterrent effect. Fifthly, security system at national airport should be more effective. The security system may include careful checking of passenger lists, the magnetometer to detect weapons, armed guards, armed flight crews, non-access to flight deck and concealed trap door on the threshold of the crew door over which the hijacker might be maneuvered.

Forty-one delegates signed the Convention on March, the day it was adopted. It will enter into force when 35 States ratified it, provided that no fewer than five of these are producer States.[75]

K. Convention to Ensure the Safety and Security of the United Nations and Associated Personnel (1994)[76]

The General Assembly on December 9, 1994 adopted a Convention on the Safety of United Nations and Associated Personnel.[77] The Convention consisting of 29 *Article*s covers United Nations personnel engaged or deployed by the Secretary General as member of a military, police or civilian component of an operation, as well as officials and experts on missions, Associated personnel are

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[75] *Ibid.*

[76] Convention on the Safety of United Nations and Associated Personnel, New York, 9 December 1994, http://www.un.org.org/millennium/law/xvii-15.htm, visited on 5.08.07.

[77] See General Assembly Resolution 49/59 dated December 9, 1994.

defined as those assigned by a government or an international organisation to carry out activities directly connected with a United Nations operation.

The Convention obliges States to establish jurisdiction over crimes including murder, kidnapping or threat of attack against U.N. and associated Personnel. It defines the duties of States to ensure the Safety and security of such personnel and to release or return those captured or detained. The Convention calls on host States of United Nations to quickly conclude agreements on the status of the United Nations operation and personnel. Transit States are required to facilitate unimpaired transit of such personnel. The Convention also addresses such issues as prosecution or extradition of the alleged offenders. The Convention came into force on January 15, 1999. As on June 1, 2000, the Convention had 35 States parties.

The term *"United Nations Personnel"* is defined as persons engaged or deployed by the Secretary- General of the United Nations as members of the United Nations operations, and other officials and experts on mission for United Nations or its specialised agencies who are present in an official capacity in the area where a United Nations operation is being conducted. The term *"United Nations Associated Personnel"* is defined as persons assigned by a Government or inter- Governmental organisation with the agreement of the component organ of the United Nations; those engaged by the Secretary- General of the United Nations or by a specialised agency; and those deployed by a humanitarian Non-Governmental Organisation or agency under an agreement with the Secretary – General of the United Nations or with a specialised agency to carry out activities in support of the fulfillment of the mandate of a United Nations operation.[78]

[78] Convention on the Safety of United Nations and Associated Personnel, New York, 9 December 1994, http://www.un.org/millennium/law/xviii-15.htm, visited on 5.08.07.

L. International Convention for the Suppression of Terrorist Bombing, 1997[79]

The convention was adopted in New York on December 15, 1997. The convention consists of 24 *Articles*. The convention defines a terrorist bomber under the *Article* 2 [80]as a person who unlawfully and intentionally delivers, places discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility, (a) with the intent to cause death or serious bodily injury; or (b) with the intent to cause extensive destruction of such place, facility or system, where such destruction results in or is likely to result in major economic loss. An attempt to commit the above offence shall also be treated as on offence under the convention. Further, any person who participates as an accomplice in an offence or any person who organizes or directs other to commit an offence shall also be considered to have committed an offence under the convention. However, the Convention shall not apply where the offence is committed within a single State, i.e., where the alleged offender and the victims are nationals of that state and the alleged offender is found in the territory of that State and no other State has a basis to exercise jurisdiction.

The convention provides under *Article* 8[81] that States either prosecute or extradite those accused of terrorist bombings within their territory and calls on State to adopt further measures to prevent terrorism and strengthen international cooperation in combating such crimes. *Articles* 9 of the convention lays down the offence of terrorist bombing shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the State Parties before the entry into force of this Convention. Further, States parties under take to include such offences as extraditable offences in every extradition treaty to be

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[79] International Convention for the Suppression of Terrorist Bombing,1997 adopted by the General Assembly on December 15, 1997, http://www.law.wits.ac.za/humanrts/instree/terroristbombing.html, visited on 5.08.07.

[80] *Ibid.*

[81] *Ibid.*

subsequently concluded between them. It seeks to deny safe havens' to persons wanted for terrorist bombing by obliging each State party to prosecute such persons if it does not extradite them to another State that has issued an extradition request.[82]

The Permanent Representative of India to the United Nations Ambassador signed on behalf of the Government of India the International Convention for the Suppression of Terrorist Bombings, within their territories on 17th September 1999 at New York.[83]

M. International Convention For the Suppression of Financing of Terrorism, 1999[84]

The General Assembly on December 9, 1999 adopted the convention in New York for Suppression of the Financing of Terrorism[85]. It requires State parties to either prosecute or to extradite persons accused of funding terrorist activities. It also requires banks to enact measures to identify suspicious transaction. Bank secrecy will no longer be justification for refusing to cooperate.[86]

The Convention provides that it is a crime for anyone to provide or collect funds to carry out acts that are considered terrorist activities, as defined by existing treaties. The term 'funds' has been defined under Article 1, as assets of every kind, whether tangible, movable or immovable, however acquired, and legal documents or interest in, such assets, including, but not limited to bank credit, travelers cheque, bank cheque, money orders, shares, securities, bond, drafts, letters of credit. Any other acts intending to kill or harms in order to intimate them

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[82] *Ibid* note 29.

[83] India signs the International Convention for the Suppression of Terrorist Bombings, 1997, http://www.indianembassy.org/policy/Terrorism/India_convention_terrorism_Sept_17_1999.htm, visited on 5.08.07.

[84] International Convention For the Suppression of Financing of Terrorism, 1999adopted by General Assembly, http://www.un.org/law/cod/finterr.htm, visited on 5.08.07.

[85] General assembly Resolution 54/109, For text of the Convention See 38 IJIL (1998) at 344.

[86] *Ibid.*

or Government or international organization would fall under the treaty's jurisdiction. The Treaty also compels countries to confiscate funds found to be intended for use in terrorist activities and to investigate information that a person who has or is alleged to have committed such a crime is in its territory. The Convention came in to force on April 10, 2002 after it received the required 22 ratifications.[87]

N. The Chemicals Weapons Convention Act, 2002

The regulatory regime applicable to nuclear materials should serve as a model. Federal law regulates the entire process of making fissile materials, from mining uranium to processing that ore into fuel. Any attempt to develop a productive capability without proper licenses is manifestly illegal and should trigger a variety of government oversight measures. Creation of a clandestine uranium enrichment facility or a chemical reprocessing plant to recover plutonium from spent fuel would be certainly illegal and virtually impossible. Storage of nuclear materials is extensively regulated, and beating security systems would unquestionably invoke a massive law enforcement response. Possession or acquisition of nuclear materials without a license is illegal, without regard to how the accused intends to use those materials. Finally, transportation of nuclear materials is subject to strict federal standards.[88]

O. International Law Commission, 1954

The International Law Commission in 1954 adopted the Draft code of offences against peace and security of mankind, drawn in the context of World War II, placed a heavy emphasis on acts of State terrorism comparable with the ones adopted by the Nazis before and during the war. This code refers to acts of aggression, terrorization of people, genocide and so on. The customary law of

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[87] Ahmed. M. Rifat, International Aggression, (1979), Humanities Press, USA, at 598-599.
[88] Barry Kellman, *Catastrophic Terrorism – Thinking Fearfully, Acting Legally*, 20 Mich. J. Int'l L. 537at 548- 550.

armed conflicts and the Geneva Convention of 1949 prohibit acts of terrorism such as genocide, inhuman treatment to war prisoners and so on as well. Reference may also be made to the remedy of claiming damages under the rules of International Law of State responsibility against State who aid or abet acts of International terrorism in contravention of international law resulting in harm to Third States[89].

P. The European Convention on the Combating of Terrorism[90]

The Convention was adopted on January 27, 1977 representing the response of the countries of Western Europe to more recent acts of terrorism involving hijacking of aircraft and kidnapping of diplomats and others. The Convention underscores the principle that in respect of certain specified "terrorist crimes" the obligation to extradite is absolute and any plea of a "political offence" is inadmissible. The list joins together in a single legal instrument the air piracy crimes covered by the Hague Convention of 1970 and Montreal Convention of 1961, mortally dangerous attacks on internationally protected persons, as outlined in the United Nations Diplomatic Services Convention of 1973, and particularly brutally or perfidious crimes such as abductions, taking hostages or attacks involving the use of a bomb, grenade, rocket, automatic fire arms or letter or parcel bomb which automatically endanger both the intended victims and innocent persons. This Convention is of great value. The comprehensive definition of acts of terrorism set forth in the *Article* encompasses, for the first time in international practice, the phenomenon of international terrorism in it's entirely rather than just specific forms as in the case o air piracy.

In the light of the attacks in the United States on 11 September and following on from the decisions taken since the European Council, the Justice and Home Affairs Council met on Thursday, 20 September 2001 to take the necessary measures to maintain the highest level of security and any other measure needed

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[89] D. V. N. Reddy, *Law relating To International Terrorism*, 2:3 IBR (1989) at 474.
[90] http://conventions.coe.int/Treaty/EN/Treaties/Html/190.htm,_visited on 1.11.07.

to combat terrorism. The Council has decided to harness all the measures already adopted at European Union level to combat these heinous acts, in particular:

-- the 1995 and 1996 Conventions on extradition between the Member States;
-- the setting up of Europol and Pro-Euro just;
-- the Convention on Mutual Assistance in Criminal Matters of 29 May 2000;
-- the setting up of the European Union Police Chiefs Task Force

The European Convention on Human Rights and Fundamental Freedoms is the first convention for enforcement of the Human Rights and Fundamental Freedoms enumerated in the Universal Declaration Human Rights.[91] The European Commission of Human Rights and the European Courts of Human Rights served as models for other regional groups. This model has been adopted by the States of America, which formed the organisation of American States. This organisation adopted in 1969 the American Convention on Human Rights.[92]

Q. Bonn Declaration Concerning Air Piracy, 1977[93]

The Heads of State and Government of the seven largest industrial countries of the west expressed their position in a declaration on combating air piracy on the occasion of the economic summit meeting in Bonn in July 1978. The Declaration allows signatory States to take recourse to counter measures in the form of air boycott against air piracy on their territory. Undoubtedly, a joint boy could be a very effective measure as far as transport is concerned, but from the standpoint of international law, this Declaration may be considered as a threat of reprisal, violating prevailing air traffic arrangements and other prescriptions against use of unilateral force or coercion.

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[91] Ashwain Kant Gautam, *Human Rights And Justice System,* (2001) New Delhi, A. P. H. Publishing Corporation, at 115.
[92] *Ibid.*
[93] http://www.dtic.mil/doctrine/jel/cjcsd/cjcsi/3610_01a.pdf, visited on 1.11.07.

R. The SAARC Regional Convention Suppression of Terrorism

India, Pakistan and five other members of South Asian Association for Regional Co- operation unanimously extended their unreserved co-operation in implementing measures suggested by their expert, to combat terrorism threatening their political and economic systems.

7. No proper results of these laws

It is to be noted that the above conventions and few other international and regional conventions have not been able to suppress the act of terrorism mainly because these conventions have not been ratified by most of the States of the World. For instance, only 107 States have ratified the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents by September 2001. It is submitted that one of the most effective ways in which the substantial progress could be achieved for curbing international terrorism lies in the universal adherence to these conventions by all or most of the States.

8. NATIONAL LEGAL REGIME RELATING TERRORISM

A. The Constitution of India

At the time of framing of the Constitution, there was a lot of discussion on the present Article 22 of the Constitution dealing with the safeguards available to the arrested persons and the detenues detained under the preventive detention laws. While supporting the necessity to pass preventive detention laws, G. Durgabai Deshmukh observed:

> ".....*The question before us is this, whether the exigencies of the freedom of individuals or the exigencies of the state is more important. When it comes to a question of shaking the very foundations of the State, which state stands not for the freedom of one individual but of several*

individuals, I yield the first place to the state.... The new Article 15-A[94]...is a very happy compromise."[95]

Another learned Member P. K. Sen a member from Bihar also supported such measure and observed:

". .....There *may be certain things in the provisions of the Articles which appear to be rather against the fundamental rights, but an awareness of the troubled times which not only this country but also all other countries in he world are passing through, some special measures for the security of the state are necessary..."*[96]

However, certain other members like Mahavir Tyagi had opposed the law of preventive detention on the ground that "*life liberty and pursuit of happiness are the three fundamental rights. The States comes into being not because it has any inherent rights of its own, but because the individual, who has inherent rights of life liberty, foregoes a part of his own rights and deposit's it with the State.... The State is thus organised and constituted not by depriving the people of their inherent rights ...the introduction here of a detention clause changes the chapter of fundamental rights into a penal code worse than the Defence Rules of India of old government... it is not the business of the Constituent Assembly to vest in the hands of he future governments power to detain people...*" [97] B. R. Ambedkar supported the preventive detention laws totally by overruling the objection of members like Mahavir Tyagi. Thus, the Constituent Assembly took cognizance of the extreme situations like terrorism and provided certain measures to curb the same.[98]

B. Law Commission 173rd Report [99]

The Law Commission of India, an advisory body headed by a former judge of the Supreme Court, recommended in April 2000 the adoption of a law

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[94] At present Article 22 of Constitution is dealing with safeguards to arrested persons and exception thereto.
[95] *Constituent Assembly Debates*, vol. IX, at 1543.
[96] *Ibid.*
[97] *Ibid.*
[98] G. B. Reddy, *Indian Legal Regime Related to Prevention of Terrorism, Terrorism in South Asia: Views From India,* (2004) New Delhi, India Research Press at 246-248.
[99] http://lawcommissionofindia.nic.in/tada.htm visited on 1.11.07.

designed to deal firmly and effectively with suspected terrorists and their activities, thus departing from the liberal investigation and trial procedures normally in use. The Commission was of the view that the impact of terrorism, both internal and external, over the past few decades in India fully justified the measures envisaged in the proposed legislation. When the very existence of a liberal society is at stake, they opined, drastic measures meant to strengthen law enforcement and the maintenance of public order are a necessary evil.[100]

The Government of India in the Ministry of Home Affairs requested the Law Commission to undertake a fresh examination of the issue of a suitable legislation for combating terrorism and other anti-national activities in view of the fact that security environment has changed drastically since 1972 when the Law Commission had sent its 43rd Report on Offences against the National Security. The government emphasised that the subject was of utmost urgency in view of the fact that while the erstwhile Terrorists and Disruptive Activities (Prevention) Act, 1987 had lapsed, no other law had been enacted to fill the vacuum arising there from. The result is that today there is no law to combat terrorism in India. The Commission was asked to take a holistic view on the need for a comprehensive anti-terrorism law in India after taking into consideration similar legislations enacted in other countries faced with the problem of terrorism. Accordingly, the Commission had taken up the study of the subject and prepared a Working Paper (Annexure I), which was circulated to all the concerned authorities, organisations and individuals for eliciting their views with respect to the proposals contained therein. Two seminars were also held for this purpose. The first seminar was held on December 20, 1999 at the India International Center, New Delhi. A second seminar was held on January 29, 2000 in association with the India International Centre in the auditorium of India International Centre.[101]

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[100] http://www.nic.in/lawcom/tada.htm. visited on 5.08.07.
[101] www.lawcommissionofindia.nic.in ,visited on 5.08.07.

C. The Indian Penal Code, 1860

Chapter V- A has introduced into the criminal law of India a new offence, namely, the offence of criminal conspiracy.[102] It came into existence by the Criminal Law amendment Act, 1913. The Britisher's introduced this section to deal the problem of freedom movement carried out by the native people. Conspiracy under the Penal code was punishable in two forms viz. a) conspiracy by way of abetment and b) conspiracy involved in certain offences.[103] In the former an act or illegal omission must take place in pursuance of conspiracy in order to be punishable while in the latter membership suffice to establish the charge of conspiracy? In 1870 the law of conspiracy was widened by the insertion of conspiracy in Indian Penal Code.[104] Under the law of conspiracy[105] in the Code, it is an offence to conspire to commit any of the offences mentioned in the Code and is punishable under the same. To conspire, to overawe, by means of criminal force, or to show of criminal force, the Government of India, or local Government is punishable. The assignation of the then Prime Minister of India, one of the two actual killers and two conspirators were brought to trial. Both the conspirators were away from the scene of the crime. The Supreme Court acquitted one of them. His movements after the incident were not properly proved. The document recovered from his custody did not indicate any agreement between him and the other accused. They tried to prove the agitated state of mind, which wanted revenge. This was not sufficient to establish case against him. On the other hand *Kehar Singh*[106], was shown to be was having secret talks with one of the actual killers and saying that they were trying to keep them selves away from

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[102] Section 120A of Indian Penal Code, Definition of criminal conspiracy.

[103] K. D. Gaur, *A Textbook on The Penal Code*, 3rd Edition (2004), Delhi, Universal Law Publication, at 176.

[104] Act XXVII of 1870.

[105] Section 121A Conspiracy to commit offences punishable by section 121: - *Whoever within or without India conspires to commit any of the offences punishable by Section 121, or conspires to overawe, by means of criminal force or the show of criminal force, the Central Government or any State] Government, shall be punished with imprisonment for life, or with imprisonment of either description which may extend to ten years, and shall also be liable to fine.*
Explanation: -To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

[106] AIR 1988 SC 1883; AIR 1989 SC 653.

their wives, children and other family members, all the time and on being asked what they were talking about, they remained mysterious. These facts were sufficient to show that they were planning something secret.

D. The Preventive Detention Act, 1950 - The Preventive Detention Act IV, 1950

The Preventive Detention Act, 1950 was originally passed for one year but was extended periodically upto 1969. During this period the Act was challenged in Supreme Court for its validity and Parliaments continued to amend it. Again in 1971, need was felt to frame another Preventive Detention Act with the object to "*maintain internal security*". And this was the infamous Maintenance of Internal Security Act (Maintenance of Internal Security Act, 1971), which was later grossly misused to settle all political opposition during emergency (1975 – 1977). The Act gave extraordinary powers to the executive, the misuse of which was observed by the Supreme Court:

> *"It turned into an engine of oppression posing threat to democratic way of life."*[107]

The total route to the Congress party, during the March 1977 General Election could be taken as a "measure of public resentment against the misuse of Maintenance of Internal Security Act". The Janata Party Government fulfilling one of its polls – promise repealed Maintenance of Internal Security Act on July 3, 1978. Though Maintenance of Internal Security Act was gone, yet the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 along with Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980 continued. Soon the need was felt to frame another Preventive Detention Act, to tackle communalism and extremist activities. The National Security Act (NSA) was formulated in 1980 with the object to cope with situations of communal disharmony, social tension, extremist

[107] *Bankat Lal v. State of Rajasthan*, AIR 1975 SC 522.

activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitations on different issues.

The framers of our Constitution were of the view that in free India, when there will be democratic and representative Government, the need for framing such preventive detention laws will rarely arise and shall be sparingly and cautiously used. But it was right that in 1950 that the Parliament passed the Preventive Detention Act to curb the "violent and terrorist" activities of the communists in Hyderabad, West Bengal and Madras State. The Constitutional validity of the Act was upheld by the Supreme Court in terms of the Parliament's power to enact such a law but Chief Justice Kania and Justice Mahajan and Mukherjee, observed in *A.K. Gopalan v. State of Madras*[108], that preventive detention laws were repugnant to democratic constitutions and did not exist in democratic countries. In another case the Chief Justice of the Supreme Court, Patanjali Shastri in *Ram Krishnan Bhardwaj v. State of Delhi*[109], stated:

> "*Preventive Detention is a serious invasion of personal liberty and such meager safeguards as the Constitution has provided against improper exercise of the power must be zealously watched and safeguarded by the Supreme Court.*"[110]

E. The Armed Forces Special Powers Act, 1958

Justice S C Agrawal delivered the Supreme Courts judgement on behalf of a unanimous Constitutional bench of five judges. There is ethereal gain for federalism. *Section 3* empowers the central governments as well as state governments to declare the whole or any part of the state "*to be a disturbed area*". The court ruled:

> *We are unable to construe Section 3 as conferring a power to issue a declaration without any time- limit. The definition of 'disturbed area' in Section 2(b) of the Central Act talks of 'an area, which is for time being*

[108] AIR 1950 SC 27.
[109] AIR 1953 SC 318.
[110] *Ibid* note 106.

declared by notification under Section 3 to be disturbed area'[111]. (Emphasis supplied)

The words *'for the time being'* imply that the declaration which will operate indefinitely. It is no doubt true that in Section 3 there is no requirement that the declaration should be reviewed periodically. But since the declaration is intended to be for a limited duration and a declaration can be issued only when there is grave situation of law and order, the making of the declaration carries within it an obligation to review the gravity of the situation from time to time and the continuance of the declaration has to be decided on such periodically assessment of the gravity of the situation. During the course of the arguments, the attorney general has made the following statement indicating the stand of the union of India in this regard:

> *It is stated on behalf of the government of India that it keeps all notifications it has issued under the Armed Forces (Special) Powers Act, under constant review. It states that even in future while the notifications themselves may not mention the period it will review all future notifications within a period of at the most one year from the date of issue, and if continued, within a period of one year regularly thereafter. As far as the current notifications are concerned, their continuance will be reviewed within a period of three months from today. The government may also review or revoke the notifications earlier depending on the prevailing situation*[112].

The government gave this assurance in the annual review. The matter rests there. However the court has made the following remarkable observation:

> *A situation of internal disturbance involving the local population requires a different approach. Involvement of armed forces in handling such a situation brings them in confrontation with their countrymen. Prolonged or too frequent deployment of armed forces for handling such a situation is likely to generate a feeling of alienation among the people against the armed forces who by their sacrifices in the defence of heir country have earned a place in the hearts of the people. It also has an adverse effect on the morale and discipline of the personnel of the armed forces. It is, therefore, necessary that the authority exercising the power under Section 3 to make a declaration so exercises the said power that the extent of the disturbed area is confined to the area in which the situation is such that it cannot be handled without seeking the aid of the armed forces and by*

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[111] *Naga People's Movement Human Rights v Union of India*, AIR 1998 SC 431.
[112] *Ibid.*

making a periodic assessment of the situation after the deployment of the armed forces the said authority should decide whether the declaration should be continued and, in case the declaration is required to be continued, whether the extent of the disturbed area should be reduced[113].

The court ruled that while the union retains control of its armed forces deployed in the state, they cannot supplant or substitute the civil authority is restored; not, to supplant it. Unacceptable attitude of the court was refusal to read in Section 4(a) *the licence to kill* by insisting on the principle of proportionality. It has left this intolerable provision intact. As regards clause (a) of Section 4 the submission is that it empowers any commissioned officer, warrant officer, or non commissioned officer or any other person of equivalent rank in the armed forces to fire upon or otherwise use force even to the causing of death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or things capable of being used as weapons or of fire arms, ammunition or explosive substances. It has been urged that the conferment of such a wide power is unreasonable and arbitrary. The powers under Section 4(a) can be exercised only when:

(a) Prohibitory order of the nature specified in that clause is in force in the disturbed area.
(b) The officer exercising those powers forms the opinion that I is necessary to take action for maintenance of public order against the person/ person's acting in contravention of such prohibitory order; and
(c) A due warning as the officer considers necessary is given before taking action.

The laying down of these conditions give an indication that while exercising the powers the officer shall use minimal force required for effective action against the person /persons acting in contravention of the prohibitory orders. In the circumstances, it cannot be said that clause (a) of Section 4 suffers from the voice of arbitrariness or is unreasonableness.

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[113] *Ibid.*

F. The Unlawful Activities (Prevention) Act, 1967

The UAPA was designed to deal with associations and activities that questioned the territorial integrity of India. When the Bill was debated in Parliament, leaders, and cutting across party affiliation, insisted that its ambit be so limited that the right to association remained unaffected and that the executive did not expose political parties to intrusion. So, the ambit of the Act was strictly limited to meeting the challenge to the territorial integrity of India. The Act was a self-contained code of provisions for declaring secessionist associations as unlawful, adjudication by a tribunal, control of funds and places of work of unlawful associations, penalties for their members etc. The Act has all along been worked holistically as such and is completely within the purview of the central list in the 7th Schedule of the Constitution.

G. The Maintenance of Internal Security Act, 1971

On December 3, 1971, the President issued a proclamation of emergency under Article 352 of the Constitution. On December 4, 1971, Parliament enacted the Defence of India Act, 42 of 1971. The Act was passed in view of the grave emergency, which then existed as proclaimed by the President, and to provide for special measures to ensure public safety and interest, the defence of India and civil defence, for trial of certain offences and for matters connected therewith. Section 2(3) of the Act would remain in force during the period of operation of the proclamation of emergency and for six months thereafter. By Section 6, the Act introduced amendments in several Acts, one amongst them being the Maintenance of Internal Security Act, 1971. Clause (d) of sub-section (6) of Section 6 amended Section 13 of the Act by adding after the words therein "from the date of detention", the words and figures "or until the expiry of the Defence of India Act, 1971, whichever is later". By clause (e) of sub-section (6) of Section 6, a new section, Section 17-A was inserted in the Act.

The new section, Section 17-A[114] effectuates three main changes: (1) by its non-obstinate clause overrides the other provisions of the Act, (2) a person may be detained in a class or classes of cases or under the circumstances set out in sub-clauses (a) and (b) of its sub-section (1) without obtaining the opinion of an advisory board for a period longer than three months, but not exceeding two years from the date of detention, that is to say, no opinion of an advisory board need now be obtained for 21 months from the date of detention, the first three months of the detention being permissible without such opinion even before the insertion of Section 17-A; and (3) the maximum period of detention of such a person can be three years or until the expiry of the Defence of India Act, 1971 whichever is later. These changes have been brought about by Parliament exercising power contained in clause (4) (b) read with clause 7(a) and (b) of Article 22. The power is exercised in respect of classes of cases and circumstances relating to all the heads under Entries 9 and 3 of Lists I and III of the Seventh Schedule, except one, viz., maintenance of essential and services, in respect of which Parliament has the power to pass preventive detention laws.

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[114] Section 17 A (1) of MISA, "*17-A (1) Notwithstanding anything contained in the foregoing provisions of this Act, during the period of operation of the Proclamation of Emergency issued on the 3rd day of December, 1971, any person (including a foreigner) in respect of whom an order of detention has been made under this Act, may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding two years from the date of his detention in any of the following classes of cases or under any of the following circumstances, namely -*

(a) where such person had been detained with a view to preventing him from acting in any manner prejudicial to the defence of India, relations of India with foreign powers or the security of India; or

(b) where such person had been detained with a view to preventing him acting in any manner prejudicial to the security of the State or the maintenance of the public order.

(2) In the case of any person to whom sub-section (1) applies, Sections 10 to 13 shall have effect subject to the following modifications, namely,

(a) in Section 10, for the words 'shall, within thirty days', the words 'may, at any time prior to but in no case later than three months before the expiration of two years' shall be substituted;

(b) in Section 11, -

(i) in sub-section (1) for the words 'from the date of detention', the words 'from the date on which reference is made to it' shall be substituted;

(ii) in sub-section (2), for the words 'the detention of the person concerned', the words 'the continued detention of the person concerned' shall be substituted;

(c) in Section 12, for the words 'for the detention', in both the places where they occur, the words 'for the continued detention' shall be substituted;

(d) in Section 13, for the words 'twelve months', the words 'three years' shall be substituted."

In *Sambhu Nath Sarkar v The State of West Bengal*[115], the petitioner challenged the validity of the provisions of the Act and the detention order mainly on the following grounds –

(1) that the amendments introduced in the Act by Section 6(6)(d) and (e) are Violative of Article 22(4), (5) and (7);

(2) that Section 10, both prior to and after its amendment, contravenes Article 22(4);
(3) that Section 6(6)(d) and (e) of the Defence of India Act contravenes Article 14;
(4) that the maximum period prescribed by the amendment to Section 13 by Section 6(6)(d) of the Defence of India Act and by the new Section 17-A (2)(d) is ultra vires the powers of Parliament since it amounts to punitive and not preventive detention;
(5) that Sections 3, 5, 8, 11 and 12 of the Act are violative of *Articles* 14, 19 and 21 on the ground that they are unreasonable restrictions and are not saved by any of the sub-clauses of Article 19(1); and
(6) that the amendments brought about in them by Section 6(6)(d) and (e) of the Defence of India Act cannot breathe life in them as they were non set, by reason only of the subsequent proclamation of emergency.

In *Gopalan's* case[116] the majority court had held that Article 22 was a self-contained Code and therefore a law of preventive detention did not have to satisfy the requirements of *Articles* 19, 14 and 21. The view of Fazl Ali, J., on the other hand, was that preventive detention was a direct breach of the right under Article 19(a)(d) and that a law providing for preventive detention had to be subject to such judicial review as is obtainable under clause (5) of that Article. In *R. C. Cooper v. Union of India*[117], the aforesaid premise of the majority in Gopalan's case was disapproved and therefore it no longer holds the field. Though *Cooper's*

[115] AIR 1973 SC 1425.
[116] AIR 1950 SC 27.
[117] AIR 1970 SC 1318.

case dealt with the inter-relationship of Article 19 and Article 31, the basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major premise of the majority in Gopalan's case[118] to be incorrect. In view of this constructional position, counsel for the petitioner and for the intervener made submissions on Section 13 of the Act as amended by Section 6(6)(d) of the Defence of India Act as being in violation of Article 14 and also on Sections 3, 8, 9, 10, 11 and 12 of the Act even as they stood before the enactment of Section 6(6)(d) of the Defence of India Act on the ground that those provisions were not reasonable restrictions and were therefore void and the subsequent declaration of emergency and the enactment of Section 6(6)(d) could not breathe life into those provisions which were already void. Counsel also contended that the maximum period of detention prescribed by the amended Section 13 and by Section 17-A (2)(d) did not satisfy Article 22(7)(b) since the period fixed by Parliament therein is three years or until the expiry of the Defence of India Act, whichever is later, an event uncertain as no one can anticipate when the emergency would be terminated. However, in the view we have taken of Section 17-A of the Act we need not go into them as in accordance with the practice followed by this Court we need not decide more than what is necessary. We, therefore, do not express any views on the aforesaid contentions raised by counsel. It is, therefore, enough for us to declare Section 17-A as not having satisfied the requirements laid down in clause (7)(a) of Article 22 and therefore bad.

H. The Criminal Procedure Code, 1973

The rule for calling out and employing the military in aid of the civil power were first enacted in the code of 1872, and embody (according to Sir J. Stephen) the principles laid down in the charge of Jindal C.J. to the grand jury of Bristol in 1832, as to duty of soldiers in dispersing rioters. The rules carry the law somewhat further than it has yet been carried in England as they expressly

[118] AIR 1950 SC 27.

indemnity all persons acting in good faith in compliance with requisition under section 129 and 130 and forbid prosecution of magistrates, soldiers and the police officers except with the sanction of the State of Central Government.[119]

Chapter X[120] of the Criminal Procedure Code deals with dispersal of unlawful assemblies by the civil and military authorities. The Constitutional Law guarantees only the right '*to assemble peacefully and without arms.*'[121] Unlawful assembly is defined under Section 141 of the Indian Penal Code, 1860. Failure of an assembly of persons to disperse or even to do so would certainly invite the application of sub-section (2), but it does not result in the conversion of a lawful assembly into an unlawful one. The unlawful character of an assembly has to be determined with reference to Section 141 of the Indian Penal Code alone, and the disobedience of a command issued under this section is not a relevant consideration for that purpose.[122]

Section 129 of Cr.P.C. contemplates two kinds of assemblies (1) an unlawful assembly within the meaning of Section 141 of IPC (2) an assembly of five or more persons likely to cause disturbance of the public peace. Disobeying the command to disperse the former kind of assembly is punishable under Section 145 of IPC and the latter under Section 151 IPC.

The power to issue order under sub-section (1) or (2) of Sec. 129 Cr.P.C. is authorized to (given) an executive magistrate; an officer-in-charge of a police station; in the absence of such an officer, any other police officer, not below the rank of a sub-inspector.

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[119] R. Gopal, *Sohoni's Code of Criminal Procedure 1973,* Vol. II, 20th Ed. (2003) Lexis Nexis Butterworths at 1151-1168.

[120] Sub-Section (1) of Section 129 reproduced sub section (1) of Section 127 of the 1898 Code and Sub Section (2) reproduces Section 128 of the same with some minor changes.

[121] Article 19 (1) (b) of the Constitution of India.

[122] *Ibid* note 118.

Chinappa Shantirappa v. Emperor[123], it is the right of the civil authorities to demand, and the duty of the military to furnish all the armed aid that may be necessary in the suppression of disorders and breaches of peace. This duty is cast not only upon the military but also upon all loyal citizens and subjects of Crown (now State) actively to aid in the suppression of disorders.

The police have not only the right, but also the duty to maintain law and order in given circumstances. If circumstances warrant the use of force, the police have the right to use it. It is the duty of the police to use force and that power does not stem from the permission to be granted by any private person or authority. However, the police officer exercising such authority can do so only if he is not less than a sub-inspector of police, and excessive and disproportionate use of force than what the situation demands, may lead the legitimate use of force.

The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crimes, or by the necessity of dispersing a riotous crowd, which is dangerous unless dispersed.[124]
In *State of Karnataka v. B. Padmanabha Beliya*[125] court took the view that if the death were caused without justification due to unlawful firing of the police, the State would be responsible for such consequences including the payment of compensation to the victims.

Court in *Ram Adhar Yadav v. Ramachandra Mishra,*[126] found if a complaint is made against any officer alleging that he while acting or purporting to act u/s. 129, committed the offence complained of, the Court will not entertain the complaint unless it appears that the State government had sanctioned the prosecution of the officer concerned. But if the allegation in the complaint does not indicate such facts, then the question of sanction will not arise, and the Court

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[123] AIR 1931 Bombay 57.
[124] *Ibid* note 118.
[125] 1992 Cr.L.J. 634 (Kar).
[126] 1992 Cr.L.J. 2216 (All).

cannot refuse to entertain the complaint.[127] Indemnity to officers extends not only to prosecution by the state but even to private prosecution. To get the benefit of this section, the accused has to show[128] –

(i) that there was an unlawful assembly of five or more persons likely to cause a disturbance of public peace;

(ii) that such an assembly was commanded to disperse;

(iii) that either the assembly did not disperse on such command or, if no command had been given, its conduct had shown a determination not to disperse; and

(iv) that in the circumstances he used force against the members of such assembly.

Whether the bar of this section applies to the facts of a given case or not is a matter for judicial discretion. That decision does not depend upon the assertions of either party. It is arrived at, as all decisions are, by sifting and weighing the evidence before the Court. For deciding that question, the Court should take into consideration all relevant materials placed before it. The decision can be reached either at the time of the institution of the complaint or at any time during the progress of the case. Whether sanction is necessary or not, the court[129] cannot look to the findings of an inquiry commission set up to go into the circumstances of the dispersal of the unlawful assembly and the use of force.

Section 130[130] leaves entirely to the discretion of the officer in command as to how he will disperse the assembly or arrest and confine the persons forming parts of it. Subsection (3) of the same section makes it imperative to use as little force as it required dispersing the unlawful assembly. As both males and females can form an unlawful assembly the army authorities acting under this section can

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[127] *Nagraj v State of Mysore,* AIR 1964 SC 269.

[128] *Ibid.*

[129] *Karan Singh v Hardyal Singh*, 1979 Cr.L.J 1211.

[130] Subsection (1) of this section reproduced Sec. 129 of the 1898 Code of Criminal Procedure and sub section (2) & (3)reproduce the two subsection of Section 130 of the same code with some minor changes of mere drafting nature.

also arrest females. In *Peoples Union for Human Rights v. Union of India,*[131] Gauhati High Court took the view that the provisions of arrest under the Armed forces (Special Powers) Act 1958 being departure from the provisions of the Code, such procedure is protected by Section 4 of the Code.

In *Naga People's Movement of Human Rights v. Union of India*[132] Supreme Court held that Section 130 of the Code has limited application and it enables the executive Magistrates to deal with a particular incident involving breach of public security on account of unlawful assembly by use of armed forces. Section 131[133]of the Code empowers a commissioned officer or gazetted officer of the armed force to deal with an isolated incident involving manifesto breach of public security by an unlawful assembly. The Supreme Court has further held that the provisions of section 130 and 131 of the Code do not deal with a situation requiring continued use of armed forces in aid of civil powers.

Under this section army authorities can arrest a person, if the situation so requires, even in the absence of a magistrate. When the provision of AFSP Act, 1958 are in operation, arrest by armed forced need not be in conformity with the provisions of Code. The provisions of the Armed forces (Special Powers 1958 regarding arrests etc being within the protection of section 4 of the Code, arrest of females may not be as per requirement of the Code.[134]

I. The Terrorist Affected Areas (Special Courts) Act, 1984

The above Act 61 of 1984, applicable to the whole of India except the State of Jammu and Kashmir received the assent of the President on August 31, 1984 replacing Ordinance No. 9 of 1984 promulgated on July 14, 1984, the object of which is to provide for the speedy trial of certain offences in terrorist affected

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[131] 1991 Cr.L.J. 1935 (Gau) FB.

[132] AIR 1998 SC 431.

[133] .Section reproduces Section 131 of the 1898 Code except for minor changes. In the new Code even gazetted officer of the armed forces may disperse the unlawful assembly as produced by the section earlier only commissioned officer.

[134] *Peoples Union for Human Rights v. Union of India,* AIR 1992 Gau 23.

areas and for matters connected therewith. Section 2(1) of this Act defines the expression "*terrorist affected area*" as an area declared as a "*terrorist affected area*" under Section 3 which provision empowers the Central Government by notification to declare any area to be "*terrorist affected area*" and constitute such area into a single judicial zone or into as many judicial zones as it may deem fit provided in its opinion the offences of the nature specified in the Schedule appended to that Act are being committed in any area by terrorists on such a scale and in such a manner that it is expedient for the purpose of coping with such terrorists to have recourse to the provisions of the Act. The notification issued under Section 3(1) in respect of an area should specify the period during which the area shall for the purpose of this Act be a "*terrorist affected area*". As per Section 3(2) a notification under Section 3(1) in respect of an area specifying the period during which the area shall for the purpose of this Act, be a terrorist affected area, and where the Central Government is of the opinion that the terrorists had been committing in that area from the date earlier than the date of issue of the notification, offences of the nature specified in the Schedule on such a scale and in such a manner that it is expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from that date subject to the proviso thereto.

This Act contains 21 sections relating to the establishment of special courts, their composition, jurisdictional and appointment of judges and provision for an appeal as a matter of right from any judgment, sentence or order (not being an interlocutory order) of a special court to the Supreme Court both on facts and law. Though in the original Schedule to this Act by virtue of the definition of the expression *'Scheduled Offence'*,[135] of the various enactments including 58 sections under the Indian Penal Code of which 23 sections are bailable were specified, the Legislature by the Amendment Act 45 of 1985, published in the Gazette of India, dated August 26, 1985, retained only Sections 121, 121-A, 122 and 123 of the

[135] *See*, Vide Section 2(1) (f)of the Terrorist Affected Areas (Special Courts) Act, 1984.

Indian Penal Code and Sections 4 and 5 of the Anti-Hijacking Act, 1982 and deleted the rest from the original schedule.

Central Government established judicial zones in Jullundur, Patialia, Ferozpur and Chandigarh but abolished them by Notifications[136] and transferred the cases to ordinary courts. Two additional Courts were constituted by the Government of India for trial of hijacking cases and Golden Temple case at Ajmer and Jodhpur but these two courts were also abolished by the Government vide notifications[137] respectively. However this Act is not repealed, but is in operation.

J. The Terrorist and Disruptive Activities (Prevention) Act, 1985

This Act was published in the Gazette of India, which received the assent of the President of May 23, 1985 and Extra. Part II, Section 1, dated May 23, 1985, came into force on May 24, 1985 in whole of India for a period of two years. Originally the proviso to sub-section (2) to Section 1 was added and it reads: "*Provided so much of this Act as relates to terrorist acts shall not apply to the State of Jammu and Kashmir*". However, this proviso was omitted by Act 46 of 1985.and the provisions of this Act were made applicable to the State of Jammu and Kashmir w.e.f. June 5, 1985. The preamble of this Act read that the special provisions of this Act were made "*for the prevention of and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto*". The Statement of Objects and Reasons of introducing this Act were that the terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. Since the 10th May 1985, the terrorists have expanded their activities to other parts of the country, i.e. Delhi, Haryana, Uttar Pradesh and Rajasthan as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to

[136] Nos. S.O. 692, 693, 694 and 695 dated September 25, 1985.
[137] Nos. S.O. 655 (E) and 722(E) dated August 24, 1990 and September 28, 1993.

terrorise, to create fear and panic in the mind of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires be taking serious note of and dealing with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern.

The Bill as introduced sought to make provisions for combating the menace of terrorists and disruptionist, inter alia, too -

(a) provide for deterrent punishment for terrorist acts and disruptive activities;

(b) confer on the Central Government adequate powers to make such rules as may be necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities; and

(c) provide for the constitution of Designated Courts for the speedy and expeditious trial of offences under the proposed legislation.

In Section 2, clauses (c) and (f) the expressions *'disruptive activity'* and *'terrorist act'* are defined. This Act in all contains 24 sections which are segregated into four parts i.e. Part I,[138] Part II,[139] Part III[140] and Part IV[141] dealing with punishment for, and measures for coping with, terrorist and disruptive activities, constitution of Designated Courts constituted under Section 7 of the Act, its jurisdiction and powers, the procedure to be followed, production of witnesses, appointment of Public Prosecutors and the provision for appeal as a matter of right from any judgment, sentence or order, not being an interlocutory order, of the court direct to the Supreme Court both on facts and law[142] and other miscellaneous provisions regarding the modified application of certain provisions of the Code of Criminal Procedure, 1973, competence of Central Government to exercise powers of State Government and delegation of powers, power of the Supreme Court of India to make rules etc.

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[138] Sections 1 to 2 of Terrorist and Disruptive Activities (Prevention) Act, 1985.
[139] Sections 3 to 6 of Terrorist and Disruptive Activities (Prevention) Act, 1985.
[140] Sections 7 to 16 of Terrorist and Disruptive Activities (Prevention) Act, 1985.
[141] Sections 17 to 24 of Terrorist and Disruptive Activities (Prevention) Act, 1985.
[142] Vide Sections 7 to 16 of Terrorist and Disruptive Activities (Prevention) Act, 1985.

K. The Terrorist and Disruptive Activities (Prevention) Act, 1987

Act 28 of 1987 was enacted as Act 31 of 1985 was due to expire on May 23, 1987 and as it was felt that in order to combat and cope with terrorist and disruptive activities effectively, it was not only necessary to continue the said law but also to strengthen it further. Since both the Houses of Parliament were not in session and it was necessary to take immediate action, the President promulgated the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) on May 23, 1987, which came into force w.e.f. May 24, 1987. However, this Act repealing the Ordinance received the asset of the President of India on September 3, 1987 and was published in the Gazette of India, Extra. Part II, Section 1, dated September 3, 1987. The scheme of Act 31 of 1985 and Act 28 of 1987 as reflected from their preambles is the same. The scheme of the special provisions of these two Acts were/are "*for the prevention of and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto*".

There have been anti-terrorist laws in India before, each one enacted by the legislature and upheld by the judiciary, albeit with some reluctance and much regret. Each one has been a temporary statute, enacted in the expectation that things would improve and that such drastic measures need not become a permanent feature of the law of the land. But after a year or two, with fresh spurts of terrorist activities, the statutes have been reintroduced with requisite modifications. The second last comprehensive law along these lines was the Terrorist and Disruptive Activities (Prevention) Act of 1987 or TADA, for short.

TADA had many rigorous provisions, some of which proved to be open to gross abuse in the hands of law enforcement officials. The Supreme Court of India upheld its constitutional validity on the assumption that those entrusted with such draconic statutory powers would act in good faith and for the public good. There were many instances of misuse of power for collateral purposes, however. The Act gave strong search and seizure powers to the police, who could indict any

person on the basis of strong suspicion. Once indicted under TADA, a special court according to special procedures would try the accused. In such trials, well-known protections ordinarily available to an accused in a liberal society would be given a go by. The accused risked conviction on the basis of slender evidence, which would have been insufficient for conviction by an ordinary court. Under Section 15, a confession allegedly voluntarily made before a police officer, not lower in rank than a Superintendent of Police, and recorded by such police officer in writing or by using any mechanical device such as audio cassettes and video tapes, was admissible in court against an accused (or co-accused, abettor or conspirator) for an offence under this Act. Even the ordinary safeguards available in the matter of proof and its burden were jettisoned in favor of the prosecution. TADA had been enacted initially for two years but successive amending Acts has extended its life from time to time.[143] It has many striking features, which depart from time to time by substantive and procedural aspects[144].

When TADA lapsed, and failed to be extended, there was a vacuum in special anti-terrorist law in India, but there was no improvement in the situation. There were several tragic incidents including the hijacking of Indian Airlines Flight IC-814 and the release of three notorious terrorists by the Government of India to save the lives of innocent civilians and crew. The released terrorists subsequently engaged in activities and made open proclamations of terrorist intent, which no government could bear. Repeated attacks on security forces and their camps, including assaults by suicide squads, are new in India and add a dangerous dimension to terrorist activities. Several discoveries of substantial quantities of RDX (a form of explosives used in making bombs), arms and

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[143] Act 16 of 1989, Act 35 of 1991, the latest Act 43 of 1993, extended the life of the TADA till 1995.

[144] Abetment Section 2 of TADA *contains only one notable feature –"abet" as defined. TADA does not requires mens rea – mere communication association, or rendering of assistance to terrorist or to persons assisting such terrorist is enough under Section 2 (1) (i) (a)of TADA. While acknowledging the blissfully and impermissibly vague and imprecise nature of the definition, which could be void for vagueness, the Supreme Court held that the expressions – 'communication' and 'association' should be qualified to the extent that 'actual knowledge or reason to believe' should be read in.*

ammunition made in various parts of the country are among the many instances of terrorism, which have aggravated the situation.

This legislation defined terrorism in its Section 3 in an exhaustive manner. An analysis of Section 3 clause (1) shows that whoever with intent

(i) to overawe the government as by law established; or

(ii) to strike terror in the people or any section of the people;

(iii) to alienate any section of the people; or

(iv) to adversely affect the harmony amongst the different sections of the people does any act or things by using

(a) bombs or dynamites; or
(b) other explosives substances; or
(c) inflammable substances; or
(d) fire arms; or
(e) other lethal weapons; or
(f) poisons or noxious gases or other chemicals; or
(g) any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause (i) death; or (ii) injury to any person; or (iii) loss of or damage to or destruction of property; or (iv) disruption of any supplies or services essential to the life of the community; or (v) 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 punishable under Section 3 of TADA.

This is very comprehensive definition of terrorist act and it is self-explanatory in nature, as it covers all the forms and consequences of terrorism.

Terrorist and Disruptive Activities (Prevention) Act, 1987 contained the following features: -

1. Section 3 (1) of the Act provides for definition of a terrorist act. This section provides that whoever with 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 the 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 of a hazardous nature in such a manner as to cause, or as is 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 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, commits a terrorist act.
2. Whoever commits a terrorist act if such act is resulted in death of any person be punishable with death or imprisonment for life and shall also be liable to fine. In any other case, the punishment is 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.
3. TADA provides for minimum punishment of five years and maximum of imprisonment of life for conspiring to commit or knowingly facilitating the commission of terrorist act.
4. Whoever harbours or conceals any terrorist was to be punished 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.
5. Punishment for disruptive activities was imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life.
6. Disruptive activities mean any action taken whether by act or by speech or through any other media which intent to disrupt sovereignty and territorial integrity in India.

7. TADA also provided for minimum punishment of five years and maximum of imprisonment for life for possession of certain unauthorized arms.
8. It provided for forfeiture of property persons convicted of any offence punishable under the Act. The Act enabled the Central Government or State Government to constitute one or more designated court for particular area or for such cases or group of cases.
9. The Act also gave power to the designated court try any other offence with which the accused may be charged at the same trial if the offence is connected with such other offence.
10. Under the TADA a designated court was to take cognizance of any offence without the accused being committed to it for trial upon receiving the complaint for a police report.
11. There was a special provision for summary trial of offences punishable with imprisonment for a term not exceeding three years.
12. TADA provided that a confession made by a person before a police officer not lower in rank than a Superintendent of Police was to be admissible for the trial of such person for an offence under the Act.
13. It provided that trial of any offence by a designated court should have precedents over the trial of any other case against the accused in any other court.

There was considerable criticism against the misuse of the provisions of the Act by the National Human Rights Commission, Minorities Commission, and International Human Rights Organisations like Amnesty International and International Natural of Jurists on basically the following charges:

i. Innocent persons being proceeded against or arrested under the Act;
ii. Confession to the Police being admissible under the Act, which was odious to the established procedures of criminal justice;
iii. Minorities being targeted under the Act;

iv. Bail was not easily obtainable as the provisions of Bill in the Act were illusory; and

v. Burden of proof was on the accused.

L. The Terrorist and Disruptive Activities (Prevention) Act, 1987 (Amendment) Act, 1993[145]

This Act was enacted as Act 31 of 1985 was to expire on May 23, 1987 and as it was felt that in order to combat and cope with terrorist and disruptive activities effectively, it was not only necessary to continue the said law but also to strengthen it further. Since both the Houses of Parliament were not in session and it was necessary to take immediate action, the President promulgate the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) on May 23, 1987 which came into force w.e.f. May 24, 1987. However, this Act repealing the Ordinance received the assent of the President of India on September 3, 1987 and was published in the Gazette of India, Extra. Part II, Section 1, dated September 3, 1987. The Scheme of Act 31 of 1985 and Act 28 of 1987 as reflected from their preambles is the same. The Scheme of the special provisions of these two Acts was/ is "*for the prevention of and for coping with, terrorist and disruptive activities and for matters connected there with or incidental thereto*".

As per sub- section (1) of Section 1, Section 5, 15, 21 and 22 came into force at once and the remaining sections came into force on 24th May 1987. According to sub-section (4) of Section 1, This Act was to remain in force for a period of two years from May 24, 1987 but subsequently sub- section (4) was amended by virtue of the Amendment Act 16 of 1989 where by for the words "two years", the words "four years", were substituted and the validity of this Act was extended for a further period of two years. Thereafter as it was felt that the Act should continue, the President promulgated an Ordinance where by for the words "four years", "six years", were substituted in sub- section (4) of Section 1.

[145] Act 28 of 1987.

Subsequently, this Ordinance was repealed by Act 35 of 1991 thus extending the life of the Act 28 of 1987 to six year. As the Act even by the extended period of six years was to expire on May 23, 1993, another Amendment Act 43, 1993, was enacted extending the life of the Act for eight years instead of six years.

This Act contains 30 sections grouped under four parts i.e. Part I,[146] Part II,[147] Part III,[148] Part IV[149].Part II of the Act deals with punishments for, and measures for coping with terrorists and disruptive activities. Part III deals with constitution of Designated Courts, their jurisdiction, powers, and the procedure to be adopted. It also provides provisions for appeal to the Supreme Court both on facts and law as in the case of other Acts. The provisions under Part IV under the heading "Miscellaneous" deal with the modified application of certain provisions of the code, presumption as to offences under Section 3, identification of accused, power of the Supreme Court to make rules etc.

The table given below shows that some provisions were similar in both the Acts of 1985 &1987[150]:

The Terrorist and Disruptive Activities (Prevention) Act, 1985	*The Terrorist and Disruptive Activities (Prevention) Act, 1987*
Section 7	Section 9
Section 8	Section 10
Section 9(2)	Section 11(2)
Section 13	Section 16
Section 16	Section 19
Section 17(2)	Section 20(4)
Section 17 (4)	Section 20(7)
Section 17 (5)	Section 20 (8)

[146] Section 1and 2 of TADA, 1993.
[147] Sections 3 to 8 of TADA, 1993.
[148] Sections 9 to 19 of TADA, 1993.
[149] Sections 20 to 30 of TADA, 1993.
[150] *See,* Preeti Verma, *The Terror Of POTA and Other Security Legislation: A Report on The People's Tribunal on The Prevention of Terrorism Act And Other Security Legislation,* New Delhi, March 2004, Human Rights Law Net work, at 330.

M. The Chemicals Weapons Convention Act, 2000[151]

In order to give effect to the convention on the prohibition of development, production, stock piling and use of chemical weapons and their destruction the Chemical Weapons Convention Act, 2000 has been enacted. In view of the fact that the statute has been enacted in fulfillment of the country's international commitments the Act extends to the whole of India. It also applies to citizens of the country outside India and associates, branches or subsidiaries outside India of companies or bodies corporate registered or incorporated in India. To underscore the primacy according to international commitments of the country, section three of Act unequivocally lays down that notwithstanding any thing to the contrary contained in any other law the provisions of the convention set out in the schedule to this Act shall have the force of the law in India.

Section 13 of the Act prohibits the development, production, acquisition, stockpiling, retention or use of chemical weapons. And section 15 prohibits the development, acquisition, retention or use of toxics chemicals or precursors. However, the production, processing, acquisition, consumption, transfer, import or export or use of toxic chemicals or precursors is permissible if the same is needed for research, medical, pharmaceutical or productive purposes. In order to regulate this activity person engaged in the above said activities have to seek registration with the national authority. And it is only subsequent to this registration that any person is permitted to produce, process, acquire, consume, transfer, import, export or use any of the toxic chemicals. The observance of the statute makes elaborate provisions of inspection, search seizure and forfeiture[152].

Section 14 of the Act also places a non- negotiable duty on the person having knowledge about the possession or location of old chemical weapons or abandoned chemical weapons to inform the national authority of the same. Not only is this information to be provided within a period of seven days from the

[151] Act No. 34 of Gazette of India 29.8.200 Part II S. I (Extra) Sl. 42.
[152] Section 19 - 27 of The Chemical Weapons Act.

commencement of the Act and after the commencement of the Act within seven days from the acquisition of such knowledge. Failure to provide this information has been rendered punishable under section 46 with fine which may extend to a lakh of rupees or imprisonment up to three years. Punishment has also been prescribed for infringing the other prohibitions specified under the Act. Minimum mandatory imprisonments, which can extend up to life and heavy fines are the suggested sanctions[153].

N. The Prevention of Terrorism Act, 2002

Taking into account the terrorist activities of various groups in several parts of the country and the fact that some of these groups sponsored by foreign elements. The Government came to the conclusion that alternative law to effectively deal with terrorism is necessary. Pursuant to this, the Government enacted another Act namely, the Prevention of Terrorism Act (POTA). The essential points of difference between TADA and POTA are:

(i) Provisions allegedly misused / likely to be misused are deleted from the new legislation;

(ii) Section 5 of Terrorist and Disruptive Activities Act, which had made unauthorized possession of arms in a notified area, an offence, is deleted. The Arms Act, amended already, provides for a deterrent punishment for possession of certain classes of unauthorized arms. Therefore, the need to repeat the provisions in the new legislation was not felt. Further, this section is the one, which is alleged that has been most misused;

(iii) Section 15 of the Terrorist and Disruptive Activities Act, which had provided that confessions made to a Police Officer, was admissible in evidence. This was against the grain of the normal provision of the Evidence Act where statements made to the police are not admissible as evidence. In the new Act certain safeguards have been incorporated;

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[153] Annual Survey of Indian Law, 2000, at 581-582.

(iv) Section 21(1) (c) and (d) of the old Terrorist and Disruptive Activities Act, had laid down certain presumptions relating to confessions. This section had provided that if it was proved that one of the accused had made a confession that the other had committed the offence, it was to be presumed that the other (accused) had committed the offence. It also provided that if it was proved that an accused had made a confession to any person even other than a police officer, it was to be presumed that he had committed such an offence. Since there were allegations that these provisions had been misused, these are not reflected in the new law.

(v) Section 20(8)(b) had provided that a Court shall not grant bail unless it was satisfied that there are reasonable grounds for believing that the accused was not guilty of an offence under Terrorist and Disruptive Activities Act. This provision had made it extremely difficult to obtain bail in Terrorist and Disruptive Activities Act, cases. No such provision has been made in the new law.

Under Terrorist and Disruptive Activities Act, an appeal from the designated court lies to the Supreme Court. It was argued that under Indian conditions, with prevailing poverty, it is difficult for people to approach straightaway the Supreme Court. In the new legislation, an appeal is being provided to the High Court. As suggested by the Supreme Court, a provision has been made that investigation in the cases relating to terrorism and an officer not lower in rank than that of an Assistant Superintendent of Police or equivalent officer should do disruptive activities. This would reduce the misuse substantially.

a. Salient Features of POTA

(i) Instead of being made a permanent feature under law, a time limit of 3 years has been prescribed for the proposed Bill.

(ii) To have a sharper focus, the word "disruptive activity" was substituted by "disruptive act".

(iii) Keeping in view the possibility of misuse of the provisions even for petty communal disturbances" or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people" has been deleted.

(iv) The concept of knowledge was brought in for culpability relating to "Whoever harbours or conceals, or attempt to harbour or conceal any person knowingly that such person is a terrorist".

(v) Similarly the concept of knowledge was brought in for offences relating to disruptive activities and it was incorporated "Whoever harbours or conceals, or attempts to harbour or conceal any person knowingly that such person is disruptionist". Further, clause 4(3)(b) relating to "Whoever predicts, prophesies or pronounces or otherwise expresses in such a manner as to incite, advise, suggest or prompt, the killing of" has been deleted as it was felt that the construction is much too wide, and, could be misused.

(vi) The Review Committees both for the Centre as well as the States have been provided with a statutory base and it has been provided that a Judge of the High Court should be its Chairman.

(vii) Apart from reviewing the cases pending under POTA these Review Committees will also review the cases under old TADA Act.

From a comparative analysis of POTA and the American Law, it is seen that POTA is in some way less stringent than the American Act. While the "Terrorist Act" defined under section 3 of POTA prescribes punishment for an over an act with a specific intention for a terrorist activity as a punishable offence where as American Act on terrorism act on counter terrorism provides punishment to a person even when he is likely to engage in terrorist activities.

O. Unlawful Activities (Prevention) Amendment Act, 2004[154]

It would however be simplistic to suggest, as some critics viewed that the new law has retained all the operational teeth of Prevention of Terrorism Act or it has made only cosmetic changes. The difference between Prevention of Terrorism Act and Unlawful Activities Prevention Act is substantial even as a lot of provisions are in common with some cosmetic changes in it.

a. A brief outline of the amended act

The Act does not define the word terrorist in its definition clause but defines a terrorist act. The word terrorist is to be construed according the definition of the terrorist act[155]. Terrorist act is defined in the Act as - Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms 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 in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from

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[154] Unlawful Activities (Prevention) Amendment Act, 2004, No. 29 of 2004, Hereinafter as UAPAA.

[155] Section 2 (k) of UAPAA, *"terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly.*

doing any act, commits a terrorist act[156].The above definition did not exist in the 1967 Act.

The previous Act only defined and dealt with unlawful activity. An unlawful activity includes an activity which intends to bring about cession of a part of the territory of India or the secession 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[157].

Whether an association is unlawful is to be declared by the Central government by giving the grounds for such a declaration[158].

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[156] Section 15 of the UAPAA, *Terrorist Act.-Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms 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 in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.*

[157] Section 2 (o) of the Unlawful Activities Prevention Act, 1967, *"unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise).*

[158] Section 3 of the Unlawful Activities Prevention Act, 1967, *Declaration of an association as unlawful (1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful. (2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary: Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose. (3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette: Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, ----1 Subs. by Act 31 of 1972, s. 4, for cl. (g). 2 Ins. by Act 24 of 1969, S. 3. -765 for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette. (4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:- (a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association ; or (b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association ; or (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 ; or (d) in such other manner as may be prescribed.*

According to Section 3 thereafter it is referred to the Tribunal under Section 4[159]. The Tribunal issues a notice to the association concerned to show cause why it should not be declared unlawful. For declaring the association unlawful it has to ascertain whether there is sufficient cause to do so. For taking cognizance of any offence under this Act prior sanction of the Central or the State government, as the case may be, is necessary. Criminal Procedure Code, 1973, is made applicable in matters of arrest, bail, confessions and burden of proof. Those arrested are to be brought before a magistrate within 24 hours, confessions are no longer admissible before police officers and bail need not be denied for the first three months. The presumption of innocence leaving the burden of proof on the prosecution has also been restored.

The evidence collected through interception of wireless, electronic or oral communication under the provisions of the Indian Telegraph Act or the Information Technology Act or any law being in force has been made admissible

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[159] Section 4 of the Unlawful Activities Prevention Act, 1967, *(1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government: Provided that no person shall be so appointed unless he is a Judge of a High Court. (2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person 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. (3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act. (4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India. (5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings. (6) 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 (5 of 1908), while trying a suit, in respect of the following matters, namely:- (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. (7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of 767 the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).*

as evidence against the accused in the court.[160] The amended Act provides for following penalties: Offence Includes Penalty. A person being a member of an unlawful association and continues to be a member of such association, takes part in meetings, contributes to, or receives or solicits any contribution for the purposes of the association or in any way assists the operations of such association. If such person is in possession of unlicensed firearms, ammunition, explosive, etc, 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, and if such act has resulted in the death of any person. In any other case Imprisonment for a term, for which punishment may extend to two years and fine.

b. Death or imprisonment for life

Penalty for the said offence terrorism is imprisonment for minimum five years. Dealing with funds of an unlawful association is also included. Includes an association declared unlawful by the central government. Such association is prohibited from dealing in any manner with moneys, securities or credits pays for such a offence punishment is Imprisonment upto three years, or fine, or both. Contravention of an order made in respect of a notified place Includes use of *Articles* for unlawful activities found in a notified place (i.e. a place used for unlawful association and so notified by the central government). Punishment is imprisonment upto one year. Unlawful activities Includes taking part in or

[160] Section 46 of UAPAA, Notwithstanding anything contained in the Indian Evidence Act, 1872 or any other law for the time being in force, the evidence 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 the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case:
Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived there from shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:
Provided further that the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

committing an unlawful act, advocating, abetting, advising or inciting the commission of any unlawful activity. Assisting an unlawful organization in its activities the punishment term should not be less than seven years and fine or imprisonment upto five years or fine, or both. The amended law now contains new provisions dealing with terrorist acts, the offences and their punishments.

For the offence of raising funds for a terrorist act the imprisonment is not less than five years. In case of Conspiracy punishment term should not be less than five years. Harbouring, Imprisonment for not less than three years for being a member of a terrorist organization. The term may extend upto imprisonment for life. Holding proceeds of terrorism may extend to imprisonment for life. Accused under this Act found guilty of threatening witnesses the imprisonment upto three years. There is a provision in the Act, which provides for enhanced penalties. Any person aiding a terrorist or acting in contravention to Explosives Act, 1884, the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959, or has unauthorized possession of bombs, explosives, etc, will be punished with a term not less than three years and may extend for life[161]. The Act also gives power to the Central and the State Governments, as the case may be, to forfeiture the proceeds of terrorism. The investigating officer is empowered to seize the concerned property with the prior approval of the Director General of the police of the State[162]. Cash[163] can also be seized if it intends to be used for purposes of terrorism. The Court confirms the seized property and orders its forfeiture.[164] An appeal to the High Court against the forfeiture is allowed within one month from the date of receipt of such order.

Chapter VI of the amended Act gives power to the Central government under section 35 to add or remove an organization in the schedule as a terrorist organization. Under section 36, an application can also be made to remove an organization from the schedule. Such an application can be made by an

[161] Section 23 of Unlawful Activities (Prevention) Amendment Act, 2004.
[162] Section 24 and 25 of Unlawful Activities (Prevention) Amendment Act, 2004.
[163] Cash includes monetary instruments.
[164] Section 26 of Unlawful Activities (Prevention) Amendment Act, 2004.

organization or any affected person. The offences and penalties under this chapter as given below: Offences Punishment Membership of a terrorist organization imprisonment not exceeding ten years[165]. For supporting a terrorist organization the imprisonment should not exceeding ten years[166]. For raising funds for terrorist organization the punishment term should not exceeding fourteen years[167].

The Act also provides for protection of witnesses[168] such as keeping the their identities secret even in orders, judgments and records of the Court, issuing directions to secure the identity of the witnesses and by imposing punishment for contravention of any such directions

9. Constitutional validity of the Anti- terror legislations

The Supreme Court has pronounced the constitutional validity of TADA in *Kartar Singh v State of Punjab.*[169] Full bench of Punjab and Haryana Court in *Bimal Kaur Khosla v. Union of India* also considered the constitutional validity.[170]

While deciding the constitutional validity of the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987, the Supreme Court has, in its judgment in *Kartar Singh v State of Punjab*,[171] laid down the following guidelines so as to ensure that the confession obtained in the pre-indictment interrogation by a police officer not lower in rank than a Superintendent of Police is not tainted with any vice but is in strict conformity of the well recognised and accepted aesthetic principles and fundamental fairness-

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[165] Section 38 of Unlawful Activities (Prevention) Amendment Act, 2004.
[166] Section 39 of Unlawful Activities (Prevention) Amendment Act, 2004.
[167] Section 40 of Unlawful Activities (Prevention) Amendment Act, 2004.
[168] Section 44 of Unlawful Activities (Prevention) Amendment Act, 2004.
[169] (1994) Cr. L. J 3139 (SC).
[170] 1988 Cr. L. J 869 (F.B) (P&H).
[171] *Ibid* note 141.

i. The confession should be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him;

ii. The person from whom a confession has been recorded under section 15(1) of the Act, should be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under Rule 15(5) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay;

iii. The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person should be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon;

iv. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank of an Assistant Commissioner of Police in the Metropolitan cities and elsewhere of a Deputy Superintendent of Police or a Police Officer of equivalent rank, should investigate any offence punishable under this Act of 1987;

v. The Police Officer if he is seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody, must file an affidavit sworn by him explaining the reason not only for such custody but also for the delay, if any, in seeking the police custody;

vi. In case, the person, taken for interrogation, on receipt of the statutory warning that he is not bound to make a confession and that if he does so, the said statement may be used against him as evidence, asserts his right to silence, the police must respect his

right of assertion without making any compulsion to give a statement of disclosure.

Besides, while upholding the validity of sections 16, 19 and 20(3) of the Act, the Supreme Court made certain observations, emphasizing the desirability of supplementing the law by making provisions therein.

Section 16(2) and (3) empowering the Designated Court to take measures for keeping the identity and address of witnesses secret, was assailed on the ground that these provisions turn a trial under the provisions of TADA into a farce. In reply, it was contended that the legislature merely regulated the right to fair trial and the right of the accused to effectively defend him keeping in view the requirements of the situation prevailing in terrorists affected areas where the witnesses were living in a reign of terror and were unwilling to depose against the terrorists in courts for fear of retribution or reprisal. The Supreme Court upheld these provisions in view of the extraordinary circumstances.

Therefore, in order to ensure the purpose and object of the cross-examination, we feel that as suggested by the full Bench of the Punjab and Haryana High Court in Bimal Kaur, the identity, names and addresses of the commences; but we would like to qualify it exception that it should be subject to an exception that the Court for weighty reasons in identity and addresses of the witnesses especially of the potential witnesses whose life may be in danger.

As regards section 19 of the Act, the Supreme Court adverted to some of the practical difficulties based on which the validity of this section was assailed and how these could be removed so that the Parliament may take note of them and devise a suitable mode of redress by making the necessary amendments in the appeal provisions. In this regard, the following observation made by the Supreme Court can be referred to. This predicament and practical difficulty, an aggrieved person has to suffer can be avoided if a person who is tried by the Designated Court for offences under the TADA but convicted only under other penal

provisions, is given the right of preferring an appeal before the next appellate court as provided under the Code of Criminal Procedure and if the State prefers an appeal against the acquittal of the offence under the provisions of TADA than it may approach the Supreme Court for withdrawal of the appeal or revision, as the case may, preferred by such person to the Supreme Court so that both the cases may be heard together.

As regards section 20(3) and 4(a) empowering the Executive Magistrate and Special Executive Magistrate to record confessions or statements and authorizing the detention of accused, it was contended that it was against the very principle of separation of judiciary from the executive enunciated in article 50 of the Constitution and therefore bad under *Articles* 14 and 21 of the Constitution. Negating this contention, the Supreme Court observed as follows: Though we are holding that this Section is constitutionally valid, we, in order to remove the apprehension expressed by the learned Counsel that the Executive Magistrates and the Special Magistrates who are under the control of the State may not be having judicial integrity and independence as possessed by the Judicial Magistrates and the recording of confessions and statements by those Executive Magistrates may not be free from any possible oblique motive, are of the opinion that it would be always desirable and appreciable that a confession or statement of a person is recorded by the Judicial Magistrate whenever the Magistrate is available in preference to the Executive Magistrates unless there is compelling and justifiable reason to get the confession or statement, recorded by the Executive or Special Executive Magistrates."

Challenges to TADA was also taken up in *Shaheen Welfare Association v Union of India*[172] the Supreme Court observations are as follows:

(i) *Deprivation of the personal liberty without ensuring speedy trial would not be in-consonance with the right guaranteed by article 21 of the Constitution. Of course, some amount of deprivation of personal liberty cannot be avoided in terrorist cases, but if the period of deprivation, pending trial, becomes unduly long, the*

[172] AIR 1996 SC 2957.

fairness assured by article 21 would receive a jolt. The Court also observed that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by article 21.

(ii) The Court observed that while it is essential that innocent people should be protected from terrorists, it is equally necessary that terrorists are speedily tried and punished. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted but to remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA.

(iii) The proper course is, therefore, to identify from the nature of the role played by each accused person, the real hardcore terrorists or criminals from others who do not belong to that category and apply the bail provision strictly in so far as the former class is concerned and liberally in respect of the later classes.

(iv) When stringent provisions have been prescribed under an Act such as TADA for grant of bail and a conscious decision has been taken by the legislature to sacrifice to some extent the personal liberty of an under trial accused for the sake of protecting the community and the nation against terrorists and disruptive activities or other activities harmful to society. It is also necessary that investigation of such crimes is done efficiently and adequate number of designated courts are set up to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.

Constitutional validity of the Prevention of Terrorism Act, 2002 was challenged in *People's Union for Civil Liberties v Union of India,*[173] Supreme Court observed that terrorism affects the security and sovereignty of the nations and it should not be equated with the 'law and order ' or 'public order' problem which is confined to State alone. Court felt the need of Collective global action and therefore upheld the competency of the Parliament to enact and enforce this Act.[174] Court went to the extent of saying that mere abuse of a law cannot be a ground to declare a Statute unconstitutional[175].

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[173] AIR 2004 SC 456.
[174] *Ibid* at 465.
[175] *Ibid* at 468.

10. National Measures to curb Terrorism

International measures alone are not capable in combating the acts of terrorism unless States themselves are not enthusiastic in suppressing it. Perception of what constitutes terrorism will differ from country to country, as well as among various sectors of a country's population.[176] The General Assembly on realizing the importance of the role of the States in this regard has called on States to take 'appropriate measures' at the national level and to co-operate with each other to eliminate international terrorism. The General Assembly has not precisely elaborated it. States may take the following measures in this regard:

i) Ratification of International Conventions:

Although no comprehensive 'single convention' for combating international terrorism has been formulated as yet due to various problems of both a practical and theoretical nature, in the past a few conventions have been adopted in order to curb specific forms of terrorism. They are required to be ratified by all the State. Further, States are required to enact legislation to ensure that violations of various anti- terrorism instruments are brought to trail.

ii) Extradition or Prosecution:

Extradition is "the formal of a fugitive criminal to request to a requesting state- usually under the terms of a bilateral or multilateral treaty"[177]. Extradition of an offender normally takes places only when there exits an extradition treaty between the territorial State and the requesting State. Persons involved in the acts of terrorism therefore cannot be extradited if, after committing an offence of terrorism, they flee to a State, which does not have an extradition treaty with the State where the

[176] V. P. Srivastav, *Prevention of Terrorism Act: Myth and Reality,* (2005), Indian Publisher's Distributors, Delhi, at 164 - 165.

[177] *Ibid* note 145.

offence has been committed. Thus, the system of extradition often depends on the ad hoc network of bilateral or multilateral treaties. It was believed that an extradition treaty should be interoperated liberally to give effect to the purpose of the states to achieve the surrender of fugitive criminals for trial in the requesting state.[178] This rule of International Law has led the terrorist to flee only to such States. However, a limitation has been imposed on this rule by a few conventions, which have been concluded to curb the specific forms of terrorism. For instance, The Hague Convention of 1970 has made a provision that the offence shall be deemed to be included as an extraditable offence in any existing treaty. The above provisions imply that the contracting parties shall extradite a person who commits the offences, even if extradition treaty does not exist. Further such offences shall not be regarded as a political motive or purpose. Montreal Convention of 1971 also provides, similarly, for the suppression of unlawful acts against the safety of international aviation. It is submitted that the States for their other acts should extradite the persons charged for the offences of terrorism as well. If the terrorists began to realize that they would be extradited and convicted by a State where the offence has been committed, terrorism can be eliminated substantially.

Different countries have different approaches to extradition, depending on the domestic law is based on civil or common law system. This difference needs to be addressed and harmonized so that an international convention can adopt a common practice with regard to extradition provisions in their Convention. There are two broad exemptions to the extradition process, namely that relating to national and political offenders. Civil law countries reject extraditing nationals on the basis of "*extensive extra – territorial jurisdiction on the nationality principles*"[179].

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[178] Colin Warbrick, *Extradition,* 38 ICLQ, 1989, at 425.

[179] V. P. Srivastav, *Prevention of Terrorism Act: Myth and Reality,* (2005), Indian Publisher's Distributors, Delhi, at 164.

In those cases where a State fails to extradite a person charged with an offence of terrorism, because of technicalities of law or because of different interpretations, it should prosecute the offender by its competent authorities. The authorities must take their decisions in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. It is desirable that prosecution takes place with out delay. Speedy trial is likely to help in avoiding the repetition of similar acts. When the Indian aircraft was hijacked to Pakistan in1981, the latter decided to prosecute the offenders but before the initiation of the prosecution proceedings, in 1984 another Indian aircraft was hijacked to Pakistan. Had the accused involved in 1981 air hijacking case been prosecuted or convicted earlier, perhaps hijacking of aircraft in 1984 had not taken place. Punishment is required to be serious and a wide publicity is required to be given to the decisions so that they may have deterrent effect.

Mr. Soli J. Sorabji said that the most importation tool for bilateral cooperation is the extradition treaty between States. Extradition serves the dual purpose of bringing justice the perpetrators of heinous crimes as well as of facilitating the interrogation of suspects – the latter being vital for cracking terrorist networks and for the prevention of further acts of terrorism. However, the lack of extradition treaties amongst some of Nation States, the requirement of dual criminality, the uncertainty regarding the degree of evidence required under the domestic law of the extraditing State, the requirement that there should be no capital punishment in the receiving State and the 'political offences' defence have been loopholes that have been exploited by persons accused of even terrorist acts. Experience of extradition

iii) Conclusion of Bilateral Treaties:

In absence of any multilateral treaty to curb terrorism, States are required to conclude bilateral treaties with as many States as possible for the extradition of the persons accused or convicted for the offences of terrorism. In February 1992, India and Britain concluded the Indo- Britain Extradition Treaty and the Agreement to confiscate on reciprocal basis the assets of terrorist and Drug- runner in either country. The Confiscation Agreement is the first of its kind in the world and is likely to have great impact on the activities of the terrorists.

iv) **Mercenaries:**

A large number of terrorist acts are committed by 'soldiers of fortunes' paid murderers and 'whores of war' who are generally called mercenaries. The entire world has been affected by their inhuman acts. The General Assembly of thee United Nations has more than once voted to condemn mercenarism and qualified it as an international offence. However, their activities have not been controlled. It is submitted that the training of terrorist and mercenaries in schools and institutions, mercenary services, recruitment, dispatches and transportation of mercenaries to different parts of the world should be banned by all States by enhancing appropriate laws. In order to put a ban the General Assembly in the year 1980 created a committee to formulate an international convention against mercenaries. Accordingly, the Convention against the Recruitment, Use, Financing and training of Mercenaries was adopted on December 4, 1989 which called on all States to refrain from organizing, instigating, assisting or participating in acts in other States.

v) Mutual Co-operation:

Mutual co- operation among states in exchange of relevant information and apprehension of terrorist acts is paramount importance. It

will also be helpful in the conclusion of special treaties and in prosecution or extradition of perpetrators of terrorist acts.

These are some of the areas, which are like to reduce frequency and intensity to terrorism. Although it is difficult to say that these measures would eliminate al possible acts, they would indeed be helpful in combating terrorism to a large extent. All the States have condemned the act of terrorism. They have regarded it as a crime in various international forums and all States have supported its elimination. Lack of political will of the States and their determination to suppress it are largely responsible for its increasing frequency despite their condemnation. Speeches, discussions and deliberations alone cannot suppress it. They have to recognise the value of human being, and have to take specific and effective measures with courage and determination to save innocent people from being a victim of international terrorism.[180]

11. Terrorism and National Human Rights Commission

Terrorism and more particularly the counter measures which one takes to meet this menace is a matter of great concern and relevance today.[181] Terrorism has been the subject of a huge debate over the years but as yet there is no universally acceptable definition of what is "terrorism", against which we have to fight. It is common knowledge that systemic human rights violations for long periods of time are often the root cause of conflicts and terrorism. When there is tyranny and wide spread neglect of human rights and people are denied hope of better future, it becomes a fertile ground for breeding terrorism. The existence of social, economic and political disparities in a large measure contribute to the eruption of conflicts within the State and beyond. The importance of promoting Economic, Social and Cultural Rights to contain such conflicts must, therefore, be

[180] International Law and Human Rights, at 602-604.
[181] Annual Report, *National Human Rights Commission,* 2004-2005, at 4 – 5.

realized and appreciated. The protection and promotion of Economic, Social and Cultural Rights must go hand in hand with protection of Political Rights for giving Human rights a true meaning.

The neglect of Economic, Social and Cultural Rights gives rise to conflicts and emerging forms of terrorism, which are threatening the democratic societies worldwide. It cannot be denied that disillusionment with a society where there is exploitation and massive inequalities and whose systems fail to provide any hope for justice are fertile breeding grounds for terrorism, which, more often than not, thrives in environments where human rights and more particularly Economic, Social and Cultural Rights are denied by the State and Political rights are violated with impunity, both, by the State and non-State actors. Systemic denial of Economic, Social and Cultural Rights, like right to food, health, education etc. are causative factors of conflict and terrorism. Any worthwhile strategy to resolve conflicts and terrorism will have to ensure enjoyment of the full range of Economic, Social and Cultural Rights.