

Terrorism and Counter Terrorism Laws in India

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ABSTRACT

Terrorism is a global phenomenon. There's not even a single country in the world which is saved from its attacks. Presently, the biggest threat to the world peace is TERRORISM, especially, to India's national security. India has been a victim of various internal as well as external terrorist attacks in the past. The threat has increased in today's time, with advancement and easy access to technology, terrorists are also adopting sophisticated methods in their operation. The availability of resources, weapons, and support has increased. Also, purchasing capacity of such organisations is on increasing. They threaten basis of democracy and freedom and challenge the existence, progress and development of mankind, and a country as a whole. The threat is so dangerous that need for stringent laws for its prevention cannot be under estimated. There are some special laws enacted for combating terrorism, and to prevent and punish the culprits. The study is to investigate and examine the existing laws and find out whether they are equipped to counter terrorism, in modern times.

I. INTRODUCTION

Terrorism is a worldwide phenomenon that has impacted every country in some form or another. It is a complex and controversial issue, which lacks a standardized definition due to its nature. Terrorism was first used during the French Revolution to refer to terror employed by revolutionaries against their enemies. Terrorism is derived from the French word *Terrorisme*, which means great fear, dread, or to frighten. Acts of terrorism usually involve threat, use of violence for creating fear and achieve political or ideological objectives among a wide audience, not just the direct victims. Targets are usually selected very carefully to have a massive impact, with places that attract large crowds, such as schools, shopping centres, bus and train stations, and restaurants, or places with sentimental value to the public, being

commonly targeted. Terrorists often target important places like embassies or military installations to cause extensive damage and instil fear among the population, with the ultimate goal of pressuring political leaders to meet their demands. However, the issue of terrorism is multifaceted, and addressing its underlying causes such as poverty, political instability, and extremist beliefs, in addition to effective law enforcement and intelligence measures, is crucial in combating this threat.

There are various types of terrorism activities that differ in terms of aims, members, beliefs, and resources of the group engaged in terrorism. In recent times, threat of terrorism has increased significantly, with these groups adopting sophisticated methods and gaining access to advanced technology. The availability of resources, weapons, and support has also increased, and these organizations threaten the basis of democracy and pose a serious challenge to the progress and development of nations.

As there is no universal definition of terrorism, nations are left to define it in accordance with their counter-terrorism legislation, provided they comply with international legal principles. It is highly necessary to have an effective and preventive international strategy to tackle terrorism, which is guided by a legal framework that upholds the principles of Human Rights, Due Process, and Rule of Law. Despite, there is no widely agreed-upon definition of terrorism in the legal sense. Nevertheless, such a strategy should aim to prevent and deter the use of violence or threats of violence to attain political, ideological, or religious goals.

To ensure that the global response to terrorism is consistent with international law and human rights standards, a normative legal framework is crucial. This could be accomplished through various legal instruments, such as UNSC Resolutions, regional treaties, and national laws, which provide the basis for states to collaborate in

the fight against terrorism while respecting Human Rights and Rule of Law. Any Counter Terrorism measures must also be resonating with International Laws, for right to life, prohibition of torture, and right to a fair trial. Any measures that violate such rights are likely to have counterproductive effects in the long term, including fuelling radicalization and violence, and alienating communities.

In conclusion, Terrorism is the most significant threat to world peace. Therefore, world should come together to enact special laws aiming at combating terrorism, in order to prevent and punish those responsible for terrorist activities. India, in particular, has been a victim of various internal and external terrorist attacks in the past and could benefit from such legislation. However, it is important to ensure that any counter-terrorism measures are implemented to comply with international legal principles and do not violate human rights or the rule of law.

KINDS OF TERRORISM

There are commonly six different categories of TERRORISM. However, they all share common characteristic- being violent acts causing damage property, fear, and attempt to harm innocent civilians.

- The first type is **CIVIL DISORDER**: It involves protests that may turn violent and cause destruction of property, usually in response to a political action.
- The second type is **POLITICAL TERRORISM**: In this category of terrorism a group uses violence to intimidate another political faction.
- The third type is **NON-POLITICAL TERRORISM**: It is often of a religious nature and has a goal that is not necessarily political.
- The fourth type is **QUASI-TERRORISM**: Here a criminal uses terrorist tactics, but without the political motivation.
- The fifth type is **LIMITED POLITICAL TERRORISM**: It aims to make a political or ideological statement through a one-time violent act.
- The final type is **STATE TERRORISM**: Here an existing Govt. initiates violent action to achieve a particular goal, often involving conflict with another country.

It is pertinent to note that these categories are not necessarily distinct and can overlap. Additionally, terrorism can evolve over time, making it crucial for Govts. and communities to

remain vigilant and adaptable in their efforts to prevent and respond to terrorist threats.

CAUSES OF TERRORISM

It is a complex and multifaceted phenomenon that cannot be attributed to a single cause. There have been three main perspectives identified for the motivations behind terrorism:

- Psychological,
- Ideological, and
- Strategic.

According to the **PSYCHOLOGICAL PERSPECTIVE**, some individuals may engage in Terrorist acts for personal reasons, such as a desire for power or hatred towards a particular group. They may not have a grand ideological or strategic goal, but they seek attention for their actions.

The **IDEOLOGICAL PERSPECTIVE** emphasizes the beliefs and values of a group, which may include religious or political philosophies and programs.

The **STRATEGIC PERSPECTIVE** suggests that it may be seen as a logical extension of the failure of politics. When traditional means have failed to redress their grievances through govt., individuals or groups may resort to violence to achieve their objectives.

Additionally, states may use terrorism to pursue their own interests. Some of them may sponsor these groups when their objectives align.

Comprehending multifaceted motivations behind terrorism is crucial for the state for developing effective strategies as to counter terrorism to prevent and combat it.

VARIOUS FORMS OF TERRORIST THREATS

Throughout the course of human history, nations have faced various challenge to their security. These threats have taken many forms and resulted in mass losses of life, destruction of property, widespread illness and injury, displacement of large numbers of people, and devastating economic loss. With help of technology these threats have become more dangerous, deadly and now have become computer based i.e. cyber-attacks; and the use of chemical, biological, nuclear and radiological weapons have also become common.

Terrorists often utilize destructive devices as their weapon of choice, and the necessary information and materials can be easily obtained from various sources. These devices can be transported easily and detonated remotely. They

have been used to target financial, political, social, and religious institutions, resulting in numerous casualties and damage.

After witnessing the impact of Covid-19, the threat of Biological terrorism or use of biological agents as weapons has increased. These organisms that can harm humans, animals, or crops. Also, their spread is very easy. Furthermore, their impact can be more widespread and communicable. It would result not just into the loss of lives, rather would directly or indirectly disrupt the functioning of a nation. It has extensive and long lasting impact in comparison to explosion threats.

COUNTER TERRORISM LAWS IN INDIA

The history of India's Anti-Terrorism Laws is often associated with its past use of Preventive Detention Laws. After independence, the framers of the COI found it suitable to adopt the Colonial Preventive Detention Laws. These laws aimed to safeguard civilians and aid law enforcement agencies in preventing crimes before they could happen. Consequently, the framers of the COI incorporated provisions for preventive detention, thus indirectly establishing the preventive detention system within the COI.

In addition to the constitutional provisions, the Indian Parliament felt the need to create a specific law governing preventive detention and its relevant situations. Thus, the PDA, 1950 was passed hastily, infringing on the fundamental rights guaranteed by Part-III of the COI. As a result, the Act had to be urgently repealed.

India's initial foray into anti-terrorism laws occurred with the passage of the MISA, 1971. The Parliament justified the law by citing the need to maintain internal peace and security. However, MISA proved to be short-lived as it was heavily abused by the govt. during the emergency period, making it a potent tool for suppression. As a result, the Act failed to endure the test of time.

In addition to MISA, the Parliament enacted the UAPA, 1967 which contained the necessary provisions to penalize situations that disturbed the peace and order of the country. In 1980, the Parliament introduced another law, the NSA, 1980, which, like UAPA, 1967, provided minimum safeguards to address violent situations.

To address the growing disturbances in different parts of the country, the Parliament passed the TADA 1985. However, the Act's notorious application and implementation led to its eventual repeal in 1995.

In December 2001, there was a deliberate assault on India's sovereignty and integrity when a

group of terrorists carried out a well-planned attack on the Indian Parliament, a symbol of Indian democracy. In response, the Prevention of Terrorism Act, 2002 (POTA), a controversial law, was enacted. However, in 2002, the country witnessed communal riots and extensive violence, and POTA was once again widely misused, similar to its predecessor TADA, leading to its eventual repeal in 2004.

The terrorist attack on Mumbai in November 2008 lasted for 72 hours and caused widespread outrage among the Indian govt. and citizens. In response, the National Investigation Agency Act, 2008 (NIA-2008) was introduced, along with amendments to the Unlawful Activities Prevention Act, 1967. These laws, along with the National Security Act, 1980 and the Criminal Code, form the basis of India's current anti-terrorism laws. The Indian judiciary has also played an important role in interpreting and upholding these laws while ensuring the protection of fundamental rights. These laws continue to be relevant and require ongoing attention.

This section aims to provide a brief overview of the history of anti-terrorism laws in India, which will serve as a foundation for understanding the Indian scenario.

THE PREVENTIVE DETENTION ACT, 1950¹

The Constitution of India, under Article 22, grants the Parliament the power to pass laws on preventive detention in specific situations and in compliance with certain conditions. In line with this, the first legislation on preventive detention in independent India was enacted, known as the PDA, 1950. The Act applied to the entire country, except for Jammu and Kashmir, and was set to expire on 31st December, 1969. The PDA consisted of 15 provisions, which were regarded as oppressive and went against the values of personal freedom and liberty.

The Prevention Detention Act, 1950 contained 15 articles that included various provisions for preventive detention. Section 2 provided definitions of terms such as "State Govt.," "Detention Order," and "Appropriate Govt." Section 3 empowered the Central or State Govt. to detain certain individuals who may act in a manner prejudicial to the defense of India, relations with foreign countries, security of the state, maintenance of public order, or essential community services. Officers such as DM, Additional DM, Commissioner of Police in metropolitan cities, and Collectors were authorized to make detention

¹The Preventive Detention Act, 1950

orders. They were required to report the facts, grounds, and reasons for detention to the govt. The State Govt. had to report such detentions to the Central Govt. The order could be executed at any place in India in the manner provided for the execution of arrest warrants under the Code. Section 4 provided for the powers to regulate the places and conditions of detention. It allowed the Govt. to detain a person secretly, move them from one place to another secretly, and regulate their conditions of detention. The govt. could require a person who had absconded or concealed himself to be present as per the time, place, and conditions put forward by the officer making the arrest.

Section 2 of the Preventive Detention Act, 1950 defined key terms such as "State Govt.," "Detention Order," and "Appropriate Govt.," Section 3 outlined the powers of the Central or State Govt. to detain a person in order to prevent them from acting in a manner prejudicial to the defense of India, foreign relations of India, security of the state, maintenance of public order, and essential community services. DM, Additional DM, Commissioners of Police in metropolitan cities, and Collectors were authorized to exercise the powers of detention, and the officers responsible for making the detention order were required to report the facts, grounds, and reasons for the detention to the govt. Section 4 empowered the govt. to regulate the places and conditions of detention and to move detainees secretly from one place to another.

Under Article 22, the govt. was required to communicate the grounds of detention to the detainee within five days of the detention and allow them representation. An Advisory Board was required to be constituted in accordance with the rules and qualifications of office bearers, and the appropriate govt. was required to present the grounds for the detention and any representations made by the person affected to the Advisory Board within thirty days from the date of detention. Section 10 outlined the procedures to be followed by the Advisory Board, which was required to submit its report to the appropriate govt. within ten weeks from the date of detention after considering the materials placed before it and hearing the person concerned, if deemed necessary.

Section 11-A set the maximum period of detention at 12 months, after which the govt. could confirm the detention order and continue the detention of the person concerned for as long as it deemed fit. The govt. could also direct the release of the detained person for a specified period, with or without conditions, and cancel their release at any time.

After the Act was enacted, it faced widespread criticism and condemnation. A landmark case was brought before the SC, challenging the Act's constitutionality and its violation of certain rights guaranteed by the Indian Constitution. This case proved to be the final blow to the Act, and the growing criticism and opposition ultimately led to its repeal in 1969.

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967²

The National Integration Council had set up a Committee on National Integration and Regionalization to examine various aspects, including the imposition of reasonable restrictions in the interest of India's sovereignty and integrity. Based on the recommendations of the committee, the Constitution (Sixteenth Amendment) Act, 1963 was passed to impose such restrictions by law. To give effect to this Act, the Unlawful Activities (Prevention) Bill was introduced in Parliament and later enacted into law.

The main objective of UAPA is stated in its Preamble, which aims to effectively prevent certain unlawful activities of individuals and associations, and to deal with terrorist activities and related matters. The Preamble was further amended in 2008 to include a commitment to abide by international obligations based on certain United Nations Security Council resolutions related to the prevention of terrorism.

The amended Preamble specifically mentions UNSC Resolution that requires all states to take measures to combat international terrorism. Additionally, the Preamble recalls the UNSC Resolution that mandates states to take action against designated terrorists and terrorist organizations, freeze their assets and economic resources, prevent their entry or transit through their territory, and prohibit the direct or indirect supply, sale, or transfer of arms and ammunition to the individuals or entities listed in the Schedule.

According to the Preamble of the UAPA, its objective is to effectively prevent certain unlawful activities of individuals and associations and to deal with terrorist activities and other incidental matters. In 2008, the Preamble was amended to include a commitment to uphold international agreements based on specific United Nations Security Council Resolutions aimed at preventing terrorism. The Preamble also acknowledges that the Central Govt. has implemented the Prevention and Suppression of Terrorism (Implementation of Security Council

²The Unlawful Activities (Prevention) Act, 1967

Resolutions) Order, 2007 under section 2 of the United Nations (Security Council) Act, 1947. The Preamble emphasizes the importance of implementing these resolutions and order and making special provisions for preventing and combating terrorist activities and related matters.

The Act has a broad scope of application, covering the entirety of India. Anyone who violates the Act's provisions is subject to punishment. Even if an individual commits an offense outside of India, they may be prosecuted under this Act as if the act were committed within India. The Act also applies to Indian citizens who are outside of India, govt. officials, and individuals on board Indian-registered ships and aircraft, regardless of their location. Once the Govt. declares an organization as unlawful and notifies the public, the declaration must be referred to the Tribunal for review within 30 days. The Tribunal will then serve a show cause notice to the organization in question, requesting an explanation for why such a declaration should not be made.

Once the Tribunal receives the show cause notice from the concerned organization, it is required to review the causes and reasons presented and make a decision to endorse or set aside the govt.'s declaration of the organization as unlawful. This process should be completed as soon as possible, but no later than six months from the date of the notification. The Tribunal's order should also be published in the Official Gazette, similar to the govt.'s notification.

According to Section 5 of the Act, the Central Govt. is authorized to establish a Tribunal known as the U.A.P Tribunal' consisting of one member who must be a High Court Judge. If a vacancy arises, the Central Govt. may appoint a person of similar caliber to fill the position. The Tribunal may be assisted by the necessary staff, and it will have the same powers as a Civil Court under the CPC, 1908. The notification issued shall remain valid for two yrs., and the Central Govt. may cancel or revoke it by issuing another notification. Section 8 of the Act specifies that once an organization has been declared unlawful by the Central Govt., it can notify the locations that were being used by that organization. The District Magistrate or a designated officer in the locality where the place is situated will prepare an inventory of all the items found in that location after the notification has been issued. If the Court is satisfied that the place was indeed being used for unlawful activities, it can restrict any other person from entering the premises without the permission of the Court.

The procedure that the Court must follow in disposing of applications filed by individuals who are affected by orders of the Tribunal is the same as that followed in the Code of Civil Procedure.

Chapter III of the Act (Sections 10-14) provides for the penalties and offenses. If any person violates the order issued under Section 7 of the Act, by paying, delivering, transferring, or dealing in a prohibited manner, then such person shall be punishable with imprisonment of three yrs. or with a fine or both. Additionally, the Court can impose an extra fine to recover the money for which the order has been violated.

Section 13 of the Act states that any person who commits, advocates, abets, advises, or incites the commission of unlawful activities shall be punishable with imprisonment for seven yrs. or with a fine or both. If any person assists in such unlawful activities, then he shall be punishable with imprisonment for five yrs. or with a fine or both.

Chapter IV of the Act deals with punishment for terrorist activities. Section 15 defines terrorism and provides for terrorist acts. It states that if a person uses criminal force or threatens to use criminal force to intimidate or overawe any public functionary, or attempts to do so, or causes the death of any person, or detains, kidnaps, or abducts any person and threatens to kill or injure such person to compel the govt. to do or abstain from doing something, then such person commits a terrorist act.

Section 16 of the Act prescribes punishment for terrorist acts. If such an act results in the death of any person, then the punishment is either death or life imprisonment and a fine. In other cases where the death of any person has not occurred, the punishment is imprisonment for five yrs., which may extend to life imprisonment and a fine.

In response to the Mumbai Terror attacks, a new provision was added to the Act as section 16A, which provides punishment for demanding or aiding in the acquisition of radioactive substances, nuclear devices, bombs or dynamite with the intent to commit a terrorist act. The punishment for such an offense is imprisonment for up to 10 yrs. and a fine. Section 17 of the Act deals with punishment for raising funds for a terrorist act, which includes imprisonment for a minimum of five yrs. and may extend to life imprisonment along with a fine. Additionally, the Act provides for punishment for conspiracy to commit a terrorist act, with imprisonment for not less than five yrs., extendable to life imprisonment and a fine.

Section 18-A prescribes punishment for organizing terrorist camps, which is not less than five yrs. of imprisonment, extendable to life imprisonment, and a fine. Similarly, Section 18-B states that recruiting or causing to recruit any person or persons for the commission of a terrorist act is punishable by imprisonment not less than five yrs., extendable to life imprisonment, and a fine. Section 19 deals with the punishment for harboring, which is imprisonment for three yrs. extendable to life imprisonment and fine.

Section 20 prescribes punishment for being a member of a terrorist gang or organization, which is imprisonment extendable to life and a fine. Holding proceeds of terrorism is punishable under Section 21, which is extendable to life imprisonment and a fine. Threatening a witness is punishable with three yrs. of imprisonment and a fine.

Section 23 deals with enhanced punishments under the Act, stating that if any person with intent to aid any terrorist gang or organization contravenes any provisions of the Explosives Act, 1884, the Explosive Substances Act, 1908, the Inflammable Substances Act, 1952, or the Arms Act, 1959, or is in unauthorized possession of any bomb, dynamite, or hazardous explosive substances or other lethal weapon capable of mass destruction, they will be punishable with five yrs. of imprisonment extendable to life imprisonment and a fine.

Chapter-V of the Act pertains to the forfeiture of proceeds of terrorism. Section 24 states that no person shall hold or be in possession of any proceeds of terrorism, and such proceeds shall be liable to be forfeited by the Central or the State Govt. Section 25 deals with the powers of the investigating officer and the Designated Authority, and the provisions pertaining to an appeal against the order of the Designated Authority. An investigating officer can make an order on suspicion to seize or attach property with prior approval of the Director General of Police. The Designated Authority must confirm or revoke the order of seizure or attachment within 60 days after giving the aggrieved person an opportunity to make a representation.

Section 25 of the Act covers the powers of investigating officers and the Designated Authority, as well as the appeal process against the Designated Authority's orders. It states that an investigating officer, with the prior approval of the Director General of Police, can issue an order to seize or attach property based on suspicion. The order mandates that the property cannot be transferred or dealt with without the prior

permission of the authorities. The investigating officer must inform the Designated Authority within 48 hours of any such seizure or attachment. The Designated Authority is then required to either confirm or revoke the order within 60 days, after giving the affected person an opportunity to make a representation.

According to Section 25 of the Act, an investigating officer can order the seizure or attachment of property if they suspect that it is intended to be used for terrorism or to aid a terrorist organization. The officer must obtain prior approval from the Director General of Police and inform the Designated Authority within 48 hours of any seizure or attachment. The Designated Authority must confirm or revoke the order within 60 days after providing the aggrieved person an opportunity to make a representation.

If cash is seized, it must be released within 48 hours unless the Designating Authority allows for its further retention. Section 26 of the Act allows for the forfeiture of property by the Court, but the Court must serve a show cause notice to the person whose property has been seized or attached before making any forfeiture order. The aggrieved person can appeal to the High Court having jurisdiction in the case. The forfeiture order does not interfere with other punishments under the Act. If a third party claims ownership of the seized, attached, or forfeited property, they must prove their claim to the investigating officer. The Designating Authority has powers akin to those of a Civil Court. Therefore, any transfer of property seized, attached, or forfeited by any person is invalid. In case a person is convicted of an offence under the Act, the Court can seize all or a part of their property.

Section 34 of the Act deals with the forfeiture of shares in a company to the Central or State Govt., which the company must transfer upon forfeiture. Chapter VI pertains to terrorist organizations. Section 35 allows the Central Govt. to amend the schedule by adding or removing organizations identified as terrorist organizations in a resolution adopted by the UN Security Council to combat international terrorism. An organization is deemed to be a terrorist organization if it engages in or prepares for terrorism, promotes or encourages terrorism, or is otherwise involved in terrorism. The Central Govt. must establish one or more Review Committees, consisting of a Chairperson and up to three members with specified qualifications, to review and make recommendations on such designations.

Section 38 of the Act sets out various offenses related to terrorist organizations. Any

person who associates with or professes to be associated with a terrorist organization commits an offense and is subject to imprisonment for up to 10 yrs., a fine, or both. Similarly, anyone who provides support to a terrorist organization is subject to imprisonment for up to 10 yrs., a fine, or both. Raising funds for a terrorist organization is punishable by imprisonment for not less than 14 yrs. or a fine, or both.

The miscellaneous provisions of the Act are covered under Chapter VII. Section 41 states that formal acts of dissolution or change of name of an association will not automatically result in its cessation if actual combination among its members for the purposes of the association continues. The Central Govt. may delegate its authority and powers to State Govt.s when necessary. According to section 43, the rank of the investigating officer for cases under this Act depends on the location of the case.

If an officer of the Designated Authority has knowledge of a plan to commit an offence, or has reason to believe that a person has committed an offence under this Act, they may authorize a subordinate officer to make an arrest or conduct a search. The arresting officer must inform the arrested person of the reasons for their arrest and hand them over to the nearest police station without delay. The Code will continue to apply to arrests, searches, and seizures, except when inconsistent with the provisions of this Act. Section 43-D of the Act outlines certain modifications that apply to specific sections of the Code. Meanwhile, section 43-E of the Act pertains to presumptions relating to offences under section 15 of the Act. This section places the burden of proof on the accused to prove their innocence under the Act. In investigating any offence under the Act, the investigating officer has the power to request information from officers or authorities of the Central or State Govt., local authorities, banks, or companies. Failure to provide such information is punishable by up to three yrs. imprisonment, a fine, or both.

Section 44 of the Act deals with the protection of witnesses. The Court is not allowed to take cognizance of any offence under chapter-III, IV, and VI without the prior sanction of the Central or State Govt. The sanction for prosecution must be given within a prescribed time frame, after considering the reports of the appointed authority that makes an independent review of the evidence and provides a recommendation within a set time.

Section 46 of the Act addresses the admissibility of evidence collected through the interception of communications. Evidence collected by investigating authorities 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, is admissible as evidence against the accused in court during the trial of the case. The authorities must inform the accused of such interception, which was conducted lawfully and authorized by a competent authority, at least 10 days prior to the trial, unless the judge waives this period and determines that it was not possible to furnish the accused with such an order ten days before the trial.

Finally, section 52 of the Act pertains to the rule-making power of the Central Govt. This section empowers the Central Govt. to create rules for serving notices or orders, the manner of such service, the procedures to be followed by the Tribunal or Court, the determination of the price of forfeited property, the qualifications of members of the review committee, the time within which sanction for prosecution and recommendation to the Central Govt. shall be given, and other matters.

THE MAINTENANCE OF INTERNAL SECURITY ACT, 1971³

In 1971, India introduced the Maintenance of Internal Security Act (MISA), which had a profound impact on the country's lawmakers, judiciary, and human rights advocates. MISA replaced the PDA, 1950, which had been abolished in 1969. The law applied to all of India, with the exception of J&K. Similar to the PDA, 1920, MISA's Section 2 included definitions of terms such as "appropriate govt.," "detention order," and "foreigner."

In 1971, India introduced MISA, which had a significant impact on lawmakers, the judiciary, and human rights defenders throughout the country. MISA was created as a replacement for the Preventive Detention Act of 1950, which ended in 1969. MISA applies to all of India except for Jammu and Kashmir.

Section 3 of MISA grants the power to the Central or State Govt. to issue detention orders against individuals, including foreigners, to prevent them from committing acts that could endanger national defense, security, public order, relations with foreign nations, or essential supplies to the community. Additionally, the govt. can detain foreigners to ensure their continued presence in the country or to expel them. DM, Additional DM, and Commissioners of Police are authorized to issue detention orders, and they must justify their decision to the govt. The detention order is valid

³The Maintenance of Internal Security Act, 1971

for a maximum of 12 days, unless it is approved by the govt. If the grounds for detention are communicated within five to fifteen days as per Section 8 of the Act, the detention period can be extended to a maximum of twenty-two days. If the State govt. approves the detention order, it must report back to the Central govt. with all the details, including the reasons and circumstances for the order.

The detention order is not considered invalid or inoperative if the person to be detained is outside the country or beyond the territorial jurisdiction of the country. In the case of an absconding person, the Govt. has the power to report to the Magistrate of any state where the person is suspected to be hiding and direct them to appear before the officer in a prescribed location and under certain conditions. MISA also includes the formation of an Advisory Board, consisting of three individuals who are or have been judges of the high court, with one member serving as the chairman.

In a similar manner to the PDA, the MISA 1971 gave power to the Central or State Govt. to detain individuals, including foreigners, in order to prevent acts that could harm the country's defense, security, public order, foreign relations, or essential supplies. DM, Additional DM, and the Commissioner of Police were authorized to issue such detention orders, subject to approval by the govt. The maximum period of detention was 12 days, extendable to 22 days if the grounds of detention were communicated within 5-15 days. If approved, the State govt. had to report back to the Central govt. with reasons for the order. The Advisory Board, consisting of three former or current high court judges, had to be consulted within 30 days, and its report had to contain its opinion on whether there was sufficient cause for the detention. The maximum period of detention was 12 months, and the govt. had the power to revoke or modify the order. However, if a foreigner violated criminal laws, the BSF Act of 1968, or the Official Secrets Act of 1923, they could be detained for a maximum period of two yrs. without consulting the Advisory Board.

THE NATIONAL SECURITY ACT, 1980⁴

MISA, 1971 was a controversial law that caused chaos in India for seven yrs.. During the period of 1977-1980, there was no preventive detention law in place. However, the govt. later decided to enact another preventive detention law in the form of the NSA, 1980, which is still in force

today. It is important to study this act in detail, as its provisions are often criticized by human rights activists. The National Security Act, 1980 was enacted in the thirty-first year of India's independence and consists of 18 sections. The law's primary objective is to provide for preventive detention in specific cases and to deal with related matters. The Act applies to the entire country, except for Jammu & Kashmir. In the National Security Act, 1980, Section 2 provides definitions for terms like 'appropriate Govt.', 'detention order', 'foreigner', 'person', and 'State Govt.'. Section 3 deals with the powers of the Central Govt. or State Govt. to issue orders authorizing the detention of certain individuals. If the Govt. is satisfied that it is necessary to prevent an individual from acting in a way that is prejudicial to India's defence, foreign relations, or security, or to regulate the continued presence of a foreigner in India or to arrange for their expulsion, they may issue an order for detention. The Govt. may also issue an order for detention to prevent certain crimes from occurring. The decision of the Govt. is subjective but can be reviewed by the Court if challenged by the affected individual.

Section 4 of the National Security Act, 1980, empowers the State Govt. to issue orders to regulate the conduct of certain individuals in order to prevent them from acting in any manner prejudicial to the defense, relations, or security of India or to regulate the continued presence of foreign nationals in India. The satisfaction of the govt. in this regard is subjective, but it is liable for judicial review if challenged by the affected individuals.

If the State Govt. is satisfied that it is necessary to do so, it may issue an order directing the regulation of the conduct of individuals in a particular area within the jurisdiction of a District Magistrate or a Commissioner of Police. The order must be reported to the State Govt. immediately along with the grounds for its issuance and other relevant details. The order must be confirmed by the State Govt. within 12 days of its issuance, and if it is confirmed, the State Govt. must report back to the Central Govt. within seven days.

Section 5 of the Act deals with the regulation of the place and conditions of detention of individuals who have been detained under the Act. The appropriate Govt. may specify the place and conditions of detention, including maintenance, discipline, and punishment for breaches of discipline. The detained individual may also be removed from one place of detention to another, within the same state or to another state, by order of the appropriate Govt.

⁴The National Security Act, 1980.

Section 5-A of the Act pertains to the grounds of detention being severable. It specifies that if a person has been detained based on an order of detention made on two or more grounds under section 3, then such order shall be considered to have been made separately on each of those grounds. The order will not be considered invalid or inoperative just because one or some of the grounds are vague, non-existent, irrelevant, not connected, or invalid for any other reason. It may not be possible to hold that the Govt. or officer making such an order would have been satisfied with reference to the remaining ground or grounds and made the order of detention. The section also allows for the person to be required to appear before an officer at a specified place and within a specified period. If a report is made against the person under sections 82, 83, 84 and 85 of the CrPC, 1973, then the provisions of the said sections will apply to the person and their property, as if the detention order made against them were a warrant issued by the Magistrate.

Section 8 of the Act requires that the grounds for a detention order must be disclosed to the person who has been detained as soon as possible, but not later than five days from the date of detention. However, in exceptional circumstances, if the reasons are recorded in writing, the disclosure can be delayed for up to fifteen days. The person must also be given an opportunity to make a representation against the order to the appropriate govt.

Section 9 of the Act deals with the constitution of Advisory Boards. The Central and State govts. are required to constitute one or more Advisory Boards, each consisting of three members, one of whom must be a Chairman who is or has been a High Court judge or is qualified to be appointed as one. These members will be appointed by the appropriate govt.

Whenever a detention order is made, the appropriate govt. must place the grounds on which the order was made and any representation made by the detained person before the Advisory Board constituted under section 9 within three weeks of the detention. If the order was made by an officer, the officer must also forward a report to the govt. containing the grounds for the order and any other relevant information.

Section 8 of the Act states that when a person is detained under a detention order, the authority must disclose the grounds for the order to the affected person as soon as possible, but no later than five days, unless there are exceptional circumstances that require a delay of up to fifteen days, which must be recorded in writing. The

affected person must also be given an opportunity to make a representation against the order to the appropriate govt.

Section 9 requires the Central and State Govts to constitute one or more Advisory Boards, consisting of three qualified persons, one of whom shall be the Chairman, who are or have been judges of a HC. The appropriate Govt. must place the grounds for the detention order and any representation made by the affected person before the Advisory Board within three weeks of the date of detention. The Board must consider the materials placed before it, may call for further information, and may hear the affected person if necessary, and submit its report to the appropriate Govt. within seven weeks of the date of detention.

If the Advisory Board reports that there is sufficient cause for the detention, the appropriate Govt. may confirm the detention order and continue the detention for as long as it deems fit, up to a maximum of twelve months from the date of detention.

Section 14-A provides that a person detained under an order may be detained for a period longer than three months but not exceeding six months without obtaining the opinion of the Advisory Board if the person is being detained in a disturbed area to prevent them from interfering with govt. efforts to combat terrorist and disruptive activities and from acting in a way that is prejudicial to the defense, security, public order, or essential supplies and services of the community. The expiry or revocation of a detention order does not prevent the making of another detention order under Section 3 against the same person.

Section 15 of the Act allows the appropriate Govt. to temporarily release a person detained under a detention order for a specified period, with or without conditions, and can cancel their release at any time. The Govt. may also require the person to enter into a bond for the observance of the specified conditions. The Act provides immunity to the Central or State Govt. and any person acting in good faith under this Act from any legal proceedings.

Section 17 clarifies that the Act does not apply to detentions made under State laws. Section 18 deals with the repeal and saving of certain provisions, specifically the NSO, 1980, which was repealed. However, anything done or taken under that Ordinance is deemed to have been done or taken under the corresponding provisions of this Act. Additionally, any reference made under section 10 of the repealed Ordinance and pending before an Advisory Board at the time of the new Act's assent may continue to be dealt with by that

Board as if it had been constituted under section 9 of the new Act.

THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987⁵

The Act's primary objective, as stated in its Preamble, is to establish special provisions for the prevention and handling of terrorist and disruptive activities, as well as other associated issues. The Act is applicable throughout India, encompassing Indian citizens residing outside the country, govt. officials serving overseas, and individuals aboard Indian-registered ships and planes, no matter where they are located. Initially, the Act was intended to be in force for a duration of eight yrs., starting from May 24th, 1987. Nevertheless, the expiration of the Act did not impact any actions performed or endured under its provisions. This includes any offenses committed, resulting penalties, forfeitures, or punishments, or legal proceedings or remedies obtained. Any such actions can still be pursued or enforced, and any penalties, forfeitures, or punishments may still be imposed, as if the Act had not expired.

Section 3 (1) of the Act defines terrorist acts and lays down the punishments for them. It states that if someone commits a terrorist act resulting in the death of a person, they shall be punishable with death or imprisonment for life and also be liable to pay a fine. In case the terrorist act does not result in death, the person shall be punished with imprisonment for at least five yrs., which may extend to life imprisonment, along with a fine. The Act also mentions that whoever conspires, attempts, advocates, abets, advises, incites or knowingly facilitates a terrorist act or any act leading to it, shall be punished with imprisonment for at least five yrs., which may extend to life imprisonment, and shall also be liable to pay a fine. Additionally, anyone who harbours, conceals or attempts to harbour or conceal a terrorist shall be punished with imprisonment for at least five yrs., which may extend to life imprisonment, and shall also be liable to pay a fine. The Act further states that a person who is a member of a terrorist organization or gang involved in terrorist acts shall be punished with imprisonment for at least five yrs., which may extend to life imprisonment, and shall also be liable to pay a fine. Finally, whoever possesses any property obtained through the commission of a terrorist act or acquired through terrorist funds shall be punished with imprisonment for at least five

yrs., which may extend to life imprisonment, and shall also be liable to pay a fine.

Section 4 of the Act deals with punishment for disruptive activities which shall be imprisonment for a term not less than five yrs.. but which may extend to imprisonment for life and also liable to fine. Sub-section 2 of Section 4 of the Act defines disruptive activity, which includes any action taken through any medium advocating, suggesting, inciting, predicting, prophesying or expressing in any manner that prompts the killing or destruction of any person who is bound by oath to uphold the sovereignty and integrity of India or any public servant. Any individual who engages in such disruptive activity will be punished with imprisonment for a term not less than five yrs. but which may extend to imprisonment for life and also liable to fine.

According to the act, if a person is found with specified arms and ammunition listed in Category I or Category III (a) of Schedule I to the Arms Rules, 1962 or unauthorized explosives in a notified area, they will be subject to punishment. This punishment includes imprisonment for a period not less than five yrs. but could extend to life imprisonment, as well as a fine. It is important to note that this punishment applies even if there are no other laws in force for the offense.

According to Section 6 of the Act, if any person intends to assist a terrorist or disruptionist and violates any provision or rule under the Arms Act of 1959, Explosives Act of 1884, Explosive Substances Act of 1908, or Inflammable Substances Act of 1952, they shall be punishable with imprisonment for a term of at least five yrs., but which may extend to life imprisonment and a fine, regardless of any provisions in those Acts or their corresponding rules.

The Act allows the Central Govt. to confer special powers on any officer of the Central Govt. to prevent and handle offenses under Section 3 or Section 4 or for any case, class or group of cases under these sections in any state, if it deems necessary or expedient. These powers may include the powers of arrest, investigation, and prosecution of individuals before any court, similar to those of a police officer under the Criminal Procedure Code, in that particular state or part of it.

If an officer who is investigating an offence has grounds to believe that any property that is under investigation is obtained or derived from the commission of a terrorist act and consists of terrorism-related proceeds, then the officer can make an order seizing the said property with the approval of the Superintendent of Police. If seizing the property is not feasible, the officer may make

⁵The Terrorists And Disruptive Activities Act, 1987

an order of attachment directing the disposition of the property.

In addition to imposing punishment, the Designated Court has the power to order the forfeiture of any property, movable or immovable, that belongs to the accused and is specified in the order. The property will be forfeited to the Govt., free from any encumbrances, as per the written order of the court.

Part-III of the Act covers the establishment, composition, and authority of the Designated Court. The Central or State govt. may establish one or more Designated Courts for a specified area, case, class, or group of cases. In the case of a Designated Court established by both the State and Central govts, the court established by the Central Govt. would have jurisdiction to try the case.

A Designated Court can be headed by a judge appointed by the Central or State govt. with the consent of the Chief Justice of the High Court. If the court finds it necessary or desirable, it can conduct its proceedings at any place other than its regular location, upon its own motion or an application by the PP.

Any offense punishable under this Act or any rule created under it can only be tried by the Designated Court located within the jurisdiction in which the offense was committed. The Central Govt. has the power to transfer any case from one Designated Court to another Designated Court within the same State or any other State.

Section 12 of the Act pertains to the powers of the Designated Court concerning other offences and the cases that the Special Court could handle. It is mandatory for every Designated Court to have a PP appointed by the Central Govt. or the State Govt. Additional PPs can also be appointed by the govt. Section 13 of the Act requires the State Govt. to appoint a PP and Additional PPs for every Designated Court.

Section 14 of the Act outlines the procedure to be followed by the Designated Court. It allows the court to take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint or police report. In cases where the offence is punishable with imprisonment for a term not exceeding three yrs. or with a fine or both, the Designated Court may try the offence in a summary manner. The Designated Court is empowered with similar powers as that of a Session Court to try offences under the Act.

If a case is transferred to a Designated Court, it will be dealt with as if it had been transferred under Section 406 of the Code to such

Designated Court. The Designated Court can proceed with the trial even in the absence of the accused or his pleader if it thinks fit and records the evidence of any witness subject to the right of the accused to recall the witness for cross examination.

However, Section 15 of the Act contains a controversial provision that a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer in writing or on any mechanical device shall be admissible in the trial of such person, co-accused, abettor, or conspirator provided co-accused, abettor, or conspirator is tried for the same offence. The police officer must explain to the person making the confession that he is not obligated to do so, and if he does, it can be used as evidence against him. The police officer must not record any confession unless he has reason to believe that it is being made voluntarily after questioning the person making it.

The Act had provisions for the protection of witnesses and ensured that the proceedings under the Act would be held in camera, meaning they would be conducted in private. The Designated Court had the power to take measures to keep the identity and address of any witness secret, and any person who violated the court's directions in this regard could be punished with one year imprisonment and fined one thousand rupees.

The Act also provided that the trial under this Act of any offence by a Designated Court would take precedence over the trial of any other case against the accused in any other court that was not a Designated Court.

Section 18 of the Act stipulated that if a Designated Court, after taking cognizance of an offence, found that the offence was not triable by it, it must transfer the case to a court having jurisdiction under the Code. The court to which the case was transferred could then proceed with the trial of the offence as if it had taken cognizance of the offence.

Regarding appeals, an appeal could be made within 30 days from any judgment, sentence, or order (except an interlocutory order) of a Designated Court to the SC on both facts and law. However, no appeal or revision could be made to any court from any judgment, sentence, or order (including an interlocutory order) of a Designated Court.

Part-IV of the Anti-Terrorism Act addressed various miscellaneous provisions. Section 20 allowed for the modified application of certain provisions of the Code, while Section 20-A dealt with the cognizance of offences under the Act.

However, Section 21 of the Act deviated from the principles of justice by placing the burden of proving innocence on the accused persons for offences under the Act. It also stated that if a person is declared a proclaimed offender in a terrorist case, evidence of identification by witnesses based on their photograph would hold the same value as evidence from a test identification parade. The Act did not affect the jurisdiction or procedures of any court or authority under any law relating to the armed forces of the Union.

Furthermore, if an order appears to have been made and signed by an authority in exercise of power conferred by or under this Act, a court may presume that the order was made by that authority. The Act also had overriding effects, as stated in Section 26, which provided immunity to the Central Govt., State Govt. or any other authority conferred with powers under the Act from any legal proceedings.

The SC could create necessary rules to carry out the provisions of the Act related to Designated Courts. The Central Govt. could also create rules to regulate the conduct of individuals in areas deemed necessary or expedient, and to confer powers upon various authorities to prevent or cope with terrorist acts or disruptive activities. Additionally, the Central Govt. could regulate the arrest and trial of persons who contravene any rules or orders made, and provide for the seizure and detention of any property involved in such contraventions. Section 30 of the Act addressed the provisions related to repeal and savings.

THE PREVENTION OF TERRORISM ACT, 2002⁶

Similar to the TADA 1987, the Indian Parliament enacted this Act in 2002, following the devastating attack on the Indian Parliament, considered a significant event in the history of the world's largest democracy. The Act's preamble states its primary objective, which is to make provisions for preventing and addressing terrorist activities and related matters.

The Act, referred to as POTA, 2002, was enacted in response to the attack on the Indian Parliament in 2001. It had 64 sections and applied to the entire country. Any person found guilty of violating the provisions of the Act in India or beyond India would be punished accordingly. The Act applied to Indian citizens outside India, govt. officials, and persons on Indian registered ships or aircraft. Section 2 of the Act defined several important terms, including "terrorist act,"

"property," and "state govt.," among others. Additionally, any words or expressions used but not defined in the Act were to be interpreted according to their meanings in the Code.

In Chapter-II of the POTA, 2002, the Act sets out the punishment and measures to deal with terrorist activities. Section 3 of the Act defines terrorist acts and provides for punishment for the same. According to this section, anyone who intends to threaten India's unity, integrity, security, or sovereignty, or to strike terror in people, can be punished for committing a terrorist act. Such acts may include the use of bombs, explosives, firearms, poisons, or other hazardous substances that cause death, injuries, damage to property, or disruption of essential services. The Act also covers the detention of a person and threatening to kill or injure them to compel the govt. or any other person to do or abstain from doing any act.

Furthermore, if a person is a member of an association that is declared unlawful under the UAPA 1967, or voluntarily aids or promotes the objectives of such an association, and is in possession of unlicensed firearms, ammunition, explosives, or other instruments or substances capable of causing mass destruction, and commits an act resulting in loss of human life or grievous injury to any person, or significant damage to any property, that person will be considered to have committed a terrorist act.

The punishment for committing a terrorist act is severe. If such an act results in the death of any person, the offender will be liable for the death penalty or imprisonment for life, and a fine. In any other case, the offender will be liable for imprisonment for a minimum term of five yrs., which may extend to life imprisonment, along with a fine. Additionally, anyone who conspires, attempts, advocates, abets, advises, or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act can be punished with imprisonment for a minimum of five yrs. and a fine.

Additionally, anyone who willingly shelters, hides or attempts to hide a person whom they know to be a terrorist may face imprisonment for at least three yrs. but up to life imprisonment, and may also be required to pay a fine. It should be noted, however, that this section will not apply if the spouse of the accused is the one providing shelter or concealment.

Anyone who is found to be a member of a terrorist gang or organization involved in acts of terrorism can be punished with imprisonment for life or a fine of up to ten lakh rupees, or both. Additionally, threatening a witness or anyone

⁶The Prevention of Terrorism Act, 2002

related to a witness with violence or unlawfully restraining them, or committing any other illegal act with the intention of harming the witness, can result in imprisonment for up to three yrs. and a fine.

Section 4 of the Anti-Terrorism Act states that if any person is found to be in unauthorized possession of specified arms, ammunition, explosives, or other lethal weapons in a notified or non-notified area, he/she will be considered guilty of a terrorist act and punished with imprisonment for life or a fine of up to rupees ten lakh, or both. Section 5 of the Act provides for enhanced penalties, and prohibits any person from holding or possessing any proceeds of terrorism. Any such proceeds, whether held by a terrorist or any other person, can be forfeited to the Central or State Govt. Section 7 of the Act deals with the powers of investigating officers and the appeal process against orders of the Designated Authority. If an investigating officer has reason to believe that any property under investigation represents the proceeds of terrorism, the officer can make an order seizing or attaching the property with the prior approval of the Director General of Police of the relevant state. The person concerned must be served a copy of the order, and the property can only be transferred or dealt with the permission of the officer making the order or the Designated Authority.

Section 8 of the Act states that if any property is seized or attached as proceeds of terrorism, the Special Court may order its forfeiture, even if the person from whom it was seized is not prosecuted for an offense under this Act. Section 9 provides that no order of forfeiture shall be made without giving notice to the person holding or in possession of such proceeds, giving them an opportunity to make a representation in writing and being heard in the matter. However, if the person establishes that they are a bona fide transferee of the proceeds without knowing that they represent proceeds of terrorism, no order of forfeiture shall be made. If any claim or objection is made to the seizure of any property, the Designated Authority shall investigate the matter and has all the powers of a civil court. If any property referred to in the order or notice is transferred, such transfer shall be deemed null and void for the purpose of proceedings under this Act. The Special Court trying a person accused of an offense under this Act may pass an order to attach any of their properties, movable or immovable, during the period of such trial if not already attached under this Act.

Chapter III of the Act pertains to terrorist organizations. The Act defines an organization as a terrorist organization if it is listed in the Schedule or operates under the same name as an organization listed in that Schedule. The Central Govt. has the authority to add, remove or amend an organization from the Schedule in the Official Gazette, but only if it believes that the organization is involved in terrorism. An organization is considered to be involved in terrorism if it commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism, or is otherwise involved in terrorism.

If a person disagrees with the Central Govt.'s decision to retain an organization in the Schedule, they may apply for a review to the Review Committee established by the Central Govt. within one month. If the Review Committee orders the removal of an organization from the Schedule, the Central Govt. is required to remove the organization as prescribed.

Section 20 of the Act outlines that a person commits an offence if they belong or claim to belong to a terrorist organization, but this subsection does not apply if the person can prove that the organization was not declared as a terrorist organization at the time they became a member, and that they have not participated in the activities of the organization during its inclusion in the Schedule as a terrorist organization. A person found guilty of an offence under this section may face imprisonment for up to ten yrs., a fine, or both.

Section 21 of the Act states that a person commits an offence if they invite support for a terrorist organization, and the support is not restricted to the provision of money or other property as defined in section 22. A person also commits an offence if they address a meeting to encourage support for a terrorist organization or to further its activities.

Section 22 of the Act deals with fundraising offences for terrorist organizations. It is an offence if a person invites another to provide money or other property and intends or has reasonable cause to suspect that it may be used for the purposes of terrorism. It is also an offence if a person receives money or other property and intends or has reasonable cause to suspect that it may be used for the purposes of terrorism. Additionally, it is an offence if a person provides money or other property and knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

Chapter IV of the Act deals with the establishment of Special Courts. The Central Govt. is authorized to establish one or more Special

Courts for specific areas or cases through a notification. If both the Central and State Govt.s have issued notifications for the same area or case, the Special Court established by the Central Govt. will have jurisdiction over all cases, and pending cases in the State Special Court will be transferred to it. A Special Court can also hold its proceedings in a place other than its usual location if necessary, with the SC and HC having the power to transfer cases between Special Courts.

During a trial, a Special Court can try other connected offenses as well and convict the accused of any other offense found in the course of the investigation. Additionally, a police officer investigating a case can request the CJM or the CMM's Court to obtain samples of various materials from the accused person reasonably suspected of being involved in the offense.

For every Special Court, the Central or State Govt. must appoint a PP and may appoint Additional PPs. A Special Court can take cognizance of an offense upon receiving a complaint or police report of facts constituting the offense, and if the offense is punishable with imprisonment for up to three yrs. or with a fine, the Special Court may try the offense in a summary manner.

Section 30 of the Act provides special measures for protecting witnesses, including holding all proceedings under the Act in camera and allowing the Special Court to take necessary steps to ensure the safety of witnesses. The trial of any offence under this Act by a Special Court is given priority over the trial of any other case against the accused in any other court, and the latter case must be put on hold until the former is concluded.

Section 32 of the Act includes a severe provision allowing confessions made by an accused person before a police officer of a certain rank to be admissible in court. Specifically, confessions made before a Superintendent of Police and recorded in writing or on a device such as a cassette or tape are admissible in the trial of the accused for an offence under this Act or its rules.

Section 34 of the Act allows for appeals to the High Court from any judgment, sentence, or order (excluding interlocutory orders) made by a Special Court, on both factual and legal grounds. Until a Special Court is established under Section 23, the jurisdiction given by this Act to a Special Court for any offence punishable under the Act will be exercised by the Court of Session in the division where the offence was committed, following the same procedures and with the same powers as those outlined in this chapter.

Chapter-V of the Act deals with the interception of communication in specific circumstances.

The Central or State Govt. may appoint a Competent Authority, not below the rank of Secretary or Joint Secretary, respectively, to authorize the interception of wire, electronic, or oral communications if certain conditions are met. These conditions include having probable cause to believe that an individual has committed or is about to commit an offense punishable under sections 3 and 4 of the Act and that specific communications related to the offense can be obtained through interception.

After passing the order for interception, the Competent Authority must submit a copy of the order along with all relevant documents to the Review Committee within seven days for approval. The Act specifies that no interception order can be for longer than 60 days or more than necessary to achieve its objective. The interception may be conducted by a public servant under the supervision of the investigating officer authorized to conduct the interception.

The Act also allows for emergency interception by an officer not below the rank of Additional Director General of Police or an officer of equivalent rank, in case of immediate danger of death or serious physical injury to any person, or conspiratorial activities threatening the security or interest of the State or characteristic of a terrorist act. The intercepted communication must be recorded and protected from editing or alteration.

The IT ACT, 1885 has been amended to include provisions for the interception of wire, electronic or oral communication. The interception can only be done under the authorization of a Competent Authority and with the purpose of ensuring national security, preventing incitement to the commission of an offense, or investigating any offense. Evidence collected through this interception can be used in court, but only if the accused has been provided with a copy of the authorization order and accompanying application at least ten days before the trial. A Review Committee constituted by the Central or State Govt. must review every order passed by the Competent Authority. Any police officer who violates the Act intentionally will be punished with imprisonment for up to one year and a fine. The Central and State Govt.s must prepare an annual report on all interceptions made under the Act. Chapter VI of the Act covers miscellaneous provisions, and Section 49 modifies the application of the Code for the purpose of this Act. A court cannot take cognizance of any offense under this

Act without the prior sanction of the Central or State Govt.

Section 51 of the Act specifies that no police officer, below the rank of a DSP in the case of the Delhi Special Police Establishment, or an equivalent rank in the metropolitan areas of Mumbai, Kolkata, Chennai, and Ahmadabad, and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, shall investigate any offense punishable under this Act, except for specific cases.

If a police officer arrests a person, they must prepare a custody memo for that person and inform them of their right to consult a legal practitioner as soon as they are brought to the police station. Additionally, the police officer must inform a family member or relative of the person's arrest immediately after it occurs and record this information under the signature of the person arrested.

Section 64 of the Act includes provisions regarding the repeal and saving clauses of the Act.

THE NATIONAL INVESTIGATION ACT, 2008⁷

In response to the Mumbai terror attacks, the Indian Parliament passed new legislation in 2008, known as the National Investigation Act, in addition to making amendments to the existing Unlawful Activities (Prevention) Act of 1967.

The purpose of the Act is to establish a national-level investigation agency that can prosecute offenses related to the sovereignty, security, and integrity of India, as well as offenses under international treaties and agreements. The Act applies to all citizens of India, whether they are within or outside of the country, as well as to govt. officials and individuals on Indian registered ships and aircraft.

Section 3 of the Act establishes the National Investigation Agency, a special agency created by the Central govt. to investigate and prosecute offenses listed in the schedule. Officers of this agency will have the same powers, duties, privileges, and liabilities as police officers when investigating these offenses. Additionally, any officer of the agency holding the rank of Sub inspector may exercise the powers of an officer-in-charge of a police station throughout India.

Section 4 of the Act grants the Central Govt. the authority to supervise the Agency. The Agency will be managed by officers designated as

DG, who will be appointed by the Central Govt. and will have powers similar to those of a DGP.

Section 5 of the Act specifies that the Agency will be organized and the conditions of service for its members will be determined by the rules.

Section 6 of the Act outlines the procedure for the investigation of scheduled offences. If a police station receives information about a scheduled offence, the officer-in-charge must forward a report to the State Govt., which should be sent to the Central Govt. promptly. Within 15 days of receiving the report, the Central Govt. must decide whether the offence is a scheduled offence and whether it is appropriate for the NIA to investigate. The Central Govt. can also direct the NIA to investigate a scheduled offence even if the State Govt. is already investigating it. In such a case, the State Govt. or any police officer cannot continue with the investigation and must provide relevant documents and records to the NIA.

Section 7 of the Act provides that the NIA can request the State Govt. to assist with an investigation or transfer the case to the State Govt. with the Central Govt.'s approval. Section 8 of the Act allows the NIA to investigate any other offence that is related to the scheduled offence. The State Govt. is required to provide necessary assistance and cooperation to the NIA for the effective and timely investigation of scheduled offences. However, this provision does not prevent the State Govt. from investigating a scheduled offence or any other offence under the applicable law.

Section 11 of the Act empowers the Central Govt. to establish Special Courts for the trial of scheduled offences. The Central Govt. can appoint one or more Special Courts for specific areas or cases as per the notification. The Chief Justice of the High Court recommends a judge to preside over the Special Court, and the Central Govt. can appoint additional judges as recommended by the Chief Justice. The NIA can also request the Chief Justice to appoint a High Court Judge to preside over the Special Court. The jurisdiction of the Special Courts is determined by the Central Govt.

The National Investigation Agency Act provides for the establishment of a special court to try offenses scheduled under the Act. The court has jurisdiction over offenses committed within its local area, and the SC or HC can transfer cases to other special courts if necessary.

The special court can also try other offenses connected to the scheduled offense, and the Central Govt. appoints a PP for each special court. The court has similar powers to a Sessions

⁷National Investigation Agency, Act, 2008

Court, and it can take cognizance of an offense without the accused being committed to it for trial.

The Act mandates provisions for the protection of witnesses and states that the trial conducted under this Act takes precedence over all other cases. If the special court thinks the trial is not within its jurisdiction, it can transfer the case to another court.

An appeal from the special court's order lies with the High Court, and the State Govt. can also establish special courts to try scheduled offenses. The Act includes provisions for miscellaneous matters, such as the power of the High Court to make rules and the Central Govt.'s power to make rules to carry out the provisions of the Act.

To summarize, the National Investigation Agency Act sets out the establishment and powers of a special court to try offenses scheduled under the Act, including provisions for the protection of witnesses and the appointment of a PP. The Act also includes provisions for appeals, the establishment of additional special courts, and miscellaneous matters.

II. CONCLUSION AND SUGGESTIONS

CONCLUSION

The above discussion on laws relating to terrorism and counter terrorism laws prevalent on international level and India reveals zeal of the world to enact effective legislations to fight terrorism. Terrorism has impacted almost every country of the world including India, and compelled the world to come together and frame effective laws to combat it, with the aim of defeating it. India always attempts to take initiative to provide its support towards the aim of making it a better world and to maintain the world security, peace and harmony. It has its own unique approach towards adaption, enactment, interpretation and implementation of such laws keeping in mind its diversity and challenges.

However, the effectiveness of Indian anti-terrorism laws in combating modern terrorism is still a matter of debate. It is often argued that the laws are outdated and do not adequately address the new and evolving forms of terrorism, while the other opinion is also maintained that the laws are sufficient, but implementation and enforcement are lacking.

India has several laws to combat terrorism, including the UAPA, the POTA, and the NSA. These laws provide the govt. with extensive powers to detain, arrest, and prosecute individuals suspected of terrorism-related activities. However,

these laws are too broad and vague, and can be misused by executives to target individuals and groups for their political or religious beliefs. Additionally, the laws do not adequately address the new forms of terrorism, such as cyber terrorism, and do not provide sufficient protection to vulnerable groups, such as minorities and activists.

Furthermore, the implementation and enforcement of these laws are also a matter of question. The police and security agencies lack the necessary resources and training to effectively combat terrorism, and there is a need for greater coordination between different agencies to prevent and respond to terrorist attacks.

In conclusion, while Indian anti-terrorism laws provide the govt. with extensive powers to combat terrorism, their effectiveness in combating modern terrorism is still a matter of debate.

It is crucial for the govt. to ensure that the laws are not misused, and that they are implemented and enforced effectively to protect the rights of all citizens and prevent terrorist attacks.

SUGGESTIONS

Making existing anti-terrorism laws effective in fighting modern forms of terrorism would require a multi-pronged approach. Here are a few suggestions:

1. Regular review and update of the laws: Given the evolving nature of terrorism, it is important to regularly review and update the anti-terrorism laws to ensure they are effective in combating new forms of terrorism. This can be achieved by consulting with experts and stakeholders from diverse fields, including law enforcement agencies, intelligence agencies, civil society organizations, and legal experts.
2. Strengthening law enforcement agencies: To combat modern terrorism, law enforcement agencies need to be equipped with the necessary resources, training, and technology. This includes providing them with access to state-of-the-art equipment, intelligence gathering tools, and training programs that keep them up-to-date on the latest terrorist threats and tactics.
3. Enhanced international cooperation: Modern terrorism is often transnational in nature, and requires international cooperation to effectively combat it. Countries need to work together to share intelligence, resources, and best practices in order to identify and disrupt terrorist networks and prevent cross-border attacks.

4. Balancing security measures with human rights: While it is important to have strong anti-terrorism laws, it is equally important to ensure that they do not violate the basic human rights of citizens. The laws must strike a balance between security measures and protection of individual rights and freedoms.
5. Creating public awareness: Public awareness campaigns can help in educating the public about the threat of modern terrorism and ways to prevent it. This can include information on how to identify suspicious behavior, reporting mechanisms, and resources for individuals who may be radicalized.

In conclusion, making existing anti-terrorism laws effective in fighting modern forms of terrorism requires a comprehensive approach that includes regular review and update of the laws, strengthening law enforcement agencies, enhanced international cooperation, balancing security measures with human rights, and creating public awareness.