

ENFORCEMENT OF ANTI-TERRORISM LAWS IN JAMMU AND KASHMIR: A CRITICAL ANALYSIS

A Thesis

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in

LAW

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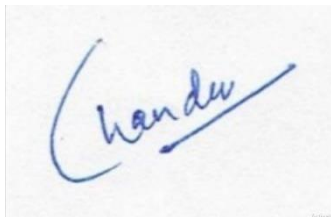
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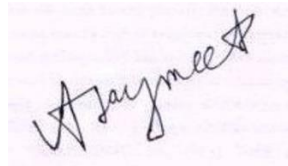
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ABSTRACT

Terrorism can be defined as Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them. It has stretched its arms to reach every nook and corner of the world, with very few countries being spared from its ill-effects and consequences. The escalation of terrorist activities in the past few decades has made terrorism one of the most disturbing present day problems. Today, among the issues directly affecting people and the government throughout the world, terrorism has taken center stage with almost all states, having to suffer at the hands of such miscreants. For the last three decades, terrorists have been playing a pivotal role in making and reversing the international relations in the international arena. These terrorist groups are engaged in numerous kinds of acts which attract the attention of the public towards their causes, their involvement in assassination, kidnapping of diplomats, politicians and their near relatives, bombing crowded places, embassies, business houses and place of worships, hijacking and piracy and threat of nuclear terrorism has created immense fear and uncertainty in public life and thereby hampering world peace, security and order. With the advent of globalization and new technology, terrorism has also had a face lift with earlier it being involved within national boundaries but now spreading its wings to international spheres. Internationally, there is no widely accepted definition of terrorism which remains as a flaw. Basically, terrorism is the use of violence, or threat of violence, to frighten people in order to achieve a political, social or religious goal. It is an act which affects the audience beyond the immediate victims. With the passing of years, the face of terrorism has had a major upheaval and states across the globe have become victim to such acts with a very few countries being spared. Against this background, the present research will outline the history and details of terrorism; analyze the laws relating to terrorism namely TADA, POTA and UAPA and the circumstance under which it has been repealed. The law presently applicable, the NIA Act, UAPA, AFSPA, PSA, etc will be examined to explore the efficiency of the Act for countering terrorism in the country. The impact of terrorism in the form of violation

of human rights will give a broader outlook on the topic. In the changing world, where war's and terrorist activities are rampant, this study will give an impetus for understanding the problem of terrorism and suggest means and measures for combating such acts. Terrorism is not new and this term is being used for the centuries but it can be relatively hard to define. As an uneven form of conflict, to suppress the terrorism, States use coercive powers including military action. In some cases, terrorism has been used as a means to carry on a conflict without showing to opposite the nature of the threat. They mistakenly take terrorism as normal criminal activity. Because of these characteristics, terrorism has become increasingly common among those pursuing extreme goals throughout the world. But despite its popularity, terrorism can be a nebulous concept. After analyzing these heinous acts of terrorism the legislation has felt to enact laws for dealing and preventing the unlawful activities of terrorist. Time to time new and specific laws had enacted to counter terrorism in India. Indian law as it stands today has come around in strange circumstances as the earlier legislation was found capable of being misuse. This law is less harsh than the previous anti-terrorism laws in India and is not equipped by way of express provision for discretion to deal with a vast variety of terrorist activity or other activities connected with perpetration of terrorism. Judiciary is playing an important role in interpreting law to provide equity and justice. Whenever any question arises as to constitutional validity of an existing law, procedure or new law making, judiciary is establishing landmark principles. Although judiciary is playing its role while interpreting and upholding the constitutional validity the anti- terror laws but there is need of extra-ordinary anti-terrorist laws and a strong administration to curb this menace. These laws should work as an exception to the ordinary laws of the country and the implementation of the same should be stringent. The nature of anti-terror laws must be blunt, with deterrent and retributive effects and be capable of justifying deviation from the established principles of law, without taking into consideration the impact on the freedoms and rights of people given under the Constitution of India. There are other provisions under other substantive as well as procedural law of country to curb this menace. Solution required rigorous implementation of energy and resources. Law is always seven steps behind the technology. Because we cannot change the law as at the same pace, technology is changing. Many a times court upheld the validity of anti- terror laws, only on one

ground that the terrorism is an extraordinary crime and it should be dealt with an extraordinary law. Security of the individual is a basic human right and the protection of individuals is a fundamental duty of Government. Nations, therefore, have a duty to save the human rights of their citizens by taking positive steps to protect them against the threat of terrorist acts and bringing the terrorists to justice. Terrorism by its nature is very unique. Whereas some regard it as acts of heroism and nationalism; it is a heinous socio-legal deviance in the eyes of others. It is essentially a faceless and a bodiless phenomenon. The persons involved in the activity are at the best only its outward symbols. No wonder then that elimination of the persons carrying on terrorist activities or suspected hardly makes any difference; more it often rather strengthens and promotes the movement.

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ABBREVIATIONS

AFSPA	Armed Forces Special Powers Act
CBI	Central Bureau of Investigation
CPI	Communist Party of India
CRPC	Code of Criminal Procedure
ECHR	European Convention for the Protection of Human Rights
ICCPR	International Convention for Civil and Political Rights
IPC	Indian Penal Code
LTTE	Liberation Tigers of Tamil Eelam
MHA	Ministry of Home Affairs
MOCOOA	Maharashtra Control of Organised Crime Act
NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NIA	National Investigation Agency
NSA	National Security Act
OAS	Organisations of American States
POTA	Prevention of Terrorism Act
POTB	Prevention of Terrorism Bill
POTO	Prevention of Terrorism Ordinance
PUCL	Peoples Union for Civil Liberties
PUDR	Peoples Union for Democratic Rights
TADA	Terrorist and Disruptive Activities (Prevention) Act
UAPA	Unlawful Activities Prevention Act
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
US	United States

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CHAPTER 1

INTRODUCTION

AND

HISTORICAL BACKGROUND

OF TERRORISM

Noam Chomsky - "Everyone's worried about stopping terrorism. Well, there's really an easy way: Stop participating in it."

1.1. Introduction

This research work entitled **"Enforcement of Anti-Terrorism Laws in Jammu and Kashmir: A Critical Analysis"** is concerned with the legislative measures adopted by the authorities for overcoming such dangerous issue of "Terrorism", in its various forms. Before stating anything on the legislative ascertainties which Governments have adopted so far on this subject the researcher considers it necessary to offer a brief comment on the nature of the problem of terrorism and the nature of the legislative measures which are the subject matter of this study. Almost every day we hear of a terrorist event occurring in some part of our country, or somewhere in the world. The terrorist events manifest themselves in the form of violent activities of the individuals or organizations. The terrorists are pursuing their activities by new methods and new techniques. The concern of the sovereign States and of the international organizations with regard to this problem has been increasing day by day. To grapple with the problem the international organizations are adopting new policies and programs which hitherto were unknown to the system of justice obtaining in the countries. Based on the advices coming from the International Organizations the national governments are adopting new policies and programs to deal with the problem.

The rules and regulations adopted in the form of International Conventions, Treaties, Agreements and Covenants adopted at the international level and the Statutory Enactments and subordinate legislation adopted at the national level together constitute the Anti-Terrorism Laws. But this research work basically is concerned with the laws enacted at the national level. Reference has been made to international regulations where such a reference in the matter has become necessary. The international conventions and the statutory enactments not only lay down the basic criteria for considering a certain activity as terrorism but they also aim at establishing new procedures, new techniques and new forms of cooperation among the States.

At international level the trend is set by the International Organizations and Regional Agencies defining the concept of terrorism and laying down new rules as to

matters of State jurisdiction, the necessary steps to be taken by States in dealing with this problem and what procedure they should follow for the prosecution and punishment of the terrorists.

At the national level the trend is set by the agencies which are at work at the national and state levels. Besides enacting suitable legislation based on the international conventions or expediency, the agencies of State Administration also have the responsibility of ratifying the international conventions. They have also the responsibility of enacting the enabling legislation and establishing an administrative mechanism for implementing the international conventions. According to the system obtaining at present every convention adopted at the international level needs for its implementation at the national level a system of enforcement machinery, a budgetary allocation and technical support to the law enforcement agencies. In short, the Anti-Terrorism laws at the national level seek to bring the national laws in tune with the measures adopted at the international level and seek to deal with the problem as it arises in the form of a local or a national menace. It needs to be pointed out at this stage that the Anti- Terrorism Laws mostly are based on the premise of treating Terrorism as a crime affecting the peace of international community and the interests of humanity.

1.2. Background to the problem

Violent activity as an offensive behavior has been a usual phenomenon in social relations. This kind of activity has been witnessed in the history of mankind since several centuries. It is normal in any social group to engage in a verbal fight in the beginning and to engage in a physical combat at the end of the day. A variety of factors cause the people to resort to this kind of offensive behavior. Such an offensive behavior is due to “economic problems” or due to “Social or Political tensions”. There is no particular place that alone has been the target of such an offensive behavior. This happens in every sector everywhere, in the realm of domestic relations as well as in the realm of social relations. It also happens in public places like the government offices, the legislatures, and the courts. Even the religious institutions are not an exception to this kind of offensive behavior taking place. Further, there is no specific individual who does not behave in this manner, and there is no specific individual who is exempt from

being the victim of such a violent activity. Even the Monarchs of Great Empires and Leaders of great political systems of the world have always had to face the danger of being attacked by some or the other. They have also had to face the danger of assassinations owing to personal differences or political reasons. The attackers pursued the aim of destroying the existing order and seizing the political power for themselves. In short, no society anywhere has been free from violent activity.

Even in a highly developed country like the United States of America where there is peace and prosperity and there is maximum freedom of the individuals, there have been incidents of violent activities. The Presidents and other major political figures have been the victims of terrorist activities. President “John F. Kennedy”, his brother and “Martin Luther King” died at the hands of the assassins and attempts were made on the lives of Presidents Truman, Ford and Reagan. In our own country, two great Prime Ministers were killed by the Terrorists Causing a great to the country. Neighboring countries of India also the terrorist activity has brought to an end the lives of great political figures and functionaries. In Sri Lanka, the terrorists killed the President of the country. They did the same thing in Pakistan and Bangladesh. The worst of all was the killings in Nepal where the King, the Queen and the several members of the Royal Family were brutally murdered at one and the same time.

In the past, when the crime of terrorism was in its infancy such activities were committed by individuals at their personal level, but now what is seen is that there is the formation of organizations by the terrorists to carry out such activities in an organized manner for their specific aims. Persons of the same ideas join together and pursue their political, social or economic aims adopting the policy of violence. Then there is support given to them by others by way of finance, and military equipment. As a result of all this the violent activity of the terrorists has assumed the form of a dangerous activity everywhere. The whole world is stunned over the growing number of terrorist organizations being formed at various places and terrorist activities indulged in.

Originally, action against such violent activities was taken by, individual states in the exercise of authority under their own respective laws because the effect of the

criminal activity was felt within the state. In this connection, the authorities followed the traditional rules to prevent the violent activity and to punish the persons indulging in such activities. But when the activities assumed the form of organized crimes and the effect of such activities was felt across the country, nations have felt the need of offering an organized, concerted and unified defence against such activities. This is done by a series of treaties, multi-lateral conventions, executive resolutions and regional agreements. In their zeal to deal with the problem of terrorism more effectively the international organizations have modified the traditional rules on terrorist activities and introduced new ideals in the realm of criminal justice. The result of this innovative step has been that a new set of institutions, new principles and procedures have come aiming to curb such problem. Thus the primary aim of the study is the analyses of nature of Anti-Terrorism Laws.

1.3. Objectives of the study

This research work has been carried out with the following, among other, aims and objectives:

1. *“To analyze the in-depth meaning and understanding of the concept of terrorism and its historical development in India and world at large”.*
2. *“To observe the international as well as national initiatives to curb terrorism”.*
3. *“To peruse the judicial response to terrorism in India”.*
4. *“To ascertain the lacunas in Anti-Terrorism Laws at International and National level”.*
5. *“To study the direct impact of Anti-terrorism Laws in Jammu and Kashmir”.*
6. *“To make suggestions for the improvement of the current situation as well as for the improvement or amendment of the Anti-Terrorism legislations.*

1.4. Area of Research

Studying Anti-Terrorism laws basically a study of the provisions of Criminal Law on the subject which have the object of preventing and punishing the crime of

terrorism. But in the present day situation the Anti-Terrorism laws are based on the provisions of “International Criminal Law”. It is in the form of international instruments rather than national legislation. The truth is that on no other subject have the international agencies formulated, in a short span of few years so many principles by way of declarations, conventions and resolutions as they have done in the case of terrorism. The international instruments are not only vast but are complex too in regard to the definitions, the principles jurisdiction, and the principles of liability and matters of extradition.

The study entails a vast coverage of the measures adopted by the authorities in regard to various aspects of the problem of terrorism. The response of the State authorities to this problem of course comes in the form of legal provisions embodied in the legal instruments. The particular branch of study, which addresses itself to the problem of terrorism is the International Law and within International Law the specific area is that of International Criminal Law. This particular branch of law is known for prescribing the rules for prevention and punishment of crimes. The various sub-themes of Criminal Law are the substantive rules and the procedural rules. The substantive rules are based on the premise as to what acts need to be punished and the procedural rules are based on the premise as to how the offensive conduct should be dealt with. In the sphere of substantive criminal law the legal provisions lay down the ingredients of the crime of terrorism and the punishment that should be meted out to the criminal. In the sphere of procedural rules however the matters dealt with are the jurisdiction of the courts, the authority of the prosecutors, the regulations of proof, the rules of extradition and the regulations regarding cooperating among the States for establishing an efficient system of criminal justice. Apart from the international conventions there are Regional Conventions also adopted by the regional organizations such as the “European Union”, the “Arab League”, the “Organization of African States, the Council of Islamic countries”, the “South Asian Association for Regional Cooperation (SAARC)” etc. These regional conventions have been formulated with an aim for promotion of friendly relations and collective responsibility so as to curb the act of terrorism, which are termed as the danger to interest of the world at large. These conventions are adopted after from the early 20th century and nations are continuing to do so as with every day

a new form of terrorist act is arising. The above aspects of the problem of terrorism have been covered in this research work. The researcher has made a beginning of his study by looking into the causes and consequences in which the evil of terrorism has been thriving.

1.5. Hypotheses

On a preliminary observation of the events of violent activity occurring at many places and the measures adopted by various agencies at various levels to deal with such violent activities the hypotheses formulated for the study are that:

1. *“The crime of terrorism differs from the conventional type of crime in several respects”.*
2. *“The act of terrorism has hampered the growth of Jammu and Kashmir”.*
3. *“The techniques adopted to overcome terrorism have failed and the ideology of many people in Kashmir valley has become anti-India”.*
4. *“The steps taken by the Government to control terrorism are insufficient”.*
5. *“The implementation and practice of the laws to curb terrorism is ineffective, amounting to disturbing the contemporary situation even more badly”.*
6. *“The strategy to control the conflicting situation in the valley has resulted in the human rights violation, torture, sexual abuse, etc., directly or indirectly impacting the people of Jammu and Kashmir”.*

1.6. Research Methodology

For the purpose of the research, the researcher aims to do Doctrinal and Non-Doctrinal research. Data for the study will be collected from primary and secondary sources.

The representatives are selected region specific from the two regions of Jammu and Kashmir, i.e., Jammu and Kashmir.

For the fulfillment of study, sampling technique will be opted, more specifically Simple Random Sampling. The target audience for the sampling shall consist of 3 groups of people:

1. First shall be the members of Armed forces which include Indian Army,
 - a. among those officers of Indian Army who are dealing or have dealt with terrorism
 - b. At-least of 20 Army officers are to be consulted for the fulfilment of the research from the whole area of Jammu and Kashmir.
2. Secondly, Jammu and Kashmir Police specifically Special operations group (SOG)
 - a. At-least of 20 Police officers are to be consulted for the fulfilment of the research from the whole area of Jammu and Kashmir.
3. Thirdly, the study includes the audience from general public specifically divided in 4 sub-groups, such as
 - a. Advocates (at-least 50 from each region),
 - b. Law students(at-least 50 from each region),
 - c. Academicians in Universities as well law colleges (at-least 15 from each region) and
 - d. Lastly state level judicial officers specifically dealing with these matters (at-least 5 from whole of Jammu and Kashmir).

The researcher has aimed for collecting data altogether from the whole Jammu and Kashmir.

Opting such technique will efficiently help the researcher to find out the field reality regarding the roots of terrorism, impact of terrorism, and the problems that are being faced till date. Moreover, the procedure to be used for collection of the samples is by the way of the questionnaires, obtaining the opinions, present scenario, suggestions and views of the people therein.

1.7. Review of literature

Analyses from Special Conflict Report, The Carter Centre (2002), the special report provided one of the key reason regarding the conflict of the Kashmir. It is observed that the inadequacy to come to the mutual solution is specifically ripping apart the Kashmir. It is fairly possible that unilaterally the terrorist or militants will have a hard time to recognize the possible and amicable solution for their welfare. Adjacent to it, the difficulty of communication between the government and terrorists also creates tensions between them. The report also suggests that the solution can be obtained only by the compromises on both parts, i.e., government as well as terrorists. This will definitely help to reach the solution which would be acceptable to all.¹

It is also concluded that not only the compromises but initiatives will improve the economic situation of the state as well as for the country also. The violence has already digested the one generation in Kashmir and the upcoming is in verge of the extinction. Unquestionably the peace initiatives from valley people will definitely increase the chances to gain the peace and a sustainable life.

Anjum Ara Shamim (2005), in the study the researcher has attempted to analyze the “*position of human rights in the state of Jammu and Kashmir*”. The researcher observed that “*there is a huge amount of Human rights violations*” which is degrading the situation of Kashmir and making it more and more sensitized matter. Another thing which is seen here is that irrespective of peace initiatives provided by the Government of India such as packages, grants, etc. which are provided for gaining the trust of Kashmir people have failed. This resulted in disturbance of the situation even more.²

Shaheen Akhtar (2010), the author here specifically taking into consideration the increasing of terrorism in the valley. It is seen that Terrorism in Kashmir has led to appropriation of the armed forces to face the situation. As from last two years, it has been increased to the extent that there is neither a day when a terrorist is not killed.

¹ Special Conflict Report, The Kashmir Conflict: Historical & Prospective Intervention Analyses, The Carter Conflict Center, Conflict resolution program (2002).

²Anjum Ara Shamim, The human rights position in J&K, Department of Political Science, University of Kashmir (2005).

Therefore it is observed that there is actively increase in number of terrorists. Such may be due to invasion or by the volunteering of the youth within the state or by any other reason resulting into humiliation of the state more and more. ³

RekhaChowdhary (2014), in a case study on Kashmir, a province in the “State of Jammu and Kashmir”, the author concluded that “*terrorism is deeply rooted in the soil of Kashmir*”. The reason of such rooted terrorism in J&K, specifically the Kashmir is result of legitimacy of militancy. The way how this was plotted in the people of Kashmir is through the lane of religious-political movement. With the majority of Muslim population in Kashmir province, the deep roots of such militancy is plotted. The researcher founded that with the exploitation since the independence, it was politically very easy to manipulate the people and the result is that the valley people has accepted the legitimization of such terrorism. ⁴

Ajazul Islam (2014), observed and analyze the disturbed economy of the “State of Jammu and Kashmir”. It is seen that the economy of the state is been shaken from the increase in the anti-social activities from last two decades. As we all know that Kashmir is known as heaven on earth, the Kashmir, a large number of tourists visit every year which plays an important role in state`s economy as well as for the livelihood of the valley people. But due the increase in militancy day by day, the tourism has got a great impact. The number of visiting of tourists are decreasing very drastically which is ultimately hitting the earnings of the valley people.⁵

Anshu Sharma (2014), the observations from the research scholar explains the changing of credo by the extremists are influencing the situation of valley. The internal conflict between the extremists and the Government of India is observed as the result of insurgency. It is a tug of war right from the period of 70`s and with the end of 1989, where a huge number of people are supporting the extremists came forward which led

³Shaheen Akhtar, War on terrorism & Kashmir issue, Institute of Regional Studies (IRS) (2010).

⁴RekhaChowdhary, Terrorism and Movement: A case study of Kashmir (2014).

⁵Ajazul Islam, Impact of Armed Conflict on Economy & tourism: A study of the state of Jammu & Kashmir, IOSR, Journal of Economics & Finance, Vol. 4, Issue 6, July-Aug (2014) at 55.

the state in the primitive mode in political stability, economic development and ethnic potential.⁶

Shobna Sonpar (2015), attempted to highlight the growth and evolution of terrorism as a result of democratic regime. The researcher propounded that the beginning of militancy in 1989 was the eventual result of democratic policy of India right from 1947 for Kashmir. When the arrow was out of the bow, the Counter-insurgency policies were framed and projected by the Union Government which led to psychosocial infertility among the valley people. The results that we are observing are the target killings, disappearances, torture, sexual abuse, etc. which have directly impacted the mental stability of the valley people. Therefore a change in psychological thinking is seen which led to hate rate among the people of Kashmir and the growth of terrorism.⁷

Coverage by Economic times (2017), in the coverage among the hoteliers in Kashmir, it is also shown that there is a huge decline in the tourists due to such unrest in valley. Besides of the vacation season the hoteliers are observing a dire situation which is striking their earnings. As explained by the president of “*Kashmir Hotel and Restaurant Owners Federation*”, JavedBurza, the political dilemma is worsening the situation day by day. Post-killing of the “*Militant Burhan Wani*”, the situation had taken an unfortunate turn that now the valley people are forced to look into other business and employment opportunities for their survival.⁸

Abdul Hamad Khan (2017), an observation by the researcher towards changed circumstances of the “*State of Jammu and Kashmir*” presented a detailed view. The

⁶Anshu Sharma, Insurgent Attitude of Jammu & Kashmir state, research scholar Jammu, International Journal of Humanities & Social Science Invention, Volume 3, Issue 11, November (2014).

⁷Shobna Sonpar, Transforming Conflict Changing Society: Psychosocial Programming in India, Jammu and Kashmir, Institute of social Studies Trust, New Delhi, India, Springer International Publishing, Switzerland, (2015).

⁸Hakeem Irfan, Kashmir sees sharp decline in tourists this year due to political situation, Economic times Bureau, April 15th, 2017 (Jan. 17, 2018, 7:43 PM) http://www.economicstimes.com/news/politics-and-nation/kashmir-sees-sharp-decline-in-tourists-this-year-due-to-political-situation/amp_articleshow/58187469.cms.

researcher analyzed that right from the independence, the valley people who fought against the forces of Pakistan, with the year 1989 are welcoming and supporting them as well the terrorists. The research talks about such drastic changes that are observed in the valley. The reasons propounded could be the unrest in the valley in different instances resulting into the demand of referendum demanded by people of Kashmir right from the last decade. It is also observed that there is a change in internal dimension of the people of Jammu and Kashmir. Such is due to the religious and regional influence. Moreover it concluded that with the political touch to above mentioned influences the situation of the state is reached at a stage that autonomy is being demanded and rights in total absolute from rest of the nation.⁹

A.S. Chonker (2018), provided for the unique way so as to alter the objectives of the terrorism. The researcher talks about certain tools, which can be used for enhancing and for transportation of their objectives. As the roots of terrorism are cemented very much due to change in the ideologies of the people resulting to become terrorists or to aid terrorism. The ideologies of such could be targeted and the problem of terrorism could dwindle. The basic act which is changing the ideologies is the instigation religious sayings every day to each and every individual with the operations by forces to overcome such huge challenge also results into deaths which further influences the new people to volunteer for the terrorism and the revenge cycle starts its paddle. This is drastically changing the ideologies rapidly. Therefore such change in the ideologies rigorously touch the sentiments of the youth and as a result the ideologies are atomically recasted.¹⁰

UNHC report on situation of Human Rights in Kashmir (2018), on the position and of Human Rights situation in Kashmir clearly shows the international interest to curb the problem of terrorism, subject to the condition that basic human rights should not being violated. Although a strong reply have been given to this report on behalf of the Indian Government but the violations are presented in a large number. The

⁹ Abdul Hamad Khan, Changed Security Situation in Jammu & Kashmir, the road ahead, IDSA, New Delhi monograph series, No. 61, May (2017).

¹⁰ A.S. Chonker, Centre for Land welfare studies, Senior Fellow Claws, Issue no. 130, March (2018).

unrest in valley right from 2016 after the killing of Highbul Mujahidin Commander, BurhanWani by the Indian forces, the Indian Army with the local armed forces of the state are trying to control the situation in the valley. In the report the UNHC observed that with such operations and attempts to curb the terrorism as well to control the terror affected areas, a huge amount of human rights violations are being practiced from last 2 years. Such unrest is not only reflecting the human rights violation but also the fundamental rights violations which includes the sexual violence, civilian casualties, displacement of valley people, excessive use of force, torture, disappearances, restriction of freedom of expression, violation of right to education, employment degradation, diminishing of livelihood, etc.¹¹

Report on missing people (July, 2018), a report providing the recruitments of youth of valley into terrorism clearly defines the increase in their number day by day. Starting from 2010 where the local youth joined terrorism was 54 in number, which got a little distress in the subsequent year, i.e., in 2011 (23 in number), 2012 (21 in number) and in 2013-14 (6 in number). But after the passage of 2014, in 2015 the activity took a pace and in 2015, 53 of local youth joined terrorism which reach 66 in 2016. After the killing of “Militant Burhan Wani” in the year 2016 the scenario has been changed and there is a rapid increase in the recruitments of local youth in terrorism. The inputs shows that in 2017, 126 valley youth are recruited in terrorism where as the number is still in its pace in the year 2018 having 110 recruitments till July 15th, 2018. *“Some may conclude that the difficulty in understanding the right and wrong is due to the illiteracy or by the religious-emotional breakdown but in 2018 where two Kashmiri youth joined terrorism are well educated as one of them, 26, pursued a MBA degree from Kashmir University and another a PhD scholar, 26, from Aligarh Muslim University”*.¹²

¹¹ Report on the situation of Human rights in Kashmir, Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018 & General Human Rights Concerns in Azad Jammu and Kashmir & Gilgit-Baltistan, Office of the United Nations High Commissioner for Human Rights, June 14th (2018).

¹² 110 Joined Terror Groups in Jammu and Kashmir Till July 15, July 29, 2018, 18:31 IST (Jan. 25, 2019, 2:25 PM) <https://www.ndtv.com/india-news/110-youths-joined-terror-groups-in-kashmir-valley-till-july-15-officials-1891679>.

ChanderParkash Singh (2020), provided a research work on the Public Safety Act, 1978, explaining the enactment of it for on the intent that to maintain the order of society and tranquility which is disturbed or before getting disturbed, it primarily focuses on the detention of those individuals which tends to do so. Further various powers are provided in the Act to overcome such situations. The mainstream questions arises here about the legitimacy of this legislation. Where one Act provides for the rights of any accused persons, the privileges given to them and right to bail, this Act creates an exception to those. As enacted for the maintenance of public order, in recent trends it can be seen that it is being used for the political rivalry.¹³

1.8. Design of study Chapterwise

Chapter 1. Introduction and Historical Background of Terrorism

In this chapter the concept of terrorism will be studied and analyzed. The study will be in-depth for the comprehension of the meaning, key definition and aspects explaining the terrorism in India as well worldwide, to build up a foundation to this research. Moreover this chapter will also highlight the historical development as well as the growth of the terrorism in India and all over the world. In this chapter the different incidents will be discussed which played as the turning points in such huge gain of the terrorism all over the world. Moreover the first objective will be achieved.

Chapter 2. International initiatives for combating Terrorism

As in the preceding chapter, the familiarity with the concept, meaning and historical background of terrorism will be understood, in this chapter the initiatives taken all over the world and still in practice by various countries at various instances would be analyzed and discussed for combating it. With this the second objective will be achieved.

Chapter 3. Legal Mechanism to control Terrorism in India

¹³ChanderParkash Singh, The Public Safety Act, 1978: Bane or Boon”, ISBN –978-93-87047-37-2 , PAGE NO. 267-27, March, 2020.

In this chapter the legal mechanism to control terrorism resulting into destruction in several parts of the India will be perused. The study will help the researcher in achieving the third objective of the research. The instances previously happened and in the run in whole of the India due to terrorism to be analyzed by considering the literature, reporting, articles, etc. right from the post-independence hour, providing the causes due to which it has happened and is still happening. Moreover the legal mechanism initiated by the authorities so as to curb terrorism will be analyzed to get familiar with the key reason for its huge expansion all around the world.

Chapter 4. Legal Provisions in Jammu and Kashmir

In this chapter the legal provisions to control terrorism will be studied in detail. The chapter is primarily focusing to define the various statutory provisions which the state`s legislature have enacted to overcome it. Furthermore the chapter will also project the provisions which are enacted specially for the valley by the state as well as by the Union authority.

Chapter 5. Judicial response and activism

In this chapter the judicial response/behavior/activism to be studied in-depth, that how the judiciary is acting in the past time to tackle the dispute regarding terrorism, whether the punishments are made deterrent by the judiciary or preference are made towards rehabilitation or anything else is to be studied and analyzed. It is seen that the judicial response towards its cases are treated differently than from the ordinary criminal conduct. Therefore, it is to be studied that how differently they are considered and what extra procedures and laws are taken to suppress it. Moreover, the fourth objective will be achieved in this chapter.

Chapter 6. Impact of Terrorism in Jammu and Kashmir

This chapter is specifically dealing with the impact of terrorism in the Jammu and Kashmir. For the completion of this chapter Non-Doctrinal approach is to be followed as explained in the methodology. The primary purpose for the study in this chapter is to collect and analyze the data as to what is the resultant impact of terrorism

in the valley specifically in the state of Jammu and Kashmir, aiding the researcher to achieve the fifth and sixth objective.

Chapter 7. Conclusion & Suggestions

With the detailed analyses of the study and data collected, the conclusion reached will be notified and the suggestions, if any, for the improvements will be provided.

1.9. Concept of Terrorism

Terrorism could be understood as the use of violence or force or threat so as to create fear among the people. The persons whether individual, group or any organization performing such activities are termed as terrorists. Terrorism is a world-wide problem which is a threat to almost every country. Last few decades have faced its dynamic and worst consequences. Every society all over the world is facing this issue. Terrorism almost in every case is caused by groups, termed as “terrorist groups”, which use almost same ideologies and ways to strategize their aims and objectives, such as political goal, religious goal, etc. The activities practiced by these groups as a result effects many aspects of an individual, society and of nation also in the whole world. Due to such practices, acts and doings, the researchers are attracted now days towards the issues related to it and to perform the studies for the understanding, reasons, consequences and needs to be resorted to overcome this huge problem. Their activities may either be small or large in operation, but the motive behind each is to defeat the peace. It can be political, social, nuclear, cyber, religious and many more. Different countries faces terrorism in different aspects. Therefore terrorism can be defined as depending upon the demography of the country facing it. A wide number of jurists, researchers, academicians, authors, politicians etc. have defined it in their own understandings. Almost every nation in the world is facing the problem of terrorism. This problem is not confined to any single issue. It affects several other issues related to the politics, social integrity, education, trade, globalization, employment, etc.

Thus, here the researcher is opting the methods to get familiar with the effects of terrorism in the “*State of Jammu and Kashmir*”, an integral part of Union of India,

perusing in detail the anti-terrorism laws particularly enacted & enforced to curb such anti-social activities and analyzing critically the after-effects of enforcement of such anti-terrorism laws. Right from the post-independence time the whole state of the Jammu and Kashmir is facing this serious threat, comparatively much more in the valley.

Terrorism could be elaborated as “*state of ultimate fear and apprehensions*” which have effects on the individuals of the society and usually result into destruction as well as the uncertainty of the society.¹⁴ There are many forms of terrorism. One of them includes the terrorism with the political ends, which the individual results for gaining the political power or political gains. The violence is spread all over so as to disturb the society and hamper the socio-culture norms, beliefs and values.¹⁵ Terrorism means the indulgent of actions creating the fear of death among the society and pressure upon the authorities. That is why it is considered as the most multiplex phenomena of the present society.¹⁶

It has various faces but to show only few. The terror groups act most of the time nowadays hiding behind the name of politics, religion, etc. Terrorism is no doubt regarded as the most violent threat against the state. Sometime it is being based on religious ground while most of the time it has the foundation of the political motive. Threat, terror and fear are being used as the tools of the terrorism so as to widen its scope and increase its impact whether physically or psychologically. Therefore its

¹⁴Akçay, E.Y., Çelenay, Ö.E., TerörveMedyaİlişkisinin,Yılındaİstanbul’daMeydanaGelenSaldırılarıÖrneğiyleİncelemesi, NevşehirÜniversitesiSosyalBilimlerEnstitüsüDergisi, Vol. 2 (2012) at 183 (Sept. 29, 2018, 3:31 PM). <http://acikerisim.hakkari.edu.tr:8080/xmlui/handle/123456789/170>.

¹⁵ Michael, S., Terrorism a Socio-Economic and Political Phenomenon with Special Reference to Pakistan, Journal of Management and Social Sciences, Vol. 3, (2007) at 35 (Sept. 30, 2018, 11:09 AM) <http://pakistansocietyofvictimology.org/Userfiles/Terrorism%20A%20socio%20economic%20and%20political%20Phenomenon.pdf>.

¹⁶Magureanu, Virgil, Declinulsauapoteozaputerii?, RAO International Publishing Company, Grupul Editorial RAO, Bucuresti (2003).

ultimate object is to sway the pressure on the authorities in order to achieve their goals which cannot be achieved by ordinary means.¹⁷

A case study in 2005 provided another analysis of Terrorism as “harassment, destruction, suicide attack and killing of innocent people.” Moreover it hampers the local people, affects the state`s infrastructure by damaging it, bring down the economy and destabilize the social order.¹⁸

A study by Barth, Li, McCarthy, Phumiwasana, and Yago propounding the effects of terrorism in the economic growth of a State. It was found that the economic growth of a State is impacted by the terrorist activities by variation of FDI, formation of proper and adequate capital & increasing risk in that State for investment. Simply taking into consideration a war, which have a huge consequences, the terrorism in comparison have the similar effects. More the terrorist attacks occur more the instability the economy of a country becomes.¹⁹ An analysis from International Monetary Fund in 2001, gave the estimates of the costs of the 9-11 terror attack in United States as an equal to 21.4 billion U.S dollars whereas the Capital loss from 50 billion dollars to 53 billion dollars.²⁰

In the year 1984, a study analyzing the different aims and targets so as to profess the terrorist activities. These are as follows:²¹

¹⁷Terrorism in the context of globalization FLORIN STIBLIFaculty of Economics, West University of Timisoara, Romania, Vol. 9, No. 1 (2010) at 1.

¹⁸Ayaz Ahmed Chachar, Aftab Ahmed Mangi, ZareenAbbasi and Zubair Ahmed Chachar, Impact of terrorism on the psychology of working women in Pakistan: A case study of Sindh, International Journal of Science and Research, 2, no. 2 (2013) at 462.

¹⁹ James R. Barth, Tong Li, Don McCarthy, TriphonPhumiwasana, and Glenn Yago, Economic impacts of global terrorism: from Munich to Bali (Oct. 02, 2018, 6:18 PM) http://www.milkeninstitute.org/pdf/econ_impact_terrorism.pdf.

²⁰ International Monetary Fund, How has September 11 influenced the global economy (Oct. 05, 2018, 12:54 PM) www.imf.org/external/pubs/ft/weo/2001/03/pdf/chapter2.pdf.

²¹Schmid, P. Alex and Jongman, J. Albert, Political Terrorism: A New Guide To Actors, Authors, Concepts, Bata Bases, Theories, And Literature, Center for International Affairs, Harvard UniversityPress, and Cambridge, Massachusetts (1984).

- Brutality and power,
- Political reasons,
- Fear as outcome of terrorism,
- Psychological effects,
- Discrepancy between the targets and victims,
- Threat,

The terrorist activities not only impacts the forces or economy of two countries, but also have sound impact on society also. In almost every terrorist activity lives of innocent are deeply involved. And even when encounters take place or the situation when there is a gun battle between the forces and hidden terrorists, the probability of loss of innocent lives are at the highest stake. To sum-up we can say that terrorism steer towards to death or slaying of the lives of innocent people.²²

It is also founded that due to the economic conditions also the terrorist's activities are planned and performed. As we know very well that the people practicing these activities are termed as the terrorists and their groups are called as the terrorists groups. The formation of such groups are the result of the regretful current situation of the country. Opting such activities according to them will being the fruitful changes they wanted in the country. Such anti-social activities may have various effects on the economy of the country.²³

A study by James and Sadler in the year 2002, provided a different view of the result of the terror activities. According to them such activities will not only affect the country in which they are being performed, but also to adjoining and neighboring countries. The practice in one country may have impact on the other countries in the shape of rebellion or war or internal conflict by impressions of these activities. In

²² Soros George, *The Age of Fallibility: Consequences of the War on Terror*, Public Affairs and New York (2006).

²³ Bloomberg, S. Brock, Gregory D. Hess and AkillaWerapanna, *Terrorism from Within: An Economic Model of Terrorism*, Working Papers in Economics, Claremont Colleges (2002).

various studies it is observed that as one nation develops and growth takes place in a good pace, similarly the terrorist`s activities also have the outcome effects.²⁴

A study in 2004 in the city Madrid and in 2004 in New York, talks specifically on the policies and set of regulations must be the effective one so as to secure the market (financial) during terror attacks. The study defined clearly that in order to protect the market, the state`s authorities along with the market can overcome the evil after-effects due to the terror attacks with adjustable responses of the authorities.²⁵ Another study in 2010 also propounded that due to the terror attacks the stock market also get effected. The study analyzed approximately seventy five attacks during the time period of 1995-02. In such time frame the main target were the firms which were publicly famous. It was also found that there is a defeatist stock market reaction as compared to the physical loss. Due to the attacks on the market, the capital and the infrastructure, both are targeted, due to which there is a negative effect on the stock market.²⁶

To degrade the society the terrorist organizations propound several aims and objectives so as to disturb the society. One of their prime aim is to have inclusive effect on the society as much as possible, rather than to make the killings.²⁷ Their primary aim is to demolish the working of the society and spoil the strength of the people. Their main aim is to hamper the working of the society whether it is in political level, social level or national level. They perform their activities so that different aspects of society get affected and their aims are achieved.²⁸

The activities of such evil organizations are such that they forcefully compel the authorities to act accordingly these organizations. The fear created by these

²⁴ Murdoch, James and Sandler, Todd, Civil Wars and Economic Growth: Spatial Dispersion, American Journal of Political Science, Issue no. 48 (1), (2002) at 138.

²⁵ Johnston B. R. and O. M. Nedelescu, The impact of terrorism on financial markets, Journal of Financial Crime, (2006) at 7.

²⁶ Karolyi G. A. and R. Martell, Terrorism and the Stock Market, International Review of Applied Financial Issues and Economics, Vol. 2(2) (2010) at 285.

²⁷ Abdurrahg̃m E, As A Regional Crisis, The Effects Of Terror On Entrepreneurs In The East And South East Regions Of Turkey: A Field Research In Diyarbakir K̃kdemgr, D (2009).

²⁸ Varol K, "Ter̃rveSağduyu", Çağın Polis Dergisi, Yıl, (2007) at 5.

organizations directly as well as indirectly is reflected upon the society through their violent activities and through creating the tensions among the society and the nation's authorities. With the active performing capabilities and intentions, in the present time they are running towards adopting the psychological techniques to hamper the society. Such psychological techniques are less in investment but their results are very much effective.²⁹ A study conducted in 2003 in Greece, Turkey and Israel, during the period of 91-00, the results observed were that terrorism affects the market and its impact causes the depletion in the market growth.³⁰

A study done by Llorca-Vivero in 2008, critically observed the evil resultant impact of terrorism specifically on tourism. The study particularly focused on the diminishing steps of the tourists due to terrorism. The study states that the effect or impact of terrorism is quantifiable. Such could be computed by the acts done by terrorists or by estimating the deaths due to the acts of terrorists. The notable observations as a result obtained is that due to causalities in whole creates a consequential fatalistic impact on tourism industry.

The study concluded as the evolution of heavy risks due to the terrorism in any state. It is the wicked nature of the terrorism which creates such interpretation on the mindsets of the tourists and creates the risk factors.³¹

A study in 2002 by Fleischer and Buccola, it was concluded that the tourism is affected from the acts of terrorism. The study conducted in Israel shows that terrorism affects the tourism to a huge extend. Whenever there is a terrorist attack, there is a reduction in tourists. Not only local or regional tourists but the foreign tourists also

²⁹ Sandler, T and Enders, W, An Economic Perspective on Transnational Terrorism, *European Journal of Political Economy*, Vol: 20, Issue: 2 (2004).

³⁰Drakos K. and A. M. Kutan,, Regional Effects of Terrorism on Tourism in Three Mediterranean Countries, *Journal of Conflict Resolution*, Issue. 47(5) (2003) at 621.

³¹Llorca-Vivero R., Terrorism and International Tourism: New Evidence, *Defense and Peace Economics*, Vol. 19(2) (2008) at 169.

avoid the visiting due to terrorist activities. The data reveals that there is a decrease in overnight stay by the tourists with every terror activity.³²

Another study found that the terrorism hits the tourism rapidly and badly. A decrease in the tourism is being observed right form year 2001 (September) after the 9/11 attack in USA. The result of the attack could be seen as in huge downfall of number of tourist visiting USA. The data shows the diminish of the tourists up to one-third as compared to 90`s. But as tourism as a losing arena, some of the areas are getting benefits out of it. ³³

Terrorism: Impact on different sectors:³⁴

1. Financial
 - a. On earnings,
 - b. Recourse utilization,
 - c. Tourism,
 - d. Investments,
 - e. Internal security, etc.
2. Socio-Political
 - a. Nation`s Representation regionally as well as internationally,
 - b. Functioning of state,
 - c. Infrastructural development,
 - d. Increase in unemployment,
 - e. Increase in poverty, etc.
3. Psychological effects
 - a. Mental Health issues,
 - b. Social illness,

³² Fleischer A. and S. Buccola, War, Terror, and the Tourism Market in Israel, Applied Economics, Vol. 34 (11) (2002) at 1335.

³³ Saleh B. A., The Intifada's Impact on Tourism in Israel: An Interrupted Time-Series Approach, Department of Economics, Kansas State University, Manhattan, Kansas (2003).

³⁴ Ibid.

c. Physical abuse due to mental instability, etc.³⁵

1.10. Meaning and Definition of Terrorism

For the most part talking, for a long time "fear mongering" or "Terrorism" has been utilized as an insulting term, generally applied to the opposite side. "The word terror is taken from Latin word *terrere* which means *to frighten*".³⁶ The real association of terrorism with political ends was first observed during "French Revolution".³⁷ Terrorism was initially associated with the meaning of the acts with in the state only. But moved to depicting non-state entertainers following its application to the French and Russian agitators of the 1880s and 1890s.³⁸ The terrorism through high jacking of airplanes were seen in 70s as a new form of terrorism.³⁹ Number of treaties were enforced and signed by almost every nation for reduction of such incidents. Various conventions are also undergone by the international organizations as well as nations against curbing of terrorism and terrorist activities but so far their output is considerably insufficient. Different phases of terrorism can be traced with the passage of time, such as the terrorism which was emerging in 1990s is different from the terrorist activities of 60s and 70s.⁴⁰ In the present times the form of terrorism is achieving its popularity from a religious point of view. The high jacking for various destroying's such as the attack in New York in September 2011 has shown the highly need of anti-terrorism

³⁵*Ibid.*

³⁶ Alex P. Schmid, The Problems of De^aning Terrorism, in *Encyclopedia of World Terrorism* 12, 12 (Martha Crenshaw & John Pimlott eds., 1997).

³⁷ Peter J. van Krieken, Terrorism and the International Legal Order with Special Reference to the UN, the EU and Cross-Border Aspects 13 (2002) (describing other instances of government-sponsored terrorism used to engender fear in the citizenry).

³⁸ These groups sought to affect political change through violence against symbolic targets that would, they hoped, arouse the masses. See *id.* at 13–14. See generally Joseph Conrad, *The Secret Agent* (1907).

³⁹Alona E. Evans, Aircraft Hijacking: Its Cause and Cure, 63 *Am. J. Int'l L.* 695, 697– 98 (1969).

⁴⁰ Michael Whine, Antisemitism Worldwide 2000/1: The New Terrorism, <http://www.tau.ac.il/Anti-Semitism/asw2000-1/whine.htm> (last visited Oct. 21, 2005). Michael Whine, Antisemitism Worldwide 2000/1: The New Terrorism, <http://www.tau.ac.il/Anti-Semitism/asw2000-1/whine.htm> (last visited Oct. 21, 2005).

laws to be implemented with more caution and strictness as well as creating more and more fear among the people all over the world.⁴¹

“Oxford dictionary” defines it as the “use of terror especially for political purposes”. Thus it implies clearly that the act of terrorism includes violence to meet the political ends. However, there can be also other effects.⁴² The terrorism, which is defined as a strategy or as a part of a strategy for attaining political ends or power has certain other components such as:

- a. “Psychological oppression is showed in demonstrations of socially and politically inadmissible Violence,
- b. There is a predictable example of emblematic or delegate determination of the person in question or objects of demonstrations of fear mongering and
- c. The Revolutionary development intentionally means their activities to make mental impacts on explicit gatherings and accordingly change their political conduct and perspectives”.⁴³

1.10.1. General Definitions of Terrorism

Terrorism is the deliberate utilization of methods for delivering a typical risk , which shall constitute the act which is chargeable against any person employing crime against the life, the freedom or the physical respectability of people or against legislative or exclusive property to offer or trying political or social thoughts will be rebuffed.⁴⁴

⁴¹AsliBâli, *Stretching the Limits of International Law: The Challenge of Terrorism*, 8 *ILSA J. Int'l & Comp. L.* 403, 408 (2002).

⁴²Brain Jenkins, *'International Terrorism' a New Code of Conflict* (Los Angeles : crescent publications) (1975) p. 1.

⁴³Martha Genshaw Hutchinson, "The Concept of Revolutionary Terrorism". *Journal of conflict revolution* vol. 16 No. 3 (1972) pp. 383-396.

⁴⁴Article 2 of the text adopted by committee V.

The “4th International Conference in Paris” again took up the subject of terrorism and defined as “All offences, preparatory acts for such offences as well as agreements and conspiracies aimed at imposing a political or social determine through violence or intimidation will be considered as an act of terrorism.”⁴⁵

At the “fifth International Conference”, it was decided, on the basis of a new report (Roux) that terrorism and crimes of common danger should be examined separately and terrorism was defined as “If any act is committed, in order to express, propagate or carry out a political or social doctrine, which causes a common danger to life, health or physical integrity or to private property or that of the local community or state, or causes the danger of interrupting public communications or the functioning of public utilities, it will be considered as act of terrorism”⁴⁶

The “Sixth International Conference” for the unification of penal law defined as “Any international acts directed against the life, physical integrity, health or freedom of a. head of state of his/her spouse, or any person holding the prerogatives of a head of state, as well as crown princes, members of governments, peoples enjoying diplomatic immunity and members of the constitutional, legislative, or judicial bodies, producing a common danger or a state or terror calculated to cause a change in or impediment to the operation or the public authorities or to disturb international relations.”⁴⁷

According to the government of Haiti, the term terrorism has been defined as “Any threat or act of violence committed by a person or group of person on foreign territory or in any other place under international jurisdiction against any person with a view to achieving a political object.”⁴⁸

⁴⁵Fourth International Conference for Unification of Penal Law, Paris (1931).

⁴⁶Fifth international conference for the Unification of penal law (1935).

⁴⁷This was the first time that the USSR was represented at such a conference and one of its delegate was famous PACIIOUKAN'S'

⁴⁸Report of the adhoc committee on international terrorism (1973) p. 22. GAOR : 28th session, Supplement No. 28 (A/9028).

The government of France proposed to define ‘international terrorism’ more narrowly as “Any heinous act of barbarism committed in the territory of a third state by a foreigner against a person possessing a nationality other than that of the offender for the purpose of exporting pressure in a conflict not strictly internal in nature.”⁴⁹

The Encyclopedia defines terrorism as “Terrorism is a term used to describe the method or the theory behind the method whereby, an organized group or a party seeks to achieve its avowed aims chiefly through .the systematic use of violence. Terroristic acts are directed against persons who as individual agents or representatives of authority interfere with the consummation of the objectives of such a group.”⁵⁰

1.10.2. International Definition of Terrorism

According to Chalmers Johnson “Terrorism is political goal oriented action involving the use of threat of extraordinary violence performed for psychological rather than material effect and the victims of which are symbolic rather than instrumentals”.⁵¹

The Convention⁵² in 1937 gave the “definition of terrorism”. According to the convention the activity of terrorism is based on oppression as “criminal acts coordinated against a state and proposed or determined to make a condition of dread in the brains specific people, or gathering of people or overall population”.⁵³ The definition, therefore highlights the acts of violence by individuals or groups against the. State for agitation purposes which endangers innocent civilians. This convention was the outcome of the League of Nations by France due to consequent “assassination of King Alexander I of Yugoslavia and Mr. LousiBarthou, President of council of the French

⁴⁹*Ibid.*

⁵⁰Chalmers Johnson, “Perspective of Terrorism”, an article in the terrorism render: A Historical Anthrology, Water Laquer (London wild wood House ltd. (1974) pp. 268.

⁵¹*Ibid.*

⁵² The Convention on the Prevention and Punishment of Terrorism of November 16th 1937.

⁵³For text of convention see annex I of the study preparing the secretariat on "Measures to prevent international terrorism" UN general assembly document A/C 6/418, Nov. 2. 1972. Also League of Nations publications v. legal-1938 vol. 3 official document no. C 94. M. 47 1938.

Republic". The "League of Nations" also formed a committee to "assure the repression of conspiracies of crimes committed with political or terrorist's purpose".⁵⁴

An Adhoc Committee defines terrorism as "any act of violence endangering or taking innocent human lives or jeopardizing their fundamental freedoms and affecting more than one state, such act being committed as a form of coercion to secure some specific end"⁵⁵

The Asian-African Legal Consultative Committee (AALCC) defined terrorism and also contrasted the terms people's struggle for freedom and terrorism. The AALCC defines the terrorism as "violent act or acts or attempts of such acts, perpetrated by states or individuals or groups of individuals against innocent civilians or nations of states not involved in an on-going conflict, calculated to cause fear and panic to general public, and intended to coerce a state or an institution to conform to a course of conduct dictated by. Political consideration of the Perpetrators."⁵⁶

Robert A Friedlander's Definition Friedlander says that an exact legal definition of terrorism is unnecessary and also advocates an approach which would relate terrorism with crime. "It is not necessary to have an exact legal definition, if terrorism is dealt with as a common crime. Concentration on the elements of *actus reus* may be all that is needed by way of definition for murder, arson, kidnapping, serious bodily harm and infliction of severe mental distress are criminal acts in themselves and need only be proved as such."⁵⁷

Grant Wardlow's Definition In view of Grant Wardlow terrorism is a political terrorism. He defines it as, "the use of violence by an individual or group, whether

⁵⁴Surya P. Sharma, "International Law Consensus Still Elusive" World Focus (1986) Vol. VII No. 2 Feb.p. 7.

⁵⁵See paragraph 43. Report of the Adhoc Committee on international terrorism - General Assembly, official records thirty-fourth session, supplement No. 37C (A/34/37).

⁵⁶Legal Criteria for distinction between terrorism and people's struggle for liberation, A preliminary study prepared by the secretariat of Asian-African Legal Consultative Committee Doc No. AALCC/XXVIII/89/4 p.4.

⁵⁷Robert Friedlander, "Terrorism Encyclopaedia of Public International Law" (1986) p. 373.

acting for or in opposition to established authority. When such action is designed and acted to create extreme anxiety or effects in targeted group larger than the immediate victims with the purpose of coercing that group into the acceding to the political demands perpetrators”.⁵⁸

1.10.3. Definition given by International Jurists, Eminent and Noted Persons

Apart from the above definitions, some other definitions have been given by well-known International lawyers: -

Chalmers Johnson’s defines the terrorism as “Terrorism is political goal oriented action involving the issue of threat of extra ordinary violence, performed for psychological rather than material effect and victims of which are symbolic rather than instrumental,”⁵⁹

According to Brain M. Jenkins “International Terrorism may be defined as acts of violence or compaign of violence waged outside the accepted rules and procedure of international diplomacy and war”.⁶⁰

R. Baxter’s Definition He commented that “we have cause to regret that a legal concept of ‘terrorism’ was never inflicted upon us. The term is imprecise it is ambiguous, and above all, it serves no operative legal purpose.”⁶¹

According to J.J. Paust, “Terrorism involves the international use of violence or threat or violence by the precipitators against an instrumental target in order to communicate to a primary target or threat of future violence”.⁶²

⁵⁸K. Subrahmanyam, "Terrorism to the Fore Front of the State Strategic Analysis" (1986) No. 17 pp. 238-39.

⁵⁹Encyclopaedia of Social Science vol. 13-14 pp. 575-579.

⁶⁰Brain M. Jenkind, "International Terrorism" A new mode of conflict', (1978).

⁶¹Late R. Baxter professor of International Law (Harvard), Judge of International court of justice, "A skeptical Look at the Concept of Terrorism". Akron Law Review 7 (1974) p. 380.

⁶²Jordan J. Paust, "Private Measures of Sanctions", in Legal Aspects of International Terrorism". (Ed). Alona Evans and John, F. Murphy.

Almost similar and elaborate definition of terrorism was given by the Alex P. Schmind when he says, "Terrorism is an anxiety-inspiring method of repeated violent action, employed by clandestine individual group or state actions, for idiosyncratic, criminal or political reasons, whereby in contrast to assassination the direct target of violence are not the main targets. The immediate human targets of violence are generally chosen randomly or selectively from a target population, and serve as message generators. Threat and violence based communication' process between terrorists victims and main targets are used to manipulate the main target turning it into a targeting of terror, a target of demands or a target of- attention, depending on whether intimidation, coercion or propaganda is primary sought."⁶³

According to Dobson, "Terrorism is the use of explosive devices used by terrorists with appropriate training".⁶⁴

Martha Crenshaw He defines the terrorism that "Terrorism is means to accomplish certain objectives with international support".⁶⁵

According to the Michael Walzer the "Terrorism is random terror for political achievement which emerged as strategy of revolutionary struggle after World War-II."⁶⁶

According to Walter Lacquer "Terrorism means acts of violence and repression carried out by government against their own people".⁶⁷

According to Jay Millin the "Terrorism as substitute for overt warfare." But according to his own words, when the political authority becomes unsuccessful, the

⁶³Alex Schmind and J. Albert Jongman "Political Terrorism" (New Brunswick: Transaction-Books) (1988) p. 28.

⁶⁴Christopher. Dobson and Ronald Payne, "The Weapons of Terror."(London : Macmillan Press) (1979) p. 67.

⁶⁵Martha Crenshaw, "Theories of Terrorism", The Journal of Strategic studies (December 1987) No. 4 Vo. 10. p. 13.

⁶⁶Michael Walzer, "Political Principles" (New York: Basic Books Inc) (1980) pp. 201-203.

⁶⁷Walter Lacquer, "The Age of Terror" (London: Wildenfield and Nicolson) Passim. (1987).

force takes the charge, “When soldiers fail take over to terrorists”. Actually meaning of this definition is, when diplomats, politicians, fail to curb terrorism then soldiers take over the responsibility to curb the terrorism.⁶⁸

Lawrence Zelic Freedman Defines Terrorism as “Terrorism is defined as the use of violence when its most important result is not the physical and mental damage of the direct victims but the psychological effect produced on someone else.”⁶⁹

Chalmers Johnson gave that “Terrorism involves the international use of violence or threat of violence by the precipitator against an instrumental target in order to communicate to a primary target a threat of future violence.”⁷⁰

Ajit Singh Bains defines the Terrorism as “Terrorism is an act of intimidation of innocent people threatening their lives, destroying their property, depriving them of their liberty and creating tension among them.”⁷¹

George P. Schutz in his view “terrorism” “is the use of threat or violence for political purposes to create a state of fear, which will cause individuals, groups or governments to alter their behaviour or policies.”⁷²

Ranbir Samaddar gives the definition of terrorism as “continuing acts of violence around persistent boundaries, such as between the colonizers and the colonized, or any other persistent deep differences.”⁷³

⁶⁸Jay Millin, “Terrorism as Military Weapons” Air University Review (Jan. Feb. 1977) Vol. XXVIII No. 2. p. 54-64.

⁶⁹Lawrence Zelic Freedman, “Terrorism” Problem of the pollster axic an Artide in “Perspective in Terrorism” Lawrence Zelic Freedman and Yonah Alexander, (Ed). (Delhi India: Hindustan publishing corporation (1985) p. 3.

⁷⁰ Ibid.

⁷¹Justice Ajit Singh Bains, Punjab and Haryana High Court, Chandigarh, in “State Terrorism and Human Rights” IPSG, New Delhi (1992), p. 8.

⁷²United States Senate, 99th Congress, 2nd Session, executive report 99-17 of July 8, 1986.

⁷³ Ibid.

General Ved Parkash Malik (retd). In opinion of Gen. V. P. Malik “Terrorism is an act of war and it fight with multi-dimensional plan.”⁷⁴

1.11. Historical Perspective of Terrorism

The chapter charts the evolution of terrorism from an unformulated, but frequently resorted to tactic in a power struggle to a cogent strategy of goal attainment. The origin of terrorism originally followed from “*regime de la terreur*”, organized by the “*Jacobins*” from end of 18th century, which impacted the governmental issues of progressive brutality for the following two centuries.⁷⁵ Present day psychological warfare/terrorism is dared to be the outlier of the last mentioned. While psychological warfare/terrorism may have implied various things to various individuals at various purposes of time, the essential inquiry is the reason did they resort to fear based oppressor strategies, and, all the more significantly, have the reasons, on-screen characters, casualties, and effect been the equivalent or have they contrasted generally?⁷⁶

Terrorism is often viewed as “warfare by extreme means”.⁷⁷ The history of ancient Greece, Assyria, Mesopotamia, China, Rome and India has been full of violence where the destruction of cities and villages were accepted as a normal consequence of war.⁷⁸

In the twentieth century, terror became a tactic favoured by many types of groups in various types of “low intensity conflicts”.⁷⁹ As for state terrorism, one finds that in a few cases, it took the shape of genocide, which was often guided by racial

⁷⁴The Tribune (Chandigarh) July 21, 2006.

⁷⁵ Walter Laqueur, A History of Terrorism, New Jersey: Transaction Publishers, July 2001, p.6.

⁷⁶Jussi M. Hanhimäki and Bernhard Blumenau, eds., An International History of Terrorism: Western and Non-Western Experiences, New York: Routledge, 2013, pp.2-3.

⁷⁷ Andrew Sinclair, An Anatomy of Terror: A History of Terrorism, London: Macmillan, 2003, pp. xv-xvi.

⁷⁸ Ibid.

⁷⁹ Lt. Col. Vivek Chadha, Low Intensity Conflicts in India: An Analysis, New Delhi: Sage Publications Pvt. Ltd., 2005, p.24.

hatred.⁸⁰ Contemporary terrorism can, however, be seen in Second “World War in 1945”, nevertheless it gained momentum since the 1960s.⁸¹ This was the period that saw total wars give way to limited wars, where the use of terrorist tactics increasingly became part of a strategy of attrition, especially through its role in psychological warfare.⁸² The scale of killings also rose exponentially as a “result of technological development and the growth of weapons of mass destruction”.⁸³

For instance, victory of Allied powers in World War II in 1945 can be deemed as one of superior weapon technology than one of principles. They introduced the threat of terrorism in nuclear form which is a state sponsored terrorism.⁸⁴ This may not be considered as terrorism in many Western circles, as they might not have known of the sheer destructive capacity of the first bomb, but justifying the Americans using the second nuclear bomb whereby an entire civilian population was targeted.⁸⁵ The decisions to attack Hiroshima and Nagasaki were based on the doctrine of strategic bombing to evoke fear in a civilian population and force them to pressurise their government into surrendering.⁸⁶ Thus, by the end of World War, states used terror as a deliberate strategy and justified it in terms of its results and not just their stated

⁸⁰ Matthew Krain, “State -sponsored mass murder: The onset and severity of genocides and politicides”, *Journal of Conflict Resolution*, New York, Vol. 41, No.3, June 1997, pp.331-360.

⁸¹ Gerard Chaliand and Arnaud Blin, “Terrorism in the Time of War: From World War II to the Wars of National Liberation” in Gerard Chaliand and Arnaud Blin, eds., n.10, p.208.

⁸² *Ibid.*

⁸³ Gerard Chaliand and Arnaud Blin, *op.cit.*, p.209.

⁸⁴ Ariel Merari, “Terrorism as a strategy of insurgency” in Gerard Chaliand and Arnaud Blin, eds., n.10, p.15.

⁸⁵ Mark Weber, “Was Hiroshima Necessary”, *The Journal of Historical Review*, The Institute for Historical Review, California, Vol. 16, No. 3, May-June 1997, pp. 4-11.

⁸⁶ Gerard Chaliand and Arnaud Blin, n.122. Chaliand and Blin have also cited the American nuclear strategist Albert Wohlstetter who coined the phrase the “balance of terror” in a 1958 RAND paper based on the principle of mutual deterrence, where the terror of nuclear attack would deter an adversary from resorting to the use of nuclear weapons . Thus, top-down terror reached its height during the period of the two World Wars where along with combatants, masses of civilians/non-combatants were killed (p.209).

objectives.¹²⁸ Therefore, by the mid-twentieth century, one finds the ethics of terror being dependent on the efficacy of terror and not just its end goals.

After the “*World War- II*”, different variants among terrorism emerged leading to attitudinal flip-flops as to the acceptability or unacceptability of terrorism. The oft-quoted saying “one man’s terrorist is another man’s freedom fighter/revolutionary” gained purchase depending on which side used terror and which side suffered it.⁸⁷ This moral relativism made it difficult to label a group/state as terrorist, despite them resorting to terrorist tactics. But one could generally figure out the main motivating factor guiding their use of these tactics.⁸⁸ So, despite the classifications of twentieth century variants of terrorism being riddled with complexities, attempts have been made to present a broad picture of the types of terrorism. One such attempt was made by C. Gus Martin, an American terrorism studies expert, in his book *Essentials of Terrorism: Concepts and Controversies* (2008), who classified the types of twentieth century terrorism as: ⁸⁹

- State terrorism: Committed by a government against enemies within and outside the state.
- Dissident terrorism: Terrorism from below, committed by non-state actors against perceived enemies, which is usually the state.
- Religious terrorism: Committed by those guided by absolute faith in the sanction of terrorist violence by God to attain certain goals.
- International terrorism: Targets chosen by terrorists because of their value as “symbols of international interests” either in the states or outside its territory.⁹⁰

⁸⁷ Boaz Ganor, n.2.

⁸⁸ Thomas R. Mockaitis, n.1, p. 114-116.

⁸⁹ Gus Martin, *Essentials of Terrorism: Concepts and Controversies*, California: Sage Publications Inc., 2008, pp.10-11.

⁹⁰*Ibid.*

1.12. Historical view of terrorism in India

In India, terrorism has had different connotations both in pre-and post-independence periods. As a strategy against oppressive colonial rule, terrorist acts had some sort of legitimacy among the Indian populace, even to the extent of the terrorists (termed as “*revolutionary terrorists*” by Indian historians) being honoured as national heroes.⁹¹ After independence, terrorism against the state was viewed by Indians in general as an illegitimate strategy/activity. Thus, the legitimacy and morality of terrorist acts can be claimed to be subjective, parochial and contingent on the compulsions of particular time periods.

I. Pre-independence period

The discriminatory and repressive policies of British colonial rulers combined with a certain loss of faith among some sections of the Indian youth on the nationalist leadership’s non-violent, low pressure approach, led to the emergence of what is called “*revolutionary terrorism*” around 1905.⁹² The study of this phenomenon is relevant to the current research in two major ways:

- a. The counter-terrorism measures of the British colonial government influenced the counter-terrorism laws of the independent Indian state,⁹³ and therefore, the way the British perceived Indians can help one understand how a state perceives threat from non-state actors.
 - b. The manner in which groups espousing terrorism were organised, grew or declined can lead to an understanding of the recurring trends of terrorist activity.
- ***First Phase of Revolutionary Terrorism (1907-1918)***

⁹¹ Peter Hechs, “*Revolutionary Terrorism in British Bengal*” in ElekeBoehmer and Stephen Morton, eds., *Terror and the Postcolonial*, West Sussex, UK: Wiley-Blackwell, 2010, p.153.

⁹² Shortly after the formation of the Indian National Congress, the two major factions were the Moderates (who believed in the value of persuasion and wanted self-government under the British) like Dada Bhai

⁹³ For details, see: Grace Pelly, ed., *State Terrorism: Torture, Extrajudicial killings and Forced Disappearances in India*, New Delhi: Human Rights Law Network (HRLN), 2009, pp.35-46.

The Indian revolutionary terrorists believed that alien rule was destructive to all worthwhile aspects of national life and that Western imperialism could only end by Western methods of violence or the “*the cult of the revolver and the bomb*”.⁹⁴ In May, 1908, a cartoon labelled ‘*Down with the Monster*’, which appeared in the *Hindi Punch magazine* signified the British perspective on Indian revolutionary terrorists. It depicted the Indian Viceroy at the time, Lord Minto, as the Greek mythological hero “Hercules killing the twin-headed Hydra monster of Indian Anarchy and Revolution with a club”. The message in the cartoon was clear: that of the British being the upholders of lawlessness of Indian revolutionaries.⁹⁵ The British demonized the Indian revolutionaries, who were automatically delegitimized, and this in turn, legitimized the repressive counter-terrorism measures of the colonial rulers.⁹⁶ But seen from the Indian context, revolutionary terrorism was absolved of any negative connotation when it was made synonymous with armed resistance against colonial rule.⁹⁷

Revolutionary terrorism in India emerged after the Partition of Bengal in 1905 when the British rulers increasingly adopted repressive measures to quell dissent although this tendency can be traced to V.D. Savarkar and G.V. Savarkar’s *MitraMela* (1898-99).⁹⁸ By 1906, the ‘*swadeshi movement*’, the first mass based movement, had induced national feelings among large sections of the people by emphasizing self-sufficiency and the use of indigenous products while boycotting the British

⁹⁴ B. L. Grover and S. Grover, *A New Look on Modern Indian History*, New Delhi: S. Chand & Company Ltd., 1998, p.434-435. Also see: Partha Chatterjee, “Bombs and Nationalism in Bengal”, Paper presented at a conference on “Empire and Terror” held at Columbia University, New York, in April 2004. Available at <http://www.icis.emory.edu/subalterndocs/Chatterjee.pdf>, Accessed on December 18, 2012.

⁹⁵ Cited by the British historian Stephen Morton in “Terrorism, Literature, and Sedition in Colonial India” in ElekeBoehmer and Stephen Morton, eds., n.160, p.202.

⁹⁶ *Ibid.*

⁹⁷ BidyutChakrabarty, “Radicalism in modern Indian social and political thought: Nationalist creativity in the colonial era” in V. R. Mehta and Thomas Pantham, eds. *Political Ideas in Modern India: Thematic Explorations*, New Delhi: Sage Publications India Pvt. Ltd., 2006, p.10.

⁹⁸ Bipan Chandra, *India’s Struggle for Independence: 1857-1947*, New Delhi: Penguin Books India Pvt.Ltd., 1988, pp.245-246.

manufactured ones.⁹⁹ Although influenced by swadeshi zeal, there were, however, differing reactions among the revolutionary terrorists to this movement. For instance, to raise funds for their terrorist activities, they condoned acts of murder, dacoities, looting of banks, post offices and train derailments.¹⁰⁰ Many of these dacoities were dubbed as ‘swadeshi dacoities’ to ascribe patriotic intentions to criminal acts so as to raise funds and purchase arms.¹⁰¹ On the other hand, a circular of the Bengali revolutionary group Anushilian Samiti started by Pramathanath Mitra rejected any link between the Samiti and the swadeshi movement as they did not want their political goal of independence to get diluted by what Barin Chandra Ghose’s group claimed to be “*bania* (shopkeeper) politics”.¹⁰² Thus, the first batch of revolutionaries, while united in their goal of ousting the British, was not always united in other aspects. For instance, Aurobindo Ghose had advised his brother to merge his Maniktala Group (a garden house in Maniktala which was turned into a centre of revolution and an arsenal stocking base) with that of another Bengali revolutionary Jatindranath Mukherjee (popularly called “Bagha Jatin”), who worked for Nani Gopal Sen Gupta of the Howrah gang. But soon differences cropped up between Barin Ghose and Jatindranath Mukherjee. They refused to merge their groups. When Bengal was partitioned in 1905, the two reconciled to spread the activities of the revolutionary group, the Anushilan Samiti, across the region.¹⁰³ Apart from the Anushilan Samiti, the other major group was Jugantar.¹⁰⁴ While the Anushilan Samiti had a hierarchical and centralised structure and was run

⁹⁹ Pradhan Ram Chandra, *Raj To Swaraj: A Textbook On Colonialism And Nationalism In India*, Delhi: Macmillan India Ltd., 2008, p.98.

¹⁰⁰ B. L. Grover and S. Grover, n.164, p.435.

¹⁰¹ Bidyut Chakrabarty, “Radicalism in modern Indian social and political thought: Nationalist creativity in the colonial era” in by V. R. Mehta and Thomas Pantham , eds., n.167, p.10.

¹⁰² Peter Heehs, “Revolutionary Terrorism in British Bengal” in Eleke Boehmer and Stephen Morton, eds., n. 160, p.161.

¹⁰³ *Ibid.*, pp.157-158.

¹⁰⁴ One of the main leaders of Jugantar was Jatindranath Mukherjee. A former leader of Jugantar was Narendranath Banerjee who later went by the name of M.N. Roy and became an important member of the Communist International. He helped found the Communist Party of India. By the 1920s and 1930s, several former revolutionaries joined the communists and other left-wing parties. See: Peter Heehs, n.160, pp.163-173.

with strict discipline, the latter was a loose alliance of autonomous cells that on occasions worked with each other.¹⁰⁵ It may be noted here that the formative stage of revolutionary terrorism reflected the lack of a broad-based organised resistance, despite a handful of groups participating in the same anti-imperialist and nationalist discourse.¹⁰⁶ One finds a dichotomy in their name itself. A revolution implies a mass uprising. This was not the case with the Indian revolutionary terrorists.¹⁰⁷ One of the ideologues of the revolutionary terrorists was the Cambridge-educated Aurobindo Ghose. He wrote in his *Doctrine of Passive Resistance* (1907) that “a nation is entitled to attain its freedom by violence” and encouraged a large-scale militant uprising spanning one or two decades to achieve this. However, his brother, Barin Chandra Ghose wanted to conduct quick attacks resulting in quick results.¹⁰⁸ Building a mass base would take time and so the terrorist activities got limited to groups, which mostly comprised of educated young men.¹⁰⁹ This made their resistance appear more like “elite-action terrorism”.¹¹⁰ While the objective may have been to induce a mass uprising through propaganda by deeds, they lacked a popular base, and in any case, the Indian populace was less inclined towards secular, militant ideologies than those with a moral-religious base.¹¹¹ After the Partition of Bengal in 1905, the revolutionaries in Bengal, Punjab and Maharashtra focused mainly on propaganda through newspapers and pamphlets like *Yugantar*, *Kal*, *Sandhya*, *BhavaniMandir*, *VartamanRananitiand Muktikonpatheor* “Which way is Freedom” (an article of *Yugantar* that was a bestseller

¹⁰⁵ Peter Heehs, n.172, p.163

¹⁰⁶ Partha Chatterjee, n.164, p.7.

¹⁰⁷ *Ibid.*

¹⁰⁸ Peter Heehs, n.172, p.161.

¹⁰⁹ An Alipore sample of Government of Bengal, Confidential Police File No.24 of 1910, and the Rowlatt sample of Rowlatt et.al. 1918 (Annexure 2) reveal that most of the arrested revolutionary terrorists were in the age group of 21-25 followed by those in the 16-20, 26-30 and 31-35 age groups. Cited in Peter Heehs, n.172, p.166.

¹¹⁰ Sumit Sarkar, *Modern India: 1885-1947*, Delhi: Macmillan India Limited, 1983, p.114.

The fact of terrorism often separates a terrorist from the society as while a terrorist group may or may not get the support of a society, the latter will hardly participate as a whole in an act of terror.

¹¹¹ *Ibid.*

before it was banned by the police).¹¹² Many of these publications were full of symbolism and invoked historical and religious figures to draw a parallel with the contemporary struggle of the Indians against the British.¹¹³ Their messages were so fiery¹¹⁴ that the British officials started to view these publications as “both a symptom and a cause of unrest”.¹¹⁵ The British resorted to the law of sedition (defined as any speech, song or publication that promotes “hatred” and “contempt” for, or “disaffection” against the government), which Aurobindo Ghose sarcastically described as being “so admirably vague” so as to crush any hint of dissent.¹¹⁶

The revolutionary activities included preliminary activities (propaganda, recruitment, training, and the collection of arms and money) as well as actual terrorist attacks.¹¹⁷ From 1907, groups like the Anushilan Samiti and its offshoot the *Dacca* Anushilan Samiti under Pulin Bihari Das tried to become more professional and learn the craft of militant warfare.¹¹⁸ For instance, Barin Ghose and his compatriot Hem Chandra Kanungo went to Paris to learn making of bombs from Russian and French and Jatindranath networked with the Germans.¹¹⁹ They started favouring the tactic of public assassination of British officials as they hoped to demoralise and terrorise British officials into leaving the country and at the same time, arouse the patriotic fervor of Indians and remove their fear of British authoritarian power.¹²⁰

¹¹² B. L. Grover and S. Grover, n.164, p.437. Also see: P. N. Chopra, *A Comprehensive History of Modern India*, New Delhi: Sterling Publishers Private Limited., 2003, p.206.

¹¹³ An example of this could be found in B.G. Tilak’s paper *Kesari*. Tilak invoked the figure of the Maratha ruler Shivaji whom he felt had murdered Afzal Khan for the good of others and had driven away the foreigners. Thus, resort to violence for the good of the people was justified. See: Stephen Morton, n. 165, p.210.

¹¹⁴ For instance, an article of Yugantarexhorted, “Without blood, O Patriots! Will the country awake?” See: BidyutChakrabarty, n.171.

¹¹⁵ Cited in Stephen Morton, n.165, p.204.

¹¹⁶ *Ibid.*

¹¹⁷ Peter Heehs, n.172, p.166.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ B. L. Grover and S. Grover, n.164, p.435. BidyutChakrabarty, n.171.

One of the first cases of assassination took place in 1897. Two brothers, Damodar and Balkrishna Chapekar, who had a physical culture club in Poona, were horrified by the British response to a plague epidemic that year, and assassinated the plague commissioner W.C. Rand who “had made himself an enemy of our religion”.¹²¹ Another Briton, C.E. Ayerst, was also killed; and the Extremist leader B.G. Tilak called these assassinations a patriotic act.¹²² These were individual acts of terrors as the brothers were driven by “*an intense hatred for the British rulers of the country and scorn for the useless chatter of nationalist politicians*”.¹²³ While they were inspired by the writings of Tilak and had some degree of political consciousness, they were mostly motivated by personal resentment and religious passion.¹²⁴ However, after the communal riots of 1907, Aurobindo Ghosh and others spoke about a “religion of patriotism” (which Aurobindo Ghosh called a civic religion and not Hinduism, though revolutionary terrorists did sometimes refer to Hindu terms and symbols) and tried to avoid divisions arising due to religion.¹²⁵

By 1907, there was more of a political motivation behind the assassination attempts of revolutionary terrorists, though none of these resulted in the achievement of any political goal.¹²⁶ But they did manage to capture the popular imagination and evoke feelings of intense patriotism.¹²⁷ To cite a few examples, V.D. Savarkar set up the Abhinav Bharat, a secret organisation in Nasik in 1904, which was modeled after the Giuseppe Mazzini’s Young Italy; and a member of Abhinav Bharat, Madan Lal

¹²¹ Quote of DamodarChapekar as cited by Peter Heesh, n.172, pp.155-156.

¹²² P.N. Chopra, n.183, p.205.

¹²³ Cited in Partha Chatterjee, n.164, p.2.

¹²⁴ Peter Heehs, n.172, p.156.

¹²⁵ After the Comilla riots of 1907, the Dacca AnushilanSamitiavoided having Muslims as their members though their members were instructed to not be either hostile or unjust to Muslims. See: Peter Heehs, n.172, p.162.

¹²⁶ The Indian historian, Sumit Sarkar, has described revolutionary terrorism a “heroic failure”. Cited in Partha Chatterjee, *Black Hole of Empire: History of Global Practice of Power*, New Jersey: Princeton University Press, 2012, p.282.

¹²⁷ The Indian historian, Ramesh Chandra Majumdar, felt that the “revolutionaries galvanized the political consciousness of the country as nothing else could.” Cited in Partha Chatterjee, n.197, p.286.

Dhingra was hailed by Indians for assassinating the India Office bureaucrat, Curzon Wylie, in July 1909.¹²⁸ On April 20, 1908, two young men, Khudiram Bose and Prafulla Chaki, tried to kill the unpopular English judge Kingsford, instead, two English women died. Chaki shot himself to avoid capture and Bose was hanged. Thousands wept at Bose's execution and the young men "went down into the history of the freedom movement as martyrs and as the symbols of patriotic courage".¹²⁹ However, the British press portrayed Bose and Chaki as terrorists and called their act an "outrage", thus delinking the cause behind their attack.¹³⁰ On December 23, 1912, Rashbehari Bose and Sachin Sanyal, who had put together a secret organisation that spanned centres in Punjab, Delhi and Uttar Pradesh, staged a bomb attack on Viceroy Hardinge and thus became local legends.¹³¹

At this point of time, many revolutionary terrorists were influenced by their contact with international revolutionary and anarchist ideologies.¹³² There was also an international dimension to revolutionary terrorism as quite a few young educated Indians went abroad and established centres to provide logistical and other forms of support to their counterparts at home.¹³³ For example, the house of Shyamji Krishnavarma taken by V. D. Savarkar's group in 1907, and became a centre of revolutionary propaganda.¹³⁴ The revolutionary terrorists also set up centres in Paris, Geneva, Berlin and British Columbia. But these were isolated émigré groups. It was

¹²⁸Bipan Chandra, n.168, pp.144-145.

¹²⁹ As claimed by historian P. N. Chopra, n.183, p.206.

¹³⁰ Peter Heehs, n.172, p.159.

¹³¹Bipan Chandra, n.168, p.144. These attacks also inspired others to take up revolutionary terrorism, for example, Lala Har Dayal.

¹³² Peter Heehs, *The Bomb in Bengal: The Rise of Revolutionary Terrorism in India*, New Delhi: Oxford University Press, 2004.

¹³³Bipan Chandra, n.168, pp.147-151.

¹³⁴Savarkar's views, in the form of his book *The Indian War of Independence, 1857* and the pamphlet "A Grave Warning", were widely circulated in India and in London. In the fiftieth year of the 1857 uprising, he turned the sepoy mutiny into a war of independence, and this struck a chord with the people at the time. See: B. L. Grover and S. Grover, n.162, p.436.

only in the US that some 15,000 Indians, mostly Sikhs, created a mass base.¹³⁵ In 1910, the United Indian House in Seattle was set up by T. N. Das and G. D. Kumar.¹³⁶

In 1911, Lala Har Dayal, an Indian exile who briefly taught at the Stanford University, California, started to set forth his idea of using the freedom provided in America to fight the British.¹³⁷ This he sought to do by mobilising Indians abroad and preparing them for a revolt against the colonial rulers. Thus, along with Ram Chandra and Barkatullah, he set up the Ghadar (mutiny) Party in San Francisco.¹³⁸ The “Ghadar movement”, though comprised of Sikhs, was remarkable for its lack of religious chauvinism; it was flagged off from San Francisco in 1913 and called for complete independence.¹³⁹ This was the stage where immigrant Indians, especially in the US and Canada stepped up efforts to build national consciousness and solidarity among the expatriates.¹⁴⁰

The revolutionary terrorist groups back home, however, did not network with each other as frequently. They belonged to different regions and religions with a few becoming the ideological inspiration for current extremist groups.¹⁴¹ Their acts were sporadic and not well-coordinated and thus, the colonial rulers were able to suppress them with a set of repressive legislations.¹⁴² Further, Mahatma Gandhi had come on to the scene and had started to provide an alternative strategy for action that didn't involve violence.¹⁴³

¹³⁵Sumit Sarkar, *Modern India: 1885-1947*, Madras: Macmillan India Limited, 1983, p.145.

¹³⁶Bipan Chandra, n.168, p.147.

¹³⁷*Ibid.*

¹³⁸B.L.Grover and S.Grover, n.164, p.438.

¹³⁹ Harish K. Puri, “Revolutionary Organization: A Study of the Ghadar Movement”, *Social Scientist*, Indian School of Social Sciences, New Delhi, Vol. 9, No. 98-99, September-October, 1980, pp.53-66.

¹⁴⁰Bipan Chandra, n.168, p.148

¹⁴¹Sumit Sarkar, *Beyond nationalist frames: Relocating Postmodernism, Hindutva, History*, New Delhi: Permanent Black, 2002, p.250.

¹⁴²B.L.Grover and S.Grover, n.164, p.439.

¹⁴³*Ibid.*

- *Second Phase of Revolutionary Terrorism (1922-1935)*

The second phase of revolutionary terrorism began after 1922. But this time, revolutionaries realised that “better results could be achieved only through an all-India organization and better coordination”.¹⁴⁴ In October, 1924, revolutionaries from all over India like Sachindranath Sanyal, Yogesh Chandra Chatterjee, Ramprasad Bismil, Bhagat Singh, Sukhdev, Shiva Varma, Bhagwati Charan Vohra and Chandra shekhar Azad met in Cawnpore (Kanpur).¹⁴⁵ Their deliberations resulted in the formation of the “*Hindustan Socialist Republican Association or Army*” (HSRA) with units in Bengal, Bihar, Uttar Pradesh, Delhi, Punjab and Madras.¹⁴⁶ The HSRA’s objectives were to expose the weakness of the Gandhian method of non-violence and demonstrate the need for the strong and bold revolutionary steps to obtain total independence.¹⁴⁷

Prime mover of HSRA was the revolutionary leader from Punjab, Bhagat Singh. His national ideological vision emphasized self-sacrifice for the country. For instance, S. Irfan Habib, an Indian historian, claims in his book that “These revolutionaries were not merely trigger-happy adventurous patriots who sacrificed their lives for the country; more importantly, they espoused a revolutionary vision to transform India into a secular, socialist and egalitarian society.”¹⁴⁸ This time, instead of attacking private individuals, they decided to raise resources by targeting only government treasuries. In this regard, one can cite several prominent incidents, which have been romanticised as

¹⁴⁴*Ibid.*

¹⁴⁵ Raj Kumar, ed., *Essays on Indian Freedom Movement*, New Delhi: Discovery Publishing House, 2003, p.7.

¹⁴⁶*Ibid.*

¹⁴⁷ Raj Kumar, n.216.

¹⁴⁸ S. Irfan Habib, *To Make the Deaf Hear: Ideology and Programme of Bhagat Singh and His Comrades*, Gurgaon: Three Essays Collective, 2007, p.xi. Bhagat Singh’s prison diaries were full of quotations of Marx, Engels, Trostsky, Lenin, Bakunin, Prince Kropotkin, Bertrand Russell, Darwin and other prominent thinkers, indicating a young Bhagat Singh’s ideological influences (p.xvi).

part of the patriotic narrative.¹⁴⁹ In 1925, Ramprasad Bismil and three of his compatriots, who were responsible for the dacoity of the Kakori-bound train in Uttar Pradesh, were arrested and when they were going to be hanged, they shouted “*VandeMataram*”.¹⁵⁰ The whole incident created widespread public sympathy, in which the Indian press played a major role.¹⁵¹ In December 1928, in revenge to kill James A. Scott, Senior Superintendent of Police, Lahore, the three revolutionaries named Bhagat Singh, Raj Guru, and Sukhdev killed J. P. Saunders by mistake, for assault and consequential death of Lala Lajpat Rai. The trio died with the words “Inquilab Zindabad” or “Long Live the Revolution”.¹⁵² As the jittery British policemen tried to get rid of their bodies before the crowd could claim the bodies of their “martyrs”, the crowd attacked the police and performed the last rites of the three and the place was marked as a site of pilgrimage for posterity.¹⁵³

It must be noted that many of the leaders of revolutionary terrorism did not consider themselves to be terrorists. On February 2, 1931, a few weeks before his hanging, Bhagat Singh wrote to his comrades: “*Apparently, I have acted like a terrorist, but I am not a terrorist. Let me announce with all the strength at my command that I am not a terrorist and I never was, except perhaps in the beginning of my revolutionary career. I am convinced that we cannot gain anything through these methods.*”¹⁵⁴ Thus, the revolutionary terrorists viewed themselves as patriots; while most Indian historians

¹⁴⁹ Elaine Martin, “The Global Phenomenon of “Humanizing” Terrorism in Literature and Cinema”, *Comparative Literature and Culture*, Purdue University, Vol. 9, No. 1, 2007. Available at <http://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=1023&context=clcweb>, Accessed on October 3, 2009.

¹⁵⁰ B. L. Grover and S. Grover, n.164, p.440.

¹⁵¹ *Ibid.*

¹⁵² MeenuSinha, Shaheed Bhagat Singh, New Delhi: Ocean Books (P) Ltd., 2006, pp. 22-23.

¹⁵³ *Ibid.*

¹⁵⁴ Cited in Satya Pal Dang, “Terrorism, Cross-border terrorism and Global terrorism” in V.D. Chopra, ed., *The Global Challenges of Terrorism*, New Delhi: Gyan Publishing House, 2002, p.79.

have viewed them as martyrs and most imperial historians saw them as seditionists and enemies of society.¹⁵⁵

To sum up, while the revolutionaries fired the imagination of the people and stirred nationalist sentiments, they could not bring about any tangible success. Most of the revolutionary terrorist groups comprised of educated persons. They published newspapers and journals with propaganda pieces. They also set up international links demonstrating their usefulness. But they could not co-opt the masses and remained an elitist group. This again demonstrated the people's disinclination towards violent rebellions.¹⁵⁶ The lack of mass participation combined with the British colonial government's repressive measures contributed to the weakening of revolutionary terrorism.

II. Post-independence period

In this period, terrorism as a strategy for India's independence lost its ethical dimension in the prevailing mindset. The objective of revolutionary terrorism had been to oust the British rulers from India and that objective had been achieved, though not through terrorism. Now there was no external enemy or one uniting cause that bound the groups that had engaged in terrorism against the British. However, in India, terrorism affected different regions in varied degrees and for different reasons.

The regions that were most affected by terrorism and extreme political violence in the post-independence period are Kashmir, Punjab, the north-eastern states and the agrarian and tribal belts of eastern and southern India.¹⁵⁷ The point to be noted here is that barring Punjab, in the other regions mentioned, terrorism has been linked with insurgency.¹⁵⁸ While terrorism is not always coupled with insurgency, insurgency has

¹⁵⁵ B. L. Grover and S. Grover, n.164, p.441

¹⁵⁶ As Mahatma Gandhi and the Indian National Congress suggested an alternative and less violent form of agitation, the people made their choice, which was not in favour of terrorists despite the latter's heroic appeal to the popular imagination.

¹⁵⁷ ShahedulAnam Khan, n.155, p.161.

¹⁵⁸ B. Raman, Counter-terrorism: The Indian Experience, South Asia Analysis Group, Paper no. 649, April 1, 2003, Available at <http://www.southasiaanalysis.org/>

always been connected with terrorism with the latter being a part of its tactics or a phase of its functioning.¹⁵⁹ The goals of actors employing terrorist tactics in insurgency situations have been targeting to weak or demolish the government authority over the territory of the state by both psychological as well as forcefully means and deter people from cooperating and collaborating with the government and drain the government of its will and resources, thereby forcing it to transfer its powers to the insurgents.¹⁶⁰

In Jammu and Kashmir (J&K), the cause of terrorism has mainly been ethno-religious grievances, which has been made more complex. This region has witnessed two major wars and one low-intensity war between India and Pakistan.¹⁶¹ The “Kashmir conflict” emerged with the India-Pakistan partition that was based on “two nation theory”.¹⁶² Promoters of concept of “Pakistan” always viewed Kashmir as a part of this new state. On October 26, 1949, Hari Singh (Maharaja of J&K), worried about the increasing violence of irregular forces from Pakistan and the tense communal situation in the state, due to which the Maharaja have to sign the instrument so as to get the aid of the India known “instrument of accession”, with the condition to join India and on such condition only the Indian army would take a step to ward off the Pakistani marauders and secure the region. Since then the two countries have fought hard to claim

paper649, Accessed on June 12, 2013.

¹⁵⁹ N. K. Saxena, *Terrorism history and facets: in the world and in India*, New Delhi: Abhinav Publications, 1985, p.128.

¹⁶⁰ *Ibid.*

¹⁶¹ Victoria Schofield, *India, Pakistan and the Unending War*, London: I.B. Tauris & Co. Ltd., 2003, pp.99-126.

¹⁶² For details, see: Arvind Bahl, *From Jinnah to Jihad: Pakistan’s Kashmir Quest and the Limits of Realism*, New Delhi: Atlantic Publishers and Distributors (P) Ltd., 2007. Martha Weiss, “The Jammu and Kashmir Conflict”, Yale University Paper, June 25, 2002, Available at <http://www.yale.edu/macmillan/globalization/kashmir.pdf>, Accessed on January 3, 2010; Sumit Ganguly, “Explaining the Kashmir Insurgency: Political Mobilization and Institutional Decay”, *International Security*, Vol. 21, No. 2, Autumn, 1996, pp.76-107.

this land. Caught in between, some Kashmiris have resorted to insurgency either to secede from India and become an independent entity or join Pakistan.¹⁶³

Terrorism in J&K can be divided into three phases. This division is based on the group of terrorists that dominated a particular phase. The first phase (1988-1990) witnessed the emergence of indigenous insurgent groups demanding “azadi” (independence) from India like the Jammu Kashmir Liberation Front.¹⁶⁴ The second phase (1991-2000) witnessed the rise of groups that either sought secession like the Harkat-ul-Mujahideen or sought integration with Pakistan like the Hizb-ul-Mujahideen.¹⁶⁵ The third phase (1996/1997-till date) saw the emergence of foreign mercenaries with the Indian government accusing Pakistan’s Inter-Services Intelligence (ISI) of strengthening if not directing these terrorists through three terrorist groups having headquarter base in Pakistan itself.^{166, 167} Thus, for the Indian government, the threat perceived from Kashmir-centric terrorist groups moved from those groups that wanted “azadi” and had secular aspirations to those religious extremist groups who viewed Kashmir as a part of a global jihad (holy war).¹⁶⁸

¹⁶³ Peter Lyon, *Roots of Modern Conflict: Conflict between India and Pakistan: An encyclopedia*, California: ABC-CLIO, Inc., 2008, p.97. For details, see: Navnita Chadha Behera, *Demystifying Kashmir*, Washington DC: Brookings Institution Press, 2006; Sumantra Bose, *Kashmir: Roots to Conflict, Paths to Peace*, Cambridge, Massachusetts: Harvard University Press, 2005; Robert G. Wirsing, *India, Pakistan and the Kashmir Dispute: On Regional Conflicts and its Resolution*, New York: Palgrave Macmillan, 1998.

¹⁶⁴ Navnita Chadha Behera, *Demystifying Kashmir*, Washington DC: Brookings Institution Press, 2006, p.47.

¹⁶⁵ *Ibid.*, p.145. Also see: South Asia Terrorism Portal, Institute for Conflict Management, New Delhi, Data on Terrorist Group Profile, “HizbulMujahideen”, Available at http://www.satp.org/satporgtp/countries/india/states/jandk/terrorist_outfits/hizbul_mujahideen.htm, Accessed on November 19, 2011.

¹⁶⁶ See Praveen Swami, *India, Pakistan and the Secret Jihad: The Covert War in Kashmir, 1947-2004*, New Delhi: Routledge, 2009, pp.49-75.

¹⁶⁷ See Praveen Swami, *India, Pakistan and the Secret Jihad: The Covert War in Kashmir, 1947-2004*, New Delhi: Routledge, 2009, pp.49-75.

¹⁶⁸ *Ibid.*

¹⁶⁸ For details, see: SumitGanguly, “Explaining the Kashmir Insurgency: Political Mobilization and Institutional Decay”, *International Security*, Vol. 21, No.2, Autumn, 1996, pp.76-107; Praveen Swami,

This region accounts for more than 32,000 deaths, including 11,000 plus civilian casualties since 1990¹⁶⁹ and more than 84,000 in 2005 as accordingly by NGOs and various activists.¹⁷⁰ Among all the worst cases of internal displacement, Hindu Kashmiri Pandits have been forced, due to repeated targeting by terrorists, to leave their homes and livelihoods. The estimates for the internally displaced persons vary from 170,000 to 700,000.¹⁷¹

The Kashmir conflict is thus considered to be a high intensity conflict, where there are high civilian and combatant casualty rates and where state actors are also involved, necessitating strong responses by the Indian government. But this has also led to criticisms regarding human rights violation and military excesses and the government has been held responsible for its failure to stem terrorism and provide further arsenal to the terrorists to gain popular sympathy.¹⁷²

The North Eastern region also has experienced what can best be called part-insurgent-part-terrorist movements. It provides a mixed picture of insurgent groups that seek to bring about changes while residing within the system and those who want to completely separate themselves from the system.¹⁷³ Most of the conflicts are propelled

“Terrorism in Jammu and Kashmir in theory and practice”, *India Review*, Vol. 2, Issue 3, 2003, pp.55-88.

¹⁶⁹ The figures are taken from the Government of India’s Annual Report 2002-2003, on the ‘Internal Security Scenario: An Overview’, Available at <http://www.mha.nic.in/pdfs/ar0304-Eng.pdf>, Accessed on November 8, 2008. Chapter V of the present dissertation will provide figures collated from the South Asia Terrorism Portal of the Institute for Conflict Management, New Delhi, and the National Consortium for the Study of Terrorism and Responses to Terrorism (START), 2001, Global Terrorism Database (GTD), University of Maryland, USA.

¹⁷⁰ These figures are taken from the CSO, Kashmir Information Network, Available at <http://www.kashmir-information.com/Pakistan/machine.html>, and Accessed on November 8, 2008.

¹⁷¹ Alexander Evans, “A Departure from History: Kashmiri Pandits, 1990–2001”, *Contemporary South Asia*, Singapore: Institute of Southeast Asian Studies, Vol. 11, No. 1, March 1, 2002, pp.19-37.

¹⁷² Sumit Ganguly and Kanti Bajpai, “India and the crisis in Kashmir”, *Asian Survey*, University of California Press, Vol.34, No.5, May, 1994, pp.401-416.

¹⁷³ Shahedul Anam Khan, n.155, pp.164-167.

by the politics of ethnicity and anti-migrant perception.¹⁷⁴ Historically, this region has been different from mainland India ethnically, culturally or politically.¹⁷⁵ Further, the Indian government's neglect of these regions has provided fertile ground for both the Right and Left militant ideologues to woo the disaffected of this region. It is not only their economic backwardness but also the fear of their identities being slowly effaced or diluted that has contributed to a virulent form of ethnic and cultural nationalism. The problem is further aggravated by what the residents of this region perceive to be an arbitrary delineation of international boundaries and their attempt at establishing borders based on linguistic and ethnic identity.¹⁷⁶

Within each of the most affected states of this region--Assam, Nagaland, Manipur and Tripura-- there are many groups that not only fight against the Indian government but also fight each other over leadership and power.¹⁷⁷ They are also driven by financial motivations including monetary gains from criminal activities like illicit weapons and drugs.¹⁷⁸ External state support has helped these groups.¹⁷⁹ Bangladesh, Nepal, Myanmar, China and Pakistan have been routinely implicated by the Indian government in this regard. Migration from Nepal and Bangladesh has been perceived

¹⁷⁴*Ibid.*

¹⁷⁵Karunamay Subuddhi, "Structure, Processes and Conflict Discourses", in Prasenjit Biswas and C. Joshua Thomas, eds., *Peace in India's North-East: Meaning, metaphor and method: Essays of Concern and Commitment*, New Delhi: Regency Publications, 2006, pp. 33-34.

¹⁷⁶ The 'Inner Line Regulation' of the British colonial state was both a manoeuvre to divide and rule its Indian colony, as well as, to cordon off the frontier state. This concept of 'frontier states' still seems to be prevalent. After 1947, these states were sought to be integrated with the Indian state as a distinct geopolitical entity called the "north east", which started from Siliguri in Bengal and comprised almost 98 percent of population that didn't see itself as traditionally "Indian". For more, see: Prasenjit Biswas, "Peace without Peace: Metaphor without a Method in a State of Exception" in Prasenjit Biswas and C. Joshua Thomas, eds., n.249, pp. 265-267.

¹⁷⁷ For details, see: Lt. Gen. J.R. Mukherjee, *An Insider's Experience of Insurgency in India's North-East*, London: Anthem Press, 2005. The book is derived from the Lt.General's stay in the region and has several first hand references.

¹⁷⁸ShahedulAnam Khan, n.155, p.167.

¹⁷⁹ Col. Ved Prakash, n.251, pp.83-114.

by many to have contributed to increased hostility among the indigenous population.¹⁸⁰ These groups have also started networking with Islamist terrorist groups in recent years.¹⁸¹ Though the unrest in the north-eastern states is regarded by the Indian state as a low intensity conflict, the military has been deployed to deal with these groups. Just like in the case of Kashmir, here too, similar criticisms regarding the force-based response of the Indian government and abuses, especially the use of The “Arms Forces (Special Powers) Act, 1958”, which provides protection to the Indian armed forces deployed in the region for alleged excesses, are applicable.¹⁸²

Khalistan militancy: In the 1970s, Sikh religious revivalism flared into terrorist violence that peaked in the early 1980s with the demand for a separate Sikh state of Khalistan.¹⁸³ These Sikh terrorists were aided by expatriates, especially in North America and the UK.¹⁸⁴ Their main tactics included murdering civilians, armed robberies and even the destruction of an aircraft over the Atlantic. Though the perpetrators have not yet been identified, it is widely believed that the June 22, 1985 bombardment of airplane which departed from Canada to India, was the work of the BabbarKhalsa International.¹⁸⁵ The government retaliated to the growing Khalistani terror by launching the infamous ‘Operation Blue Star’ during which the Indian military stormed the “Golden Temple, Amritsar”, the holiest site of the Sikhs, on June 3, 1984,

¹⁸⁰ShahedulAnam Khan, n.155, p.162.

¹⁸¹*Ibid.*

¹⁸² Col. Ved Prakash, n.251, pp. 31-81.

¹⁸³ For details, see: Satya Pal Dang, V.D. Chopra and Ravi M. Bakaya, *Terrorism in Punjab*, New Delhi: Gyan Publishing House, 2000; Jugdeep S. Cheema, *The Sikh Separatist Insurgency in India: Political Leadership and Ethnonationalist Movements*, New Delhi: Sage Publications Pvt. Ltd., 2010; Cynthia Keppley Mahmood, *Fighting for Faith and Nation: Dialogues with Sikh Militants*, Pennsylvania: University of Pennsylvania Press, 1996; Virginia Van Dyke, “The Khalistan Movement in Punjab, India, and the Post-Militancy Era: Structural Change and New Political Compulsions”, *Asian Survey*, Vol. 49, No. 6, November/December 2009, pp. 975-997.

¹⁸⁴ South Asia Terrorism Portal of the Institute for Conflict Management, New Delhi, Data on Terrorist Group Profile, “BabbarKhalsa International”, Available at http://www.satp.org/satporgrp/countries/india/states/punjab/terrorist_outfits/BKI.htm, Accessed on November 7, 2011.

¹⁸⁵*Ibid.*

to flush out militants who had camped there.¹⁸⁶ During the 1980s, tens of thousands in Punjab were killed, injured and traumatised.¹⁸⁷ The Punjab government aided by the Central government embarked on a systematic campaign against the violent Sikh separatists. They were successful in eliminating or weakening these groups though some of them have set up bases abroad, for example, the “Babbar Khalsa International”, the “Khalistan Zindabad Force”, the “International Sikh Youth Federation”, the “Bhindrawala Tiger Force of Khalistan” and the “All-India Sikh Students Federation”, etc.¹⁸⁸

Left Wing Extremism are more a case of insurgency than terrorism, though there have been cases of terrorist attacks by left wing extremist groups. Since 1967, the violent Naxalite movement¹⁸⁹ has spread too many parts of the country. It began in a village in Naxalbari in West Bengal as a peasant insurrection to rescue poor farmers in the state from the oppression of rich upper caste land owners.¹⁹⁰ Inspired by the Maoist creed of peasant rebellion to usher in an ideal society based on socialism, this movement attracted not only poor peasants but also educated young Indians, especially in West Bengal, during the 1970s.¹⁹¹ The Naxalites were able to penetrate villages and establish

¹⁸⁶ J.C. Aggarwal and S.P. Aggarwal, *Modern History of Punjab*, New Delhi: Concept Publishing Company, 1992, p.108. For details on Operation Blue Star, see: Lt. Gen. K.S. Brar, *Operation Blue Star: The True Story*, Delhi: South Asia Books, 1993. Lt. Gen. Brar had led the Operation in 1984.

¹⁸⁷ Khalistani terrorism is said to have claimed 30000 lives. See: Surinder S. Jodhka, “Looking back at the Khalistan Movement: Some recent researches on its rise and decline”, *Economic and Political Weekly*, Vol. 36, No.16, April 21-27, 2001, p. 1311.

¹⁸⁸ Detailed update on each of these groups can be electronically accessed from South Asia Terrorism Portal of the Institute for Conflict Management, New Delhi at http://www.satp.org/satporgtp/countries/india/states/punjab/terrorist_outfits/index.html. Accessed on January 18, 2012.

¹⁸⁹ For details, see: J.C. Johari, *Naxalite Politics in India*, New Delhi: Research Publications, 1972. Biplab Das gupta, *The Naxalite Movement*, Bombay: Allied Publishers, 1974. Sumanta Banerjee, *In the wake of Naxalbari: A history of the Naxalite Movement in India*, Calcutta: Subarnarekha, 1980. Prakash Singh, *The Naxalite Movement in India*, New Delhi: Rupa & Co., 1996.

¹⁹⁰ Sumanta Banerjee, *In the wake of Naxalbari: A history of the Naxalite Movement in India*, Calcutta: Subarnarekha, 1980, p.102.

¹⁹¹ *Ibid.*

well-organised networks in the villages, particularly in West Bengal and Andhra Pradesh. Local support is the main lifeline of the Naxalites, though some analysts claim that this support base is shrinking.¹⁹²

By the 1980s, the means of the movement became more important than its goals with violence and depredations becoming its defining features. In 2004, the former Indian Prime Minister Manmohan Singh first called the Maoists, who are an offshoot of the Naxalites but are different from them in several ways.^{193, 194} Many police officials posted in Maoist strongholds have either “*run away*” or resigned from their jobs.¹⁹⁵ The “Red Corridor” marks the areas under varying degrees of Maoist influence.¹⁹⁶ These resource rich areas comprise of the poorest people in the country.¹⁹⁷ These areas have witnessed acts of guerrilla warfare combined with acts of terrorism mostly employed against government officials, public transport (especially, holding up trains) and

¹⁹² Sanjay K. Jha, “Political Bases and Dimensions of the Naxalite Movement” in P.V. Ramana, ed., *The Naxal Challenge: Causes, Linkages and Policy Options*, New Delhi: Dorling Kindersley (India), Pvt. Ltd., 2008, p.74.

¹⁹³ The terms “Naxalites” and “Maoists” are interchangeably used, though the former is derived from the place of origin of certain Left Wing Extremist groups and the latter is derived from their ideology. Though there are differences between them: (a) Naxalites were more nihilistic, Maoists have a more well-defined plan for the future; (b) Naxalites had a more localised agenda, while Maoists have an international goal; (c) Naxalites relied on small arms while Maoists have use of high grade weapons, bombs and landmines. Maoists are thus called “neo-Naxalites”. For details, see: Bidyut Chakrabarty and Rajat Kumar Kujur, *Maoism in India: Reincarnation of ultra-left wing extremism in the twenty-first century*, London and New York: Routledge, 2010.

¹⁹⁴ Mridula Chunduri and Rohit Singh, “In the red corridor, govt. officials live under fear of Maoists”, *The India Today*, April 23, 2012, Available at <http://indiatoday.intoday.in/story/govt-officials-live-under-fear-of-maoists/1/185739.html>, Accessed on the date of publication.

¹⁹⁵ *Ibid.*

¹⁹⁶ Sudha Rama chandran, “Maoists rule India’s Red Corridor”, *Asia Times*, April 24, 2009, Available at http://www.worldsecuritynetwork.com/showArticle3.cfm?article_id=17452&topicID=69, Accessed on April 27, 2009.

¹⁹⁷ *Ibid.*

buildings. There have also been alleged reports of certain Maoist groups collaborating with the banned Islamist group, the Student's Islamic Movement of India (SIMI).¹⁹⁸

Maoist violence in India is a case of “extremist violence” rather than terrorism per se necessitating a different approach by the government than what has been applied in Kashmir or the north-eastern region.

Criminal-Terror/Mafioso: India has also been fighting against strong home-grown criminal syndicates that bankroll terrorist outfits, have international links and are involved in many trans-national crimes like arms trafficking and narco-terrorism. One such group is headed by the notorious D-Gang, the initial “D” standing for the kingpin Dawood Ibrahim.¹⁹⁹ On March 12, 1993, followers of this group carried out a series of serial bomb blasts in Mumbai, especially targeting its Stock Exchange. Around 257 individuals were killed and around more than fourteen hundred were injured.²⁰⁰ The planners of this attack have since found safe havens in foreign territories.²⁰¹ It has been reported that Dawood Ibrahim is living in Pakistan.²⁰² According to B. Raman, an Indian counter-terrorism expert, the Mumbai blasts and the blow-ups in Tamil Nadu in February 1998, were instances of a transient terrorism fuelled by the need for revenge against the majority Hindu community or the government or both. After the attack, there was no wave of terrorism and as such, it was a one-off attack by the group concerned.²⁰³

¹⁹⁸ “ISI behind Maoist-SIMI nexus”, Deccan Herald, October 18, 2012, Available at <http://www.deccanherald.com/content/286380/F>, Accessed on the date of publication.

¹⁹⁹ B. Raman, “Dawood Ibrahim: The global terrorist”, Paper no.818, South Asia Analysis Group, October 19, 2003, Available at <http://www.southasiaanalysis.org/papers9/paper818.html>, Accessed on September 14, 2007.

²⁰⁰ Thomas Blom Hansen, *Wages of Violence: Naming and Identity in Postcolonial Bombay*, New Jersey: Princeton University Press, 2001, p.125.

²⁰¹ B. Raman, n.274.

²⁰² *Ibid.*

²⁰³ B. Raman, “Counter-terrorism: The Indian Experience”, Paper No. 649, South Asia Analysis Group, April 1, 2003, Available at <http://www.southasiaanalysis.org/%5Cpapers7%5Cpaper649.html>, Accessed on September 14, 2007.

India has also been a target of external terrorist groups such as “Liberation Tigers of Tamil Eelam (LTTE)”. But by India’s interfering in the domestic politics of Sri Lanka by sending “Indian Peace Keeping Force (IPKF)” to the state.²⁰⁴

The rise of Islamist terrorism in the late 1980s prompted a re-evaluation of India’s counter-terrorism strategy. Two incidents stimulated this rethink. The first was the December 24, 1999, hijacking of Indian Airlines Flight 814 from Kathmandu to New Delhi, where Maulana Masood Azar, the founder of Jaish-e-Mohammad (JeM), Mushtaq Ahmed Zargar, former member of JKLF, and Ahmed Omar Saeed Sheikh, who had links with various terrorist organisations, were exchanged for the lives of the 178 hostages (one hostage was killed).²⁰⁵ The terrorists became bolder when the government buckled under pressure and gave in to their demands.²⁰⁶ This was evident when some JeM members.

“Saffron” terror: A string of bomb blasts since 2006 brought to the fore a new threat, which the Indian Home Minister P. Chidambaram labelled as “saffron terror” in his warning to the state police chiefs on August 25, 2010.²⁰⁷ This refers to militant groups espousing Hindutva or extremist Hindu nationalism characterised by an “aggressive, communal and authoritarian streak”, which have been gaining in strength

²⁰⁴ There are many articles on LTTE, IPKF and India. Here, one is cited: Dr. GeetaMadhavan, “LTTE and the Assassination of Rajiv Gandhi ”, Paper no. 2943, South Asia Analysis Group, November 27, 2003, Available at <http://www.southasiaanalysis.org/%5Cpapers30%5Cpaper2943.html>, Accessed on September 19, 2007.

²⁰⁵ B. Ashok, “Lessons from Entebbe to Kandahar: Leadership and Strategic Capability”, *Faultlines*, Vol.20, January 2011, South Asia Terrorism Portal, Available at <http://www.satp.org/satporgtp/publication/faultlines/volume20/Article3.htm>, Accessed on March 3, 2011.

²⁰⁶ *Ibid.*

²⁰⁷ “Beware of Saffron Terror too, warns home minister”, *Economic Times*, August 26, 2010, Available at http://articles.economictimes.indiatimes.com/2010-08-26/news/27614770_1_saffron-terror-terror-incidents-bomb-blasts, Accessed on the date of publication.

since the last two decades.²⁰⁸ Groups like the Abhinav Bharat and the Bajrang Dal with an agenda of targeting the Muslims have sought to “acquire terrorist capabilities” and “increase their lethality” since 2002 by shoring up their supplies of bombs and ammunitions.²⁰⁹ They have been allegedly responsible for bomb blasts at Malegoan in Nashik, Maharashtra, and Modasa in Gujarat on September 8, 2006, bomb blast at Mecca Masjid, Hyderabad, on May 18, 2007; the bombing of a Delhi-Lahore bound train, the Samjhauta Express, on February 18, 2007; and, the Ajmer Sharif Dargah blasts in Ajmer, Rajasthan, on October 11, 2007.²¹⁰ These groups were spawned by disruptive communal politics and have been, to a great extent, influenced by the ideology constructed in the mid-1920s of “an aggressive Hindutva postulated upon an enemy image of a similarly conceived Islam”, where contest over territory acts as mainstream.²¹¹ Recently, despite arrests of certain key members of these groups, their threat remains real as they have the ambition and the capability to grow from discrete, localised formations into a pan-India movement.²¹²

The cost of lives which India have faced is more than 50,000 during last 10 years.²¹³ From Sept 1, 1999 to Aug 31, 200 almost 36 percent of the fatalities occurred in Jammu and Kashmir, over 33 percent in the north-eastern region, and a little less than

²⁰⁸ManjariKatju, “Mobilization for Hindutva” in Ram Puniyani, ed., Religion. Power and Violence: Expression of Politics in Contemporary Times, New Delhi: Sage Publications India Pvt. Ltd., 2005, p.176.

²⁰⁹ Praveen Swami, “The rise of Hindutva terrorism”, Outlook, May 11, 2010, Available at <http://www.outlookindia.com/article.aspx?265400>, Accessed on May 15, 2010.

²¹⁰*Ibid.*

²¹¹Sumit Sarkar, “Indian nationalism and the politics of Hindutva” in David Ludden, ed., Making India Hindu: Religion, Community and the Politics of Democracy in India, Second Edition, New Delhi: Oxford University Press, 2005, pp.273-274.

²¹² M.V. Srivignesh, “Hindutva Communalism”, National Law University, Cuttack, Orissa, Social Science Research Network, Working Paper Series, February 1, 2010, Available at: <http://ssrn.com/abstract=1807231>, Accessed on April 19, 2011.

²¹³ Ajay Sahni, “Major Terrorist Groups Operating in India”, War Within Borders, edited version as published in the Pinkerton Global Intelligence Services, November 16, 2001, Available at <http://www.satp.org/satporgtp/ajaisahni/Pink161101.htm>, Accessed on January 3, 2008.

21 percent (21%) resulted from Left Wing Extremism.²¹⁴ Terrorism espoused by secessionist groups has mostly taken place in border areas, where the population have been neglected, and where the perception of the people involved a threat to their identity and livelihoods.

²¹⁴*Ibid.*

CHAPTER 2

INTERNATIONAL INITIATIVES FOR COMBATING TERRORISM

Amit Ray - "Killing innocent people in the name of God is the highest insult to God."

2.1. Introduction

The menace of terrorism has on the normal life of the human society, various legislations, administrative and legal measures are recommended by the international organizations, which may be studied under the head of international Action against the problem of Terrorism. While some of these measures have been recommended in a general way, certain others have been recommended as and when a new type of criminality has been noticed.

International action on terrorism dates back to the days of League of Nations to regulate worldwide relations of the Sovereign States. When the “*United Nations*” came into existence after the “*World War II*” the United Nations (UN) continued the practice of adopting necessary measures as and when a problem of terrorism arose and when it became necessary to establish peace and security in the world. Thus, various measures have been devised for the purpose of dealing with the problem of terrorism. Since then the UN which is actively engaged in the formulation of necessary rules and regulations in this behalf are the “*General Assembly of United Nations and its Security Council*”. All the actions by UN are in the form of Declarations, Conventions, Protocols or Resolutions.

This Chapter has the object of highlighting the action internationally in combating terrorism. Measures adopted from the time when terrorism became an organized activity and also a serious threat to peace and security at the international level has been discussed.

Apart from efforts made by the international organizations at the global level to combat the menace of terrorism, there are efforts made by the Regional Organizations as well as almost every nation which in view of the threat posed to the regions by the problem of terrorism have adopted certain measures to strengthen the action of the international society to the problem of terrorism.

Thus in this chapter an analysis of international action on Terrorism is to discuss first the work done by the international organizations at the global level and then the work done by the organizations/nations at the regional level. The action is classified into the three heads of-

- A. Action by the League of Nations
- B. Action by the United Nations, and
- C. Action by the Regional Organizations.

2.2. Action by the League of Nations

Post “*World War II*”, there was series of acts of terrorism against the functionaries of States. There was the assassination of the Prime Minister of France and the assassination of King Alexander I of Yugoslavia. These events had impacted the

security of life in international relations. The French Government sent a memorandum to the Council of the League of Nations suggesting therein certain fundamental principles which could serve as a basis for the conclusion of a Convention on political and terrorist purpose targeting towards the curbing if such activities to happen. Thus, the first and the most significant step to combat terrorism through the instrumentality of law was after the WWI when League of Nations was establish. This Convention was known as the Convention on International Criminal Court.²¹⁵ The advisory committee of jurists provided that the states should have a governing authority which will act as adjudicatory body and the committee termed it as “Permanent Court of International Justice” to take cognizance of crime committed against international good order and Universal law of nations.²¹⁶ In 1937, a Convention for the establishment of an “International Criminal Court” was drafted by the League of Nations.

Although a Convention was adopted on “*International Criminal Court*” but such a Court never saw the light of the day. The Convention was signed by various countries but never came into force as there was no ratification given to this convention. The League went out of existence with the outbreak of World War, therefore no further progress could be made in the making of rules by way of the Conventions on Crime of Terrorism or the International Criminal Court. The concept of International Criminal Court continued to be under discussion for a long time and became a reality when the United Nations pursued the matter.

2.3. Action by the United Nations

At the global level the rapid increase in criminal acts led various world leaders to think that a climate comprising of fear from which no one was immune is emerging.

Owing to the serious impact of the phenomenon of international terrorism the “United Nations” has taken series of initiatives to combat it. Some of the measures have been taken by the General Assembly are as detailed below:-

2.3.1. Action by the General Assembly

²¹⁵ Dr. S.K. Kapoor, International Law and Human Rights, 18thedn, 2011, Central Law Agency, at p. 378.

²¹⁶*Ibid.*

The measures adopted by the UN General Assembly are to tackle the problem of international terrorism are as follows:-

2.3.1.1. Code of Offences against the Peace and Security of Mankind

In November, 1947 the UN General Assembly had entrusted to the Law Commission the task of preparing a Code specifically dealing with the acts which disturbs against international harmony and human life. To achieve this objective, the Law Commission drafted a Code which comprises of various Offences, which apart from other things addressed the problem of terrorism too. It dealt with the problem of terrorism thus:

The undertaking or encouragement by the authorities of a state of terrorist activity in another state, or the toleration by the authorities of a state of organized activities calculated to carry out terrorist acts in another state is declared to be an offence against the peace and security of mankind and therefore an international crime. Declaration of Principles of Law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations.²¹⁷

2.3.1.2. Principles governing friendly relations²¹⁸

The UN General Assembly in 70`s approved a Declaration on Principles of International Law concerning friendly relations and cooperation among States. This Declaration contained a few important principles concerning the friendly relations of the sovereign that they will abstain from the threat or usage of force at odds with the territorial trustworthiness or political self-sufficiency of any state or in some alternate manner clashing with the inspirations driving the UN. The important ones are following:

“Every state has the duty to refrain from organizing, instigating or participating in terrorist acts in another state or acquiescing in the organizing of activities within its

²¹⁷T. Padma, Acharya Nagaijuna University, A Critical study of the Anti-Terrorism Laws of India, 2008, at p. 63.

²¹⁸ Principles of International Law concerning friendly relations Among Sovereign States, 1970.

*territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force”.*²¹⁹

*“No state may use or encourage use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination or the exercise of its sovereign rights and to secure from its advantages of any kind. Also no state shall organize, assist, foment, finance, incite or tolerate the”.*²²⁰

2.3.1.3. Convention for the Suppression of Unlawful Seizure of Aircraft 1970²²¹ (The Hague Convention)

This Convention defines the act of unlawful seizure of aircraft, and the Contracting States have undertaken to make such an offence punishable by severe penalties. Under the provisions of this Convention a State is obliged, whether or not it is the State of Registration, to take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him. If there is no extradition treaty between the States concerned and the offender is in the territory of a Contracting State and that State refuses to extradite the offender then it must submit the case to its competent authorities for the purpose of prosecution under its criminal law.

This Convention requires the Contracting State in which the aircraft or its passengers or crews are present to facilitate the continuation of the journey of the passengers and crew as soon as possible and to return the aircraft and its cargo to the persons lawfully entitled to possession without delay.²²²

²¹⁹Declaration On Principles Of International Law Friendly Relations And Co-Operation Among States In Accordance With The Charter Of The United Nations, available at :www.un.org › ruleoflaw › files (last visited on 03-04-2020, at 9:47 am).

²²⁰*Ibid.*

²²¹Convention for the suppression of unlawful seizure of Aircraft 1970, available at : www.mcgill.ca › iasl › files › iasl › hague1970 (last visited on 22-04-2020, at 10:40am).

²²²*Ibid.*

2.3.1.4. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971²²³ (The Montreal Convention)

The acts which are not governed under “Tokyo and the Hague Conventions”, are specifically overcome under this convention. "The Montreal Convention" characterizes an extensive range of prohibited demonstrations in opposition to the wellbeing of common flight and has embraced in making these unlawful acts deserving of serious punishments. The Convention contains definite arrangements on locale, guardianship, arraignment and removal of the supposed wrongdoer like in the "Hague Convention". As compared to "Tokyo and The Hague Convention", the "Montreal Convention" doesn't make a difference to airplane utilized in military, traditions or police administrations. It endeavors to build up a type of widespread locale over the guilty party, as given under "Article 5 (1)".

“Article 1, sub-paragraphs 1 (a), (b) (c) (d) and (e). The Convention applies, irrespective of whether the aircraft is engaged in international or domestic flight, as provided in Article 4 (2) of the Convention, namely, if-

- a. the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of the aircraft; or*
- b. the offence is committed in the territory of a State other than the State of registration of the aircraft”;*

The cases of Air navigation facilities are observed in Article 1, subparagraph 21 (d) the Convention applies only if the facilities destroyed, damaged or interfered with are used in international air navigation.

2.3.1.5. Work on Terrorism by Ad hoc Committee

On 18th December, 1972 the General Assembly established an Ad hoc Committee consisting of 345 members, to suggest what measures be adopted by which

²²³Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971, available at : www.treaties.un.org › UNTS › volume-974-I-14118-English (last visited on 22-04-2020, at 10:33 am).

they can eliminate the problem regarding terrorism. The Committee met from 16th July to 11th August 1973 at New York and divided its work among three sub-committees. The first sub-committee dealt with the question of the definition of international terrorism; the second took up the question of underlying causes of international terrorism, and the third dealt with the question of measures to be taken to combat terrorism.. The Ad Hoc Committee established a working group to deal with the question of the causes of international terrorism and the measures to be taken against it. The discussion focused towards a working paper submitted jointly by Algeria, Barbados, India, Iran and Nigeria. Among the political causes of terrorism noted were: Colonialism, racial discrimination, and disturbance in the interior affairs, massive terror as a resulting in exodus of populations and forceful dominations.

Such racial and economic conditions the causes were the unjust universal financial request, remote misuse of national assets or systematic distribution of environment or infrastructure, social injustice, large scale violations of Human Rights, poverty, hunger and frustration.²²⁴

On 6th April, the committee adopted a set of recommendations for practically speedy riddance of terrorism for peace measures. The Committee recommended that the General Assembly should condemn every single such act which imperil or take human lives or risk essential opportunities, take note of the underlying causes and urge on nations to take contributory initiatives for diminishing such evil causes.²²⁵

2.3.1.6. Convention on the Prevention and Punishment of Crimes against internationally protected persons including diplomatic agents, 1973

It is applicable on violations of quickest contribution or connivance in murder, capturing, or assault, regardless of whether real, endeavored and undermined, on the

²²⁴T. Padma, Acharya Nagaijuna University, a critical study of the Anti-terrorism laws of India, 2008, at p. 66.

²²⁵Report Of The Ad Hoc Committee On International Terrorism General Assembly Official Records: Twenty-eighth Session Supplement No. 28 (A/9028), United Nations New York, 1973, Available at : https://www.google.com/url?Sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=2ahukewi1joaqssvoahuzibcahbhbby4qfjabegqibbab&url=http%3A%2F%2Flegal.un.org%2Favl%2Fpdf%2Fha%2Fdot%2FA9028.pdf&usq=aovvaw0f_a0agqtqfj4atd8xrwmx (last visited on 03-04-2020, at 10:04 am)

individual, officials, individual settlement and methods for transporting discretionary operators and several “universally ensured people”. have a commitment to set up their purview over the offenses portrayed, make the offenses deserving of fitting punishments, arrest asserted guilty parties, indict or remove the supposed wrongdoers, collaborate in preventive measures, and trade data and proof required in procedures. The acts alluded here are esteemed to be the acts which amounts to extradition of the offenders in-between the member states.²²⁶

Under this convention crime constitutes of the intentional commission of murder, kidnapping or other attack upon the person or liberty of an internationally protected person; a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty; a threat to commit any such attack; an attempt to commit any such attack; and an act constituting participation as an accomplice in any such attack. Since these crimes require intent they are more difficult to prove. It further says that the States shall cooperate amongst themselves and shall communicate information to the concerned state. This convention incorporates the “extradite or prosecute” principle. Article 7 says that the State party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Hence this convention creates a jurisdictional obligation to redress certain terrorist activities against protected persons or in the alternative to extradite the offenders. The convention further treats all crimes for the purpose of extradition between State parties, as if they had been committed not only in the place in which they occurred but also in the territories of the State Parties. This recognises the universal jurisdiction over the offences at issue. It grants domestic jurisdiction over the offences committed

²²⁶ Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973, available at :www.legal.un.org › texts › instruments › english › conventions › 9_4_1973 (last visited on 01-04-2020 at 1:33 pm)

extraterritorially and without regard to the nationalities of either the offenders or their victims.

2.3.1.7. International Convention against the Taking of Hostages, 1979

By this initiative, the immediate inclusion or complicity in the seizure or confinement of and risk to execute, harm or torment or keep on confining a prisoner, regardless of whether real or endeavored, so as to propel a State, a international, or a between legislative association or an individual or a gathering of people, to do or avoid doing any go about as an express or understood condition for the arrival of the prisoner was proclaimed to be an offense. Under the Convention all the State party is required to make this offense deserving of proper punishments. Where prisoners are held in domain of a State Party and it is committed to take all estimates it considers fitting to facilitate the circumstance of the prisoners and secure their discharge. After the arrival of the prisoners States Parties are committed to encourage the takeoff of the prisoners. States Parties need to participate in preventive measures, and trade data and proof required in similar procedures.

It recognises the urgent necessity to develop international co-operation between states in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism. Under this convention the offender is a person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the 'hostage') in order to compel a third party, namely a State, an international intergovernmental organisation, a natural or juridical person, or a group of persons, to do or to abstain from doing any act as an explicit or implicit condition for the release of the hostage; who attempts to commit an act of hostage-taking; or participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking. In this convention the act of crime does not require intention to be proved, therefore making it easier to prosecute. The convention seeks the nations' co-operation for the prevention of the offence and for taking the required judicial action. Article 8 again gives voice to the "extradite or prosecute" principle. Further, pursuant to the convention, no extradition of an alleged criminal should be granted if the State requesting extradition has reason to believe that the request was made "for the purpose

of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion.” Article 10 makes it clear that hostage-taking shall be deemed as an extraditable offence in any extradition treaty existing between the two states. It further reiterates that if a state receives a request for extradition from another state with which it has no extradition treaty, the requested state might at its option consider this convention as the legal basis for extradition in respect of the offence. A similar provision is also mentioned in the CPPCIPP. This convention also establishes hostage-taking as a crime warranting universal jurisdiction. In addition this convention does not apply when the offence is committed within a State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State. Instead the State has complete sovereignty to prosecute the alleged offender, as it deems fit. By adding this provision, the UN made it clear that it doesn’t intend to interfere in the domestic affairs of member nations, and this is why this convention was adopted by consensus.

2.3.1.8. Convention on the Physical Protection of Nuclear Material, 1980 (Vienna Convention, 1980)

The Physical Protection Convention of Nuclear Materials, 1980 has a two-fold intent: it builds up extend of corporal assurance needed in atomic substances utilized in tranquil things while in universal atomic vehicle as it likewise accommodates measures in odds to illegitimate acts as for the substances in worldwide atomic vehicle just as in household use, stockpiling and transport.²²⁷

Despite the fact that the degrees of physical assurance recommended are applied uniquely to atomic substances utilized for tranquil terms in worldwide atomic vehicle, different arrangements of the Convention apply to atomic substances utilized for quiet targets. Specifically, the purposeful commission of acts without legitimate position managing atomic substances causing or prone to make passing or genuine injury or harm any individual or property, burglary or theft of atomic substances, misappropriation or false acquiring of atomic material, requests for atomic substances

²²⁷ The Convention on the Physical Protection of Nuclear Material, 1980, available at: [www.iaea.org › sites › default › files](http://www.iaea.org/sites/default/files) (last visited on 04-04-2020, at 1:40 pm).

by any type of terrorizing, dangers to utilize atomic substances to make demise or genuine harm an individual or property or dangers to take atomic material to urge an individual, universal association or State to do or cease from doing any demonstration.²²⁸

2.3.1.9. Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation, 1988

It is applicable in offenses of undeviating association or connivance as purposeful and illegitimate undermined, endeavored or real risk of protected route of a boat by the commission of any of the going with the following demonstrations, such as-

1. seizure of or exercise of authority over a boat by any type of terrorizing,
2. brutality against an individual or on board a boat,
3. demolition of a boat or the causing of harm to a boat or to its freight,
4. position on a boat of a gadget or substance which is probably going to pulverize or make harm that boat or its payload,
5. annihilation of, genuine harm of, or obstruction with sea navigational offices, correspondence of bogus data and
6. injury to or murder of any individual regarding any of the first demonstrations.²²⁹

The offenses alluded are esteemed to be “*extraditable offenses*” and the nations have commitments which is build up their ward over the offenses depicted, making them offenses deserving of fitting punishments, arrest asserted wrongdoers, arraign or

²²⁸*Ibid.*

²²⁹Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation, 1988, available at: www.treaties.un.org › doc › Terrorism › Conv8-english (last visited on 04-04-2020, at 1:48 pm).

remove claimed guilty parties, collaborate in preventive measures, and trade data and proof required in related criminal procedures.²³⁰

2.3.1.10. Declaration on Measures to Eliminate International Terrorism, 1994

On 9th December, 1994, the General Assembly embraced a Declaration on Measures to terrorism at international platform. By this step, the Member States of the “*United Nations*” collectively re-certified their unequivocal judgment all things considered, strategies and practices of fear mongering as criminal acts baseless any place and by whosoever carried out counting those which hazard the genial relations among the States and social classes, and sabotage the provincial decency and security of the States. This announcement encouraged upon the Stats to survey direly the extent of the leading global legitimate arrangements on the avoidance, constraint and disposal of psychological warfare in the entirety of its structures and signs with the point of guaranteeing that there is a far reaching lawful system covering all parts of the issue.²³¹

2.3.1.11. Declaration condemning all Acts of Terrorism, 1995

On 24th October, 1995 the General Assembly of the United Nations adopted a Declaration, condemning all acts of terrorism and sought the cooperation of the member states in dealing with the problem of terrorism.²³²

2.3.1.12. Resolution to Prevent the Financing of Terrorism, 1996

By its objectives embraced on 17th December, 1996 “the General Assembly called upon all States to figure out how to prevent and adjust through fitting private gauges the financing of terrorists and such affiliations/associations, whether or not such financing is prompt or winding, through affiliations which have or case to have

²³⁰ Article 11, Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation, 1988.

²³¹General Assembly Resolution No. 49/60 dated 9th December, 1994.

²³²General Assembly Resolution No. 50/60 dated 24th October, 1995.

charitable, social or social destinations or which are similarly busy with unlawful activities, for example, illegal arms dealing, tranquilize managing and racketeering including the misuse of people to battle the terrorist activities”.²³³ The General Assembly also requested the states for the implementation of the same for terrorism prevention activities.²³⁴

2.3.1.13. International Convention for the Suppression of Terrorist Bombings, 1997²³⁵

“This Convention applies to the offense of the purposeful and unlawful conveyance, situation, release or disintegration of a dangerous or other deadly gadget, regardless of whether endeavored or real, in, into or against a position of open use, a State or government office, an open transportation framework or a foundation office, with the expectation to cause passing or genuine substantial injury, or broad pulverization liable to or really bringing about major monetary misfortune. An individual additionally submits an offense on the off chance that it is sorted out by others to submit them or in some other manner adds to their commission”. It is not applicable where such activities are of incompatible character as defined under this convention.²³⁶

It is based keeping to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organisations, whether such financing is direct or indirect through such organisations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way

²³³General Assembly Resolution No. 51/161 dated 17th October, 1996.

²³⁴General Assembly Resolution No. 52/165 dated 15th December, 1997.

²³⁵Available at: [www.unodc.org > documents > treaties > Special > 1997 International Convention for the Suppression of Terrorist Bombings](http://www.unodc.org/documents/treaties/Special/1997%20International%20Convention%20for%20the%20Suppression%20of%20Terrorist%20Bombings), (last visited on 04-04-2020, at 2:03 pm).

²³⁶ Ibid.

the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds.

An offence under this convention is committed when a person directly or indirectly, unlawfully and wilfully, providing or collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: an offence listed in other treaties or any other act intended to cause death or a serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act⁴⁰ While this Convention does not actually define an act of terrorism, it does come significantly closer. For the first time, the Convention specifically targets the financial sponsors of terrorist activity, rather than simply the actual perpetrators of the specific acts.

Further it is not necessary that an act of terrorism has taken place. The intention or knowledge of the use of funds collected or provided is sufficient. Article 10 of the ICSFT contains the “prosecute or extradite” principle. Article 11 says that in case a State receives a request for extradition from a State party with which it has no extradition treaty, it may consider this convention as the legal basis for extradition. Similar to the ICSTB this convention does not regard the offences as political offences. Further the convention recognises that state parties bear no obligation to grant any requests for extradition or mutual legal assistance made for the purpose of prosecuting or punishing a person on account of that persons’ race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that persons’ position for any of these reasons.

The most important tool of bilateral co-operation is extradition. One reason why India has not been able to seek the full co-operation of Pakistan in combating terrorism is the absence of extradition treaties. Sometimes extradition arrangements have their own limitations. Therefore the emphasis should not be on extradition but on the application of *dedere aut judicare*, i.e. ‘extradite or prosecute’ principle. No state has the right to compel another state to enter into an extradition treaty, but every state has the right to seek the application of ‘extradite or prosecute’ principle. This principle

is a concrete expression of the principle of ‘international co-operation’ in combating terrorism.

2.3.1.14. International Convention for the Suppression of the Financing of Terrorism, 1999²³⁷

It applies to such offense of shortest interest or involvement in the intentional and unlawful plan or collection of resources, whether or not tried or veritable, with the point or data that any piece of the resources may be used to do any of the offenses of such a nature proposed to make downfall or certifiable generous injury any individual not adequately drew in with outfitted conflict in order to compromise a general population, or to compel a lawmaking body or an overall relationship to do or stay away from doing any exhibition. The arrangement or assortment of assets as such assets are really involved in the prohibited demonstrations. This instrument doesn't have any significant bearing where a demonstration of this nature doesn't include any worldwide components as characterized by the Convention.²³⁸

This Convention additionally requests that to take suitable computing, as per its municipal laws, for the location and sealing, seizure or relinquishment funds. The offenses alluded are regarded to be “extraditable offenses” and nations have commitments in building up the adjudication over the offenses depicted, making the offenses to be punished properly, arrest asserted wrongdoers, arraign or remove affirmed guilty parties, collaborate in the prevention as well as measuring and proof required in related the procedures.²³⁹

2.3.1.15. International Convention for the Suppression of Acts of Nuclear Terrorism, 2005²⁴⁰

²³⁷ Available at :www.unodc.org › documents › treaties › Special › 1999 International (last visited on 04-04-2020, at 02-19pm).

²³⁸*Ibid.*

²³⁹*Ibid.*

²⁴⁰International convention for The suppression of acts of Nuclear terrorism, 2005, available at: www.treaties.un.org/doc/Terrorism/english-18-15 (last visited on 08-04-2020, at 03:48 pm).

This convention is compared as a bargain of UN in 2005 intended to condemn demonstrations of atomic fear based oppression and to advance police and legal collaboration to forestall, examine and rebuff those acts. The Convention covers an expansive scope of acts to be termed as terrorist acts/activities.

It covers dangers and attempts to execute the bad behaviors or to look into them, as a partner as well as stipulates that liable gatherings will be either evacuated or prosecuted.

Article 2 of the convention²⁴¹ defines the offence of nuclear terrorism as an act to be an offence committed by any person if such person intentionally and without any lawful justification possesses any radioactive or nuclear material or and device related to it or is making or makes and such device with intention to cause deaths and other grievous injuries to people and the environment. .

Similarly Article 5²⁴² and Article 6²⁴³ of this convention casts a duty to come forward and opt such suitable steps also for curbing such criminal activities by incorporation various domestic laws synced with the criminal acts defines under this convention.

2.3.2. Action by the UN Security Council.

The UN Charter of the United Nations specifies for one of the most important aim of it as “to maintain international peace and security.”²⁴⁴ As we know that United Nations have Six Primary and Principal Organs. One of such organ is UN Security Council with the prime objective to maintain peace at international level. The founding

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ Dr. S.K. Kapoor, International Law & Human rights, 18thedn. Central Law Agency, at p. 493. See also for detailed discussion on International Peace and Security please see Chapter on “The Security Council”. See also S.K. Kapoor, “The Maintenance of International Peace and Security”, Lawyer (November, 1972. P. 170).

members of UN intended to have such body that in carrying out the duties of UN of maintaining peace. Thus in this regard, the Council was incorporated.

“*Article 39*” provides that, The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security.²⁴⁵

Under “*Article 41*” of the Charter,²⁴⁶the Council may choose what measures not including the utilization of armed forces to be used to offer impact to its choices.

“*Article 42*” provides that if the options mentioned in Article 41²⁴⁷ seems or are insufficient, the Council are empowered to opt such procedures either by air, sea or land using forces as deemed necessary for the need of the hour so as for maintenance of peace.²⁴⁸

Not only from the U N Charter, had the Council on various events approved the utilization of such force power to be used.

In its resolution adopted on 28th September, 2001 the UN Security Council announced that all demonstrations, strategies and practices of terrorism were in opposition to the reasons and standards of the UN and that intentionally financing, arranging and inducing fear based oppressor acts were additionally in opposition to the reasons and standards of the United Nations.²⁴⁹ In the same resolution, the UN Security Council concluded that all Member States should find a way to forestall the commission of such terrorist acts at present as well as in future.²⁵⁰

²⁴⁵ Article 39, Chapter VII, U N Charter.

²⁴⁶ U N Charter.

²⁴⁷ U N Charter.

²⁴⁸ Article 42, Chapter VII, U N Charter.

²⁴⁹ UN Resolution No. 1373 of 2000.

²⁵⁰ Para 2 (b), UN Resolution No. 1373 of 2000, available at :<https://www.un.org/sc/ctc/resources/databases/recommended-international-practices-codes-and-standards/united-nations-security-council-resolution-1373-2001/> (last visited on 06-04-2020, at 8:53 am).

In its resolution adopted on “12th September, 2001 the Council stated that” it regarded any act of international terrorism as a threat to international peace and security.²⁵¹ It also provides for the Calls on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and *stresses* that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable.²⁵²

In the same resolution under para 4 it is provided that “*Calls also* on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 (1999) of 19 October 1999.”²⁵³

Thus not only the international organization is working to its fullest on the prevention of such terrorist activities, but also urging the member state to act strictly against it as it is a global evil for every continent, country, state, region, society, community and even for an individual.

Under “*Article 25 of the Charter*” provides that, "the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Charter".²⁵⁴

In its resolution of 1373 of 2001, the UN Security Council gave that every Member State should-²⁵⁵

*“Deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens,”*²⁵⁶

²⁵¹ UN Resolution No.1368 of 2001, available at:<https://www.refworld.org/docid/3c4e94557.html> (last visited on 06-04-2020, at 9:05 am).

²⁵² Para 3, UN Resolution No.1368 of 2001.

²⁵³ Para 4, UN Resolution No.1368 of 2001.

²⁵⁴ Article 25, U N Charter.

²⁵⁵ Para 2 UN Resolution No. 1373 of 2000.

²⁵⁶*Ibid.*

*“Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts,”*²⁵⁷

*“Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings”*²⁵⁸

The UN Security Council consistently embraced the resolution 1540 (2004) on 28th April 2004 which require them to make a scope of strides planned for forestalling the multiplication of atomic, substance and organic weapons, their conveyance frameworks by non-state members.²⁵⁹

This means that their delivery or conveyance established a risk to global harmony and security. The Council was thus able to adopt the resolution under Chapter VII²⁶⁰ 2004 and to lay down binding rules.

The resolution under Chapter VII of the UN Charter stated as follows:

1. The United Nations decides that all States shall refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery,²⁶¹
2. Chooses additionally that all States, as per their national systems will receive and authorize fitting viable laws which deny to make, gain, have, create, transport, move or utilize atomic weapons and their methods for conveyance, specifically for terrorism and to this end shall-

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

²⁶⁰ UN Charter.

²⁶¹ Para 1 UN Resolution No. 1540 of 2004.

- (a) create and keep up suitable powerful measures to represent and make sure about such things underway, use, stockpiling or transport,
 - (b) create and keep up fitting successful physical security measures,
 - (c) create and keep up proper successful fringe controls and law implementation endeavors to recognize, hinder, forestall and battle, including through worldwide participation when fundamental the unlawful dealing and expediting in such things as per their national legitimate specialists and enactment, and reliable with universal law,
 - (d) build up, create, survey and keep up national export appropriately and trans-shipment powers over such things and setting up and implementing proper lawbreaker or common punishments for infringement of such fare control laws and guidelines.²⁶²
3. Decides that none of the responsibilities set out in this objectives will be translated to battle with or change the rights and responsibilities of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxic Weapons Convention or alter the commitments of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons,²⁶³
 4. Recognizes the utility in executing this objectives of convincing public control records and calls upon all Member States, when fundamental, to pursue at the most prompt open entryway the improvement of such records or records,²⁶⁴
 5. Perceives that a few States may require help with actualizing the arrangements of this goals inside their domains and welcomes States in a situation to do as such to offer help as proper in light of explicit solicitations to the States coming up short on the lawful and administrative framework, usage experience as well as assets for satisfying the above arrangements.²⁶⁵

²⁶² Para 3 UN Resolution No. 1540 of 2004.

²⁶³ Para 4 UN Resolution No. 1540 of 2004.

²⁶⁴ Para 5 UN Resolution No. 1540 of 2004.

²⁶⁵ Para 6 UN Resolution No. 1540 of 2004.

Thus the resolution imposed three major obligations on States, such as to:

- a. To withhold any support to non-state actors in manufacturing, delivery, etc or use of weapons of mass destruction,
- b. To refrain the non-state characters to use such deadly weapons of destructions domestically as well as sponsoring such activities also,
- c. To prevent such domestic use of weapons of mass destructions and appropriate measures should be adopted.

2.4. Action by the regional organizations/nations

The Regional Organizations/Nations also have adopted a number of instruments in pursuance of the aims and objectives of their organizations to deal with the problem of terrorism. Like the instruments adopted by the International Organizations these instruments at the regional level also lay down the rules and regulations regarding the basic ingredients of the crime of terrorism, the principles of jurisdiction and the administrative measures which are required to be adopted by them as an effective method of enforcing the law. While some of the regional instruments adopt for themselves the very scheme which is laid down in the international instruments some instruments are such that they adopt a distinct approach altogether to overcome the issue related to terrorism keeping in view the nature of problem existing in particular region and the basic tenets of the Regional Organization.

This section has the object of analyzing the provisions of such Conventions on terrorism adopted regionally all over the world. The idea is to analyze the legislative character of the instruments, namely the constituent terrorism, the principles of jurisdiction as well as administrative measures recommended by the regional organizations.

Although there are a large number of regional organizations operating in a vast area of social, economic and political matters the work of the following regional organizations only has been studied owing to the significance which these regional conventions have in regard to the problem of terrorism.

The various conventions as well as initiatives taken by the organizations and nations worldwide are as follows:

2.4.1. The Association of Southeast Asian Nations, 1967²⁶⁶

With the primary goal including promotion of peace as well as stability in the region, “*The Association of Southeast Asian Nations (ASEAN)*” was created in 1967. The initial context related to countering terrorism measure was identified in the ASEAN Declaration on Transnational Crime 1977. It does not redefine the act of terrorism. Instead it used the pre-existing universal meaning of such activities. Another is that its arrangements are commonly extensively drafted, mirroring the pattern of lawful and political agreement. As far as its key human rights related instruments, the first things to note here is the ASEAN Charter, which became effective in 2008. Some of its supporting under Article 2 are of particular significance to counter terrorism, outstandingly ASEAN duties to:

- a. adherence to the standard of law, great administration, the standards of vote based system and established democratic government;
- b. regard for central opportunities, the advancement and assurance of common freedoms, and the advancement of social equity;
- c. maintaining the U N Charter and global law, including universal philanthropic law, bought in to by ASEAN Member States.

2.4.2. European Convention on the Suppression of Terrorism, 1977²⁶⁷

One of the aims of the “Council of Europe” is worldwide unity. The Council has felt that the increase in acts of terrorism has been causing concerns to council members i.e., “*the member states of the European Union*”. The Council believes that in order to prevent the perpetrators of such acts from resorting to that it ought to see the offenders should not be allowed to run from execution and penalizing. Keeping the

²⁶⁶The Association of Southeast Asian Nations, 1967, available at: <https://www.unodc.org/e4j/en/terrorism/module-5/key-issues/asian-region.html> (last visited on 09-04-2020, at 12:03pm).

²⁶⁷European Convention on the Suppression of Terrorism, 1977, available at: <http://www.worldlii.org/int/other/COETS/1977/1.html> (last visited on 09-04-2020, at 8:29 am).

above objective in view, the Council adopted a Convention called the “*European Convention on the Suppression of Terrorism, 1977*”.²⁶⁸

“*Article 1*” of the Convention says,

For the purposes of extradition between contracting States, none of the following offenses shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives

An offence within the scope of the Convention of the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16th December, 1970,

An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September, 1971,

A serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; an offence involving kidnapping, the taking of a hostage or serious unlawful detention,

An offence involving the use of a bomb, grenade, rocket, automatic firearms or letter or parcel bomb if this use endangers persons. An attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence is also an offence.²⁶⁹

Article 2 of the Convention provides for the extradition of any offender. The contracting states may not consider an offender as political offender in terms of the extraditing such offender, if such person has done any act of violence with or without any political intent.²⁷⁰

Article 3 gives that “arrangements of all removal bargains and plans relevant between Contracting States remembering the European Convention for Extradition, are altered as between Contracting States to the degree that they are contradictory with this Convention.”²⁷¹

²⁶⁸*Ibid.*

²⁶⁹*Ibid.*

²⁷⁰ Article 2, European Convention on the Suppression of Terrorism, 1977.

²⁷¹ Article 3, European Convention on the Suppression of Terrorism, 1977.

Strengthening the aim stated in the above provisions, Article 4 talks about the unlimited extension of the punishment for the offence which may not come under the language of “*Article 1 and Article 2 of the convention*”. Thus it means that if an offence comes out of the purview of this convention or comes out in any other convention or treaty regarding terrorism, such an offence will automatically be included within the meaning of this convention.²⁷²

In order to see that the perpetrator of terrorism does not escape punishment or does not enjoy immunity from penal action, Article 7 provides, “A Contracting State in whose territory a person suspected to have committed an offence mentioned in Article 1 is found and which has received a request for extradition under the conditions mentioned in Article 6, paragraph 1 shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.”²⁷³ That is to say if a state doesn't want to extradite such offender, such state authorities must initiate prosecution against such offender and if found guilty should punish such person in accordance with their domestic law.

2.4.3. The Arab Convention for the Suppression of Terrorism, 1998²⁷⁴

The Members of the Arab League of States are focused on the most elevated good and strict standards and specifically to reject all types of brutality and supporters of human rights for the advancement of harmony. They want to advance common collaboration in the ending of terrorism, which represent a risk to the security and strength of the Arab Nation and jeopardize its essential advantages. Guided by these

²⁷² Article 4, European Convention on the Suppression of Terrorism, 1977.

²⁷³ *Ibid.*

²⁷⁴ The Arab Convention for the Suppression of Terrorism, 1998, available at : [www.unodc.org › images › tldb-f › conv_arab_terrorism.en.pdf](http://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf) (last visited on 09-04-2020, at 11: 39 am).

contemplations, the Members of the Arab League of States adopted the Arab Convention for the suppression of terrorism, in April 1998.²⁷⁵

According to “*Article 1 (2) of the Convention*”,²⁷⁶ terrorism means any act or threat of violence, whatever its motives, or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.²⁷⁷

Under this Convention, the Contracting States are embraced not to compose, fund or submit fear based oppressor acts or to be adornments thereto in any way at all. In their pledge to the avoidance and curbing of terrorism offense as per their household laws and methods they will try to receive preventive measures for the suppression of violence and measures for the extradition of the terrorists.²⁷⁸

2.4.4. OAU Convention on the Prevention and Combating of Terrorism, 1999²⁷⁹

The Charter of the Organization of African Unity contains the standards and purposes with respect to the security, solidness, advancement of agreeable. The supreme leaders of the Nations worldwide and Government of the Organization of African Unity in 1994 embraced certain arrangements as “*Declaration on the Code of Conduct for Inter-African Relations*” and had communicated their attention to the need to advance human and virtues dependent on resilience and dismissal of all types of psychological oppression regardless of their inspirations. They have pronounced on various events that they are covetous of reinforcing participation among Member States

²⁷⁵T. Padma, Acharya Nagaijuna University, a critical study of the Anti-terrorism laws of India, 2008, at p. 109.

²⁷⁶ Article 1, The Arab Convention for the Suppression of Terrorism, 1998.

²⁷⁷*Ibid.*

²⁷⁸ Article 3, The Arab Convention for the Suppression of Terrorism, 1998.

²⁷⁹OAU Convention on the Prevention and Combating of Terrorism, 1999, available at: [www.peaceau.org > uploads > oau-convention-on-the-prevention-and-combating-of-terrorism](http://www.peaceau.org/uploads/oau-convention-on-the-prevention-and-combating-of-terrorism) (last visited on 09-04-2020, at : 10:00 am).

so as to prevent terrorism. They are persuaded that terrorist activities establishes a genuine “infringement of human rights, and specifically, the rights to physical respectability, life, opportunity and security and hinders financial advancement through destabilization of States. Therefore, they adopted on “14th July, 1999 a Convention called the OAU Convention on the Prevention and Combating of Terrorism, 1999”.²⁸⁰

According to this Convention a ‘terrorist act’ means:²⁸¹

(a) an act which violates or infringes the domestic criminal law of the nation or a state. Such violation aims to endanger the freedom and life of a human being and impacts as a threat to injure the health, property, environment, etc to the regional population where it is being practiced, and is intended to-

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles, or

(ii) To disrupt any public service, the delivery of any essential service to the public or to create a public emergency, or

(iii) Create general insurrection in a State.²⁸²

“Article 2” talks about duty casted upon the States Parties to undertake the reviewing of the national and to incorporate and establish such criminal offence which are of terrorist nature given under “Article 1”. Further the convention directs the parties to provide appropriate punishments and penalties for such act.²⁸³

The Convention provides for certain measures to be adopted by the States to deal with problem regarding terrorism. Article 7²⁸⁴ provides such measures as follows:

²⁸⁰ *Ibid.*

²⁸¹ Article 1, OAU Convention on the Prevention and Combating of Terrorism, 1999.

²⁸² *Ibid.*

²⁸³ Article 2, OAU Convention on the Prevention and Combating of Terrorism, 1999.

²⁸⁴ Article 7, OAU Convention on the Prevention and Combating of Terrorism, 1999.

1. Upon receiving information that a person who has committed or who is alleged to have committed any terrorist act as defined in Article 1 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution;

3. Any person against whom the measures referred to in paragraph 2 are being taken shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in whose territory that person habitually resides;

(b) be visited by a representative of that State;

(c) be assisted by a lawyer of his or her choice;

(d) be informed of his or her rights under sub-paragraphs (a), (b), and (c).

4. The suggested rights in "*paragraph 3*" will be polished in comparability with the state's homegrown legislation, in whose area the liable party or guaranteed miscreant is accessible, as in accordance to the arrangement that the said legislations should empower full impact on be given to the clarifications behind which the rights agreed under "*paragraph 3*".

2.4.5. Convention of the Organization of Islamic Conference on Combating International Terrorism, 1999²⁸⁵

²⁸⁵Convention of the Organization of Islamic Conference on Combating International Terrorism, 1999, available at:<https://www.refworld.org/docid/3de5e6646.html> (last visited on 09-04-2020, at 11:247 am).

The Charter of this Conference has the objective and principles for making a suitable air to fortify collaboration and comprehension among Islamic States.

The members wish to pursue the tenets of the tolerant Islamic Sharia which reject all forms of violence and terrorism, and in particular specially those based on extremism and call for protection of human rights, which provisions are paralleled by the principles and rules of international law founded on cooperation between peoples for the establishment of peace.²⁸⁶

They wish to follow the principles of peace by “abiding the lofty, moral and religious principles particularly the provisions of the Islamic Sharia as well as the human heritage of the Islamic Ummah.”²⁸⁷

They wish to “*adhering to the principles of International Law and the United Nations Charter as well as all relevant UN resolutions on procedures aimed at eliminating international terrorism, and all other conventions and international instruments to which states acceding to this Convention are parties and which call, inter alia, for the observance of the sovereignty, stability, territorial integrity, political independence and security of states and non-intervention in their international affairs.*”²⁸⁸

As provided in the Convention, terrorism means the violent act which includes motives as well as which is intended to carrying out the evil and criminal actions which targets towards harm, killing, curbing human freedom, endangering the resources (public as well as private) and hitting the integrating and sovereignty of the nation.²⁸⁹

Article 3²⁹⁰ of Convention called upon “the Contracting States not to execute initiate or participate in any form in organizing or financing the terrorist activity. By

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ Article 1, Convention of the Organization of Islamic Conference on Combating International Terrorism, 1999.

²⁹⁰ Article 3, Convention of the Organization of Islamic Conference on Combating International Terrorism, 1999.

the same provision the contract States expressed their commitment to prevent and combat terrorist crimes in conformity with the provisions of the Convention and their respective domestic rules and regulations.”²⁹¹

2.4.6. Protocol amending the European Convention on the Suppression of Terrorism, 2003²⁹²

The Council considered that it would be sufficient to alter the convention of 1977²⁹³ 1977 with the passage of time and the current need as well as situation. The rationale for this step was that the “*UN General Assembly*” had made certain recommendations on curbing terrorist acts and preserving the human rights. The recommendations were presented before the “*Council of Europe*” also showed its concerns for simultaneously fighting terrorism to end it with strengthening the human rights. Therefore, it adopted a Protocol on 15th May, 2003 a Protocol amending the European Convention on the Suppression of Terrorism.²⁹⁴ The provisions given in European Convention were supplemented by this Protocol in the following manner:

The definition of terrorism was to be understood as offences within the scope of the following conventions as provided in the appendix of this protocol.²⁹⁵

- a) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents²⁹⁶
- b) International Convention against the Taking of Hostages²⁹⁷
- c) Convention on the Physical Protection of Nuclear Material²⁹⁸

²⁹¹*Ibid.*

²⁹²Protocol amending the European Convention on the Suppression of Terrorism, 2003, available at: [www.assets.publishing.service.gov.uk › uploads › attachment_data › file](http://www.assets.publishing.service.gov.uk/uploads/attachment_data/file) (last visited on 09-04-2020, at 9:20 am)

²⁹³ European Convention on the Suppression of Terrorism, 1977.

²⁹⁴*Ibid.*

²⁹⁵*Ibid.*

²⁹⁶ Treaty Series No. 3 (1980) Cmnd 7765, adopted at New York on 14th December, 1973;

²⁹⁷ Treaty Series No. 81 (1983) Cmnd 9100, adopted at New York on 17th December, 1979;

²⁹⁸ Treaty Series No. 61 (1995) Cmnd 2945, adopted at Vienna on 3rd March, 1980;

- e) Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation²⁹⁹
- f) Convention for the suppression of Unlawful acts against the safety of Maritime Navigation³⁰⁰
- g) Protocol for the suppression of Unlawful acts against the safety of Fixed Platforms Located on the Continental Shelf³⁰¹
- h) International Convention for the suppression of terrorist bombings³⁰²
- i) International Convention for the suppression of the Financing of Terrorism³⁰³

Further “*Article 3*” of the protocol gives to implement and take appropriate measure for enforcing laws, education, awareness, etc so as to prevention of terrorism in the society. ³⁰⁴

“*Article 4*” of the conventions provides for the cooperation of the contracting parties for prevention and suppression of terrorist activities as well as offences, as provided as following means:

- a. Exchanging information³⁰⁵
- b. Investigations³⁰⁶
- c. Exchange of expertise³⁰⁷

2.4.7. SAARC Regional Convention on Suppression of Terrorism, 1987³⁰⁸

²⁹⁹ Treaty Series No. 20 (1991) Cmnd 1470, done at Montreal on 24th February, 1988.

³⁰⁰ Treaty Series No. 64 (1995) Cmnd 2947. done at Rome on 10th March, 1988;

³⁰¹ Treaty Series No. 64 (1995) Cmnd 2947, done at Rome on 10th March, 1988;

³⁰² Treaty Series No. 57 (2001) Cmnd 5347, adopted at New York on 15th December, 1997;

³⁰³ Treaty Series No. 28 (2002). Cmnd 5550, adopted at New York on 9th December, 1999;

³⁰⁴ Article 3, Protocol amending the European Convention on the Suppression of Terrorism, 2003.

³⁰⁵ Article 4(I), Protocol amending the European Convention on the Suppression of Terrorism, 2003.

³⁰⁶ Article 4(Ii), Protocol amending the European Convention on the Suppression of Terrorism, 2003.

³⁰⁷ Article 4(III), Protocol amending the European Convention on the Suppression of Terrorism, 2003.

³⁰⁸ SAARC Regional Convention on Suppression of Terrorism, 1987, available at: www.treaties.un.org
 › doc › Terrorism › Conv18-english-pdf (last visited on 09-04-2020, at 11:52 am).

The “*South Asian Association for Regional Cooperation (SAARC)*” for the very first moment for battling in opposition to “act of terrorism” in “South Asia”. It is felt that participation from all the seven nations was fundamental if terrorism somehow managed to be forestalled and dispensed from such sector. Following recommendations were made during its incorporation:-

1. SAARC member states should unequivocally condemn all acts, methods and practices of terrorism as criminal and deplore their impact on life, and property, socio-economic development, political stability, international peace and cooperation;

2. SAARC member states that have not yet done so many consider becoming parties to the existing international conventions relating to various aspects of international terrorism in keeping with the resolutions of the General Assembly;

3. As part of their obligation under International Law each SAARC member State should refrain as per United Nations General Assembly resolutions from organizing, instigating, assisting or participating in any acts of civil strife or terrorist acts in another State, of acquiescing in organized activities within its territory towards the commission of such acts that involve a threat or use of force;

4. SAARC member States should call upon one another to take measures as may be appropriate at respective national level for the prevention and elimination of terrorism. Such measures may require independent and coordinate in-depth study of the root causes of prevailing incidence of terrorism and harmonization of domestic legislation relating to terrorism with each other and with existing international conventions;

5. Member States of SAARC should resolutely support and uphold the recommendation of the United Nations Ad hoc Committee on International Terrorism;

6. Member States should give consideration to the setting up of appropriate mechanism for the identification of offences which may be regarded as terrorists and which for the purposes of extradition should not be regarded as political;

7. Cooperation among concerned security agencies of member states could include exchange and sharing of intelligence relating to terrorism so as to prevent terrorist activities through appropriate precautionary measures;

8. Some mechanism may be considered for closer cooperation and coordination among member states and also between SAARC states and other international agencies such as ICPO and Interpol, United Nations Congress on the Prevention of Crime and Treatment of offenders etc.

9. SAARC member States should cooperate by way of exchange of expertise. They could consult on how to improve the existing protective measures against possible terrorist action. Training in the field of antiterrorist techniques could be an area of cooperative activity;

10. SAARC members should make persistent efforts so that the media exercise voluntary restraint in reporting on the acts of terrorism. The focus should be on highlighting the immoral and criminal aspects of terrorism and in any case terrorists and terrorism should not be demonized.”³⁰⁹

In November, 1987 the “Heads of States or Government of the Member States of the SAARC at their summit held in Dhaka adopted the SAARC Regional Convention on suppression of Terrorism. It contains a large number of rules as to the extradition of the terrorists.”³¹⁰

2.5. Critical Overview

The League of Nations in the 1937 convention had proposed a definition: "All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public". But since the convention never came into force this definition was rendered useless. One obvious difficulty is defining “terrorism” and “terrorist”. “One man's terrorist is another man's freedom fighter” is frequently quoted and there were 109 different definitions advanced

³⁰⁹T. Padma, Acharya Nagaijuna University, a critical study of the Anti-terrorism laws of India, 2008, at p. 112.

³¹⁰*Ibid.*

between 1936 and 1981, with more since. The lack of agreement on a definition of terrorism has been a major obstacle to meaningful international countermeasures. Without a law defining terrorism, there can be no enforcement of the would-be law. Instead of concentrating on the definition of terrorism, International law has chosen to address specific forms of terrorism, such as hijackings and abduction of foreign dignitaries, and to introduce measures to ensure international cooperation to combat and investigate terrorist incidents.

The 1937 League of Nations Convention for the Prevention and Punishment of Terrorism contained important distinctive features, which reflected its origins as an initiative directly influenced by the political assassination of the Yugoslav Sovereign on foreign territory. The principle objective of the Convention was to deal with acts of terrorism which were politically motivated and in which an “international element” was present. However despite the positive elements, the Convention suffered from substantial infirmities, as far as the development of legal principles for the prevention and punishment of acts of terrorism were concerned.

It took very long for the UN to define international terrorism. From 1973 to 1987 they struggled to distinguish between freedom fighters and terrorism. It managed to arrive at some sort of a definition in 1987 because by that time most of the colonies were free. In 1987 the Secretary General convened an international conference to define terrorism and differentiate it from freedom fighting. The United Nations has since then adopted different conventions dealing with terrorism. In the absence of an umbrella act or legislation against terrorism, we have a host of conventions, covering a range of terrorist attacks.

But such conventions only defined the acts which might go forward towards the nature of a terrorist act. Out of the many international conventions, there are four primary conventions directly addressing the subject of terrorism. They are the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (CPPCIPP); the International Convention against the Taking of Hostages (ICTH); the International Convention for the Suppression of Terrorist Bombings (ICSTB); and the International Convention for the Suppression of the Financing of Terrorism (ICSFT). These conventions have all

entered into force and therefore have 101 become binding international law at least for those States who are parties to the conventions.

There apparently exist more than 16 international conventions which directly or indirectly deal with international terrorism. However, many of these conventions focus on specific problems such as hi-jacking, safety of civil aviation, safety of nuclear weapons etc. Thus, many of the times these conventions seek to avoid the direct confrontation with problems of terrorism such as problems pertaining to definitions, designation of terrorist organizations etc. These limitations put invisibly on the international law are often source of problems.

To conclude, it can safely be said that the international law's efforts to consolidate the laws to prevent acts of terrorism suffers from various vires. First, the international law depends on the cardinal principle of consent and willingness of the States to implement anything that is workable under international law. Secondly, the problem pertaining to drawing a world-wide definition acceptable to rest of the states is highly impossible. Finally, the states which are being accused of sponsoring the terrorists or states which shelters the terrorists' purpose and training camps are unwilling and remain non-co-operative in nature. One may also reason that the international law tries to evade many questions of importance and the topic of terrorism often remains off the table in any process of negotiations. Indeed time has come for the states and the United Nations to come together to effectively deal with the problems of terrorism. This can happen with the principles of co-operation and friendly relations between the states. There also remains a severe need for the other states to pressurize the defaulter states to pursue international goals to eradicate terrorism from its very base. Although there exists a huge branch of international law laying down provisions for almost every illegal act, there remains a persistent problem of international being applicable only to the states and not the individuals.

However, the international law is reluctant to directly confront the menace of terrorism and often tries to overlook the subject. The unwillingness shown by certain states in this regard is also one of the prominent reason for slow development of international law in this field. Also there exists, nearly 80 resolutions both from General Assembly and the Security Council, there have been adopted form time to time to

address the specific situations of specific places and particular references. It is high time that all states must come together for the cause of enacting and implementing a global international conventions and steps for the universal accreditation must be advanced in this regard.

These conventions and Security Council resolutions do not give a detailed definition of terrorism. They just give examples of terrorism, which include the 11 September attacks, the acts of specific groups like the AlQaida. These resolutions only seem to deal with the problems concerning the more influential members of the Security Council. It limits the application to other areas in the world, which are also suffering from some form of terrorism. They need to be more global in their content. The UN has set the basic agenda and has provided innumerable prescriptions for the elimination of terrorism. The problem is not with the lack of legal instruments only. It is also with the lack of proper implementation. Terrorists take advantage of the lack of co-operation between different countries and continue to commit crimes. The effectiveness of any international legal regime depends on its implementation and support by states.

There are many shortcomings in these multilateral conventions. First of all, there are not enough states that are party to them and especially those countries that matter, have not adopted the conventions. This is a big drawback as the convention loses its effectiveness at that point. Secondly the conventions become ineffective in the absence of any enforcement provisions. Therefore if a country which is a party to the convention and fails to comply with it, the other countries can actually do nothing about it. Also countries that are stronger are able to give a different interpretation to the established rules of international law to suit their convenience. For example the United States has refused to extradite terrorists even when their guilt is well established. This happened in the case of one Emmanuel Constant, the leader of the Haitian paramilitary forces that were responsible for thousands of brutal killings in the early 1990s under the military junta, which Washington officially opposed but tacitly supported, publicly undermining the Organisation of American States' embargo and secretly authorising oil shipments. Constant was sentenced in absentia by a Haitian court. The elected government repeatedly called on the US to extradite him. Haiti's request was ignored

time and again. Therefore for countries like the United States the law changes to suit their personal beliefs.

CHAPTER 3

INDIAN LEGAL

MECHANISM

TO

COMBAT TERRORISM

Taitusi Williams Savou - "The World will not Change unless You Change the World"

3.1.Introduction

In the previous chapter a study was made of the legislative measures adopted by the international organizations to deal with the problem of terrorism. The study in that chapter focused on the principles formulated by the international organizations with regard to the constituent elements of Terrorism and the principles of jurisdiction which the States were urged to exercise to deal with the problem. In this chapter the discussion is related to the legislation enacted in India concerning the problem of terrorism. The focus in this particular chapter is on the measures adopted by the legislatures of our country which considered such measures to be necessary to formulate to deal effectively with the problem of terrorism.

Before making a reference to any statutory enactment adopted by the appropriate legislature it is necessary to point out that the menace of Terrorism has existed in India since a long time, and in many forms. Earlier this problem was of a local nature and existed in a particular form. The legislature then had taken the nature of the problem into account and enacted the necessary provisions keeping the modus operandi in view.

But the problem of terrorism later on had become a problem of the international society; and was given the name of international terrorism. In the new situation that had arisen the legislative measures adopted by the concerned authorities reflect the initiatives that had been recommended by the international organizations. Side by side with the legislation of a national and international type there has been again the problem of terrorism in yet another form and that is in the form of ‘organized crimes’ affecting the interests of a particular State. The discussion on the law relating to organized crime is presented in the next chapter. This chapter is devoted to a study of the anti-terrorism legislation as far as the problem of terrorism at the national level is concerned.

3.2. Anti-Terrorism Legislations in India

India is a new democracy but the problem of violent activity is not something quite new to the political system of the country. Since good old days anti-social elements have been resorting to the use of violence for various purposes posing a “threat to peace, order and internal security”. In pre-Independence period, there was legislation on the “prevention and punishment of terrorist acts”. After Independence, earlier legislation was continued and then certain new enactments were passed. The reason for passing the new enactments was in some cases the inadequacy of the legislative process and in some others the criticism that the Government was adopting repressive measures against its citizens in violation of the principles of the Constitution and the Human Rights Law. In view of these factors a new set of laws had been enacted continuing at the same time the old laws. The legal provisions in India to control terrorism could be annoyed in two folds:

- a. Legislations in pre-independence period
- b. Legislations in post-independence period and continuing.

3.2.1. Legislations in Pre-Independence period

The problem of terrorism was also recognized before the independence of India. It is seen in the first chapter that the definitions and meanings vary from the community to community, state to state and nation to nation. Particularly in British India Context the concluding meaning therefore was to the revolutionary terrorism. Thus various legislation were enacted to counter such problem by the colonial rulers as in their

context such moments and acts were of nature of terrorism. The following are the legislative measures were enacted by the appropriate legislature in the Pre-Independence days to overcome the issue of terrorism:

3.2.1.1. Indian Penal Code, 1860³¹¹

The Indian Penal Code, 1860 contains various provisions with regard to offences against the State which affected the security of the State, the safety of public functionaries and peace and order of the society. These provisions are still in force under the general law of crimes. None of these offences was of course designated as a terrorist offence but each one of them had the features of a terrorist offence in that it had the features of causing damage to the peace and tranquility of the State and causing harm to the interests of the individuals.

Various offences were designated as opposing the administrative as well as legislative working of the state and placed under this code.³¹² These were as “Waging of attempting to wage a War against the Government,³¹³ Conspiracy,³¹⁴ Collecting arms with intention to wage a War,³¹⁵ Concealing the design to wage a war,³¹⁶ Sedition,³¹⁷ Waging War against any Asiatic Power,³¹⁸ Unlawful assembly,³¹⁹ Joining Unlawful assembly with deadly weapons,³²⁰ Rioting,³²¹ and Rioting armed with deadly weapons”³²².

3.2.1.2. The Arms Act, 1878

³¹¹ Act No. 45 of 1860.

³¹² *Ibid.*

³¹³ Section 121, Indian Penal Code, 1860.

³¹⁴ Section 121-A, Indian Penal Code, 1860.

³¹⁵ Section 122, Indian Penal Code, 1860.

³¹⁶ Section 123, Indian Penal Code, 1860.

³¹⁷ Section 124-A, Indian Penal Code, 1860.

³¹⁸ Section 125, Indian Penal Code, 1860.

³¹⁹ Section 143, Indian Penal Code, 1860.

³²⁰ Section 144, Indian Penal Code, 1860.

³²¹ Section 146, Indian Penal Code, 1860.

³²² Section 148, Indian Penal Code, 1860.

Post 1857 Revolt, the duty of administering “India” was straightforwardly expected by the “British Crown”. Master Lytton turned into the Viceroy of India in 1858. The Indian Arms Act of 1878 was ordered by administered during Lord Lytton's time. By this demonstration, no Indians could fabricate, sell, have, and convey guns. In any case, the English individuals could do as such. On the face it looked sensible, yet by and by getting an arms permit was a dreary procedure for an Indian. This law made it required for any Indian wishing to claim a weapon to acquire a permit for it. An unlicensed weapon was culpable with a fine and detainment as long as 3 years. Subsequently in one blow the British confined the responsibility for during the times of the Raj. Purposes behind Arms Act was that the British Raj prevalently alluded to as simply the Raj is commonly acknowledged as the period from 1858 to 1947. This was the period when India came legitimately under the standard of the crown and Queen Victoria by a declaration in 1858 took over as sovereign of Hindustan. The standard by the East India Company slipped by after the declaration. This was an immediate result of the insurrection of 1857-58 when Indian sepoys and a few rulers had rebelled against East India organization rule. The Mutiny or the principal war of Independence was squashed and the British presently directed their concentration toward administering this huge country of 250 million individuals. Before 1857 there was no weapon control law in India. Any Indian could possess any weapon of any gauge. After the rebellion things changed as the British concluded that the opportunity had arrived to confine Indians from claiming weapons and thus the principal seeds of arms control were planted.³²³

The Viceroy delegated a board which presumed that nearby Indians ought to have confined access to arms and weapons.³²⁴ It anyway made an exemption on account of Anglo Indians and British rulers who were allowed to claim weapons. The firearm permit was acquainted with confine Indians from possessing weapons. In 1877 the

³²³What was the Arms Act 1878? Rajeev Batra, MA Hindi and Sanskrit History of India & Act as a Motivator, Dr. Bhim Rao Ambedkar University, Agra, available at <https://www.quora.com/What-was-the-Arms-Act-1878> (last visited on 29-04-2020, at 09:41 am).

³²⁴ Section 13 and 14, The Arms Act 1878, available at : <http://nasirlawsite.com/laws/armsact.htm> (last visited on 29-04-2020, at 9:45 am)

Indian arms act was proclaimed and it stayed in power till 1947 and an additional 12 years thereafter till it was corrected in 1959.

3.2.1.3. The Explosives Act, 1884³²⁵

The Explosives Act, 1884 which was enacted in the Pre-Independence era is still in force. Under the act, the Central Government is empowered to make the regulations so as to regulate or prohibit the-

- Making or production,
- Custody,
- Carry,
- Importing or exporting, of bombs or explosive things.³²⁶

3.2.1.4. The Explosive Substance Act, 1908³²⁷

This Act was also enacted in the pre-Independence era but is in force even at present. The Act provides for the meaning of “explosive substance” which also includes such things or materials by which any person can make any explosive substance. Such also includes any machine or equipment by use of which such substance can be made.

As Section 3 of the Act provides, *“any individual who unlawfully and malignantly by their evil intent act so as to cause causes any explosion of such a nature prone to jeopardize life or which will cause a to definite harm to the property, shall be punished with imprisonment of life or with an imprisonment of rigorous nature of not less than 10 years”*.³²⁸

As mentioned in Section 4 of the Act, Any individual who unlawfully and malignantly intents to or conspire to cause any explosive of hazardous nature of any

³²⁵The Explosives Act, 1884, available at :

https://indiacode.nic.in/handle/123456789/2301?view_type=browse&sam_handle=123456789/1362
(last visited on 29-04-2020, at 9:52 am).

³²⁶Section 5 of the Explosives Act, 1884.

³²⁷ The Explosive substance Act, 1908, available at: *mha.gov.in* › sites › default › files › Explosive Substance Act, 1908.pdf (last visited on 29-04-2020, at 10:20 am).

³²⁸Section 3 of the Explosive Substances Act, 1908.

explosive substance of special category be “*punished with imprisonment for life or with imprisonment of rigorous in nature of minimum of 10 years, and fine.*”³²⁹

3.2.2. Legislations in Post-Independence Period and Continuing

3.2.2.1. The Preventive Detention Act 1950³³⁰

After the independence the very first law enacted by the Union legislature for the activities which may harm the social order of the society was the Detention law in 1950. The intent for its enactment was to maintain the social order. It was eventually stretched in force till 1969 since it was enacted for use during 1 year only afterwards its enactment. Questions have been raised upon the validity of the Act for several times and continuously the legislature amended it accordingly. The independence of Indian Nation was in need of a codified statute to be called as Grundnorm of the nation for which the constitution framers put forward the idea of a democratic form of government. But they were also of the view that some law should also be there for the preventive measures also as to suppress any anti-social activity as the country got independence newly. For such purpose the in 1950 after India get republic, the Indian Parliament framed a detention law as Preventive Detention Act, 1950³³¹ so as for caution against “*violent and terrorist*” activities.

In A.K. Gopalan case, the first detention law was challenged and its validity was challenged before the Apex court of India. The then Hon`ble Chief Justice of India, Justice H.J. Kania,³³² with Justice M.C. Mahajan observed that the detention Act of 1950 was not in contravention with the Article of Indian Constitution. Further it was observed and expressed that only section 14 of the Preventive Detention law was found ultra-vires and such is severable opting the principle of severability and rest of the statute was held constitutional. Thus the detention law of 1950 could not be termed as illegal. But the Indian Supreme Court was also of the view that in any democratic nation, such detention laws does not existed and their very existence challenges the

³²⁹Section 4 of the Explosive Substances Act, 1908.

³³⁰ Act No. 4 of 1950.

³³¹*Ibid.*

³³² Hon`ble Justice H. J. Kania, First Chief Justice of Independent India, 1950-1951.

constitutional principles of a freedom. In *Ram Krishnan Bhardwaj v. State of Delhi*³³³, the Hon'ble Apex Court put forward their view on existence of such laws of detention creates a very serious threat to invade the freedom of a person to its personal liberty and such to be guarded by the Apex Court of India.³³⁴

Another case of *Ahmed Noor Mohamad Bhatti v. State of Gujarat*³³⁵ it was held that a detention legislation could not be held unconstitutional or invalid merely on ground where the police personal used it in an arbitrary manner. What I to be seen is that whether such use of power given under such detention law in reality prevented a cognizable offence or not. These Detention laws are meant for preventive measures and the important instrument to preventively control the happening of any act which might disturb the social order.

3.2.2.2. The Armed Forces Special Powers (Assam and Manipur) Act 1958³³⁶

After the independence in 1947, the first ever problem of relating to act of terrorism arose in from the North Eastern States like Nagaland, Manipur, Mizoram and Tripura. The intent to pass such law was “*to tackle the disturbed area of the northeastern region of India after the disturbance created there. The law grants special powers to the armed forces deployed there such as to open fire after giving such warning to disperse, prohibiting of gathering of people, etc*”.³³⁷

Section 3 of the Act³³⁸ provides that before any area of the state be declared the disturbed one, opinion of the concern state government should be taken into. Such an opinion taken is made mandatory in the Act. Any such declaration, declaring “*an area to be the disturbed area, grants the power to the Armed forces to take control of such*

³³³ AIR 1953 SC 318.

³³⁴ *Ibid.*

³³⁵ AIR 2005 SC 2115.

³³⁶ AFSP, 1958, available at: [mha.gov.in > sites > default > files > armed_forces_special_powers_act_1958.pdf](http://mha.gov.in/sites/default/files/armed_forces_special_powers_act_1958.pdf) (last visited on 04-05-2020, at 12: 20 pm).

³³⁷ What is AFSPA, and where is it in force? The Hindu Net Desk, April 23, 2018Apr 30, 2019, available at: <https://www.thehindu.com/news/national/what-is-afspa-and-where-is-it-in-force/article23648102.ece> (last visited on 04-05-2020, at 12:30 pm).

³³⁸ Section 3, The Armed Forces Special Powers (Assam and Manipur) Act 1958.

are for maintaining peace and such are will remain under control of such forces for a minimum time period of 3 months”. Gravity of the situation varies widely from place to place. In certain States however political initiatives have brought the erstwhile extremist groups into the mainstream, thus improving the situation notable. Section 3 grants powers to the union government as well as the state governments for the declaration of any part or whole of the state *"to be a disturbed area"*, in *Naga People's Movement Human Rights v Union of India*,³³⁹ Justice S.C. Agrawal delivered the Supreme Court`s judgment that-

*“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 declared by notification under Section 3 to be disturbed area'.”*³⁴⁰

It provides that any such deceleration made is indefinite in its period. As mentioned in Section 3³⁴¹ of the Act, after the declaration, there is no scope and arrangement of any periodically reviewing of such order of declaration. But as the declaration is made only in the time of situation of such grave need to *“control the disturbed law and order, it is a mandatory obligation to observe the gravity of the situation time to time”*, for which such declaration was made. With the help of such assessment, the continuation of such declaration will be observed and if the need arise such be practiced in continuous manner.

Thus in *Naga People's Movement Human Rights* case, the Hon`ble court provided following 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 their

³³⁹ AIR 1998 SC 431.

³⁴⁰ *Ibid.*

³⁴¹ Section 3, The Armed Forces Special Powers (Assam and Manipur) Act 1958.

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 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.”³⁴²

Further as Section 4 provides,³⁴³ various powers vested in officers mentioned therein the section, the observations and reconditions were that following points to be kept in mind while exercising such powers:

1. Prohibitory direction indicated in that proviso is in power in the upset region,
2. The official practicing those forces shapes the assessment that is important to make a move for support of public request against the individual standing in contradiction in prohibition,
3. An expected reprimand as the authority considers essential is offered preceding taking an action.

Subsequently, these conditions give a sign that while practicing the forces the official will utilize negligible power needed for successful activity against the individual/people standing in contradiction. Such conditions, can't amount to be claiming that statement of “Section 4 (a)” experiences the opinion of assertion or preposterousness.³⁴⁴

The Government has been putting forth sincere attempts to achieve a finish to the upset contemplation in Mizoram and to reestablish harmony and congruity. On the acknowledgment of the terms and conditions by the Mizo National Front a progression of conversations were held with the Organization. A settlement on different issues was

³⁴²Naga People's Movement Human Rights v Union of India, AIR 1998 SC 431.

³⁴³ Section 4, Armed Forces Special Powers (Assam and Manipur) Act 1958.

³⁴⁴*Ibid.*

reached over the span of the discussions. With the end goal of reestablishing harmony and routineness in Mizoram the MNF party, on their part, attempts inside the concurred time span to find a way to finish the conspirators and to draw them out to guarantee their re-visitation of common life, to forswear brutality and by and large to help during the time spent rebuilding of regularity. Mizoram is an example of how Government has through peaceful negotiations found a resolution to some extent in that territory. Although the problem in other areas of North East continues to bother the government efforts are being made through legislative and administrative measures.

3.2.2.3. The Unlawful Activities (Prevention) Act, 1967 (UAPA)

The Unlawful Activities Prevention Act, 1967 was intended to manage affiliations and acts that hampers or creates threat to the regional integrity of India. At the point when it was bantered in Union legislature, pioneers, opponent parties, demanded for it to be restricted scope to such an extent that the privilege to affiliation stayed unaffected and that the chief didn't open ideological groups to interruption. In this way, scope of this Act was carefully restricted to meet the test to the regional integrity of the nation. The Act was an independent Code of arrangements for pronouncing secessionist relationship as unlawful, arbitration by a court, control of assets and work environments of unlawful affiliations/groups, punishments for their individuals and so on. The Act has been put in the 7th Schedule³⁴⁵ of the Constitution of India, making it immune from all the reviews and previews.

The Unlawful Activities (Prevention) Act, 1967 focuses on viable avoidance of “unlawful exercises across India and abroad”. Its principle objective was to give forces to focal offices and states to manage psychological militant exercises. Any Indian citizen or outside public charged under UAPA is at risk for discipline under this Act, regardless of the area of wrongdoing/offense perpetrated. UAPA will be pertinent to the wrongdoers in a similar way, regardless of whether wrongdoing is carried out on an unfamiliar land, outside India. The following are the salient features of this Act:-

³⁴⁵ Constitution of India.

1. The power to declare an association³⁴⁶ as unlawful association³⁴⁷ is vested in the Central Government,³⁴⁸
2. The declaration has the force only after the Tribunal has confirmed the Declaration made by the Government. However, the Declaration or notification may have impact from the date of its release if the Government is of the assessment that conditions exist which render it fundamental for the Government to pronounce a relationship to be unlawful with prompt impact.³⁴⁹
3. Where an affiliation or association has been pronounced unlawful, it may also be notified by the authorities at any time that such an association is unlawful to be in its operation in any such place as the authorities may think fit.³⁵⁰
4. Any individual distressed by the Notification alluded to above May inside 30 days from the date of notice make an application to the Court of the District Judge for an affirmation that the place has not been utilized with the end goal of the unlawful affiliation.³⁵¹
5. Whoever is a member of an association declared unlawful by a notification is *“liable to punishment of imprisonment for a term which may extend to two years and shall also be liable to fine.”*³⁵²
6. If any person or a group of persons becomes a member of such above mentioned unlawful association, penalty can be imposed upon such person.³⁵³

³⁴⁶ Section 2(a), The Unlawful Activities (Prevention) Act, 1967.

³⁴⁷ Section 2(p), The Unlawful Activities (Prevention) Act, 1967.

³⁴⁸ Section 3(1), The Unlawful Activities (Prevention) Act, 1967.

³⁴⁹ Section 3(3), The Unlawful Activities (Prevention) Act, 1967.

³⁵⁰ Section 8, The Unlawful Activities (Prevention) Act, 1967.

³⁵¹ Section 8(8), The Unlawful Activities (Prevention) Act, 1967.

³⁵² Section 10, The Unlawful Activities (Prevention) Act, 1967, Subs. by Act 29 of 2004, s. 6, for section 10 (w.e.f. 21-9-2004).

³⁵³ Section 15, The Unlawful Activities (Prevention) Act, 1967.

7. Whereas the further Section 16th and 17th of the Act provides for the penalty for the act of raising funds for the purpose of such unlawful activities for such unlawful association.^{354, 355}

3.2.2.4. The Maintenance of Internal Security Act, 1971³⁵⁶

During the emergency years on India in the regime of Smt. Indira Gandhi, the Maintenance of Security Act or popularly known as MISA was promulgated. Persons suspected of anti-social acts could be detained as terrorists under the provisions of this Act. Under this enactment persons could be detained on mere suspicion. In the name of the enemy of the State, the Police officials are vested with the extraordinary powers to detain as well as arrest. During the initial years of this enactment, protestors, political opponent trade union leaders, journalists and even student were in large number detained in jails.

The possible maximum period for which any individual might be kept in compatibility of any confinement request which has been affirmed, will be a year from the date of detainment or until this Act be canceled.³⁵⁷

“The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 13 shall be twelve months from the date of detention or until this Act be repealed.”³⁵⁸

Section 16 of the Act give “no suit or other legitimate continuing will lie against the focal government or a state and no suit or arraignment or lawful continuing will lie against any individual, for anything done in compliance with common decency or done to be planned”³⁵⁹.

3.2.2.5. The Criminal Procedure Code, 1973 (C.r.P.C)

³⁵⁴ Section 16 and 17, The Unlawful Activities (Prevention) Act, 1967.

³⁵⁵The Unlawful Activities (Prevention) Act, 1967.

³⁵⁶ Act No. 26 of 1971.

³⁵⁷ Section 3, The Maintenance of Internal Security Act, 1971.

³⁵⁸ Section 13, The Maintenance of Internal Security Act, 1971.

³⁵⁹ Section 16, The Maintenance of Internal Security Act, 1971.

Chapter X” of the “Criminal Procedure Code, 1973 (C.r.P.C)³⁶⁰ manages that how any prohibited gatherings be dispersed and who will be empowered to do so. The Grundnorm ensures just the option “*to assemble peacefully and without arms.*”³⁶¹ Unlawful gathering is characterized under “Section 141” of the IPC.³⁶² Disappointment of a get together of people to scatter or even to do so would positively welcome the utilization of sub-section (2), however it doesn't bring about the change of a legitimate gathering into prohibited one. The unlawful character of a prohibited gatherings must be resolved concerning the provision provided in alone, and the insubordination of an order gave under this part is definitely not a significant thought for that reason. As provided in Cr.P.C. provides for following kinds of prohibited gathering/assemblies as “*an unlawful assembly within the meaning of Section 141 of IPC and an assembly of five or more persons likely to cause disturbance of the public peace.*”³⁶³

The police have the right, yet additionally the obligation to keep up peace in given conditions. The obligation of the police for utilization of power and force doesn't originate from the authorization to be conceded by any private individual or authority. As observed in *Nagraj v State of Mysore*, to get the advantage of this, the denounced needs to show:-³⁶⁴

- (i) that an unlawful gathering of at least five people liable to cause an aggravation of public harmony,
- (ii) that such a gathering was told to scatter.
- (iii) that either the gathering didn't scatter on such order or, if no order had been given, its lead had shown an assurance not to scatter, and
- (iv) that in the conditions he utilized power against the individuals from such gathering.

³⁶⁰ Act No. 2 OF 1974.

³⁶¹ Article 19 (1) (b) of the Constitution of India.

³⁶² Act No. 45 OF 1860.

³⁶³ Section 129 of Cr.P.C.

³⁶⁴ *Nagraj v State of Mysore*, AIR 1964 SC 269.

Section 130³⁶⁵ leaves altogether to the prudence of the official in order concerning how he will scatter the get together or capture and restrict the people framing portions of it. Sub-section (3) clearly states that it is basic to apply the minimum force so as to disperse such unlawful/prohibited gathering.

Under Section 131³⁶⁶ of the C.r.P.C., an army officer or any gazette officer gets empowered with the right and power to manage and use the force for maintaining the public security if it is being caused by any Unlawful assembly.

The enactment was pitiably manhandled by the public authority and law requirement offices consequently, was canceled it in 1978 and the “National Security Act of 1980” was established to accommodate precaution confinement in issue identified with international concerns, guard, or security.³⁶⁷

3.2.2.6. The National Security Act, 1980 (NSA)

The NSA of 1980 is a legislation of the Union Parliament proclaimed in September 1980.³⁶⁸ It enables the “Central and State Governments to keep an individual to forestall him/her from acting in any way biased to the security of India, the relations of India with unfamiliar nations, the support of public request, or the upkeep of provisions and administrations crucial for the local area it is important so to do. The demonstration likewise offers capacity to the legislatures to confine an outsider in a view to manage his quality or oust from the country”.³⁶⁹ “In January 2020, the Lieutenant Governor of Delhi passed a request giving the Commissioner of Police with the ability to confine under NSA for a time of a quarter of a year between 19 January and 18 April. The request came when the public capital was seeing fights against the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC)”.³⁷⁰ The Act provides the government to take recourse to power of preventive

³⁶⁵ Code of Criminal Procedure, 1973.

³⁶⁶ *Ibid.*

³⁶⁷ Derek P. Jinks, “The Anatomy of an Institutionalized Emergency: Preventive Detention and Personal Liberty in India”, *MICH.J.INT ’L L.* 22, 2001, pp.311-323.

³⁶⁸ Act No. 65 of 1980.

³⁶⁹ Section 3, National Security Act, 1980.

³⁷⁰ WHAT IS NATIONAL SECURITY ACT,

detention in anticipation of past behavior of an individual and in the light of surrounding circumstances and its potentiality to disturb public tranquility by creating panic and terror in the society.

Further in *Kishori Mohan Bera vs The State of West Bengal*³⁷¹ explained the concept of maintenance of public order as:

“The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community.”

The Act requires detainment request to meet with similar procedural necessities as a warrant under the conventional criminal strategy code³⁷² and accommodated a greatest time of a year of confinement.³⁷³ The procedural safeness utilized is to educate the prisoner about the explanation regarding their detainment and the case should be shipped off the warning board 3 weeks of such confinement so lawfulness³⁷⁴ and adequate reason for confinement can check.³⁷⁵

The NSA isn't the primary law of its sort to be sanctioned in India. The Defense of India Act of 1915³⁷⁶ was corrected at the hour of the World War I to empower the state to keep a resident preventively. The Government of India Act, 1935 gave the forces of preventive confinement to the State. The common lawmaking bodies had the ability to define laws associated with the Maintenance of Public Order. At the point when the Constitution of India was instituted, “*Article 21*” ensured to each individual the privilege of life and freedom which couldn't be denied to him without respecting the due technique set up by law. “*Article 22*” of the Indian Constitution set out the plan under which a “preventive confinement law could be instituted. Preventive Detention

<https://www.business-standard.com/about/what-is-national-security-act-nsa> (last visited on 09-05-2020, at 12:06 pm).

³⁷¹(1972) 3 SCC 845.

³⁷² Section 4, National Security Act, 1980.

³⁷³ Section 13, National Security Act, 1980.

³⁷⁴ Section 10, National Security Act, 1980.

³⁷⁵ Section 11, National Security Act, 1980.

³⁷⁶Act No. IV of 1915.

Act 1950³⁷⁷ was instituted and it kept on being on resolution book until the Maintenance of Internal Security Act, 1971 (MISA).³⁷⁸ It was revoked in 1977. Furthermore, the lone period in India was with no preventive detainment law was the long term time frame, starting with the nullification of MISA in 1977 to the declaration of the NSA.³⁷⁹

It is applicable to Jammu and Kashmir following the abrogation of “Article 370 of the Indian Constitution” and implementation of The Jammu and Kashmir Reorganization Act, 2019³⁸⁰ on 9th August, 2019.³⁸¹

In the case of *Haradhan Saha & Another vs. The State of West Bengal & Others*³⁸² appreciated the nature of Order of Preventive Detention as the force of preventive detention is a prudent force practiced in sensible expectation. It might identify with an offense. A request for preventive detention might be made previously or during arraignment. A request for preventive confinement might be made with or without indictment and in expectation or after release or even vindication. The pendency of indictment is no bar to a request for preventive confinement. A request for preventive confinement is additionally not a bar to indictment. “*Such an order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances.*”³⁸³ Further the Apex Court in another case of *Giani Bakshish Singh vs Govt. Of India & Ors*³⁸⁴ interpreted the nature of Preventive Detention as it's anything but a discipline for the past exercises of an individual however is proposed to forestall the individual confined from enjoying future in exercises.

The Hon'ble Division Bench of Madras High Court in *N. Ajimeer Khan vs. District Collector and the District Magistrate, Ramanathapuram and*

³⁷⁷ Act No. 4 of 1950.

³⁷⁸ Act No. 26 of 1971.

³⁷⁹ Act No. 65 of 1980.

³⁸⁰ Act No. 34 of 2019.

³⁸¹ The Jammu and Kashmir Reorganization Act, 2019, Fifth schedule, table 1, s.no. 67-A.

³⁸²(1975) 3 SCC 198.

³⁸³*Ibid.*

³⁸⁴(1973) 2 SCC 688.

*Anr*³⁸⁵ categorically observed the nature of order of preventive detention as Preventive detention is devised to afford protection to society. The item isn't to rebuff a man for having accomplished something yet to catch before he does it and to keep him from doing it support for such confinement is doubt or sensible likelihood and not criminal conviction which must be justified by legitimate proof. It follows that any preventive measures, regardless of whether they include some restriction or difficulty upon people, don't participate in any capacity of the idea of discipline, however are taken via safeguard to forestall naughtiness to the State.

3.2.2.7. The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983³⁸⁶

This Act was also similar to the earlier Act of 1958.³⁸⁷ “It was applied in Punjab and Chandigarh in 1983 due to secessionist movements and lasted for 14 years until 1997”.³⁸⁸ Its scope was extending up to the areas of the state of Punjab and union territory of Chandigarh. Except the powers defined in the Act of 1958, the nature and ambit of power provided is enlarged as “*any property reasonably suspected to be stolen property*”³⁸⁹ and with addition of another provision to “*stop, search and seize any vehicle or vessel reasonably suspected to be carrying any person who is a proclaimed offender, or any person who has committed a non-cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a non-cognizable offence or any person who is carrying any arms, ammunition or explosive substance believed to be unlawfully held by him and may for that purpose use such force as may be necessary to effect such a stoppage, search or seizure as the case may be.*”³⁹⁰ Further Section 5 of the Act provides to break open doors, almirah, etc.³⁹¹

³⁸⁵1994 CriLJ 2670

³⁸⁶ Act No. 34 of 1983.

³⁸⁷ The Armed Forces Special Powers (Assam and Manipur) Act 1958.

³⁸⁸ Here are 10 things to know about controversial legislation AFSPA, Jul 09, 2016, HT Correspondent, Hindustan Times, available at: <https://www.hindustantimes.com/india-news/10-things-to-know-about-afspa/story-G6YYHw5s364LRfjTvg3HkK.html> (last visited on: 09-05-2020, at 12:36 pm).

³⁸⁹ Section 4 (d), The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983.

³⁹⁰ Section 4 (d), The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983.

³⁹¹ Section 5, The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983.

3.2.2.8. The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA)³⁹²

Regularly termed as TADA, it was the 1st authoritative exertion by the Central legislature of Indian Union to characterize and curb terror action. It was detailed in the background in the matter of developing terrorist viciousness in State of Punjab.

TADA came in force in Sept, 1987.³⁹³ This legislation was considerably much severe arrangements than the previous Unlawful Prevention Activates one (UAPA). UAPA, 1967 and TADA explicitly intended to manage fear terror exercises in India. Right when "TADA" was requested, the difficulties begin under the careful gaze of the Apex Court of the country as being illicit. The Apex Court maintained the protected legitimacy with the understanding that those endowed with such draconic legal forces would act in compliance with common decency and for the public great". On account of *Kartar Singh Case*,³⁹⁴ the Supreme Court, in the milestone judgment maintained the sacred legitimacy of the Act. Initially, the Court investigated the issue in an expansive point of view, recognizing the way that the current circumstance in the nation was exceptional.

The provisions of TADA provide the following:

- Section 3(1) – It provides the definition of the word terrorist act as the whoever intents to
 - to overawe the public authority as by law set up,
 - to strike fear in individuals or any segment of individuals
 - to distance any segment of individuals; or
 - to antagonistically influence the amicability among the various segments of individuals does any demonstration or things by utilizing different deadly things like bombs, explosives, guns, harmful substances and a lot more or perilous nature.

commits a terrorist act punishable under Section 3 of TADA.

³⁹²Act No. 28 of 1987.

³⁹³*Ibid.*

³⁹⁴ 11 (1994) 3 SCC 569.

- Section 3(2) (i) - Whoever commits a terrorist act be punished with death or imprisonment for life and shall also be liable to fine, if the act results in death of any person.
- Section 3(2) (ii) - Punishment for a term not less than 5 years will be imposed on those who will commit and act amounting to terrorist act. Such may be extended to imprisonment to life also with life.
- Section 3(2) (iii) – *“Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.”*
- TADA additionally accommodated in Section 5, *“Where any person is in possession of any arms and ammunition specified in Columns 2 and 3 of Category I or Category III (a) of Schedule I to the Arms Rules, 1962, or bombs, dynamite or other explosive substances un authorized in a notified area, he shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.”*³⁹⁵
- It given to relinquishment of property people indicted for any offense culpable. It empowered the Union or State legislature to comprise at least 1 assigned judicial office/court for specific zone dealing specifically with the same or gathering of cases.³⁹⁶
- TADA given that an admission made by an individual to a police official not below in position than a S.P, to be permissible for the preliminary of the individual for an offense under the Act.³⁹⁷

³⁹⁵ Section 5, TADA.

³⁹⁶ Section 8, TADA.

³⁹⁷ Section 15, TADA.

In the case of *Hitendra Vishnu Thakur*³⁹⁸, the Apex Court said that it is use of violence when it's most important result is not merely the physical and mental damage of the victim, but the prolonged psychological effect it produced or has the potential of producing on the society as a whole. If the object of the activity is to disturb the harmony of the society or to terrorize people, it will undoubtedly be held to be terrorist act.³⁹⁹

In *People's Union for Civil Liberties v. Union of India*,⁴⁰⁰ the Apex Court observed:

"It may also be that under these conditions, certain additional and unusual powers have to be given to the police to deal with terrorism. It may be necessary to fight terrorism with a strong hand which may involve vesting of good amount of discretion in the police officers or other paramilitary forces engaged in fighting them. If the versions of the police with respect to the incident in question were true there could have been no question of any interference by court. Nobody can say that the police should wait till they are shot at. It is for the force on the spot to decide when to act, how to act and where to act. It is not for the court to say how the terrorists should be fought. Court cannot be blind to the fact that even after fifty years of our independence, our territorial integrity is not fully secure. There are several types of separatist and terrorist activities in several parts of the country. They have to be subdued. Whether they should be fought politically or be dealt with by force is a matter of policy for the Government to determine. The court may not be the appropriate forum to determine those questions."

3.2.2.9. The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990⁴⁰¹

"*AFSPA, 1990*", passed by the Indian Parliament and is similar to the Acts earlier than it in dealing with the problem of internal security and terrorism. It had amplified the upset zones and risky conditions in order to incorporate activities

³⁹⁸*Hitendra Vishnu Thankur v. State of Maharashtra*, AIR 1994 SC 2623: (1994) 4 SCC 602: 1995 Cr LJ 517.

³⁹⁹*Ibid.*

⁴⁰⁰ AIR 1997 SC 1203:" 1997 AIR SCW 1234: (1997) 3 SCC 433.

⁴⁰¹ Act No. 21 of 1990.

involving terrorist act directed towards overthrowing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people⁴⁰² and further enlarged it by adding activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India.⁴⁰³

The state executive has been enabled to pronounce the state or any area of it as the disturbed by official notification. . The authorized official of the military consulted with the ability to capture without warrant if discover anyone submitted any cognizable offense, can tear lock to open and look through any home, almirah, or cup board to look and hold onto any material or individual which is needed or applicable to forestall any commission of blast or some other perilous demonstration proposed to be resolved to encroach well-being and security of the overall population. The captured individual and held onto property to be made over to the cop of that region. The officials of such positioned have been ensured under the demonstration to the degree that without authorization of the focal government, suit cannot be recorded against him.⁴⁰⁴

3.2.2.10. The Prevention of Terrorism Act, 2002⁴⁰⁵

The most violent incident on September 9, 2001 in United States of America in which the Terrorists had attacked the World Trade Centre of New York. And following that in December, 2001 an attack of the terrorists on the “Indian Parliament” backdrops the security situation in our country. Considering the terror acts of different gatherings in a few pieces of the country and the way that a portion of these gatherings supported by unfamiliar components. The Government arrived at the resolution that elective law to successfully manage psychological oppression is essential. As per this, the Government ordered another Act specifically, the *Prevention of Terrorism Act, 2002*

⁴⁰² Section 3(a), The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁴⁰³ Section 3(b), The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁴⁰⁴ Section 7, The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁴⁰⁵ Act No. 15 of 2002.

(POTA). This legislation had been pushed through at a joint sitting of Parliament claiming that it was a national necessity in the fight against terrorism.

Following are the features of the Act:

1. It permitted the detainment of a suspect for as long as one hundred and eighty days (180).
2. It additionally permits law implementation offices retaining personalities of witnesses and treats an admission made to the police as a confirmation of guilt.
3. Persons captured under the POTA could be held for Thirty days (30) before specialists needed to deliver them in an exceptional official courtroom.
4. When information was brought sure detaining and social control for like harboring or concealing, or trying to harbor or conceal a person wittingly that such person could be a terrorist.
5. The Review Committees each for the Centre also because the States are supplied with a statutory base and it's been only if a choice of the state Supreme Court ought to be its Chairman.

The leading case PUCL⁴⁰⁶ challenged the legitimacy of Prevention of Terrorist Activities Act came before the Supreme Court. The Supreme Court observed that it did not have the right to examine the necessity of POTA because it was a policy matter and the legislation had already been passed by the Government. It observed that the Government was only doing its duty and exercising all power within the limitation of the Constitution.

In the wake of the serious criticism that had arisen against the application of POTA the new Government, i.e., the United Progressive Alliance (UPA). The repeal of POTA was the first major policy decision of the UPA Government which it took office in May, 2004.

3.2.2.11. The Unlawful Activities (Prevention) Amendment Act, 2004⁴⁰⁷

⁴⁰⁶People's Union for Civil Liberties vs. Union of India, AIR 2004SC 456.

⁴⁰⁷ Act No. 29 of 2004.

With the changes in practice, the law also needs many changes. It is due to the need of the hour. After the repealing of POTA, the primary law of concern for terrorist activity which was left was the UAPA, 1967. As the UAPA was passed in 1967, the emergence of 21st century demands a set of changes as the act of terrorism in practicability has also been changed. Thus several times the amendments were made in the existing UAPA so as to meet the needs.

The Amendment Act of 2004 of UAPA firstly provided for the addition of the words “and for dealing with terrorist activities” with the word association, extending the nature and definition of the word terrorist activities towards associations also.⁴⁰⁸ Further the definition of terrorist act was amended in the amended Act which was not provided in the original Act of 1967.⁴⁰⁹ The amendment criminalized the raising of funds for a terrorist act,⁴¹⁰ holding of the proceeds of terrorism,⁴¹¹ and membership of a terrorist organization.⁴¹² It increased the time available to law-enforcement agencies to file a charge-sheet to six months from three. The amended Act of 2004 provides for various new provisions specifically for the purpose of covering an act amount to terrorist act with the punishments also under Chapter IV. These are:

1. Death penalty or life imprisonment for terror activity.
2. A term of imprisonment for not less than 5 years for intentionally raising monetary funds for terror acts.
3. For an offence of Conspiracy, punishment for a term of 5 years or more.
4. If any person harbours any person who is a terrorist, imprisonment will amount to 3 years.
5. Being an individual from a terrorist association, the term may stretch out up to detainment forever.
6. Holding proceeds of terrorism may extend to imprisonment for life.

⁴⁰⁸ Section 2, The Unlawful Activities (Prevention) Amendment Act, 2004.

⁴⁰⁹ Section 15, The Unlawful Activities (Prevention) Amendment Act, 2004.

⁴¹⁰ Section 17, The Unlawful Activities (Prevention) Amendment Act, 2004.

⁴¹¹ Section 21, The Unlawful Activities (Prevention) Amendment Act, 2004.

⁴¹² Section 20, The Unlawful Activities (Prevention) Amendment Act, 2004.

7. Imprisonment for about 3 years for threatening any witness.⁴¹³

3.2.2.12. The Unlawful Activities (Prevention) Amendment Act, 2008⁴¹⁴ and 2012⁴¹⁵

In the year 2008, UAPA was amended as a result after the assault by outfitted shooters in Mumbai. More arrangements like POTA and TADA in regards to most extreme period in police authority, imprisonment without a charge sheet and limitations on bail were consolidated into the UAPA. The 2012 revisions to the UAPA further extended the all-around obscure meaning of “terrorist act” to incorporate offenses that undermine the country's monetary security.⁴¹⁶

The Act presents an obscure meaning of terrorism to incorporate a wide scope of peaceful political action, including political dissent. It engages the public authority to pronounce an association as 'terrorists' and boycott it. Simple enrollment of a particularly banished association itself turns into a criminal offense. Moreover, it permits detainment without an energize sheet for to one hundred and eighty days and police care can be as long as thirty days. It likewise makes a solid assumption against rescue and expectant bail is of the inquiry. It makes an assumption of blame for psychological warfare offenses only dependent on the proof purportedly seized.

3.2.2.13. The National Investigating Agency Act, 2008⁴¹⁷

Throughout the previous few decades there have been endless terror assaults in India supported from across the visitors as bomb blasts in different pieces of the hinterland and significant urban areas. An enormous number of such events are found to have complex thruway and worldwide linkage with possible relationship of various activities like the pilfering of arms as well as medications, pushing in and course of fake cash, intrusion from across the visitors, etc.

⁴¹³ Act No. 29 of 2004.

⁴¹⁴ Act No. 35 of 2008.

⁴¹⁵ Act No. 3 of 2013.

⁴¹⁶ Fifty Years of Unreasonable Restrictions Under the Unlawful Activities Act

09/Mar/2017<https://thewire.in/rights/uapa-anti-terrorism-laws> (last visited on 11-05-2020, at 11:15 pm)

⁴¹⁷ Act No. 34 of 2008.

Taking a new note on every one of these acts it has been felt that there is need for setting up an Agency at the Central level for examination of wrongdoers identified with terror intention and certain connected demonstrations which have public implication. Through this demonstration a National level examination organization (NIA) has been established to indict offenses influencing the power, security and uprightness of India, security of the state just as unfamiliar states with which India have a cordial connection.⁴¹⁸

The officials of the Agency have all the forces, advantages and liabilities which the cops have regarding the examination of any offense.⁴¹⁹ The administration of the National Investigation Agency vest in Central Government and organization to vest in the official assigned for this sake by it.⁴²⁰ Examination by the National Investigation Agency can be begun by both Central Government just as by the state Government. Where the Union Government is of the evaluation that the offense is a schedule offense and it is a fit case to be investigated by the Agency, it will guide the office to examine the said offense.⁴²¹ The office with the past endorsement of the Central Government having respect to the gravity of the offense can move the examination and trial to the state government.⁴²²

3.2.2.14. The Unlawful Activities (Prevention) Amendment Act, 2019⁴²³

The Unlawful Activities (Prevention) Amendment Bill, 2019 was introduced in Lok Sabha by the Minister of Home Affairs, Mr. Amit Shah, on July 8, 2019. And on 8th July 2019, the bill get the assent to the President of India. The Bill amends the Unlawful Activities (Prevention) Act, 1967. The Act provides special procedures to deal with terrorist activities, among other things.⁴²⁴

⁴¹⁸ Section 3, The National Investigating Agency Act, 2008

⁴¹⁹ Section 8, The National Investigating Agency Act, 2008

⁴²⁰ Section 4, The National Investigating Agency Act, 2008

⁴²¹ Section 6, The National Investigating Agency Act, 2008

⁴²² Section 7, The National Investigating Agency Act, 2008

⁴²³ Act No. 47 of 2019.

⁴²⁴ *Ibid.*

The Act furthermore engages the public authority to assign people as terrorists on similar grounds. Under the Act, an Investigating official is needed to acquire the earlier endorsement of the Director General of Police to make seizure of the properties that might be associated with psychological warfare. The Act adds that if the assessment is driven by an authority of the "*National Investigation Agency (NIA)*", the support of the "*Director General of NIA would be required for catch of such property*". Under the Act, assessment of cases may be coordinated by authorities of the situation of "*Deputy Superintendent or Assistant Commissioner of Police or above*". The legislation also enables the officials of the NIA, of the position of Inspector or above, to research cases. It characterizes fear monger acts to incorporate demonstrations submitted inside the extent of any of the deals recorded in a timetable to the Act.

3.3. Critical Overview

Before going into detailed examination of specifics, it may be recognised that the Indian legal system, by and large, still continues to function under the inherited legislations from the colonial past. These legislations, it must be admitted, have served the requirements of dispensation of justice in normal criminal matters admirably well since they evolved around the basic concepts of natural justice. But, are these good enough to deal with the complex requirements of emerging challenges posed by the appearance of an entirely new breed, as it were, of serious acts of terror on the criminal canvas of the country, introduction of several special legislations like TADA, POTA, and UAPA etc.? These special laws define certain specific acts and offences related to terrorism and national security. On these issues, the approach of the Judiciary in India has been consistent. It has shown appropriate consideration for the Legislature's and Executive's intended objectives behind the enactment of the special legislations through what one may call "deference" or "margin of appreciation". Yet, any action of the state, perceived as making an inroad into the personal liberties or basic human rights of an individual, have always been subjected to very careful scrutiny by the Judiciary. Relevant material produced in the form of objective proof in accordance with the law forms the basis of judicial scrutiny. The objective evidence produced has to follow a thorough procedure which passes the muster of fairness and impartiality.

In spite of wide allegations against the authorities for the misuse of anti-terrorism laws, there remains a dire need for enactment and implementation of an

effective anti-terrorism laws clearly defining terrorism and prescribing the punishment for various offences. While enacting and implementing the anti-terrorism laws, it has widely been observed that there exist a tussle between national security at one hand and the promotion and protection of human rights of individuals at the other. It is very difficult to satisfy the needs and demands of human rights defenders while enacting such laws. Thus, the choice is often been left to the people to choose either national security or human rights principles.

Starting with the legislations which are not repealed or made ineffective, many of India's laws have become instruments of oppression rather than vehicles to regulate conduct. One such law is the Unlawful Activities (Prevention) Act, 1967 (UAPA). It is primarily meant to combat terror and proscribe known terrorist organisations. Parliament, in the latest amendment to UAPA in July 2019, chose to proscribe individuals and their activities by paving the way to name individuals as terrorists even though they may have no affiliation with any of the 36 terrorist organisations referred to in the First Schedule of the Act. The government seeks to justify this amendment consistent with its alleged desire to effectively deal with terrorists and terrorist organisations who threaten security. Unfortunately, the provisions of UAPA have, in the recent past, been used against those known to speak up for the oppressed, those who foster the cause of civil rights, and others who oppose the government and its policies.

However, we move into a somewhat grey zone when the State seeks to prosecute people by charging them with "preparing" for terrorism or "promoting" terrorism or raising money to "promote" terrorism. Unless a direct nexus is established between the acts of preparation or promotion of the terrorist act itself and the activity of a terrorist organisation, the Act will be used, and has been used, to silence those who oppose the State for its discriminatory policies and actions. The home minister further said that there are others who attempt to plant "terrorist literature" and infiltrate young minds with "terrorist theory". What kind of literature is "terrorist literature", what "theories" influence young minds, and what kind of "propaganda" is perceived to be a "terrorist act" are concepts ill-defined and easily misused.

The data available with the National Crime Records Bureau Report 2018 suggests that the conviction rate of those prosecuted under UAPA was as low as 14.5% in 2015 and as high as 49.3% in 2017. The total number of persons arrested in 2018

was 1,421; other relevant data includes those charge-sheeted (853), convicted (35), discharged (23) and acquitted (117). Clearly, the rate of conviction in 2018 was less than 30%. Of those convicted by the trial court, several may well be acquitted by the appellate court, making the rate of conviction abysmally low.

This is proof of the investigating authorities roping in named accused who are clearly not terrorists, making the law and procedures under it oppressive. Many of them are kept in custody for years before acquittal. An indication of the law's indiscriminate misuse is reflected in the kind of people arrested under UAPA. The reason why naming individuals is oppressive and violates citizens' fundamental freedoms is because of the onerous provisions relating to bail. First, those being investigated can be kept in custody for 180 days pending filing of the charge-sheet. Bail is refused if the court, on perusal of the case diary or upon filing of a charge-sheet, is of the opinion that there are reasonable grounds for believing that the accusations against the person are *prima facie* true. It is the settled position in law that the accused cannot have access to the case diary. As far as the charge-sheet is concerned, the act of taking cognisance by the court is based on a *prima facie* belief that the accusations are true. At that stage, the accused is not heard by the court. This makes the law onerous and offensive, with no hope for the accused to access bail. Trials, too, take long. At the end of 2018, of the 2,008 cases, only 317 were sent to trial. Given the state of the law, an acquittal at the end of the trial means little.

The imbalance between fundamental freedoms and the larger interests of the State is heavily skewed against the citizen. The State uses the law as an instrument of oppression, making democracy its victim.

The AFSPA, 1990 provides with the ample power to the forces (including the local police and armed forces) to break in any premises or to stop and vehicle for checking. On such suspicion such an officer can detain or arrest such person. It was implemented in Jammu and Kashmir, the law still remains a bone of contention in the militancy-hit state. Ambiguity shrouds the status of the AFSPA even as several regional parties, including separatists, debate the pros and cons of the law and up the ante against the government which time and again has refused to repeal it.

The AFSPA in Jammu & Kashmir was enacted in order to tackle the unprecedented rise in militancy and insurgency in Jammu and Kashmir. **Section (3)** of

AFSPA provides that, if the Governor of Jammu and Kashmir or the Central Government, is of opinion that the whole or any part of the State is in such a disturbed and dangerous condition then this Act can be imposed. Jammu and Kashmir has its own Disturbed Areas Act (DAA) separate legislation that came into existence in 1992. Even after the DAA for J&K lapsed in 1998, the government reasoned that the state can still be declared as a disturbed area under Section (3) of AFSPA. Implementation of AFSPA in J&K has become highly contentious but it still continues to be in operation.

Section 4 of the Act states that any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces in a disturbed area may have the powers in order to maintain public order it is necessary to fire upon or use force, even to the extent of causing death, against any individual who is deemed to be acting in contravention of any law that is in force in a disturbed area.

Further, prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances. This action can be taken up after giving such due warning that is necessary if he is of the opinion that it is necessary to *destroy any arms* dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made. Even the structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence.

Any individual who has committed a cognizable offence or against whom a reasonable suspicion exists that he/she has committed or is about to commit a cognizable offence can be arrested without a warrant and may use such force as necessary in order to carry out an arrest.

An officer authorized under the AFSPA can enter and search without a warrant is provided for any location to carry out such arrests or to apprehend any individual believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosives believed to be kept unlawfully in such premises and for this purpose reasonable amount of force can be used if necessary.

Supreme Court Guidelines 1998 which was provided In the case of Naga People's Movement of Human Rights vs. Union of India, the validity of AFSPA was

challenged before the Supreme Court and the five-judge bench concluded that the act cannot be considered as violative of the Constitution and the powers conferred under the section 4 and 5 of the Act are not arbitrary and unreasonable and therefore not in violation of the provisions of the Constitution.

Further, the guidelines stated that the army personnel are required to strictly follow minimum force under Section 4 against suspected of violating prohibitive orders. A person arrested and taken to custody under section 4 has to be handed over to the nearest police station within 24 hours of such arrest. The act has to be reviewed every six months by the state.

B P Jeevan Reddy Committee in 2005 the killing of Thangjam Manorama by the Assam Rifles in Manipur triggered widespread protests and outrage against the enforcement of AFSPA and as a follow up the government set up the Jeevan Reddy Commission to review AFSPA. After a thorough research and various visits and hearings held within and outside the North-Eastern States, the committee was firm that the Armed Forces (Special Powers) Act, 1958, should be repealed.

The committee was also of the view that the act is too sketchy and inadequate in several particulars. The committee also said that Due to the number of reports of sexual offences committed by the armed forces in India's conflict areas such as Kashmir and the North East, the Armed Forces Special Powers Act (AFSPA) – a controversial law that gives sweeping powers to and often confers immunity on security forces – must be reviewed. Security forces must be brought under the purview of ordinary criminal law rather than under army law. It also noted that AFSPA had become “*an object of hate and an instrument of discrimination and highhandedness*”.

Santosh Hegde Committee in 2013 headed by Supreme Court Judge Santosh Hegde was appointed to review the encounter killing of 1528 people in Manipur since 1979. The Supreme Court was prompted to set up the Santosh Hegde committee following the petition filed by the Extra Judicial Execution Victim Families Association of Manipur asking it to look into six charges of unlawful encounter killings in Manipur.

The Santosh Hegde committee submitted its report in 2013, saying five of the six encounters were “not genuine”, that “disproportionate force” had been used against persons with “no known criminal antecedents”, and that AFSPA gave “sweeping powers” to men in uniform without granting citizens protection against its misuse.

Further, the committee was of the view that if greater power was given then greater would be the restraint and stricter would be the mechanism to prevent its misuse or abuse, but this possibility was absent in the case of Manipur.

The 2016 judgment Supreme Court ruled against the alleged encounter killings carried out under AFSPA came due to the plea submitted by the victim's family of 1528 encounter killings carried out since 1979 in Manipur. The bench said that it does not matter whether the victim was a common person or a militant or a terrorist, nor does it matter whether the aggressor was a common person or the state. The law is the same for both and is equally applicable to both. This is the requirement of a democracy and the requirement of preservation of the rule of law and the preservation of individual liberties.

The Supreme Court of India ended the immunity of the armed forces from prosecution. The Apex court held that no excessive force Army and paramilitary forces cannot use excessive and retaliatory force during counter-insurgency operations in areas declared as disturbed under the AFSPA.

Further the Apex Court also mentioned that the Criminal courts have the jurisdiction over cases of alleged excesses by security forces which earlier were under a blanket of immunity provided by AFSPA.

Court said it does not matter whether the victim was a common person or a militant or a terrorist, nor does it matter whether the aggressor was a common person or the state. The law is the same for both and is equally applicable to both.

The July 2017 judgment of Supreme Court alleged unlawful encounter killings in Manipur has marked an important institutional step .

It recognises the presence of state violence in conflict-ridden areas. It also notes that the victims of such violence have no access to justice, which is a basic human right recognised under the Constitution of India.

The Supreme Court has overruled the objections of the Centre and the Army and ordered the Central Bureau of Investigation to set up a special investigation team to probe encounter deaths. The case has gone a long way in piercing the institutional blindness to violence by members of the security forces in conflict zones.

Both the National Human Rights Commission and the Supreme Court in 2014 have laid down the guidelines to be followed by the state in case of encounter deaths.

It states that first an FIR should be filed, investigation should be conducted by an independent agency and not by officers of the same police station and a magisterial enquiry needs to be held.

These rules, however, have remained on paper in most states. In Manipur, the Supreme Court observed that not a single FIR was filed against any uniformed personnel or members of the state police forces. Instead, charges have been filed against the victims for alleged violations of law and order in a disturbed area.

It is high time that sincere and concerted efforts are made continuously by the four stakeholders — civil society, the Armed Forces, the States and the Government of India to find a lasting and peaceful solution to the festering problem, with a little consideration from all quarters. It is never too late to bring peace and harmony in society. The recent SC verdict is likely to have far-reaching consequences in places where security forces have been insulated by AFSPA to carry out counter-insurgency operations.

CHAPTER 4

SPECIAL LEGAL

PROVISIONS

FOR

JAMMU AND KASHMIR

4.1. Introduction

In the previous chapter the discussion was with regard to anti-terrorism legislation enacted in India to deal with the problem regarding terrorism. It was noted therein that the national legislation had passed through three important phases. The first phase was relating to legislation on terrorism which had been enacted in the pre-Independence era in response to the conditions existing then, the second phase of legislation was with regard to the response which the national legislature had to offer to the international conventions which had been formulated by the “United Nations and its agencies”, and the third phase was with regard to the legislation which was based purely on the local conditions and was a response to the problems arising from the local conditions.

In the system of government prevailing in India it is possible for the legislatures of the States also to make a law on a subject not covered by the Central Legislature as well as in this matter for any state or any designated area of the state which is disturbed in the nature, the Central legislature has also made special laws pertaining to these conditions. Therefore apart from the legislation already enacted by the Union Legislature there is legislation enacted by the State Legislatures with regard to terrorism. Terrorism covered by this legislation is not of the same type as is covered by the central legislation but is a type of problem which is akin to the problem of terrorism. The purpose of this chapter is to describe the nature and scope of the State legislation

on the related offences which for all purposes are understood under the rubric of ‘terrorism’.

In this decade Indian union has seen a genuine of attacks and assaults at numerous places within the nation. The public authority strategy creators and vital local area proceed with their endeavors to discover key to counter the danger of Terrorism as illegal intimidation arises as probably the best danger to Nation’s interior safety.

The Mumbai fear assault uncovered crevices the interior defence system. The outcome is that it was gotten ignorant as well as ill-equipped yet such occurrence gave the Indian government a significant exercise to get ready itself and manage the sewage Terrorism. The primary highlights of this danger is a disturbing rate. In this manner the danger of illegal intimidation is changing and getting increasingly lethal. Psychological oppression is not, at this point restricted to a specific area, however it has been globalized now and works in an organization framework.

Before 11 September 2001 assault, terrorism was seen as one of the nearby issues. It was censured yet not genuinely managed by the worldwide local area. Nonetheless, he gigantic blow 9/11 assault came as a reminder to the global local area and broke the previous smugness. Today terrorism is not, at this point thought about an inside issues of one state, yet one that has a global implication. Each demonstration of fear, regardless of where, is regularly connected to, or upheld by terrorists elsewhere.

The danger is there in the contemporary time in India with respect to the terrorism practices. These practices are genuine and still in their full force. The greater part of the terrorism in the advanced days does demonstrations of savagery generally termed likewise state-supported huge scope activities outperforming every single public limit. Nearly they terror groups in are upheld by adjoining conditions of it n however this External help to illegal intimidation/extremists has been conceivable because of the public interior clashes and powerless reactions.⁴²⁵

⁴²⁵Jamwal, N. S. “Counter terrorism Strategy”, Strategic Analysis 27, no. 1 (2003), p. 70.

“Walter Laqueur” argues that *“the only effective weapon against terrorism in the modern era has been the infiltration of their ranks and the use of informers.”*⁴²⁶

Curbing terrorism is only possible powerful global methods, for the most part by inner participation which may incorporate announcing terrorism as a worldwide wrongdoing, removal of the guilty parties to another, contradicting to the offenses in the situation with political offenses, better proportions of help including sharing of proof available to them, following global show to keep away from any exchanges with terrorist, refusal to surrender to blackmailer requests and viable authorizations against those effectively supporting terrorist giving them refuge and different sorts of help.

India has been favoring non-military arrangements and attempted to arrive at a political answer for oblige the influenced gatherings, any place conceivable like giving more prominent independence.⁴²⁷ Military alternative has been utilized to teach a conviction that all is good among the influenced individuals, detach the issue, wear the radicals out and carry them to the orchestrating table so a political settlement could be reached. This technique got accomplishment in past time in the where the terrorists are brilliant yet it's definitely not an affected methodology since terrorist are of one area.⁴²⁸

4.2. Problem of Terrorism in Jammu and Kashmir

If there is a paradise on the earth it is here in India, in India, in India-Amir Khusro Famous Medieval, poet (Musician and Philosopher 1253- 1325 AD). The Jammu and Kashmir was a peaceful and beautiful state before 1947. There were no disturbance and the situation was normal. The famous medieval poet, Amir Khushro said, if there is a paradise on the earth it is here in India. Today, peaceful, beautiful and normal situation of Jammu and Kashmir has become deteriorated, exploited and breed disaffection among the different sections of society.

Pakistan has been aggressing on India in different kinds of forms, exploiting and killing of the innocent people since 1947. This ruthless misuse of the quiet

⁴²⁶Laqueur, Walter, *The age of terrorism*, Boston, MA: Little, brown, 1978, p 21.

⁴²⁷Budaniarajpal, “The emerging international security system: “Threats, challenges and opportunities for India”, *Strategic Analysis* 27, no. 1 (2003), p 81.

⁴²⁸Jamwal, N.S. “Counter terrorism Strategy”, *Strategic Analysis* 27, no. 1 (2003), p. 71.

individuals has been set apart by more than 80,000 killings, the interruption of society and the determined obliteration of fundamental wellbeing, schooling and monetary framework. The blackest flaw on this interval will remain the mass takeoff of Kashmiri Pandits and various Muslims driven by an incorporating trepidation through usage of fear, which was intentionally fanned by the people who may see a completion to the developed opposition of the Kashmiri Psyche.⁴²⁹

Having its own constitution within the Indian nation, J & K was ensured independence altogether local issues separated from international strategy, defence and communications. Notwithstanding, this self-sufficiency won't ever appear. The 50s and 60s, the expanding political envy with Indian Union`s endeavors to control legislative issues in J & K. Political pioneers who requested veritable self-sufficiency and favorable to referendum activists were consistently imprisoned. In 1964 the primary assailant gathering, the JKLF was shaped for battling to achieve autonomous status for J & K.

In 1975, in a move that generally defamed him with supportive of freedom Kashmiris, Sheik Abdullah, who had initially driven well known contradiction in opposition to Maharaja Singh and later in opposition to political administering through Delhi, denoted a comprehension with the then P M Mrs. Gandhi that ensured more imperative independence to J&K. Abdullah's political party, notwithstanding, gat a mind-boggling triumph in the 1977 state elections, which were viewed as free and reasonable. Gatherings like the Jamaat-e-Islami, which transparently upheld loyalty to Pakistan, were practically cleared out strategically.⁴³⁰

After Sheik Abdullah's passing in 1982, his successor (son) Dr. Farooq Abdullah took over as CM of the state of J & K. Indeed, the center meddled in the state`s governmental issues. In 1984 the ruling side in center, eliminated Dr. Abdullah and afterward his replacement, in 1986, "*G.M. Shah*", when interestingly the Union

⁴²⁹Anil Meheswari, "Terrorists create panic in the valley" The Hindustan Times (New Delhi) August 19, 1989. See also Kashmir Insurgency Time line, <http://news.bbc.co.uk/hi/enQlish/static/in.deoth/south/asia/2002/India-Pakistan/timeline/1989.html>. (last visited on 12th November, 2020).

⁴³⁰Ganguly, ed., The Kashmir Question, p. 4. And Akbar, Kashmir: Behind the Vale, p. 192.

government forced lead representative's standard, direct guideline by New Delhi in the province of Jammu and Kashmir. Lead representative Jagmohan assumed responsibility for the state organization until new decisions could be held.

“In 1986, PM Gandhi and Farooq Abdullah consented to another political arrangement building up a constituent partnership. This just added to a feeling of selling out among Kashmiris, who were stunned at Farooq Abdullah's trade off with the very Congress party that had pushed him out of force two years sooner. Numerous Kashmiris had effectively betrayed Farooq Abdullah in view of charges of corruption and wide defilement. After Farooq's apparent rat to the Congress party, there appeared to be expanding support for another resistance, the Muslim United Front (MUF), an assortment of Islamic and secessionist parties that incorporated the Jamaat-e-Islami.”⁴³¹

Numerous young individuals of valley upheld the alliance, which challenged to stand together against the actions of the state in March 1987.

The state appointment of 87 defined the moment throughout the entire existence of J&K. Mass captures of MUF up and comers and gathering laborers and inescapable & trustworthy claims of vote-fixing. Kashmiris got frustrated with appointive governmental issues and the colossal hatred in opposition to triumphant *“National Conference-Congress alliance”* that contended victory in decisions. Columnist T. Singh writes in her very much respected book, *“Kashmir: A Tragedy of Errors”*-

“The rigged election was the beginning of the end.... Nearly everyone I met said that most of the youths who had acted as election agents and workers for MUF candidates were now determined to fight for their rights differently. They had no choice but to pick up the gun, was the message I was given.”⁴³²

There were a few showings with protestors yelling enemies of India trademarks. Aggressor bunches effectively coordinated a blacklist of the 1989 Indian parliamentary races. Then, an assailant mission of brutality started, with the JKLF asserting duty regarding a progression of blasts in valley, harming state's infrastructure as well as

⁴³¹Tavleen Singh, Kashmir: A Tragedy of Errors (New Delhi: Viking, 1995).

⁴³²Tavleen Singh, Kashmir: A Tragedy of Errors (New Delhi: Viking, 1995).

vehicle. JKLF transparently conceded and got ammunitions and arms with aid as well as preparing in the neighboring nation “*Pakistan*”. The rule of peace and law circumstance started to twist wild.⁴³³

In January 1990, Jagmohan, the then State executive, effectively disagreeable in light of the fact that he was viewed as gathering to Delhi's excusal of a prior chosen government, was indeed delegated lead representative. Governor's rule was forced, placing center legislature into face to face showdown with the Kashmiri revolutionaries.

The Union government has reliably reprimanded Pakistan for arranging, preparing and furnishing the insurrection in Kashmir. Assailants, the two Kashmiris and Pakistani residents battling in J&K, have never rejected that they get arms and preparing from Pakistan. At the point when the viciousness initially started, Indian authorities picked distinctly to zero in on the Pakistani impact. Lead representative Jagmohan, in his book "*My Frozen Turbulence in Kashmir*", depicts finally Pakistan's "*Operation Topac*", a brain child of the President, "*General Zia-ul-Haq*". The ultimate goal of this operation was targeted in making the valley an indigenous and permanent integral part of their country.

J&K have fallen into near common clash. There were each day battles as a few thousands strolled in city, calling for opportunity. The attacker social occasions, with weaponry and strategy with the aid of Pakistan, carried out with their assaults, executing and bargaining Hindu inhabitants, doing capturing and passings of democratic specialists and suspected observers, taking an interest towards damages and exploding. Endless Hindu Kashmiris, known as pandits, got away from *Kashmir*. Aggressor packs that accepted a devotee Islamist theory offered perils to retailers and others busy with business that they considered un-Islamic, ardent spirits, merchants & film anteroom owners. In "*My Frozen Turbulence in Kashmir*", a book by Jagmohan asserts lawfulness had fallen when he assumed responsibility in 90's, resulting stricken with savagery, carnage and ruthlessness in the valley.⁴³⁴

⁴³³*Ibid.*

⁴³⁴ *My Frozen Turbulence in Kashmir*, by Jagmohan, 17th edition, 2006.

Counter-revolt laws like the “*AFSPA, 1990*” as well as “*Jammu and Kashmir Disturbed Areas Act were instituted in 1990*”, empowering the forces organizations severe forces of detainment & cross examination. By the reason for all intents and purposes difficult to recognize the assailants, who had neighborhood uphold, regular citizens were exposed to horrible maltreatments by forces. Indian armed force and other state powers did enormous quantities of rundown executions, custodial killings, torment, vanishings, and discretionary detainments.⁴³⁵

Security tasks included customary warrant-less searching, ordinarily in the mid-night, and after explosive and expert marksman assaults by terrorists upon security posts, safety officers would storm the neighborhood close by, burning down structures, and haphazardly whipping inhabitants. Tranquil exhibitions were scattered by aimless terminating by the security powers.

Numerous previous assailants say that they joined the equipped gatherings since they were enraged at the infringement and needed vengeance. In spite of the adjustment in governments, the approach towards J & K continued as before. While there were a few endeavors at converses with the separatists, troops kept on acting with fierceness.

In the year 1992 the public authority dispatched a “*catch and kill policy*” to execute caught aggressors. In August 1992, Indian government armed forces dispatched another hostile opposing the aggressors, known as “*Operation Tiger*”, a mission of shock strikes intended with the aim “*catch and kill*” speculated assailants and threaten non-military personnel supporters. Outline executions of prisoners and aimless assaults on regular people heightened in between the activity, what's more, for which is accompany, termed as “*Operation Shiva*.” With the passage of time the following a while, the security powers additionally occupied with continuous torching assaults, consuming houses, shops and whole areas. India offered to haggle with aggressor gatherings, yet regularly asserted that no agents were there from valley to hold the talks or negotiations.⁴³⁶

⁴³⁵ AFSPA, 1990.

⁴³⁶ Human Rights Watch and Physicians for Human Rights, *Pattern of Impunity*, p. 2.

In mid-90's, Central armed personals acquired the high ground in the significant towns in valley. However, the idea of the contention had varied. Whereas extensive stretches with regard to dispute, the terrorists were ordinarily belonging to the Kashmir part of the state. Remission recommendations were put forward and various terrorists even surrendered also. Many were executed and kept. A lot exited battle yet remained in Pakistan Occupied Kashmir (POK).

It was the year 1999, when invasion took place towards India jointly by the Pakistani forces and Pakistan aided terrorist into the Mountain regions in the Kargil and Drass, in return to this invasion, the Union of India also slapped the invaders with their effective force. The U.S. organization led by "*President Bill Clinton*", dreading a full scale nuclear battle stepped in to calm the circumstance, getting Pakistani P.M. Nawaz Sharif to pull out the invaders.⁴³⁷

In 1999, the terrorists hijacked an Indian Airlines plane and forced the pilots to go to Afghanistan. The motive behind the same was the release of 3 Pakistani Terrorists captured by the Indian Armed Forces.⁴³⁸

In December 2001, an endeavored assault on the Parliament of India was thwarted by forces in which 6 police officers and a nursery worker were murdered, just like the five assailants. More than 20 persons, including a few writers, were harmed.⁴³⁹ India started to convey its forces to border, as like our neighboring nation Pakistan. As the two sides compromised atomic clash, the worldwide local area stepped in indeed to pull the different sides back from the corner.

After the assaults of September 11, 2001, Pakistan was effectively constrained by its primary worldwide ally of worldwide terrorism. As indicated by Union reports, while around thirty five thousand terrorists are accepted to have crossed into J & K in 2001, the number plunged to 237 in 2005. An easing back down of the harmony cycle

⁴³⁷ Devin T. Hagerty, US Policy and the Kashmir Dispute: Prospects for Resolution, in Ganguly, ed., *The Kashmir Question*.

⁴³⁸ Indian Hijack Drama Over, BBC News, December 31, 1999, http://news.bbc.co.uk/1/hi/world/south_asia/584729.stm (last visited on 12th November, 2020).

⁴³⁹ India Recalls Parliament Attack, BBC News, December 13, 2002, http://news.bbc.co.uk/1/hi/world/south_asia/2572091.stm (last visited on 21st November, 2020).

in 2006, in any case, has agreed with a progressive expansion in assaults by assailants, which the military accused on expanded penetration.⁴⁴⁰

4.3. Operation TOPAC

“Operation Topac”, under which Pakistan dispatched its intermediary battle against India, was splendidly imagined and handily executed. *“Pakistan's President, General Zia-ul-Haq's”* idea behind it was *“to abuse the strict suppositions of the Kashmiri public, prepare interests on collective and partisan lines, fan the flames of strict fundamentalism as in the process steadily make conditions for pursuing a jihad”*.

Preceding dispatching its intermediary fight in Valley, *“Pakistan”* moreover began computation to manhandle the disillusioned segments among the youngsters of Punjab for the battle in creating a *“free Sikh State of Khalistan”*. The point was to destabilize our nation by making situations of shortcoming in 2 adjoining cutting edge states and to get the forces, specifically the Union forces, in inside safety commitments. It was typical that drawn out work in inside safety commitments would debilitate the Union armed forces (Army) and degenerate its standard power over the enemy forces. This was to be refined through a low-cost elective, without getting clearly included. The game plan of the state sponsor terrorism has been projected in *“Operation Topac”* by Indian security analysts on the basis of intelligence inputs received from Pakistan. The credit goes to Indian analysts who called correctly predict the three stages of the *“Operation Topac”*. The proxy war went along the counters of the Operation Topac.⁴⁴¹

Four month before his death, Gen. Zia called a meeting of top Army Generals and ISI officials at his residential office. The meeting was a hush-hush affair. Intelligence reports indicated that a top Afghan Mujahideen leader and two prominent Kashmir terrorists also attended the secret meeting. President Zia delivered a crucial speech. Zia unveiled Operation Topac in his speech. Operation Topac was meant to be a new version of Operation Gibraltar an anti-India Pakistani operation which flopped in 1965. In his Speech, following statements were observed:

⁴⁴⁰ Increase in Infiltration Across LOC: Army, Press Trust of India, July 27, 2006 http://www.hindustantimes.com/news/181_1754237,0006.htm (last visited on 12th November, 2020).

⁴⁴¹ International Centre for Peace Initiatives, Cost of Conflict Between India and Pakistan, p. 74.

Following were the key aims in the operation:

- Men were being chosen for various positions to do various tasks.
- Anti-Indian feelings were being targeted among the students on religious issues.
- Creating pressures on Line of Control through infuriation.
- To plan and attack on various HQ of forces.⁴⁴²

The Operation Topac (Proxy war) has failed to achieve its objectives. As the situation on Kashmir is totally different from what was in Afghanistan, the cost of sustaining proxy war is becoming prohibitive for Pakistan. In fact, India can easily raise Pakistan`s cost of Proxy war in many ways. For example, LOC firing costs Pakistan more than it does India. Counterstrike strategy can dismantle the infrastructure in POK and Northern Area where an insurgency force of Kashmiris can easily hit targets. Pakistan Army has been testing the threshold of Indian policy makers. It will be disastrous for Pakistan to raise the threshold. Proxy war can be a two-way affair. Pakistan is in no position to annex Kashmir by direct war or by proxy war.⁴⁴³

India claims that most of the separatist militant groups are based in Pakistan and Pakistan administrated Kashmir. Some like the All Parties Hurriyat Conference and the Jammu and Kashmir Liberation Front, demand an independent Kashmir, and other groups such as Lashkar-e Toiba and Jaish-e-Mohammed favour a Pakistani-Kashmir. Both of these organizations no longer operate under these names after they were banned by the Indian and Pakistani government, and by other countries including the USA and UK. Of these groups, the HizbulMujahideen, a militant organization based in Indian administered Kashmir, unlike other groups, has only kept its name. Several new separatist organizations have also emerged. According to Untied States intelligence, the

⁴⁴²*Ibid.*

⁴⁴³ Dutta, S.K. Rajeev Sharma, —Pakistan from Jinnah to Jehad! UBS Publishers and Distributors Pvt. Ltd. 2002. (New Delhi). P. 264.

Al-Qaida also has a main base in Pakistani Kashmir and helping to ferment terrorism in Jammu and Kashmir.⁴⁴⁴

Regardless of very much recorded proof in actuality, Pakistan continues guaranteeing that it is just giving "good, political and conciliatory help" to what it calls a native Kashmiri uprising in J&K. Musharraf says that Kashmir is its "vital national interest" and will not be compromised at any cost. He also pledged to continue providing political, diplomatic and moral support to the Kashmir's cause.⁴⁴⁵ He further said that Kashmir runs in our blood.⁴⁴⁶

The Lashkar-e-Toiba, Hafis Mohammed Saeed told a gathering in the Lahore that Indian Muslims had come to realize that "there is no future without Jihad". In October, 1997, Saeed had warned. "We feel that Kashmir should be liberated at the earliest. Thereafter, Indian Muslims should be aroused to revolt against Indian Union so that India gets disintegrated". An Inter-Service Intelligence (ISI) chief explained the primary objective that "*our aim is to weaken India from within and we can do it*".⁴⁴⁷

The Kashmir plan was inaugurated in 1984. Hashim Qureshi, has in his book "*Kashmir: Unveiling the truth*" revealed the plotting of the part and the revulsions that were to continue in Kashmir.⁴⁴⁸

Terrorism raised in the valley in 1989. Pakistan previously utilized the "*Jammu and Kashmir liberation Front*", with its supportive of autonomy belief system, to activate a mass development. Between 1989-90 was separate by the zeroed in on slaughtering of Government specialists, media work power, Judicial members, and individuals from the minority Kashmiri Pandit (Hindu) people group and Kashmir Muslims who challenged question the tenor to strategies and abundances of the terrorists. One quick impact, among January and April 1990 was the abdication of the properly chosen state government, the huge departure of almost 2, 50, 000 Kashmiris

⁴⁴⁴Information on the terrorist camps in Pakistan. <http://www.kashmirinformation.com/Pakistan/machine.html>.

⁴⁴⁵K.J.M. Varma, "Kashmir is of 'Vital Interest of Pak': The Tribune (New Delhi) February 6, 2005.

⁴⁴⁶P.C. Dogra, "Indo-Pakistan Peace Process" The Tribune (New Delhi) January 20, 2005.

⁴⁴⁷G. Parthasarathy, "Future of Peace Process", The Tribune (New Delhi) July 14, 2005.

⁴⁴⁸*Ibid.*

Pandits and more than 50,000 Kashmir Muslims from the valley with the Pandits were forcefully migrated and took haven in outcast camps in Jammu, Delhi and different urban communities in India. The target of making fear and pandemonium, deadening the state organization had met thusly with what might have appeared to be speedy achievement. This drove Pakistan to separate itself from those looking for autonomy, who it had prior tried to develop to induce estrangement in the state, and progressively try to support those, who supported joining Pakistan.⁴⁴⁹ The strategies used to advising impact by the aggressors were to assault the security powers from the front of swarmed commercial centers and common offices, in order to have a human haven or involve regular citizens into cross fire.

The state's reaction unavoidably prompted conflicts with both terrorists and regular citizen casualties. The casualties of local civilians at that point turned into the substance of missions coordinated by Pakistan and the terror groups asserting persecution of the Kashmiris and infringement of their common freedoms by the public authority. Since for each situation of such charge, government would quickly try to examine reality through its own regulatory foundation, it was set up that while sometimes there may have been eruption by the security powers working under huge danger and pressing factor, different cases were broadly misrepresented. For each situation of set up abundance, lawful activity against staff embroiled, was started by government.

Searches for the purpose of flushing out the terrorists and their allies the ground to blame the security powers for mass assaults. Such was the situation in March 1991 in KunanPoshpora town of Kupwara region, in which a mass rape of 23 ladies was claimed. The claim was enquired into by a group of senior regular citizen and military officials, on the site of the alleged event with interviews with supposed casualties. The claims were discovered to be unfounded. Ladies were especially influenced since some radical gatherings, opposing the actual grain of Kashmir's way of life, attempted persuasively to bind them to inside and the cover, likened to what the Taliban have done in Afghanistan, however without progress, to show a thing or two some Muslim

young ladies were truth be told assaulted and harmed. This truth be told commonly estranged ladies people from the development albeit many had before been strong of the secessionists through associations like the Dukhtaran-i-Millat.⁴⁵⁰

4.4. Factors Responsible for Terrorism in Jammu and Kashmir

There are various factors for emergence of terrorism in J & K namely, Historical, Political, socio-cultural and Economic factors which have been discussed as under-

1. Historical Factors

Maharaja Hari Singh, the autocratic ruler of state of Jammu and Kashmir, had also preferred to maintain the equal distance from both country India and Pakistan, to continue his autocratic dynasty rule, as well as the sovereign status of his government. Further, it appears that two major mistakes were made by the Government of India regarding the issue of J& K viz.,

- accession was accepted provisionally and its finalization was made subject to the will of people to be ascertained through plebiscite/referendum.
- The Kashmir issue was referred to United Nations by government of India, where Security Council passed the resolutions for “holding plebiscite in Jammu and Kashmir”.

2. Political Factors

The people who opted for guns to change the history of Jammu and Kashmir were given the arms, ammunition, financial help/assistance and training from across the border by Pakistan. Amanullah Khan, Chief Commander of the “*Jammu and Kashmir Liberation Front (JKLF)*” encouraged the Kashmiri youth to choose the way of violence and to recruit in Pakistan Inter service Intelligence (ISI) for launching the armed struggle. Pakistan provided the diplomatic, political, moral and financial support to local Kashmiris in the name of ‘Azadi’. The

⁴⁵⁰“Design to Destabilize” The Hindustan Times New Delhi) August 18, 1989.

command and control of the JKLF and HUM ultimately headed over to the non-Kashmiri militants. Due to this the situation in state became much worsened and after death of Sheikh Abdullah, “General Zia had instigated a plan to train the Kashmiri youth to launch an armed crusade in the valley”. But, it could not get much success. The Indian analysts analyzed that trouble was instigated by Pakistan. They also argued that Pakistan’s ISI had an important part this. The JKLF started to make the target Indian institutions like, police, judiciary, politicians and media and also raised the slogans of liberation of Jammu and Kashmir from India.

Soon it became an important factor in motivating the youth to seek arms, training from across the border. By 1993, the foreign militants had registered their presence in Kashmir as mercenaries. When the Jihadis in Pakistan gave a call against the Musharraf government to support the United States policy in Afghanistan, Hurriyat Conference openly supported the Musharraf’s move as against the Kashmiri militant organizations, which supported the Jehadi move and gave the call of strike in Kashmir.⁴⁵¹

3. Socio-Cultural Factors

The socio-cultural factors are also treated as major causes for eruption and emergence of terrorism in the name of ‘Jehad’ in the Jammu and Kashmir. The creation of Pakistan as a Muslim majority country in the neighbourhood of Kashmir provided an ideal solution, in which radical political Islam was propagated, promoted and transported to Kashmir. The propagandists of two-nation theory took the refuge of certain Quranic verses which stress that Islam does, not recognize the barriers of language, race, and domicile and thus discarded the Kashmiri nationalist as an un-Islamic ideology. Such type of ideological position found its supporters both in Pakistan as well as western world.

⁴⁵¹ *Ibid.*

The political group organizations like Jamat-i-Islami opened its schools to educate Kashmiri children their religion and Islamic solidarity as against traditional Sufi Islam of Kashmir and Kashmiriat. The Kashmiri peace loving secular citizens were denied their avenues of employment in the government institutions by the hardcore elements. The Islamists introduced dress code for women, forced the people to close the cinema halls, wine shops, entertainment television channels, discouraged people to visit shrines and institutions involved in promotion of Kashmir Language and culture.⁴⁵²

4. **Economic Factors**

The economic factor is considered one of the main reasons for Kashmiris to accede to India. The abolition of feudalism was the main reason for National Conference to win the support of Kashmir peasants and poor. The land reforms were carried out in the state of “Jammu and Kashmir”, the supporters of the ruling party managed to protect their economic interests through illegal means. A large number of estate of un-irrigated land under maize, apple, almond and walnut trees were kept away from the Land Reforms Act, to benefit some of the top level members of National Conference. The infrastructural development was confined to the urban areas only and a huge population was denied roads drinking water, electricity, schools, hospitals and other socioeconomic facilities. The admission in professional colleges became the monopoly of the influential and the government services were provided to the supporters of the ruling party and the people who could pay for being appointed. The corruption of all sorts became the main incentive for upward movement and merits were neglected in admissions to higher education and employment. The various poverty eradication schemes launched in the state were misappropriated and the benefit accrued mostly to the well-to-do class. The peasant people have no access to

⁴⁵²*Ibid.*

power structure. To fight against all these factors the armed struggle became necessary for frustrated and unemployed youth. Therefore, the economic factors took the back seat in the political struggle in Kashmir but these are part and parcel of the 'turmoil in Jammu and Kashmir State'.⁴⁵³

4.5. Countering Terrorism in Jammu and Kashmir: Policies and Strategies

4.5.1. Rehabilitation

With the goal of giving help to the mental and financial recovery of widows, vagrants, crippled and older ones, who had survived such aggressiveness, the J&K Government set up the "*Rehabilitation Council in 1995*". The "*Council*" likewise administers the recipient inclusion under different on-going government assistance and advancement plans. As an enlisted authority under the "*Societies Registration Act*", it capacities as a Non-Governmental Organization. At present an amount of "*Rs. 21 Crore approx. is accessible with the Council as corpus*". The "*Prime Minister's Reconstruction Plan for Jammu and Kashmir reported in November 2004*", encompassed. Among the other things an improved expense to strain of "*Rs.3 crore for Rehabilitation Council for year 2004-05, which has since been delivered by the Ministry of Social Justice and Empowerment, Government of India*".⁴⁵⁴

4.5.2. Rehabilitation for Victims of Militancy⁴⁵⁵

Terrorism in J & K has additionally impacts the society with deep rooted scars. Numerous ladies have been delivered widows and youngsters stranded. With the target of giving help to mental and monetary restoration to be provided to casualties due to such aggressiveness, government by incorporating the "*Council*" in 1995 for recovery of "*widows, vagrants, incapacitated and old-matured people*" unfavorably influenced

⁴⁵³*Ibid.*

⁴⁵⁴ Rehabilitation Important: Manmohan Singh, Friday, May 26, 2006, The Hindu <http://www.hindu.com/2006/05/26/stories/2006052608371200.htm>.

⁴⁵⁵ Annual Report 2003-2004, Ministry of Home Affairs, Government of India.

by hostility. It additionally focuses on better inclusion of recipients under different on-going government assistance and improvement plans of the Government.⁴⁵⁶

"National Foundation of Communal Harmony" delivered a measure around "Rs. 49.45 lakh" for giving monetary help/grants for educational purpose through the facilities such as assistant for school. A portion of the government assistance plans is allocated as per the following:

a. Widow and Girl Students⁴⁵⁷

The "Council" looked upon situations where the need of monetary help for marriage, ability enhancing and professional preparing is needed. The Council likewise assisted the casualties with help to get advances for taking up independent work adventure in addition to setting up of inns for young lady understudies, and so forth.

b. Orphans⁴⁵⁸

The Council supported understudies of terrorist influenced regions in private educational institutions, here within the state as well as outside and in cultivate homes which are administered by NGOs and masterminds exceptional instructing classes to proficient courses. For accomplishing the objective of turning out to be instructed Council arrangement of grants and repayment of educational expenses, and so on.

c. Handicapped Persons⁴⁵⁹

"For crippled people the Council has set up association of restoration and clinical camps. For the casualties of terrorism in any event, voyaging costs for specific treatment are met by the Council. Those casualties who are

⁴⁵⁶*Ibid.*

⁴⁵⁷*Ibid.*

⁴⁵⁸*Ibid.*

⁴⁵⁹*Ibid.*

occupied with professional preparing through NGOs are additionally given travel costs by the Council."⁴⁶⁰

4.5.3. Relief Measures for Victims of Militancy

The regional as well as the federal Governments should also look forward into the accompanying measures to restore casualties of aggressiveness:

(a) Ex-gratia relief/compensation to the victims of militancy/cross-border firing

*In 2006 "State Government have been providing ex- gratia relief to the Next-of-Kin (NoK) of victims of militancy for death and injury, Central Government provides an additional Rs.3 lakh to the Next-of-Kin of Jammu and Kashmir Police personnel killed in terrorism- related incidents over and above of 2 lakh paid by the State Government and reimbursed under SRE. Rs. 439.876 crore reimbursed under SRE by December 31, 2006".*⁴⁶¹

*In 2005 "Government of Jammu and Kashmir has been providing ex-gratia relief to the Next-of-Kin (NoK) of victims of militancy in cases of death and injury, as per the existing rules. Rs. 1.00 lakh is paid to the Next-of-Kin in case of death, Rs. 75,000/-, Rs. 5,000/- and Rs. 1,000/- for permanent disability, grievous injury and minor injury respectively, caused in a terrorist incident. 50% of the loss of immovable property, subject to a ceiling of Rs. 1 lakh, is paid as compensation to the property damaged in militancy. The State Government of Jammu and Kashmir provides Rs. 2 lakh to Next-of-Kin of Jammu and Kashmir Police personnel and Security Forces personnel and volunteer Special Police Officers killed in action against terrorists. This expenditure is reimbursed by the Central Government and till December 31, 2005, a sum of Rs. 426.44 crore has been reimbursed".*⁴⁶²

⁴⁶⁰*Ibid.*

⁴⁶¹ Annual Report 2005-2006, Ministry of Home Affairs, Government of India.

⁴⁶² Annual Report 2004-2005, Ministry of Home Affairs, Government of India.

In 2004, the Government opted for a new policy for the “surrender of militants” on “January 31, 2004”. The policy was having features as under:⁴⁶³

- *“a month to month payment of Rs. 2,000/- each month for a time of 3 years after give up,*
- *immediate award of Rs. 1.50 lakh to be kept looking like FDR in a bank for the sake of the surrenderee for a time of 3 years which can be drawn by him on finish of long term period and subject to acceptable conduct,*
- *incentives for gave up weapons are given according to recommended rates and*
- *vocational preparing for independent work to the individuals who want to go through such preparing”.*⁴⁶⁴

*“A complete number of 3,676 aggressors have given up-to December 31, 2005 out of which 197 assailants gave up after the declaration of the new Policy on January 31, 2004”.*⁴⁶⁵

In 2010, the Policy and Procedure for return of ex-Militants to J&K State was laid down. It further provides that Rs. 1800/- per month as stipend, creating self-employment by aiding in training for radio and T.V. mechanic, repair of home appliances, etc.⁴⁶⁶

(b) Relief to Kashmiri migrants and their rehabilitation⁴⁶⁷

“There are 55,950 Kashmiri migrant families, of whom 34,562 families are in Jammu, 19,338 families in Delhi and 2,050 families in different States/Union Territories; Government have as of late upgraded month to month money help from Rs.3000 per family each month to Rs.4000 per family each

⁴⁶³ Government of Jammu and Kashmir, Home Department, Rehabilitation Policy, 2004, Dated: 31-01-2004.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ *Ibid.*

⁴⁶⁶ Government of Jammu and Kashmir Home Department, Policy and Procedure for return of Ex-Militants to Jammu and Kashmir State, Govt order no. Home 1376 (ISA) of 2010, dated: 23.11.2010.

⁴⁶⁷ Annual Report 2006-2007, Ministry of Home Affairs, Government of India.

month and essential dry apportion to Kashmiri transients in Jammu and from Rs.3200 to Rs.4,000 per family each month to Kashmiri transients in Delhi w.e.f July 1st , 2006 and Other State Governments/Union Territories Administrations have likewise been furnishing alleviation to transients as per the scales fixed by them for the Kashmiri transients remaining in the State/Union Territories.”⁴⁶⁸

“The Central Government pays Rs. 3 lakh to the Next-of-Kin of each Jammu and Kashmir Police staff slaughtered in psychological oppression related occurrences, well beyond the measure of Rs. 2 lakh paid by the State Government and repaid under SRE in 2005.”⁴⁶⁹

(c) Measures taken for return of Kashmiri migrants to the Valley⁴⁷⁰

“Shrines in Mattan and Kheer Bhavani formed into two model groups containing brief sanctuaries, where Kashmiri travelers uprooted from these spots can be settled incidentally till such time they can fix their current private houses; State Government built 18 pads at Matt an and 100 one-room apartments at Kheer Bhavani, other than fixing/redesigning the hallowed place; Central Government supporting the development of 200 pads at Sheikhpura in Budgam District at an expected use of Rs. 20 crore for which an amount of Rs.18 crore is allotted. Development of the apartment flats previously finished and gave over to the poor individuals”.⁴⁷¹

The focused on assaults by the aggressors against regular folks in the underlying periods of the terrorist savagery in Jammu and Kashmir constrained a lion's share of Kashmiri Pandits move from the Valley in 1990 and from there on.

“There are 55,476 traveler groups of whom 34,088 families are in Jammu, 19,338 families in Delhi and 2,050 families in different States/Union Territories. 14,869 poor families in Jammu and 4,100 in Delhi are drawing

⁴⁶⁸*Ibid.*

⁴⁶⁹*Ibid.*

⁴⁷⁰*Ibid.*

⁴⁷¹*Ibid.*

alleviation. 230 transient families are living in 14 camps in Delhi and 5,778 families in 16 camps in Jammu. The arrangement of the Government in regard of these Kashmiri travelers depends on the reason that they will get back to the Valley when conditions sensibly favorable for their return are made. As needs be, the lasting restoration of the travelers outside the State isn't conceived. Legislature of Jammu and Jammu are giving money alleviation of Rs. 3,000/- per family each month in addition to fundamental dry proportions, consumption on which is repaid by the Central Government. Administration of NCT of Delhi is giving money help of Rs. 3,200/- per family each month.”⁴⁷²

(d) Confidence Building Measures (CBMs) for return of Kashmiri migrants⁴⁷³

As declared by the PM during his visit to J&K during “November 2004”, a between ecclesiastical group was comprised to get ready intend to restore Kashmiri transients. The group suggested different trust edifying strategies like development of apartments, making of open positions, enhancement of foundation in Valley, reclamation and fixing the sanctuaries/places of worship in the Valley, foundation of “*Self-Help Women's Groups*”, pioneering advancement projects and “*setting up of 1,000 house/limited scope businesses, arrangement of delicate credits, and so forth*”.⁴⁷⁴

(e) Reserved Job opportunities for Kashmiri Pundits under PM package

In 2008, the then Prime Minister, Shri Manmohan Singh, announced the package focusing on Rehabilitation of Kashmiri Pundits providing with job opportunities specifically reserved for them of around 6000. In 2020, approximately 25% of those 6000 job opportunities have been advertised⁴⁷⁵ with a view to rehabilitate them.

4.6. Legislations to curb Terrorism in Jammu and Kashmir

⁴⁷²*Ibid.*

⁴⁷³*Ibid.*

⁴⁷⁴*Ibid.*

⁴⁷⁵ Advertisement no. 03 of 2020, dated: -01-12-2020, Jammu and Kashmir Service Selection Board.

4.6.1. Armed Forces Special Powers Act, 1990 and J&K Criminal Procedure Code, 1989 (J&K C.r.P.C)

An equipped rebel development began in Kashmir in 1989, was essentially because of the Kashmiri revolt which has both homegrown just as unfamiliar measurements. Locally, the Union legislative body's inclination to oblige its view on the state without thinking about the destinations of individuals politically. Indirectly, Valley is the main cause for the issue of tension between the two nation bifurcated in 1947. At first, the conflict was totally local at this point soon Pakistan started aiding fanatics. From the mid 90's Pakistan similarly initiated coordinating "*Afghan war veterans*" and "*Islamist jihadis*" so as to re-establish to pelt the unrest in J&K.

Governor's rule was imposed with the creation of disintegrated situation in the J&K. In September 1990, "*Disturbed Areas Act*" was imposed what's more, the state was proclaimed as disputed. The "*Disturbed Areas Act of 1990*" remained "in force till July 18, 1992" and further replaced with the many "Presidential orders" of 1992 followed by 1997 and finally be allowed to be passed as a full fledged Act in 1998.

In 90's the Union legislature sanctioned "*The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA)*" and upheld the retrospective effectiveness of it from "July 5th, 1990". As per the Act "the military would be used to help the basic association in the disturbed zone to hinder terror activities composed towards striking fear in people just as any movement that jeopardized the regional respectability of the country or looked for the withdrawal of a piece of the region of India or offended public images like the Constitution, the public hymn or banner".⁴⁷⁶ Initially, "*the Act was enforced in six districts (Anantnag, Baramulla, Badgam, Kupwara, Pulwama and Srinagar) as well as in areas within 20 km of the line of control in Poonch and Rajouri districts*".⁴⁷⁷

⁴⁷⁶ "Section 3 (a) & (b)," The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, at http://mha.nic.in/pdfs/Armed%20forces%20_J&K_%20Spl.%20powers%20act,%201990.pdf, accessed on 29 March 2012.

⁴⁷⁷The Jammu and Kashmir Government Gazette, Vol 103, Srinagar, July 6, 1990, Civil Secretariat Home Department, Government of Jammu and Kashmir, at <http://>

The proceeding with use of the AFSPA in J&K in the quickly dynamic circumstance had pulled in a lot of discussion, regularly warmed. The then C M of J&K, has indeed reported withdrawal of the utilization of the law in specific zones, though the military has strongly contended for proceeding with the norm. In a new choice of the “*Association Home Ministry in disposing of an appeal archived by the Commonwealth Human Rights Initiative, Joint Secretary K. Skandan, Department of Kashmir Affairs in the Union Home Ministry*” has communicated as following:

“As the matter relating to notification/implementation of this Act was processed by the State Government.... You may, if so desire, approach the State Government for the relevant information under the RTI Act of the State Government. The RTI Act, 2005, is not applicable to the state of J&K; as such, your application was not transferred to the State Government.”

The order provides that no rules, guidelines and any instructions are given by the Ministry in regards to usage of "AFSPA" in J&K. It expresses that:

“The Chief Public Information Officer in his letter dated 6th January 2012 informed the applicant that as per the records available.... no such communication has been issued by this Armed Forces Special Powers Act, Jammu & Kashmir 23 Ministry in relation to implementation of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.”

Prior, a similar candidate had looked for data on whether any standard, rule, guideline, guidance, rule, roundabout, office notice, standing request, standard working method, journal warning or some other composed correspondence was given by MHA comparable usage of the questionable legislation.

Indian Apex Court in the year 1997 had set out various rules and regulations for AFSPA. As indicated by the Supreme Court rules, “*any individual captured and arrested in exercise of the forces under Section 4(c) of the Central Act ought to provide the official responsible for the closest police headquarters with the most un-conceivable*

[/mha.nic.in/pdfs/Armed%20forces%20_J&K_%20Spl.%20powers%20 act,%201990.pdf](http://mha.nic.in/pdfs/Armed%20forces%20_J&K_%20Spl.%20powers%20act,%201990.pdf), (last visited on 11th November, 2020)

*postponement, so he can be delivered before the closest Magistrate inside 24 hours of such capture, barring the time taken for venture from the spot of capture to the court of the justice; the property or the arms, ammo and so on, seized throughout an inquiry directed under Section 4 (d) of the Central Act should likewise be given over to the official accountable for the closest police headquarters along with a report of the conditions occasioning such pursuit and seizure”.*⁴⁷⁸

The other significant rule is that *“the arrangements of the J&K C r P C, 1989 overseeing search and seizure must be followed throughout search and seizure directed in exercise of the force gave under Section 4 (d) of the Central Act and a grievance containing a charge about abuse or maltreatment of the forces presented under the Central Act will be completely asked into. Relevantly, after the ejection of hostility in the state, AFSPA was forced in the Valley followed by Jammu separately in 1990 and 2001. The Act keeps on being in power in J&K in spite of solid resistance from political and common social activists”.*⁴⁷⁹

The contemporary legislation under *“Section 4 (a)”*,⁴⁸⁰ *“if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, 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 of things capable of being used as weapons or of fire-arms, ammunition or explosive substances. To justify the invocation of this provision, the officer need only be of the opinion that it is necessary to do so for the maintenance of public order”* and only give *“such due warning as he may consider necessary”*.⁴⁸¹

⁴⁷⁸*Ibid.*

⁴⁷⁹ Notification, Srinagar, 10 August 2001, Civil Secretariat Home Department, Government of Jammu and Kashmir, at http://mha.nic.in/pdfs/Armed%20forces%20_J&K_%20Spl.%20powers%20act,%201990.pdf, (last visited on 11th November, 2020)

⁴⁸⁰ Section 4(a), Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁴⁸¹*Ibid.*

The army can destroy property as per “*Section 4 (b)*”.⁴⁸²

Besides, the armed forces can take into custody any persons by arresting him or her without any valid issuance of a magistrate’s warrant.

*“Section 4 (c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest”*⁴⁸³

Under section 4 (d), such army officer can “*enter and search, without warrant, any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary, and seize any such property, arms, ammunition or explosive substances*”⁴⁸⁴

In accordance with Section 4(e), “*stop, search and seize any vehicle or vessel reasonably suspected to be carrying any person who is a proclaimed offender, or any person who has committed a non-cognizable offence, or against whom a reasonable suspicion exists that he has committed or is about to commit a non-cognizable offence, or any person who is carrying any arms, ammunition or explosive substance believed to be unlawfully held by him, and may, for that purpose, use such force as may be necessary to effect such stoppage, search or seizure, as the case may be.*”

This implies that the AFSPA can be held to be really disregarding “Article 21 of the Indian Constitution”,⁴⁸⁵ “the Right to Life, essential to the Fundamental Rights”. “Chapter X” of the “J&K Cr.P.C.” manages the support of public order, which gives a larger number of shields than the AFSPA. Section 129 considers dispersal of a gathering by utilization of common power. The section engages an Executive Magistrate, official responsible for a police headquarters or any cop not beneath the

⁴⁸² Section 4(b), Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁴⁸³ Section 4(c), Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁴⁸⁴ Section 4(d), Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

⁴⁸⁵ Indian Constitution.

position of sub-auditor to scatter such a gathering. It is fascinating to contrast this part and the forces that the military needs to scatter gatherings under “*Section 4 (a)*”. The “J&K Cr.P.C.” obviously indicates the positions scattering a gathering, though it concedes the ability utilising greatest power. Additionally, the “*J&K CrPC*” doesn't express that power to the degree of causing demise can be utilized to scatter a gathering.⁴⁸⁶

“*Section 130 and 131 of the Chapter IX*” set out the conditions under which the military might be brought in to scatter a gathering. These two areas have a few protections which are deficient in the Act.⁴⁸⁷ Given in “*Section 130*”, the military officials “are to follow the mandates of the Magistrate and use as little power as fundamental in doing as such”. Under “*Section 131*”, when no Executive Magistrate can be reached, the military may scatter the get together, however in the event that it gets conceivable to contact an Executive Magistrate anytime, the military should do as such. “*Section 131*” just enables the military to capture and limit. Besides, it is just charged or gazette officials who may provide the order to scatter such a get together, while in the “*AFSPA*” the non-authorized officials are given this force. The “*AFSPA*”, at that point awards far more extensive forces than the “*J&K Cr.P.C.*” for dispersal of a get together.⁴⁸⁸

J&K CrPC also in “*Chapter V*” provides the capturing/arrests strategy to be followed. “*Section 46*” sets out precisely the making of arrests. It provides that “*In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action*”. Sub-Section 46 (2) specifically provides that “*If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest*”. Sub-section (3) restricts this utilization of power by specifying that this doesn't give the official the option to cause the passing of the individual, “*Nothing in this section gives*

⁴⁸⁶*Ibid.*

⁴⁸⁷*Ibid.*

⁴⁸⁸*Ibid.*

a right to cause the death of a person who is not accused of an offence punishable with death or with life imprisonment.”

The changing circumstance would additionally legitimacy such thought. In any case, in that express the public authority keeps on persevering the “*Public Security Act, 1982 (PSA)*”, legislation of general application as compared “*AFSPA*”. This PSA is likewise the most draconian of its sort in J & K, in spite of the fact that there have been late alterations to suspend its application to minors, a strategy all around utilized in the vicious exhibits of 2010.

There may be the utilization of “*AFSPA*” in a continuous manner, if army had entrusted the office to guarantee security to the judges. On the off probability that the military during this manner it is felt that is it necessary for prolongation of “*AFSPA*” so as to unleash its duties, no alternative organization, is in a position to soundly challenge that see. By the by, within the event that it's terminated that the activity of the law ought to proceed, it's elementary so particularly the cycle be continued with regard to the enforcement of this legislation, ought to be wheat out, as in another legislation, with subtleties of however the forces give out to the law square measures are puzzled out.

Albeit the military may have guidelines or general requests on how powers should be worked out, these can scarcely sub for legal principles, enforceable by official courtrooms in a country which values the standard of law. Individuals from the military are regardless shielded from capture for anything done inside the line of obligation under Section 45 of the J&K C.r.P.C.

The heaviness of the contention at that point should be that the military be persuaded by government and agents of general society of the contentions to cancel the Act, given the assurance previously reached out to them by the current law. Be that as it may, there is another option.

The sending of the military widely in regular citizen regions in Kashmir is a headache frozen along the requests of the battle of 1947-48. Strains between the military and neighborhood regular citizen populaces, which is normal for the Valley in these non-military personnel zones, yet not along the LOC where the requirement for

organization is perceived by regular people as essential for their security spring from the inclination among regular folks that the military is an occupation power, in spite of worked endeavors by military specialists to dissipate such a picture. Nor is the military presence here needed for upkeep of peace and lawfulness, for which the military is less and less needed to be available to come in to work.

Such redeployment will surely require hefty monetary speculation. Yet, unquestionably the requirement for permitting India's residents in the state, activity of overflowing sacred opportunities should be the foremost thought, it's the perspective on author that there could be no different methods for getting the contention the State to conclusion.⁴⁸⁹

What's more, the surrendered military designs can be effectively utilized as clinics or different structures required for local area administration, including position of neighborhood police staff. New development could then produce work for Kashmir's bricklayers, craftsmen and a large group of talented laborers at as of now mulling under a system of high joblessness. An arrangement enumerating the different methods by which zones emptied by the military in the Valley. *"The Kashmiri Diaspora"*, is by and by a well-off neighborhood in *"US, the Middle East and parts of South East Asia"* be free to contribute. Although a course of action to be executed it may not about to convincing motivation to pull out the *"AFSPA"*, which would stop to apply in such area and handled by the nation's military, beside when the military should have been gotten.⁴⁹⁰

Taking everything into account, it ought to be undeniably seen that an extreme end on this should lay on the direction of the military. It might be said that the chance of redeployment has believe it or not began from among outfitted power authorities having high sensation of course. On the off chance that, by ordinary guidance it is concurred that "the law should proceed", it is to be careful to overview and Rules

⁴⁸⁹ See Jehangir Ali "Indian 'nationalism': Why Kashmir won't move on" <http://blogs.tribune.com.pk/story/11387/indian-nationalism-y-kashmir-wontmoveon/> (last visited on 11th September, 2020).

⁴⁹⁰*Ibid.*

meticulously made for its need, which should pass on the enactment into the equality with the odds of each Indian occupant ensured to them.

4.6.2. The Public Safety Act, 1978 (PSA)

Origin of PSA can be traced in the “*Defence of India Act, 1915*” which was passed under Colonial Rule in 1915. The motivation behind the Act was to smother political dispute. The PSA was founded in “*Defence of India Act, 1915*”. And post-independence as “*Public Security Act, 1946*”. In 1954, Preventive detention laws were being started to introduced by the legitimate authorities and in 1958 after various revisions and suggestions prompting the “*J&K PSA Ordinance, 1977*”. This was then revised into “*Public Safety Act, 1978*” (PSA). It was revised in 1987, 1990, 2012, and as of late as August 2018 to permit people to be confined externally the J&K.

It was acquainted in 1978 with apparently to halt the “*smuggling of timber*”. In any case, the legislative thought processes becomes more transparent when then CM Mr. Abdullah utilized it interestingly against political opponents. Since its utilization in the last part of the 70s, it is as yet being utilized today for “*the security of the state*”. Following the re-organisation of J&K, 2019, it is still enforceable and usable the “*Jammu and Kashmir Reorganisation Act of 2019*”.

Public authority disclosed the number of 16,329 individuals have been held under the PSA since 1988, for all intents and purposes all from Kashmir area of J&K in 2015. “*Public Crime Records Bureau*” records only 16 women containments in the time span 1995-2008. In February 2020, a writ petition being documented before Apex Court by Bhim Singh of J&K National Panthers Party naming PSA “*as dead and ultra vires*”.

As of now the game plan for preventive control in India exists under the CrPC, which draws in its establishments from laws Colonial rule in India. The J&K PSA is only one of the enactment in India that consider expectation containment at a state level.

The “*Public Safety Act, 1978*” of Jammu and Kashmir is a cautious confinement law that permits arresting an individual to keep the person in question who may act to hamper the security of the State. By definition, “*preventive confinement is planned to be preventive, not remedial. This far reaching definition is the most notable ground*

*used by a law implementation office when it slaps the PSA on an individual. It comes into power by an order passed either by Divisional Commissioner or the District Magistrate, or not by an order by police dependent on explicit claims or for explicit infringement of laws”.*⁴⁹¹

The PSA,⁴⁹² is a detention legislation that allows “*detention for up to 2 years*⁴⁹³ without going for a trial or charge. The Act takes into consideration the arrest and detainment of individuals without a warrant, explicit charges, and regularly for an undefined time frame.”⁴⁹⁴ However, sometimes, the Act makes arrangements for the kept individual to be educated about the explanation of authority, and furthermore offers such detained persons a chance to put forth the defense against their confinement to the public authority. Notwithstanding, the keeping authority isn't needed to uncover any realities which is against the public interest.

Its limits extend within the entire territory of J & K. It permits administrative detention for up to two years “*in the case of a person acting in any manner prejudicial to the security of the state, and for up to a year where any person is acting in any manner prejudicial to the maintenance of public order*”. The amendments of 2012 makes it clear that “*any individual below eighteen (18) was strictly prohibited under this Act to be detained*”.

As per Section 22, “*no suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith*” under the PSA.⁴⁹⁵ “*A person held under the PSA will be made before the judicial officer within 24 hours*”. “*The Advisory Board is a non-legal body set up under Section 14*”⁴⁹⁶ for

⁴⁹¹ Explained: What is Jammu and Kashmir's Public Safety Act? by Kaunain Sheriff M , Bashaarat Masood | New Delhi, Srinagar | Updated: September 17, 2019 4:57:56 pm <https://indianexpress.com/article/explained/farooq-abdullah-psa-jammu-and-kashmir-explained-6001031/> (last visited on 5th of February 2020, 9:22).

⁴⁹² *Ibid.*

⁴⁹³ Section 18, Jammu and Kashmir Public Safety Act, 1978.

⁴⁹⁴ *Ibid.*

⁴⁹⁵ Jammu and Kashmir Public Safety Act, 1978.

⁴⁹⁶ *Ibid.*

reviewing the confinement arrangements and decide if there is adequate reason for detainment.⁴⁹⁷

4.6.2.1. Provisions of Jammu and Kashmir Public Safety Act, 1978

National security or protection of a nation state, including its inhabitants, economy, and establishments, is seen as a commitment of every government. At first envisioned as affirmation against military attack, public safety is presently commonly appreciated to fuse moreover non-military estimations, including the security from mental abuse, minimization of bad behavior, monetary security, essentialness security, natural security, sustenance security, computerized security, etc. Hence, public safety perils consolidate, despite the exercises of other nation states, movement by horrible non-state performers, by narcotic cartels, and by worldwide organizations, and moreover the effects of calamitous occasions.

Governments rely upon an extent of measures, including political, monetary, and armed power, similarly as propriety, to shield the security of a nation state. They may moreover act to gather the conditions of security regionally and generally by decreasing transnational purposes behind insecurity, for instance, natural change, financial divergence, political restriction, and nuclear augmentation. To overcome such problems several measures are taken up by the appropriate authorities in every nation. Here in India also from post-independence several measures are carried upon and several measures are enacted further to strengthen the security of the nation such as “*Terrorist and Disruptive Activities (Prevention) Act*”,⁴⁹⁸ “*Prevention of Terrorism Act, 2002*”⁴⁹⁹ “*Unlawful Activities (Prevention) Act, 1967*”,⁵⁰⁰ “*Armed Forces Special Powers (Assam and Manipur) Act, 1958*”, “*Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983*”, “*Armed Forces (Jammu and Kashmir) Special Powers Act, 1990*”, “*Jammu and Kashmir Public Safety Act, 1978*” and so on.

⁴⁹⁷ WHAT IS PUBLIC SAFETY ACT (PSA) <https://www.business-standard.com/about/what-is-public-safety-act-psa> (last visited on 7th of February 2020).

⁴⁹⁸ Act No. 28 of 1987.

⁴⁹⁹ Act No. 15 of 2002.

⁵⁰⁰ Act No. 37 of 1967.

By definition, “preventive detention is meant to be preventive, not punitive. This broad definition is the most common ground used by a law-enforcement agency when it slaps the PSA on an individual. It comes into force by an administrative order passed either by Divisional Commissioner or the District Magistrate, or not by a detention order by police based on specific allegations or for specific violation of laws.”⁵⁰¹

The Public Safety Act (PSA),⁵⁰² 1978, of J & K is an authoritative confinement law that permits detainment of any person for as long as 2 years preposition of a preliminary or charge.⁵⁰³ PSA takes into consideration the capture and detainment of individuals without a warrant, explicit charges, and regularly for a vague timeframe. In any case, at times, the Act makes arrangements for the kept individual to be educated about the explanation of guardianship, and furthermore offers them a chance to put forth a defense against their detainment to the public authority. In any case, the confining authority isn't needed to uncover any realities which it considers being against the public interest to unveil.

The Provisions of the “Jammu and Kashmir Public Safety Act, 1978” provides for various protections and instances under which a person can be detained. Following are the section-wise provisions:-

- Section 1 of the Act, provides for the territorial limits and applicability of Act. It is clearly mentioned that the limits of the Act is within the territory of Jammu and Kashmir state.
- Section 2 of the Act, which provides for defining of the code for the purpose of this Act as the Code of Criminal Procedure, 1973.
- Various places have been defined under Section 3 of the Act about the prohibited places. Such places are notified by the Government, if the Government considers such places as fundamental or convenient that unique

⁵⁰¹ Explained: What is Jammu and Kashmir’s Public Safety Act? ByKaunain Sheriff M , Bashaarat Masood | New Delhi, Srinagar | Updated: September 17, 2019 4:57:56 pm <https://indianexpress.com/article/explained/farooq-abdullah-psa-jammu-and-kashmir-explained-6001031/> (last visited on 17th of February 2020, 9:22 am).

⁵⁰²*Ibid.*

⁵⁰³ Section 18, Jammu and Kashmir Public Safety Act, 1978.

precautionary measures ought to be taken to forestall the section of unapproved people, the Government may, by told request, pronounce that spot to be a restricted spot. Without the prior permission of the Government no person can enter into such prohibited place. When the permission is grated to such person to enter into such prohibited area, such person with the permission should comply his enter in accordance with that permission. The police officials deployed in such will be having the absolute power to search the person and any vehicle which such person is carrying.

- Section 6 of the Act provides for preventing any activity which may amount to violate the maintenance of communal or regional harmony which is likely to affect the public order. Such can be done by an authority authorized by the government.
- Chapter IV of the Act provides for the detaining of certain persons. Here in this chapter, Section 8 of the Act provides for the detention of certain persons which the Government may order on satisfaction on the reasons that such person is likely to affect:
 - Security of the State
 - Maintenance of Public Order
 - Smuggling, abetting to smuggle and transportation of timber.
 - Dealing with smuggled timber
 - Harboring persons engaged in smuggling of timber.

It is further provided that Divisional Commissioner and District Magistrate, if are satisfied, may exercise this power. Such prejudicial to the maintenance of public order includes:-

- (i) promoting, proliferating, or endeavoring to make, sensations of animosity or disdain or disharmony on grounds of religion, race, position, local area, or district;
- (ii) making arrangements for utilizing, or endeavoring its utilization, or utilizing, or actuating, impelling, or in any case abetting the utilization of power where such readiness, utilizing, endeavoring, affecting, instigating. inciting or abetting, upsets or is probably going to upset public request;

(iii) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of mischief within the meaning of section 425 of the Ranbir Penal Code where the commission of such mischief disturbs, or is likely to disturb public order;

(iv) attempting to commit, or committing, or instigating, inciting, provoking or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order.

- Such detention order may be executed at any place in J & K.
- *Section 10* of the Act provides for the ground for any detention which may be vague, non-existent, not-relevant, not-connected or not proximately connected with person invalid. Such an order shall be deemed to have order of detention.
- For the purpose of the person absconding, Section 12, the procedure followed by Section 87, 88 and 89 of the Code of Criminal Procedure, 1989 shall apply.
- After the amount of such person, the grounds of detention to be disclosed also. Such to be done when might be nevertheless usually not later than 5 (five) days and in extraordinary conditions and for motivations to be recorded as a hard copy not later than 10 days from the date of confinement.

But such reasons shall not be disclosed which the authority consider to be against the public interest to disclose.

- Moreover Section 14, *'if it seems necessary, the Government shall constitute an advisory Board for the purpose of this Act. Such Board shall consist of :*
 - *A chairman (who is or has been a Judge of the High Court), and*
 - *Two other members (who are or have been or qualified to be appointed as Judges of the High Court)*

Such person to be appointed by Government in consultation with the Chief justice of the High Court.

- The Procedure of the Advisory Board is provided in Section 16 of the Act.
- Section 19 of the Act provides for the Revocation of the Detention order. Any detention can be revoked or modified by Government at any time.
- It is also provided that *the person detained may also be released for any specified period either without conditions or upon specific condition specified in the order of release which may also provide for the time of cancelation of his release.*
- For such release, the person detained, may also be required to enter into a bond with or without sureties. Such rules and conditions of bond be followed as in accordance of the provisions of bails and binds under Jammu and Kashmir Criminal Procedure Code, 1989.
- If any person detained fails without sufficient cause to surrender himself, he shall be punished with imprisonment which may extend to two years or with fine or with both.

4.6.2.2. Trends in J&K Public Safety Act, 1978

The PSA considers confinement of an individual not with a conventional accusation or charge and without preliminary. It very well may be thwacked on an individual effectively in custody of the regional police force, on somebody following being conceded *“bail by a court or even on an individual absolved by the court. Detainment can be as long as 2 years”*. Dissimilar to in police authority, an individual who is kept under the Public Safety Act need not be created before an officer inside 24 hours of the detainment. The confined individual doesn't reserve the option to move a bail application under the steady gaze of a criminal court, and can't connect any legal counselor to address the person in question to the official having detaining power.⁵⁰⁴

The lone way this regulatory confinement of preventive nature request be tested is via a habeas corpus appeal or writ petition recorded by family members of the detained individual. The Supreme as well as the High Court have power as guaranteed by the Indian Constitution to empanel such appeals or writ petitions and pass a last

⁵⁰⁴ Section 16(5), Jammu and Kashmir Public Safety Act, 1978.

request looking for subduing of the Public Safety Act. Notwithstanding, if the request is subdued, there is no bar on the public authority passing another confinement request under the Public Safety Act and keeping the individual once more.⁵⁰⁵

The District Magistrate have the authority and power to implement the confinement order has security under the Act, which expresses that the order is considered "*done in accordance with some basic honesty*". In this way, there can be no indictment or any legitimate continuing against the authority who has passed the request. Likewise, following a revision a year ago by the Governor, people confined under the J&K Public Safety Act, 1978 in Jammu and Kashmir would now be able to be kept in prisons outside the state.

4.6.2.3. What happens once the PSA is slapped?

For the most part, when an individual is confined under the PSA, the District Magistrate conveys to the individual inside five days, recorded as a hard copy, the purpose behind the detainment. In exceptional conditions, the District Magistrate can require 10 days to impart these grounds. This correspondence is significant in light of the fact that it is based on it that the confined individual gets a chance of making a representation against the request. In any case, the District Magistrate additionally has the attentiveness not to uncover the real factors based on which the detainment is ordered, on the off chance that the person in question believes that these realities are *against "public interest"*. The District Magistrate needs to submit the detainment request inside about a month prior to an "*advisory board*", comprising of three individuals including a director who is a previous appointed authority of the High Court.⁵⁰⁶ The District Magistrate likewise needs to put the representation made by the detained/confined individual.⁵⁰⁷ The detained individual also can make a representation before this advisory board. Inside the 6th week from the date of detention/confinement,

⁵⁰⁵ Under Article 226 and 32 of Constitution of India respectively.

⁵⁰⁶ Section 14, Jammu and Kashmir Public Safety Act, 1978.

⁵⁰⁷ Section 15, Jammu and Kashmir Public Safety Act, 1978.

the board presents its report to the public authority, which will decide whether the detainment is openly interest. This report is restricting on the public authority.⁵⁰⁸

Why it is in news is the question to discuss. Right from its enactment thousands have been detained under this detention law. “According to the 2010 Amnesty report, “*A Lawless Law: Detentions under the Public Safety Act*”, at least 10,000-20,000 people have been detained under this preventive detention law since it was enacted in the 1970s”.⁵⁰⁹

“In 2016 alone, some 600 detention orders have been issued. According to a lawyer, this number includes those who have gone underground and evaded arrest. Previous J&K CM Omar Abdullah and Mehbooba Mufti were reserved under the severe Public Safety Act by the authorities in February, 2020. Regional political Party NC's general secretary and previous clergyman Ali Mohammed Sagar, senior PDP pioneer Sartaj Madani was reserved under the Public Safety Act. Prior, in September, 2019, ex-CM Farooq Abdullah was confined under the arrangements of Public Safety Act. Amusingly, the Act was first declared in 1978 during the boss clerical residency of Sheik Abdullah, father of Farooq Abdullah. Numerous political pioneers and gatherings have censured their confinement and named the PSA as a *draconian Act*”. Now an IAS topper from Jammu and Kashmir, Shah Faisal turned into a political competitor is also booked under this law becoming the eighth prominent mainstream politician of Kashmir to face the stringent law right after the abrogation of Article 370 by the Union Government in August 2019.⁵¹⁰ The question remains the same that whether these detentions will amount to peacefulness in Jammu and Kashmir?

The security of the state is the top most priority of the administration of the country. Such can be achieved by opting several acts, formulating various policies and

⁵⁰⁸ Section 17, Jammu and Kashmir Public Safety Act, 1978.

⁵⁰⁹India: A 'lawless law': Detentions under the Jammu and Kashmir Public Safety Act, 21 March 2011 <https://www.amnesty.org/en/documents/ASA20/001/2011/en/> (last visited on 9th February, 2020).

⁵¹⁰ Kashmir politician Shah Faesal is still IAS officer, erases Twitter timeline, The Hindustan times, New Delhi, 10 August, 2020, available at: <https://www.hindustantimes.com/india-news/j-k-ias-topper-shah-faesal-won-t-lead-kashmir-party-he-founded-sparks-buzz-about-exit-from-politics/story-KeuQgnFqo4pU9QIqewHAjN.html> (last visited on 11th December, 2020).

enforcing various legislations. “Jammu and Kashmir Public Safety Act, 1978”⁵¹¹ being one of them. As formulated for on the intent that to maintain the order of society and tranquility which is disturbed or before getting disturbed, it primarily focuses on the detention of those individuals which tends to do so. Further various powers are provided in the Act to overcome such situations. The mainstream questions arises here about the legitimacy of this legislation. Where one Act provides for the rights of any accused persons, the privileges given to them and right to bail, this Act creates an exception to those. As enacted for the maintenance of public order, in recent trends it can be seen that it is being used for the political rivalry. The recent example could be seen as from the detention of former Chief Minister of the Jammu and Kashmir state Omar Abdullah. The Abdullah was under detention for 6 months and the day it was ended, on the same day he was booked under the Public Safety Act. The question to discuss is that why 6 months period was passed on and why he was not initially booked under the Public Safety Act. It could be understood for now that it is used from the forfeited intent just to detain as maximum as possible.

⁵¹¹ Act No. 6 of 1978.

CHAPTER 5

IMPACT OF TERRORISM

AND

ANTI-TERRORISM LAWS

IN

JAMMU AND KASHMIR

MohithAgadi - "Those who concoct violence in the name of God are nothing but retarded"

5.1. Introduction

The eighties saw the whole Indian sub-landmass amidst struggle. The affirmation of autonomous ethnic and common personalities and the blend of religion and governmental issues gave a ripe ground to equipped disputes and developments for self-assurance. Cross-line abetment of psychological oppression in Punjab and Jammu & Kashmir raised viciousness and was clear in bank plunders, pyro-crime, bombings, kidnappings and killings including those of two of our Prime Ministers, to be specific, Mrs. Indira Gandhi and Rajiv Gandhi.

Right now, Terrorism in India may have lost a portion of its underlying toxin and energy, however as a political development of outrageous viciousness, it actually involves the focal point of the audience in numerous pieces of the country. In a country like India, with a pluralistic culture, there is no absence of disappointed and displeased ethnic and political gatherings that may give deceitful political pioneers and outer powers hostile to India, an opportunity to control and adventure the present circumstance for their own plans.⁵¹²

Added to the abovementioned, is the retreat to intermediary - battles by powers enthusiastic about India's destabilization. As traditional wars become excessively costly and odds of accomplishing targets through them have diminished quickly, the utilization of intermediary war has become a significant arrangement choice for outer powers antagonistic to India. An intermediary war being an appealing ease, high-achievement rate alternative, with a more prominent level of deniability with respect to the provocateur, it is no big surprise that at whatever point India saw a socio-political or ethnic upheaval, powers from across the boundary profited by the second to incite inconvenience secretly. From numerous points of view, the psychological militant issue in India would have not arrived at the extents it arrived at, had outer powers not utilized the issue as a method for assisting their expansionist plans. Obviously, the underlying foundations of the issue have been, first off, inner and political and it will be self-

⁵¹²VedMarwah, *Uncivil Wars: Pathology of Terrorism in India*, Indus, New Delhi, 1995.

destructive for any administration to bypass its regulatory and political weaknesses and lay the fault unequivocally on the unfamiliar hand.

British India came to be split into two countries, India and Pakistan. The partition was based on Jinnah's two-nation theory and it was on this basis that Pakistan's claim to Kashmir tends to rest. In October 1947, even as Maharaja Hari Singh signed the Instrument of Accession with India, Pakistan sent hordes of its 'irregulars' – tribal militants backed by its Armed Forces without uniform - to occupy Kashmir. The loot and plunder stopped only when the Indian Army was called upon by the Maharaja to help him out of this crisis. The Indian Army pushed back the raiders to some extent when a cease fire was declared. At that time, Pakistan was in occupation of almost two fifths of the state's territory and is still holding on to it. This so-called 'Azad Kashmir' area is the part where Pakistan has now set up maximum number of training camps for terrorists to be sent to India for subversion and destruction of socio-political fabric and governmental credibility.

The next attack from Pakistan came in 1965 when it perceived India to be weak after the Chinese aggression of 1962. But Pakistan suffered major reverses then too at the hands of the Indian Army.

The third confrontation came in 1971 during the Bangladesh war. At the end of the sixteen day war, Pakistan lost its eastern wing and 96,000 of its soldiers surrendered to the Indian Army. This reduction in its size and influence made Pakistan restless and it almost ached for an opportunity to hit India and assuage its own sense of revenge.⁵¹³

Militancy in the valley entered an extremely violent phase from July 1989 onwards. Attacks on selected targets and police-mob clashes made their presence felt like never before. There were bomb blasts all around and their increasing frequency threatened to erode the credibility of the government. From December 1989, an organized phase of assassinations, kidnapping, murders and looting started in J & K.⁵¹⁴

⁵¹³ D.P. Kumar. Kashmir: Pakistan's Proxv War. Har-Anand Publication. 1995.

⁵¹⁴ Dina Nath Raina, Unhappy Kashmir: The Hidden Story Reliance N.D 1990.

The Islamic Card has also been played skillfully all along to instill a feeling of distrust towards the government of India. To sum up, at the macro-level, Pak-sponsored moves seem to be aimed at-⁵¹⁵

- 1) A gradual escalation of insurgency and terrorism.
- 2) Further subversion of the local administration by infiltration of sympathisers and informers,
- 3) Use of religion to garner support for sponsored terrorism and anti- India sentiments.
- 4) Creation of chaos and terror in chosen areas of Jammu to communalise the situation.
- 5) Engineer events to invite harsh government measures and then highlight abuse of "human rights" to the world, particularly through hectic lobbying in the US, Europe and at the United Nations.
- 6) Physically eliminate all political opponents in the valley to stall any political process there.⁵¹⁶

Every one of these strategies have appropriately compensated Pakistan with the targets it set to accomplish the seeping of Indian assets the debilitation of its military, the subverting of India's standing abroad, the procurement of discretionary influence against India reprisal for Indian intruding in Pakistan's own ethnic agitation and the incapacitating of the Pakistan government homegrown political adversaries.

In spite of the fact that decisions have been held effectively in Kashmir and a famous government re-established, it appears to be impossible that Pakistan will surrender its arrangement of helping and abetting J and K psychological terrorism despite the fact that individuals are getting frustrated with it. What the territory of Jammu and Kashmir needs is the making of an appropriate climate for it to seek after far located strategies and projects. Devious way of talking about 'Kashmiriyat' should be said goodbye and supplanted by a certifiable need to discover an answer for the

⁵¹⁵ Major General Afsar Karim (with the IDR Team), Kashmir: The Troubled Frontiers Lancer Publishers, N.D 1994.

⁵¹⁶ Ibid.

numerous issues of individuals. A multi-dimensional arrangement glancing in to all parts of the Kashmir issue - military, political, strategic and mental is the need of great importance. It is just when inner conditions are solid that outside intercession can be adequately managed.

The data collected in this research work within the specified area as mentioned in the research methodology is analyzed and detailed results have been obtained by the researcher. The data collected is by the ways of questionnaires as well as with few representatives opting for an interview schedule in filling the questionnaires.

The methodology opted has already been mentioned in the CHAPTER 1. The questionnaire prepared for the research is further is divided in two sub-questionnaires. These are:

- 1) Questionnaire among the armed forces (including personnel of Indian Army-officers and J&K Police – SOG groups), and
- 2) Questionnaire among the civilians including (Law knowing persons, Academicians, law students and Lawyers)

The data collected is being analyzed by the researcher in the form of Tables, Pie charts as well as Bar graph. The questionnaire opted was a systematic one with close ended questions.

5.2. Research Methodology

For the purpose of the research, the researcher aims to do Doctrinal and Non-Doctrinal research. Data for the study will be collected from primary and secondary sources.

The representatives are selected region specific from the two regions of Jammu and Kashmir, i.e., Jammu and Kashmir.

For the fulfillment of study, sampling technique will be opted, more specifically Simple Random Sampling. The target audience for the sampling shall consist of 3 groups of people:

4. First shall be the members of Armed forces which include Indian Army,
 - a. among those officers of Indian Army who are dealing or have dealt with terrorism

- b. At-least of 20 Army officers are to be consulted for the fulfilment of the research from the whole area of Jammu and Kashmir.
- 5. Secondly, Jammu and Kashmir Police specifically Special operations group (SOG)
 - a. At-least of 20 Police officers are to be consulted for the fulfilment of the research from the whole area of Jammu and Kashmir.
- 6. Thirdly, the study includes the audience from general public specifically divided in 4 sub-groups, such as
 - a. Advocates (at-least 50 from each region),
 - b. Law students(at-least 50 from each region),
 - c. Academicians in Universities as well law colleges (at-least 15 from each region) and
 - d. Lastly state level judicial officers specifically dealing with these matters (at-least 5 from whole of Jammu and Kashmir).

The researcher has aimed for collecting data altogether from the whole Jammu and Kashmir.

Opting such technique will efficiently help the researcher to find out the field reality regarding the roots of terrorism, impact of terrorism, and the problems that are being faced till date. Moreover, the procedure to be used for collection of the samples is by the way of the questionnaires, obtaining the opinions, present scenario, suggestions and views of the people therein.

5.3. Sample Selection

For carrying out the purpose of the research work, the sample size selected is of at-least Three hundred (300) representatives. The representatives are selected objectively depending upon the nature of the representative.

The representative are divided into two major groups for the research work. The first group includes the representatives from forces (Indian Army) and local police. Whereas the second group includes the civilian population comprising of further divided into sub-groups such as Law Students, Academicians, State level judicial officers and Advocates.

The Representatives are selected on the basis of the deployment, the work culture, the area of expertise, upon the statutory responsibility and the power conferred.

The data has been collected by the way of questionnaires among the two groups of representatives. The quantity of representatives of first group are considerably low as of the representatives of group second. The reason for such is that the representatives in the Group first are having such a job that their deployment could be varied. Not only are this power for the enforcement of anti-terrorism law orders vested statutorily in the officers providing the first hand experiences. Moreover only officers are included in this research as the power to grant any order can only be granted by a police official above the Inspector and at least the commissioned officer of Indian Army. Whereas the representatives in the second group are the law knowing persons which are having the legal temperament in defining the laws.

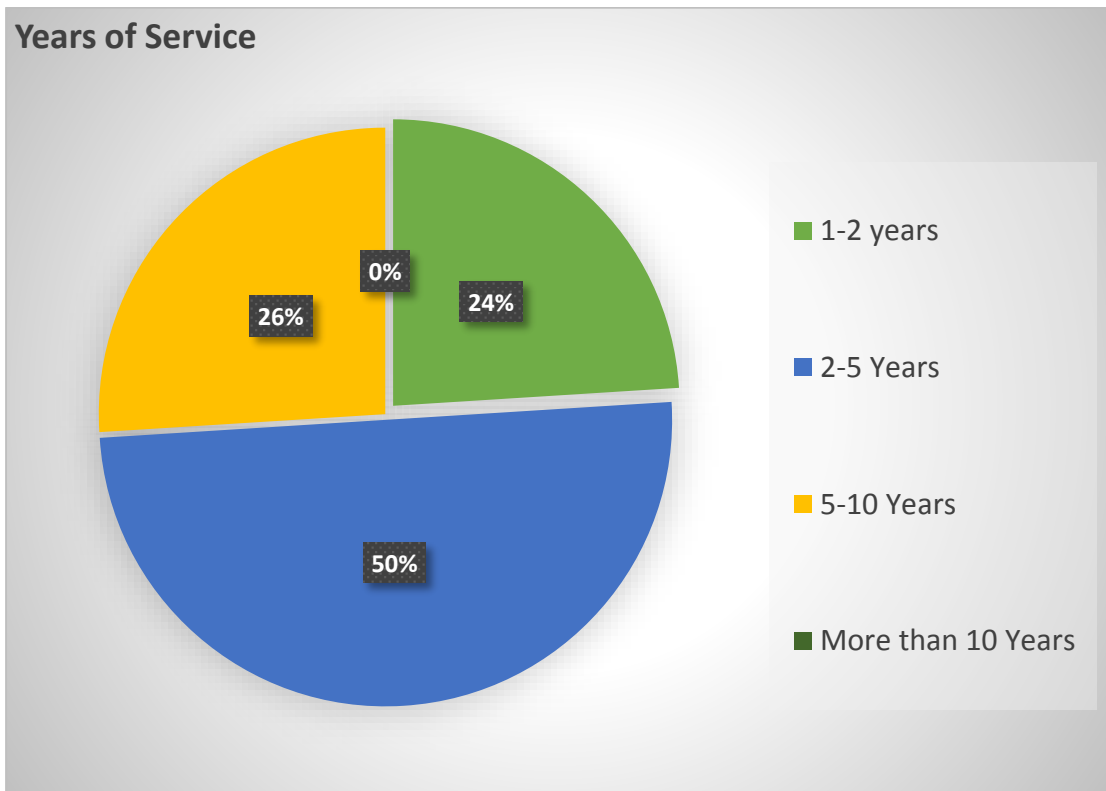
5.3. Questionnaire of Armed Forces (Total Respondents 50)

Question 1. How many years you have served in your service?

Table 1

Years of service	Responses (%) – No. of respondents
1-2 years	24% - 12
2-5 years	50% - 25
5-10 years	26% - 13
More than 10 years	-

Figure 1.

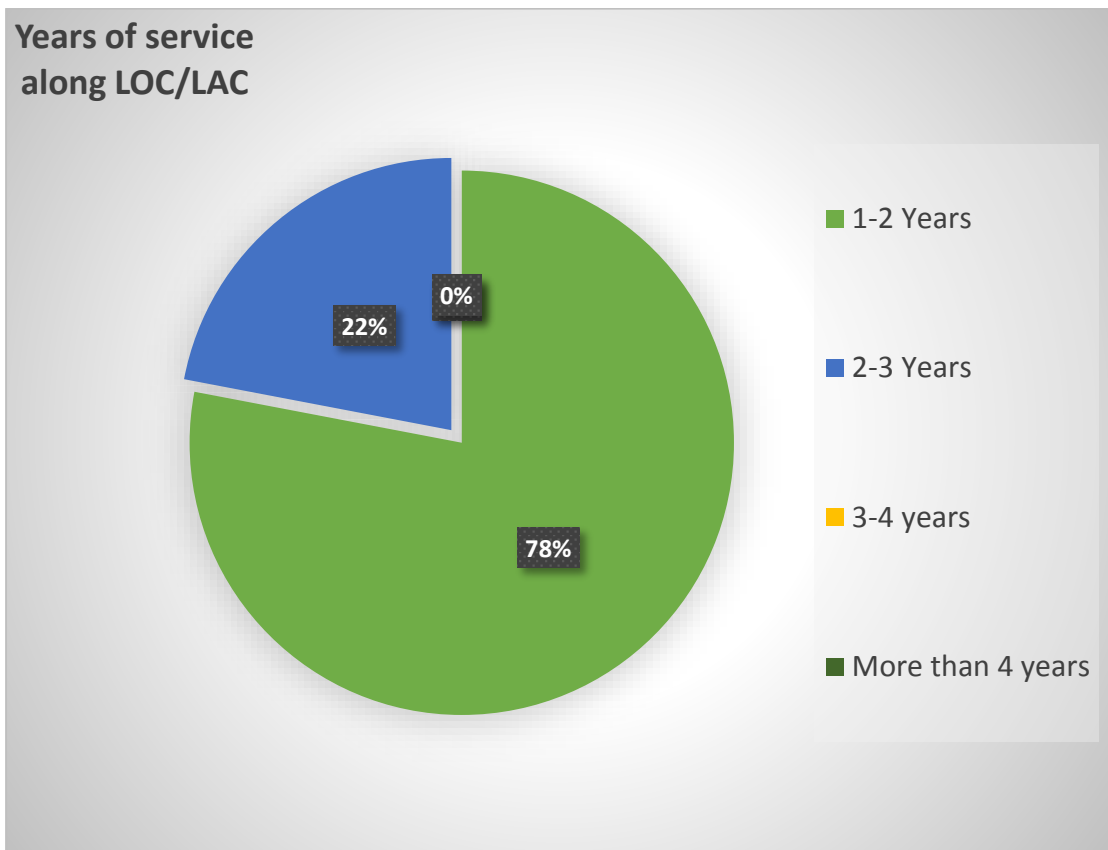


Question 2. How many years you have served in your service along LOC or/and LAC?

Table 2

Years of service along LOC/LAC	Responses
1-2 years	78% - 39
2-3 years	22% - 11
3-4 years	-
More than 4 years	-

Figure 2

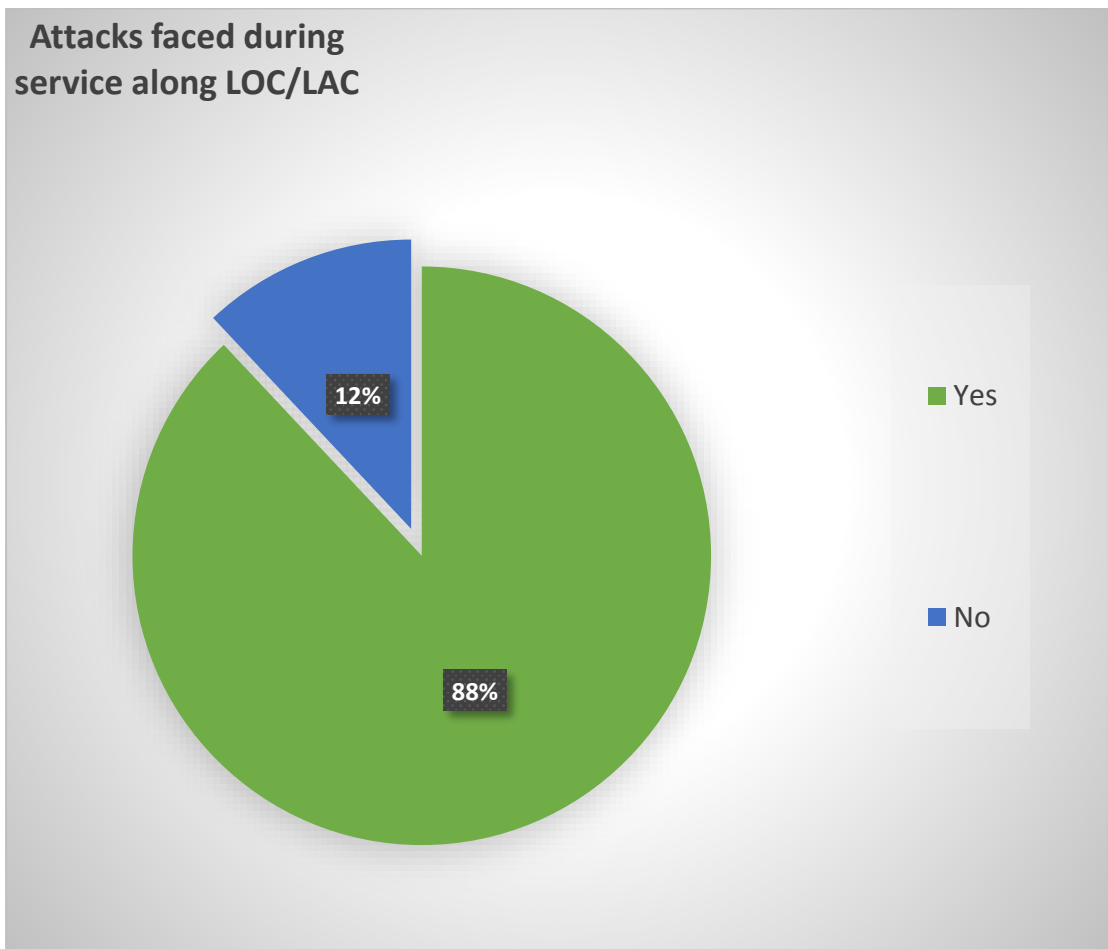


Question 3. Have you faced any terrorist attack or attacks during service along LOC or/and LAC?

Table 3

Have you faced any terrorist attack or attacks	Responses
Yes	88% - 44
No	12% - 6

Figure 3

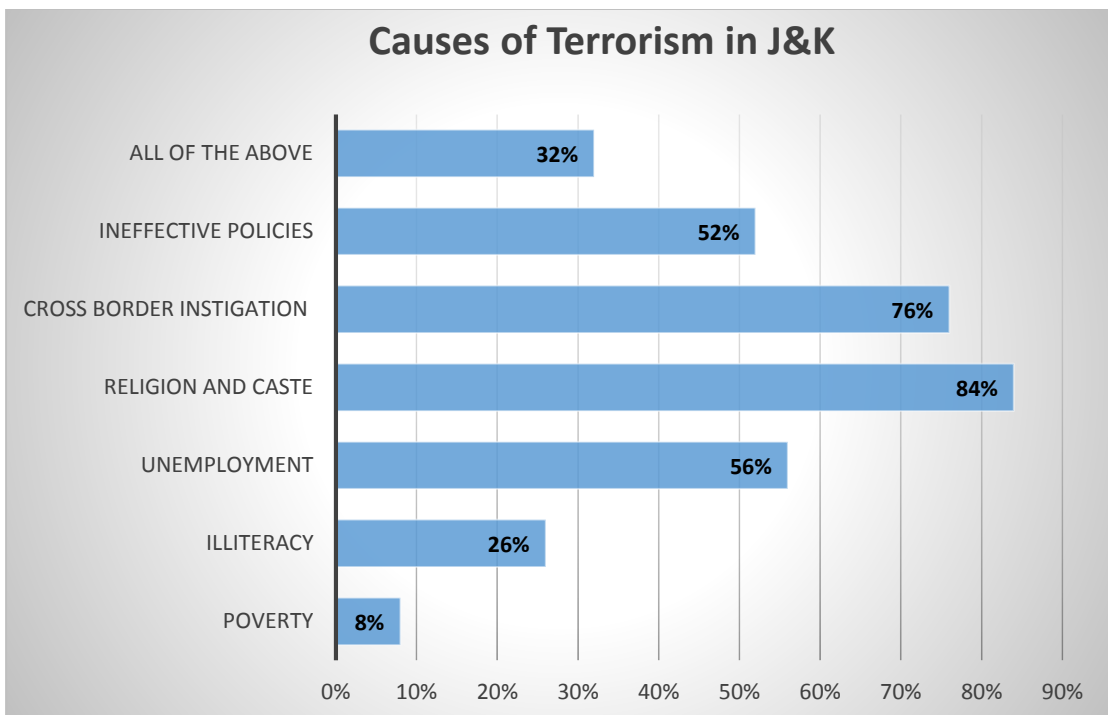


Question 4. What causes terrorism in Jammu and Kashmir?

Table 4

Causes of Terrorism	Responses
Poverty	8% - 4
Illiteracy	26% - 13
Unemployment	56% - 28
Religion and Caste	84% - 42
Cross border instigation by Pakistan	76% - 38
Ineffective policies of the Indian Government	52% - 26
All of the above	32% - 16

Figure 4

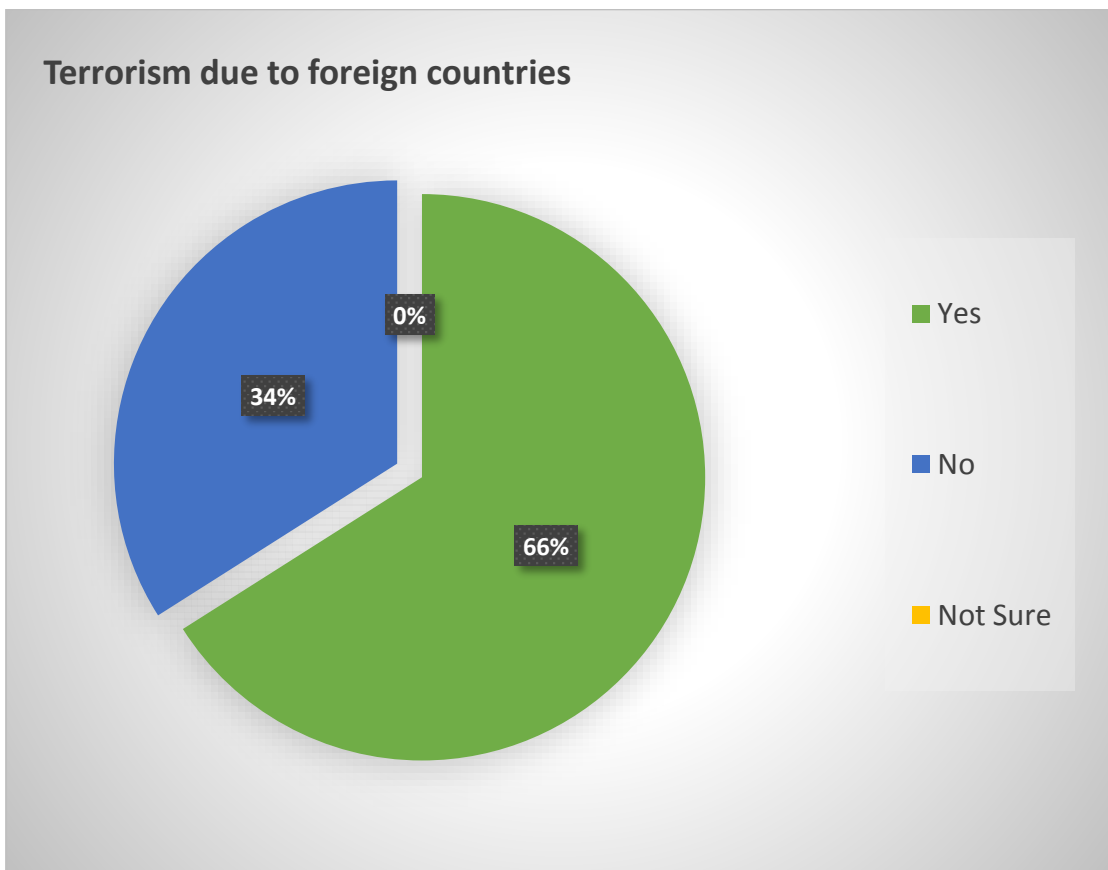


Question 5. Do you think foreign countries have any effect in cause or emerging or evolution or development of terrorism?

Table 5

Effect in causing terrorism due to foreign country/ies	Responses
Yes	66% - 33
No	34% - 17
Not Sure	-

Figure 5

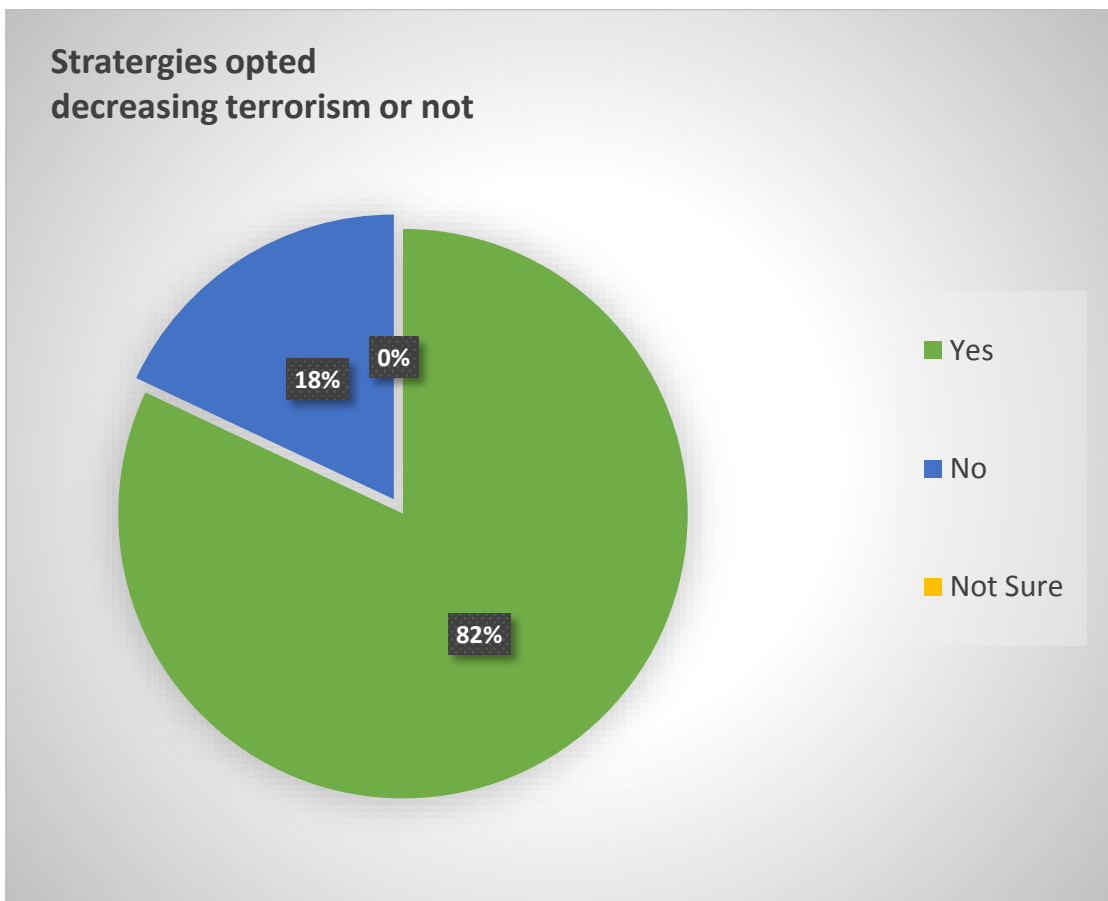


Question 6. Do you think that the strategies you have adopted or are adopting are beneficial for decreasing such terrorist attacks?

Table 6

Strategies adopted for decrease in Terrorism	Responses
Yes	82% - 41
No	18% - 9
Not Sure	-

Figure 6

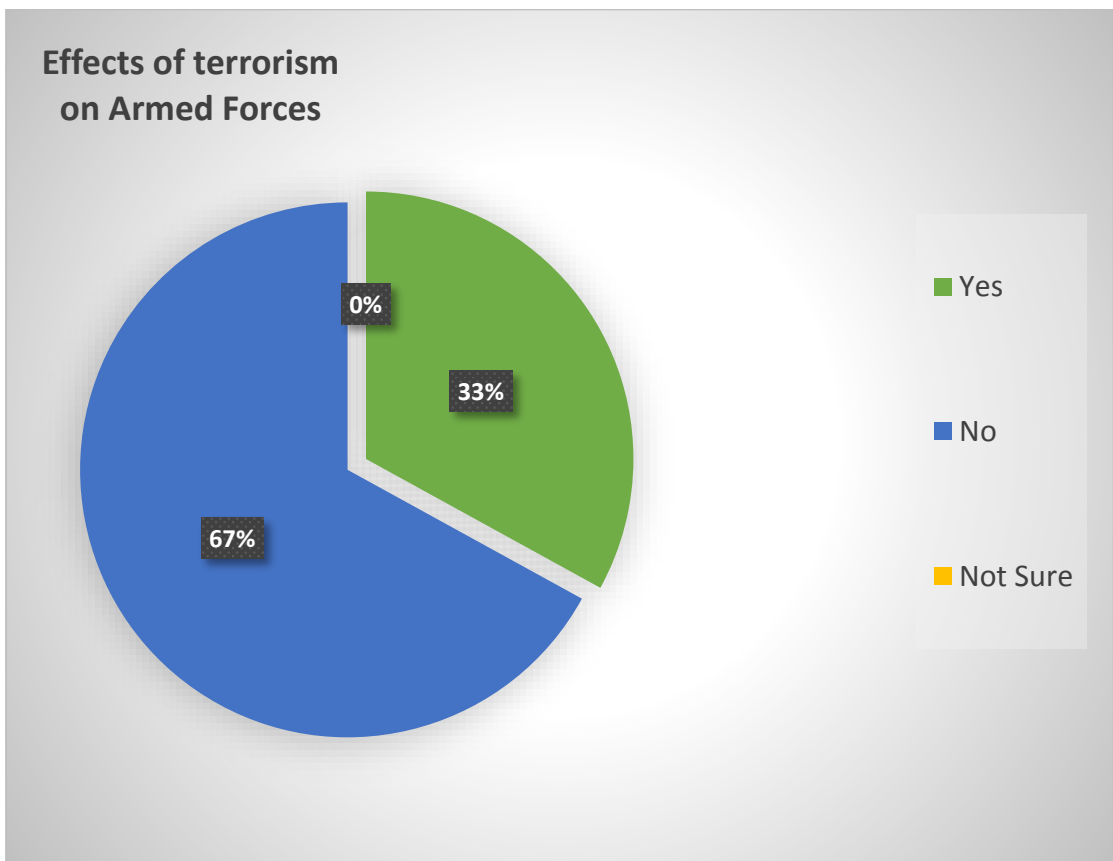


Question 7. Do you think the terrorist attacks affect the personnel deployed in terrorism affected areas?

Table 7

Effects on Armed Personals due to terrorism attacks	Responses
Yes	36% - 18
No	64% - 32
Not Sure	-

Figure 7

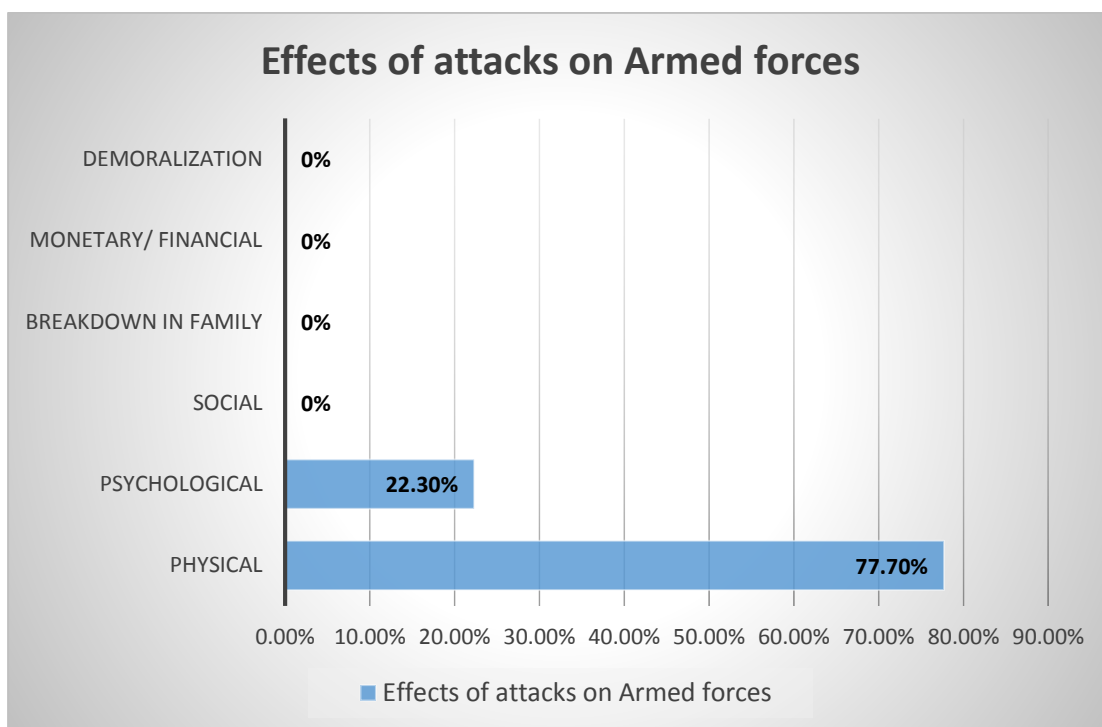


Question 8. If your answer is ‘YES’ for the above question, what are the affects you have experienced by such attacks?(Out of the ‘Yes’ responses of the question number 7)

Table 8

Effects as a consequences of terrorist attacks	Responses (Total respondents- 18)
Physical	77.7% - 14
Psychological	22.2% - 4
Social	-
Breakdown in Family	-
Monetary/Financial	-
Demoralization	-

Figure 8

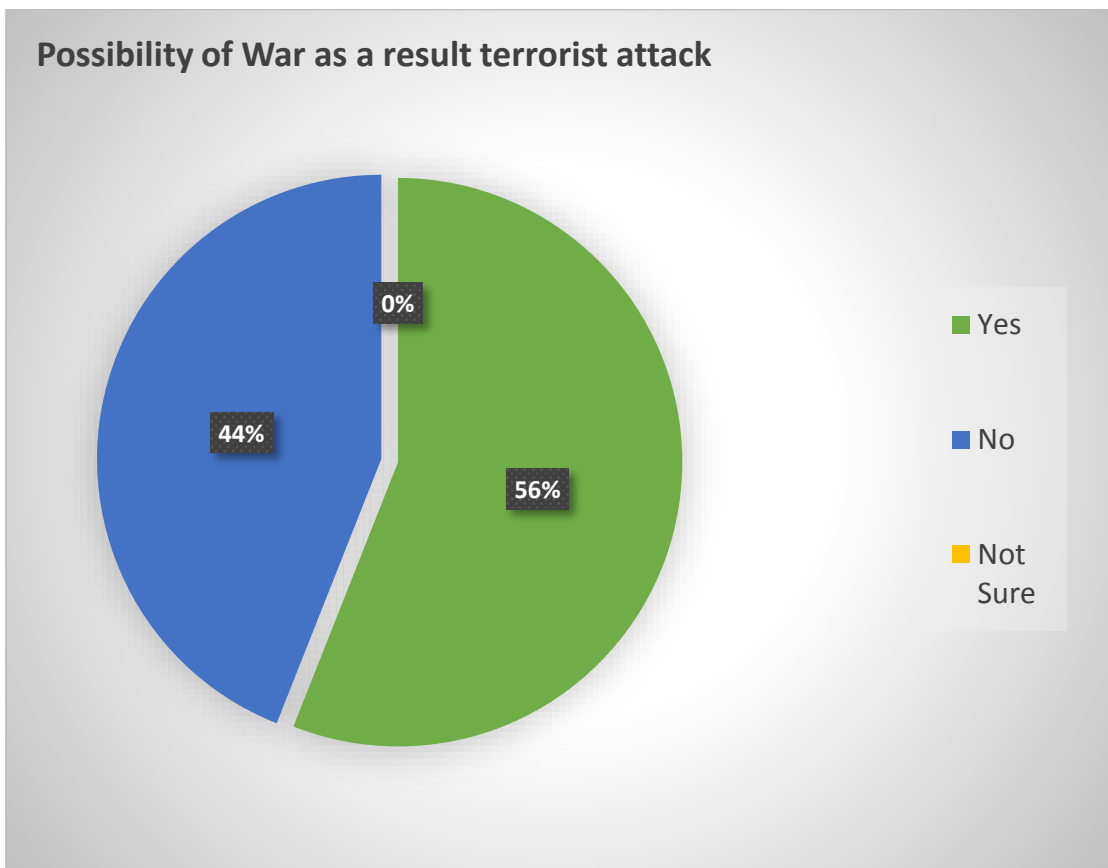


Question 9. Do you think such terrorist attacks can result in a war between India and Pakistan?

Table 9

Terrorist attacks can result in a war between India and Pakistan	Responses
Yes	56% - 28
No	44% - 22
Not Sure	-

Figure 9

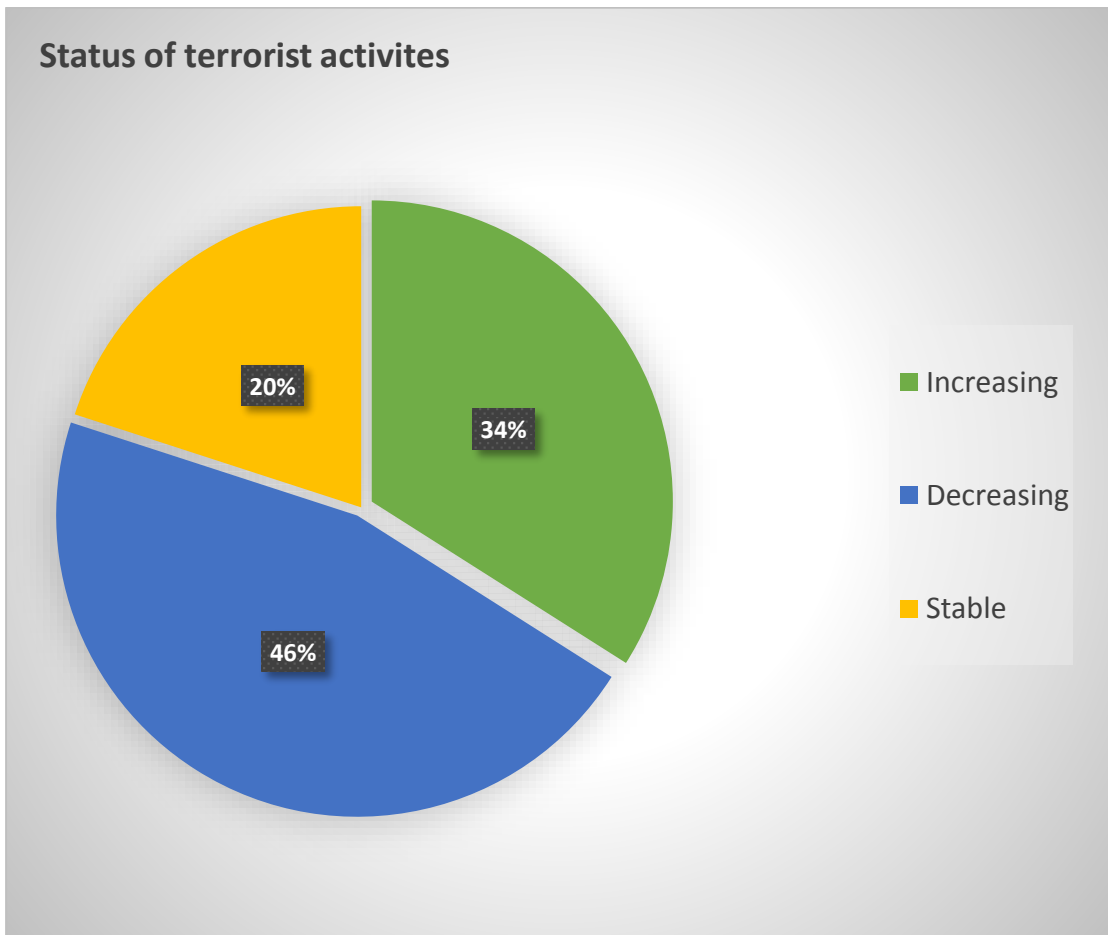


Question 10. According to you from the day you are deployed in this area, terrorism or terrorist activities are-

Table 10

Terrorist activities are	Responses
Increasing	34% - 17
decreasing	46% - 23
Stable (no change)	20% - 10

Figure 10

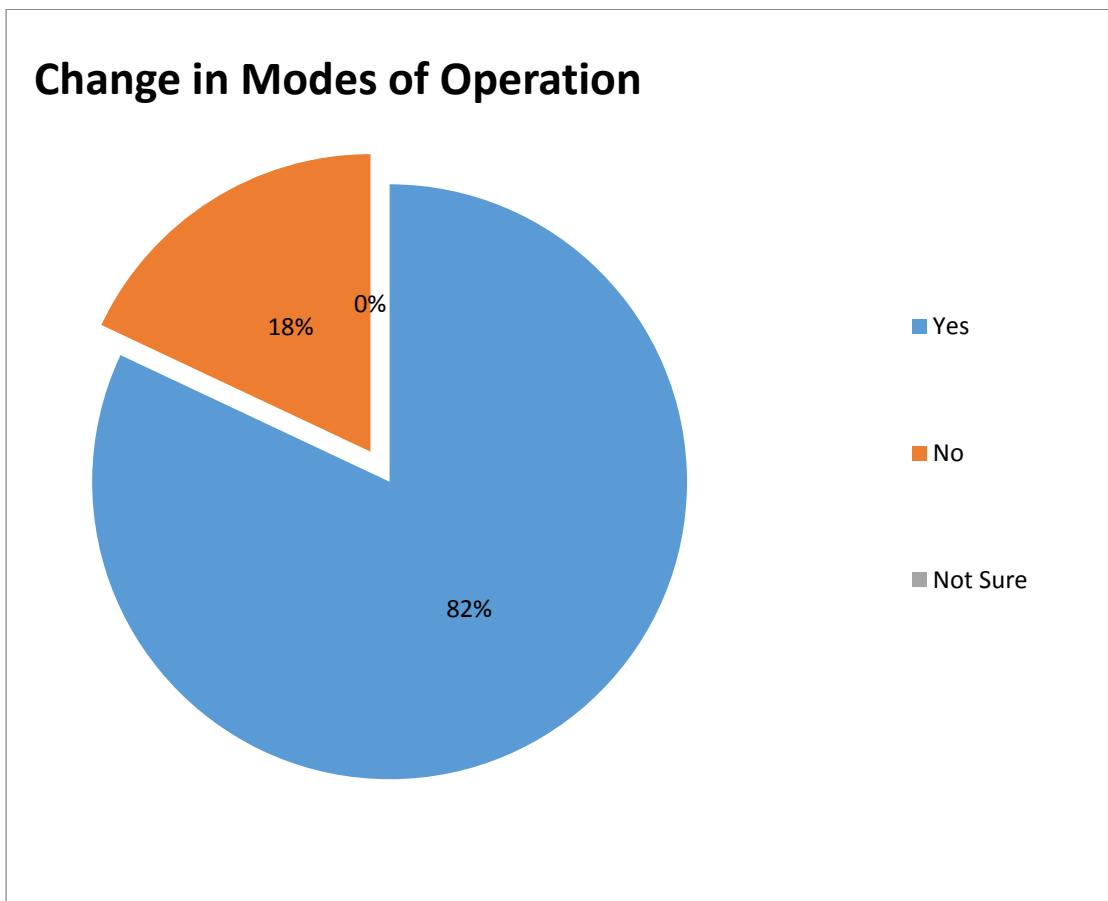


Question 11. Do you think there is any change in the mode of operation of terrorists?

Table 11

Is there any change in the mode of terrorists	Responses
Yes	82% - 41
No	18% - 9
Not Sure	-

Figure 11

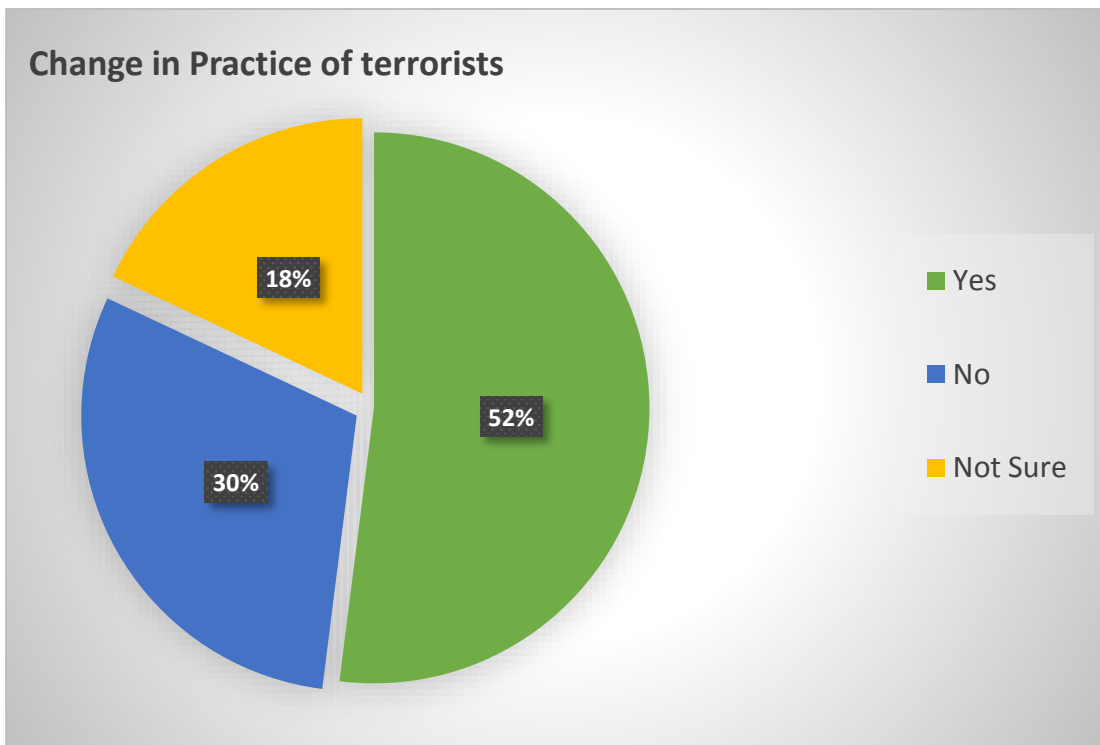


Question 12. Do you think the change in the practices or/and increase in such terror activities are the result of the lacking policies of the authorities?

Table 12

Change in Practices of terrorism as result of lacking policies to curb terrorism	Responses
Yes	52% - 26
No	30% - 15
Not Sure	18% - 9

Figure 12

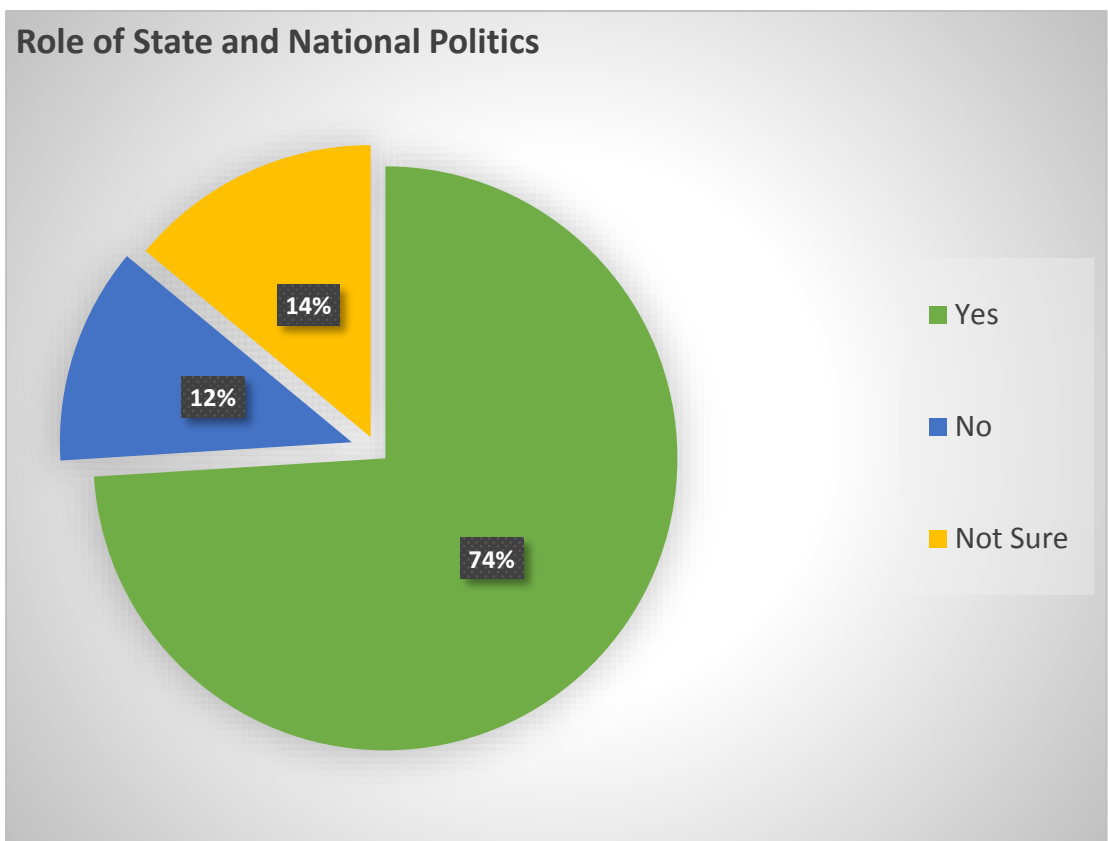


Question 13. Does the state or national politics plays any role in the inapplicability of such policies?

Table 13

Role of state and national politics in curbing the effective implementation of the policies	Responses
Yes	74% - 37
No	12% - 6
Not Sure	14% - 7

Figure 13

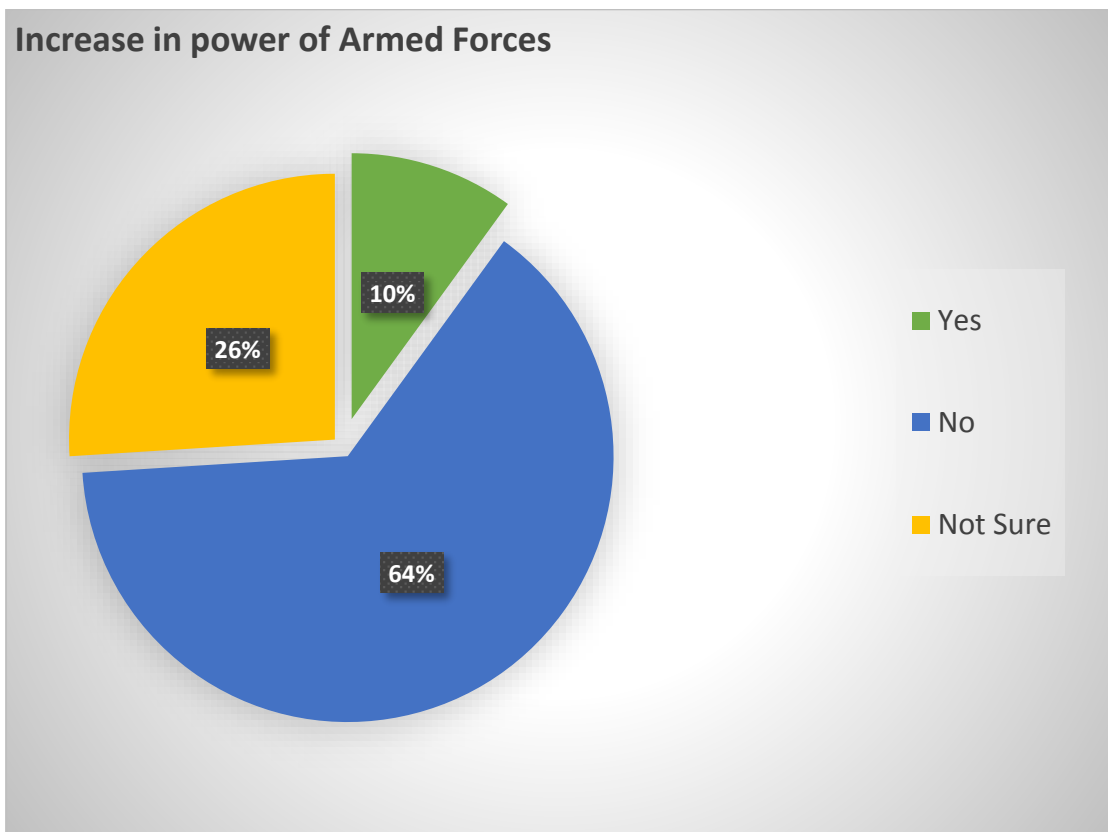


Question 14. Do you think that more operational powers should be given to the armed forces to deal with the changing practices of terrorists?

Table 14

Should more powers be given to forces for elimination of terrorism	Responses
Yes	10% - 5
No	64% - 32
Not Sure	26% - 13

Figure 14

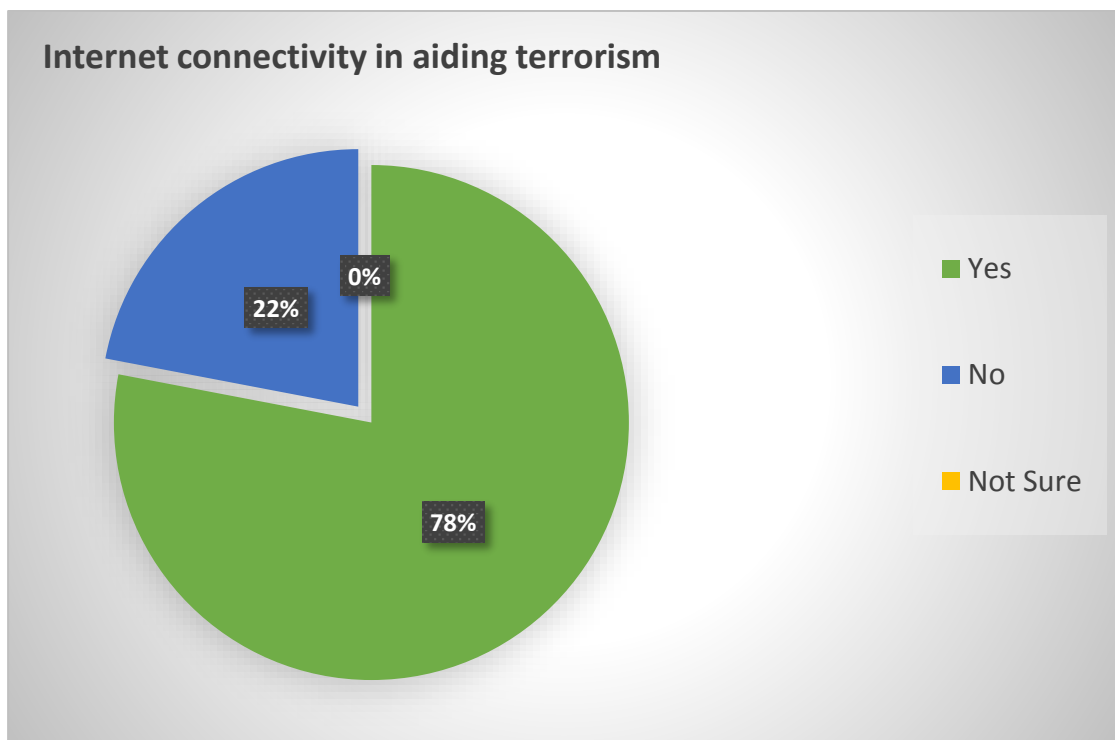


Question 15. Do you think internet, social media and digital connectivity plays an important factor in aid to terrorist to plan their acts?

Table 15

Role of social media and digital connectivity as an important factor in aid to terrorism	Responses
Yes	78% - 39
No	22% - 11
Not Sure	-

Figure 15

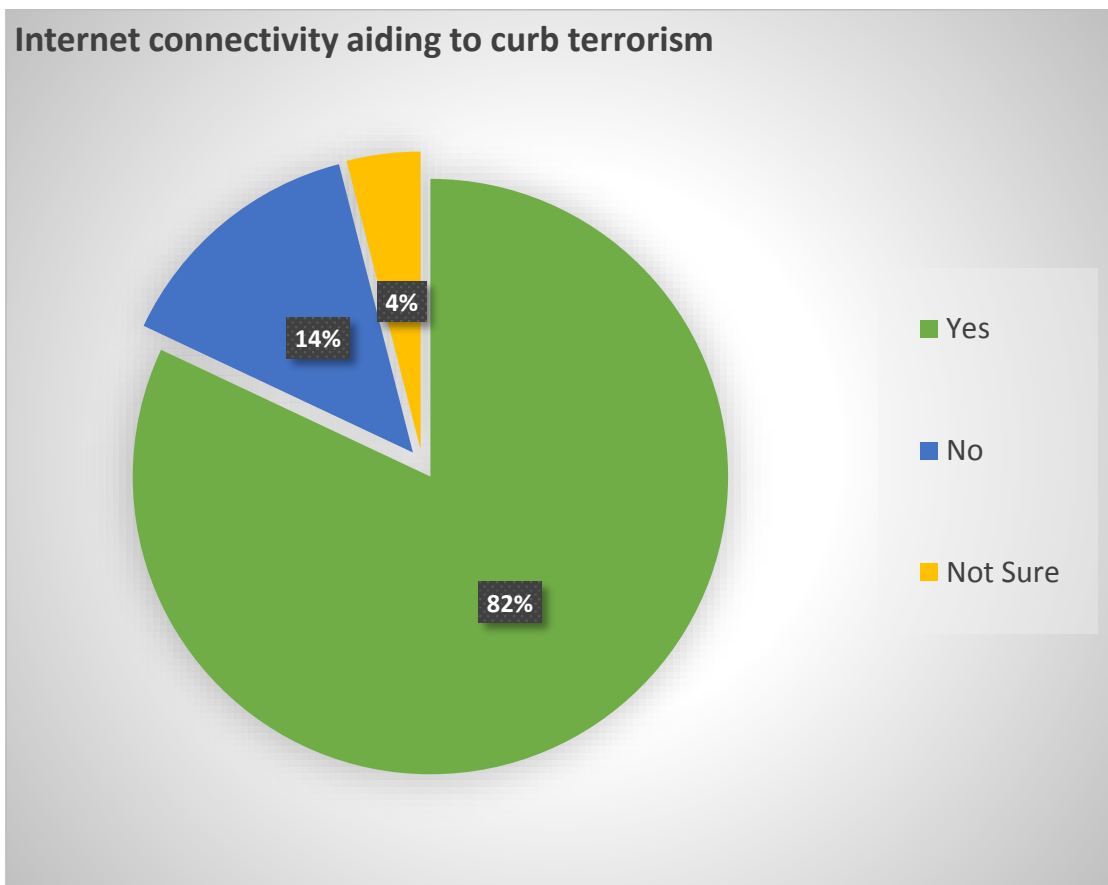


Question 16. Do you think internet, social media and digital connectivity plays an important factor in aiding the armed forces to tackle the terrorist activities?

Table 16

Role of social media and digital connectivity as an important factor in aid to curb terrorism	Responses
Yes	82% - 41
No	14% - 7
Not Sure	4% - 2

Figure 16

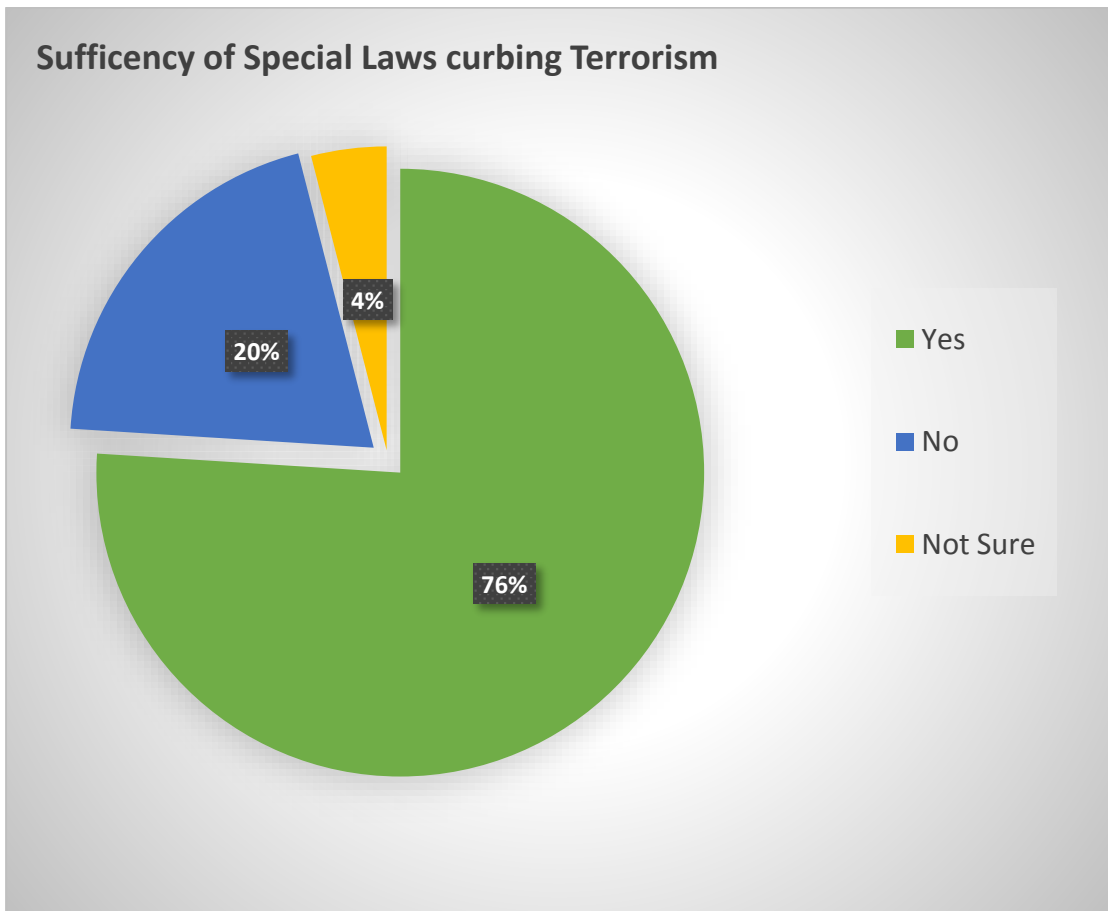


Question 17. Whether the special laws or Acts formulated to deal with the disturbed areas are sufficient?

Table 17

Are the special laws sufficient?	Responses
Yes	76% - 38
No	20% - 10
Not Sure	4% - 2

Figure 17

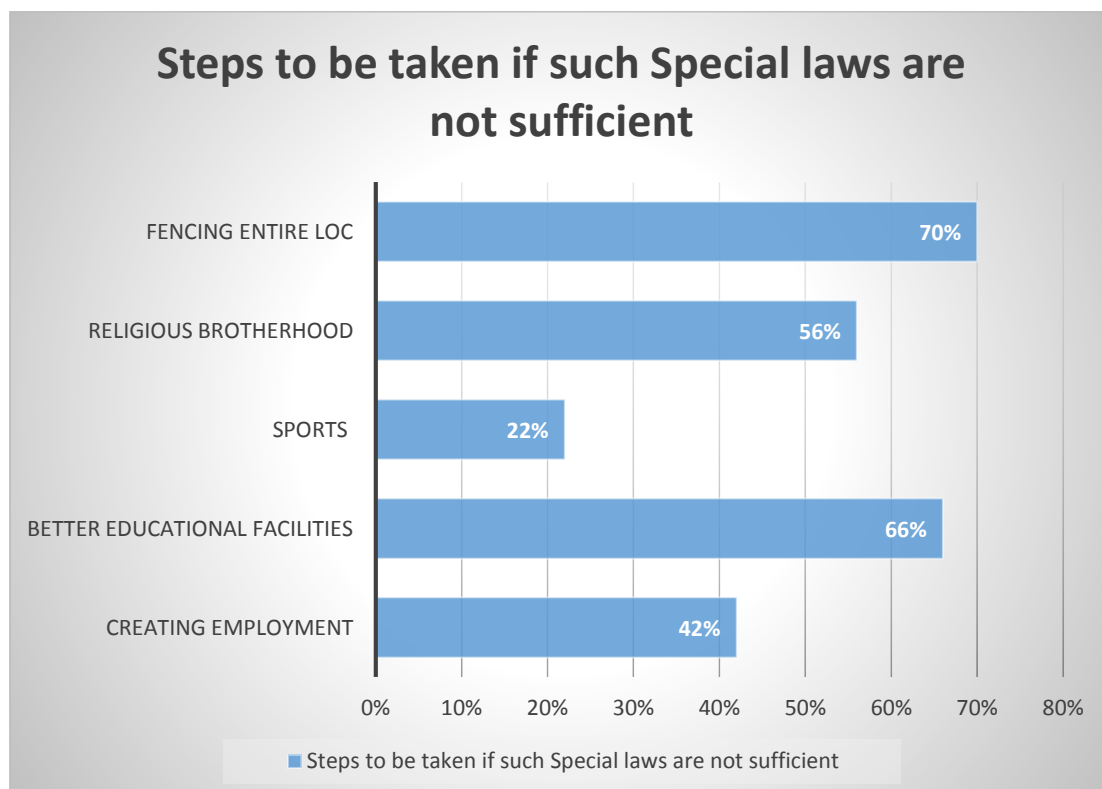


Question 18. If the special laws and strategies adopted by the Government and its authorities are not sufficient, then what steps should be taken to end terrorism?

Table 18

What steps should be taken if these special laws are not sufficient?	Responses
Creation of more employment opportunities	42% - 21
Better educational and infrastructure	66% - 33
Promotion of sports	22% - 11
Promotion of religious brotherhood	56% - 28
Fencing the entire LOC	70% - 35

Figure 18

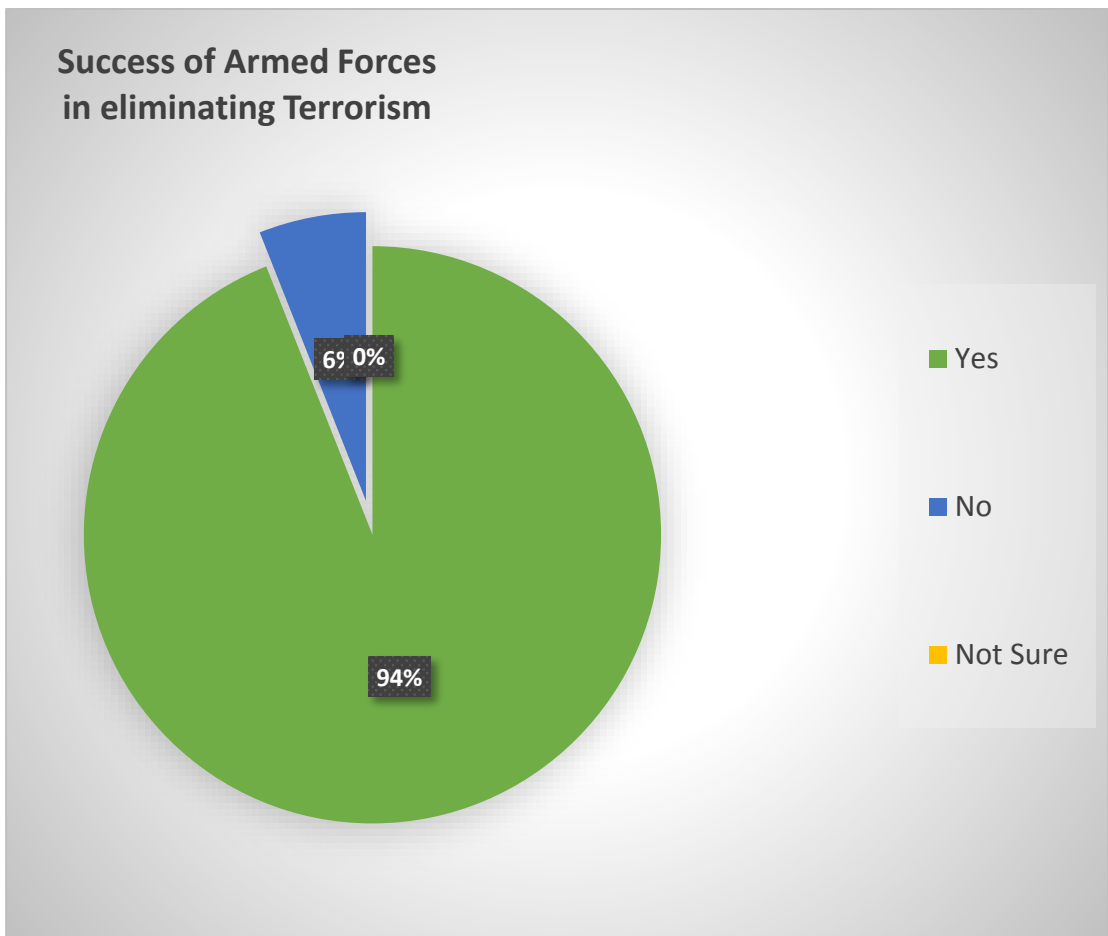


Question 19. Have armed forces succeed in eliminating terrorism till now?

Table 19

Succeeding of Armed forces in elimination terrorism	Responses
Yes	94% - 47
No	6% - 3
Not Sure	-

Figure 19

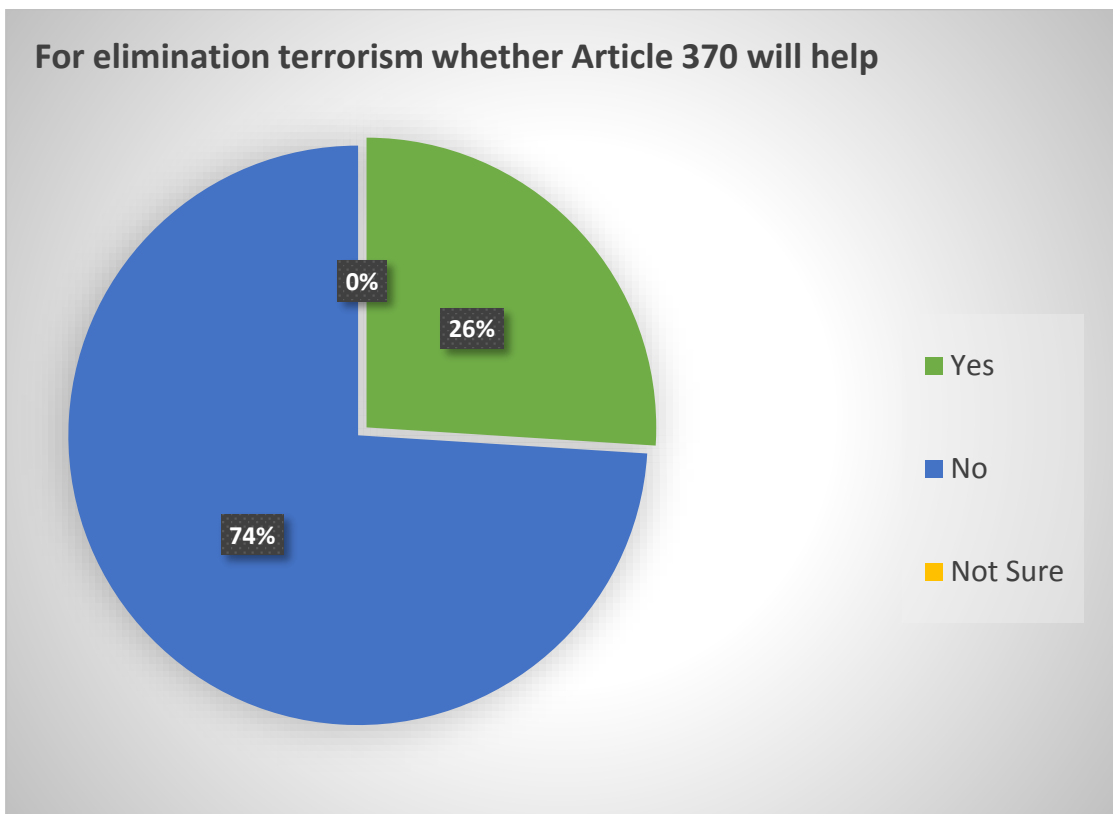


Question 20. Whether the abrogation of Article 370 will help in elimination of terrorism?

Table 20

For elimination terrorism whether Article 370 will help	Responses
Yes	26% - 13
No	74% - 37
Not Sure	-

Figure 20

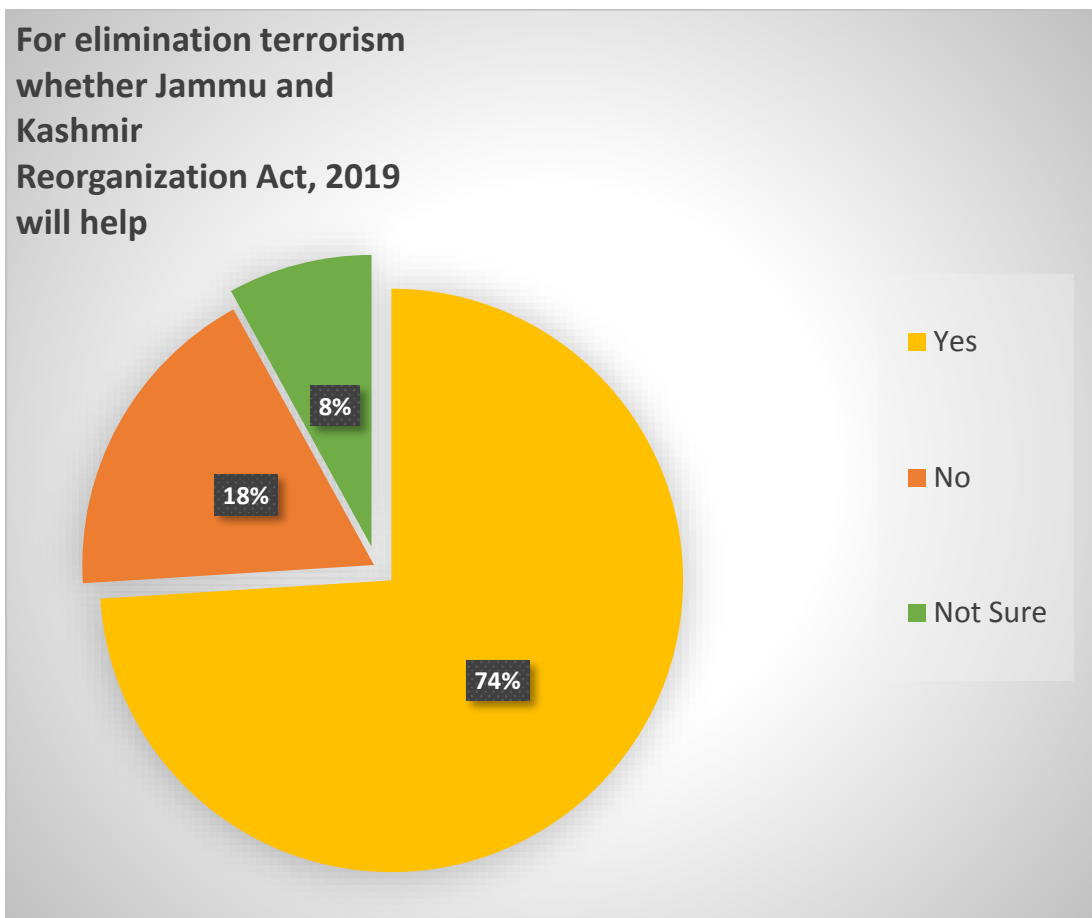


Question 21. Whether the Jammu and Kashmir Reorganization Act, 2019 will help in elimination of terrorism?

Table 21

For elimination terrorism whether Jammu and Kashmir Reorganization Act, 2019 will help	Responses
Yes	74% - 37
No	18% - 9
Not Sure	8% - 4

Figure 21

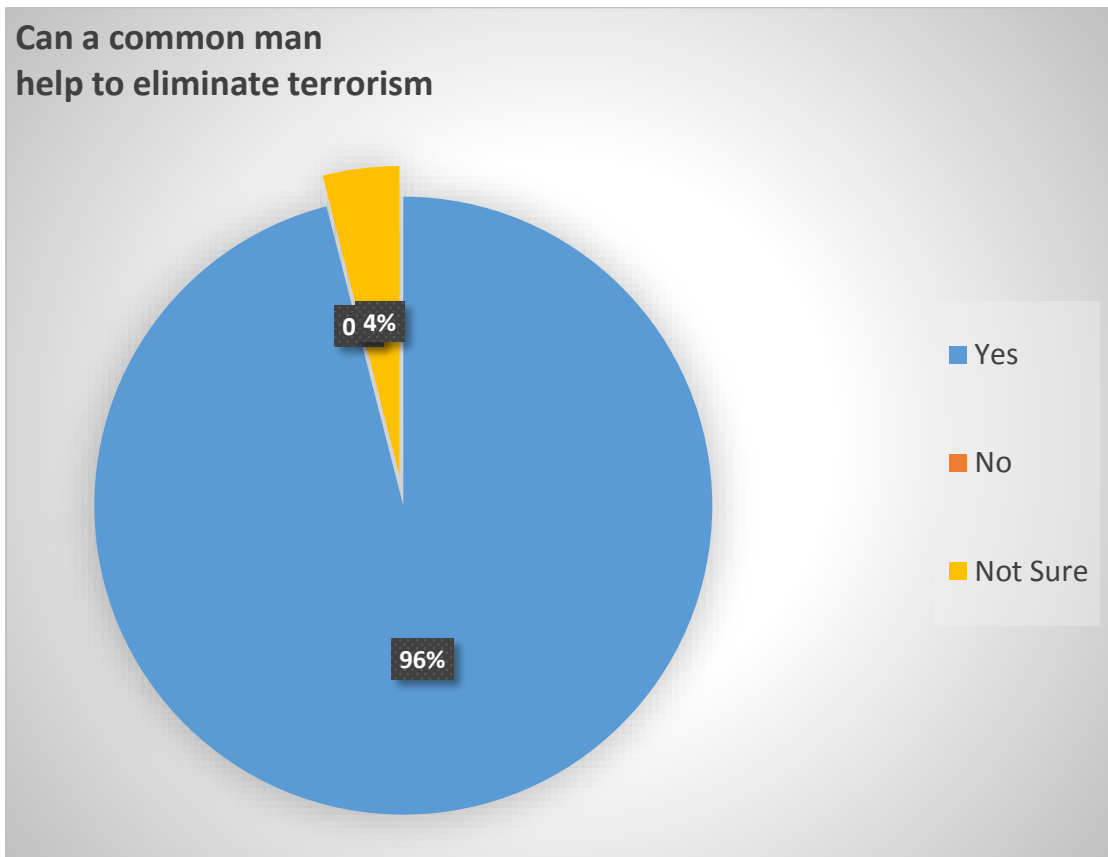


Question 22. Can a common man help the Government to combat and eliminate terrorism?

Table 22

Can a common man help to eliminate terrorism	Responses
Yes	96% - 48
No	-
Not Sure	4% - 2

Figure 22

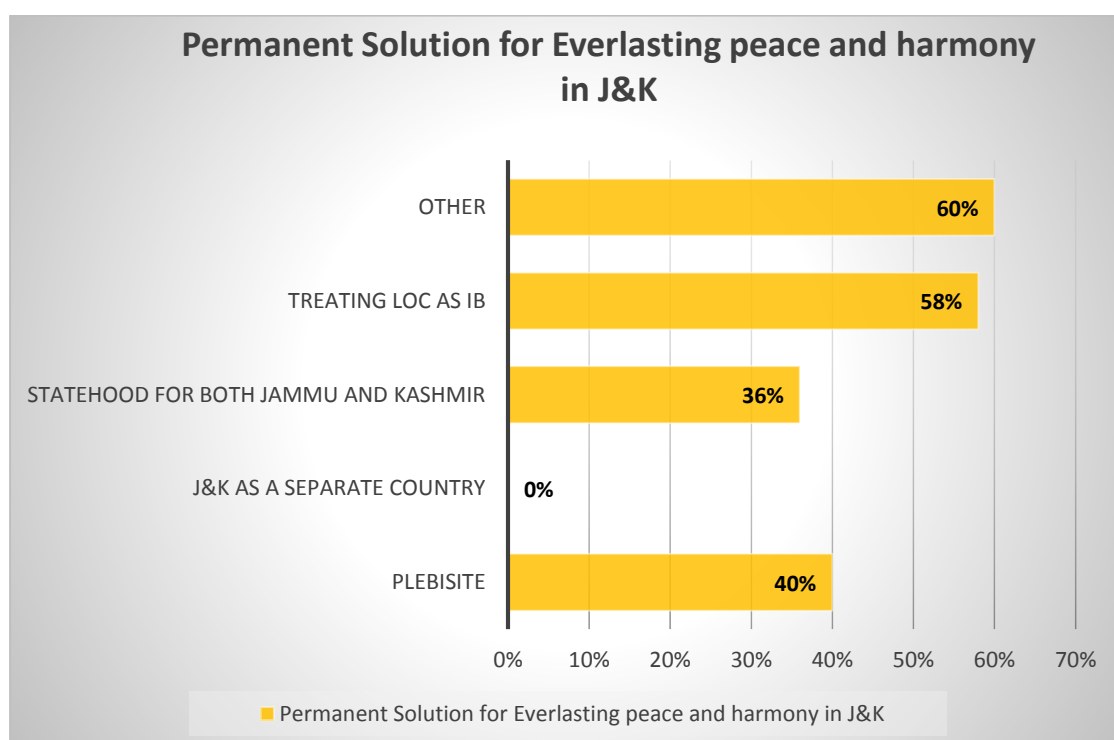


Question 23. In your opinion what can be the permanent solution to bring everlasting peace and harmony in Jammu and Kashmir?

Table 23

Peace solution	Responses
Plebiscite	40% - 20
Jammu and Kashmir as a separate Country	-
Separate Statehood for Jammu as well as Kashmir within India	36% - 18
Treating LOC as International Border by both India and Pakistan	58% - 29
Any other	60% - 33

Figure 23



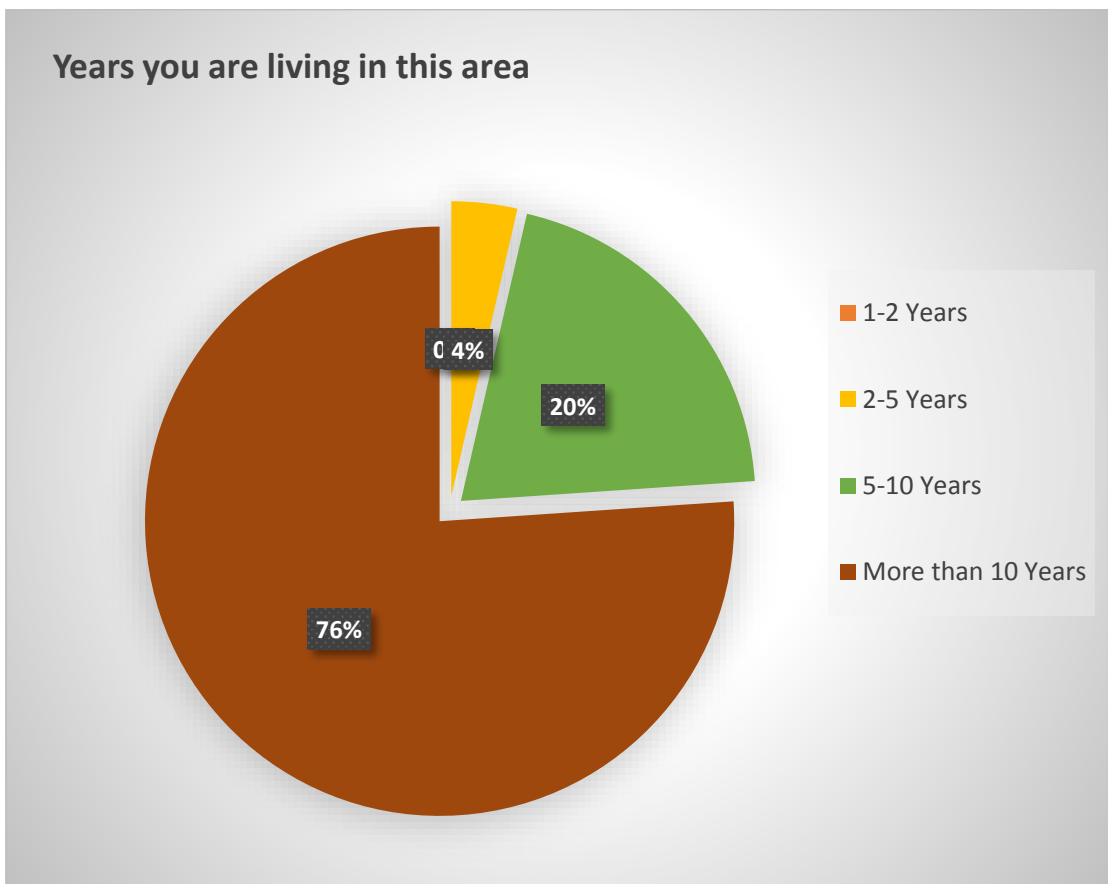
5.3. Questionnaire of Civilians (Total Respondents 300)

Question 1. From how many years you are living in this area?

Table 1

Years of residence	Responses
1-2 years	-
2-5 years	4% - 11
5-10 years	20% - 61
More than 10 years	76% - 228

Figure 1

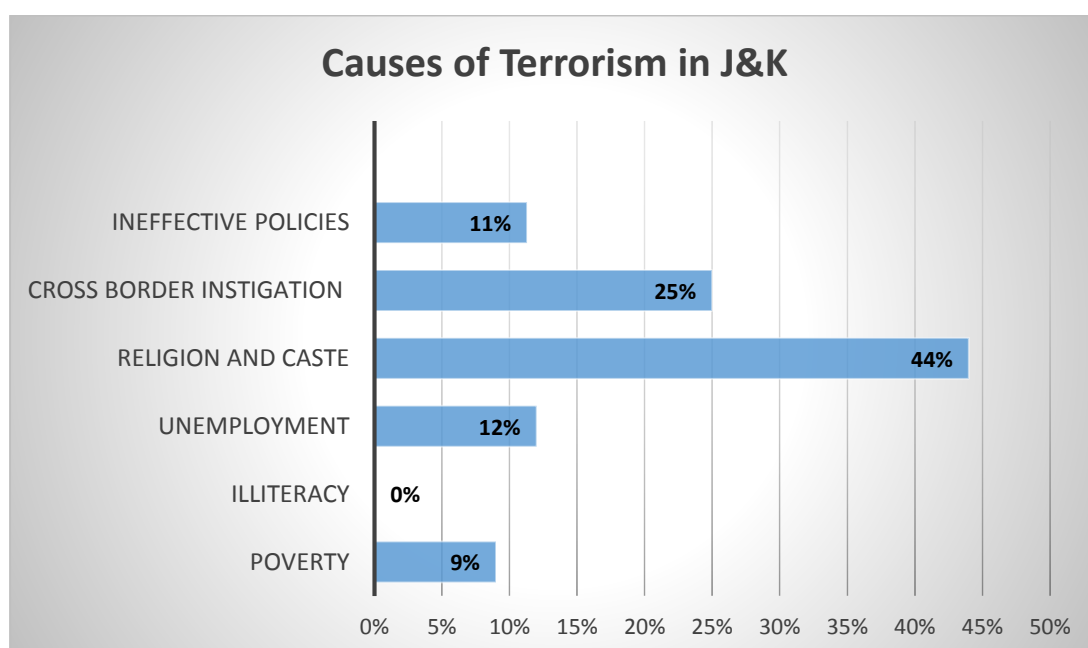


Question 2. What causes terrorism in Jammu and Kashmir?

Table 2

Causes of Terrorism	Responses
Poverty	9% - 27
Illiteracy	-
Unemployment	12% - 36
Religion and Caste	44% - 132
Cross border instigation by Pakistan	25% - 75
Ineffective policies of the Indian Government	10% - 30

Figure 2

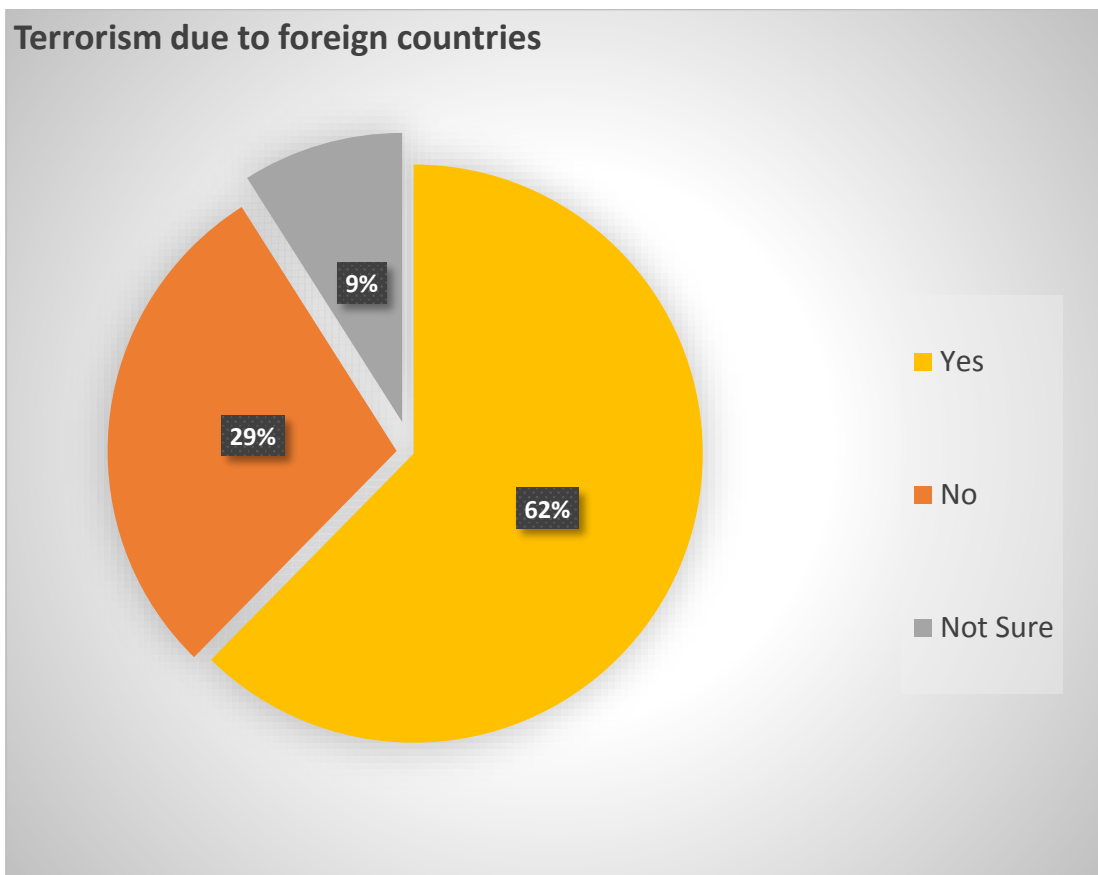


Question 3. Do you think foreign countries have any effect in cause or emerging or evolution or development of terrorism?

Table 3

Effect in causing terrorism due to foreign country/ies	Responses
Yes	62% - 187
No	29% - 86
Not Sure	9% - 27

Figure 3

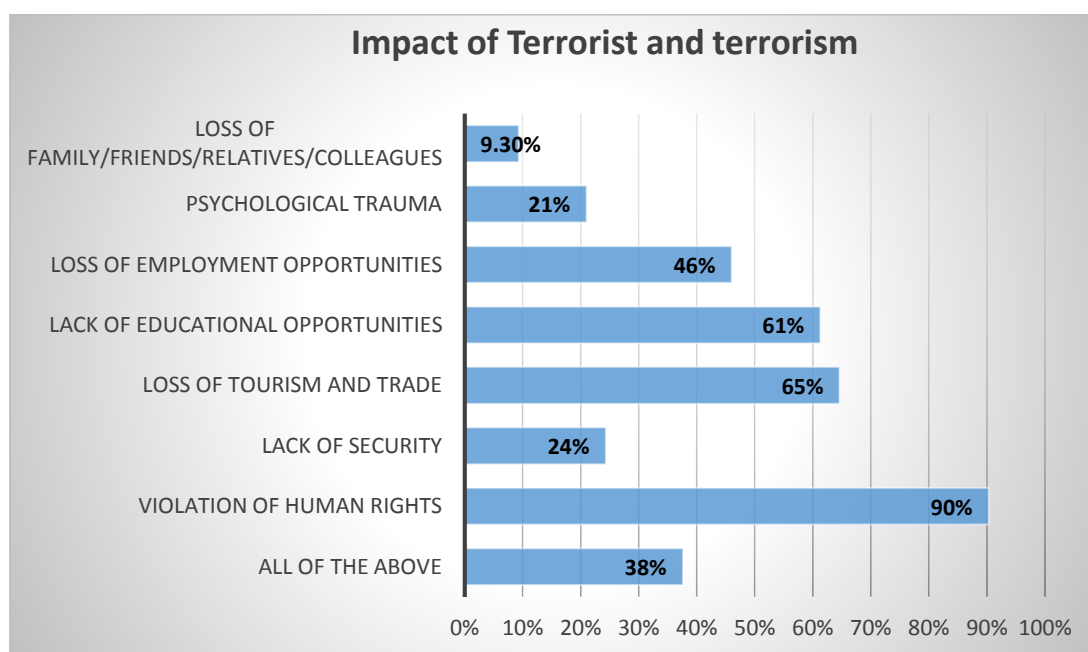


Question 4. How terrorism and terrorist activities affect the common people?

Table 4

Impact of terrorist and terrorism on common people	Responses
Loss of family members/friends/relatives/colleagues	9.3% - 28
Psychological trauma	21% - 63
Loss of employment opportunities	46% - 138
Lack of educational opportunities	61.3% - 184
Loss of Tourism and Trade revenue	64.6% - 194
Lack of security	24.3% - 73
Violation of Human rights	90.3% - 271
All of the above	37.6% - 113

Figure 4

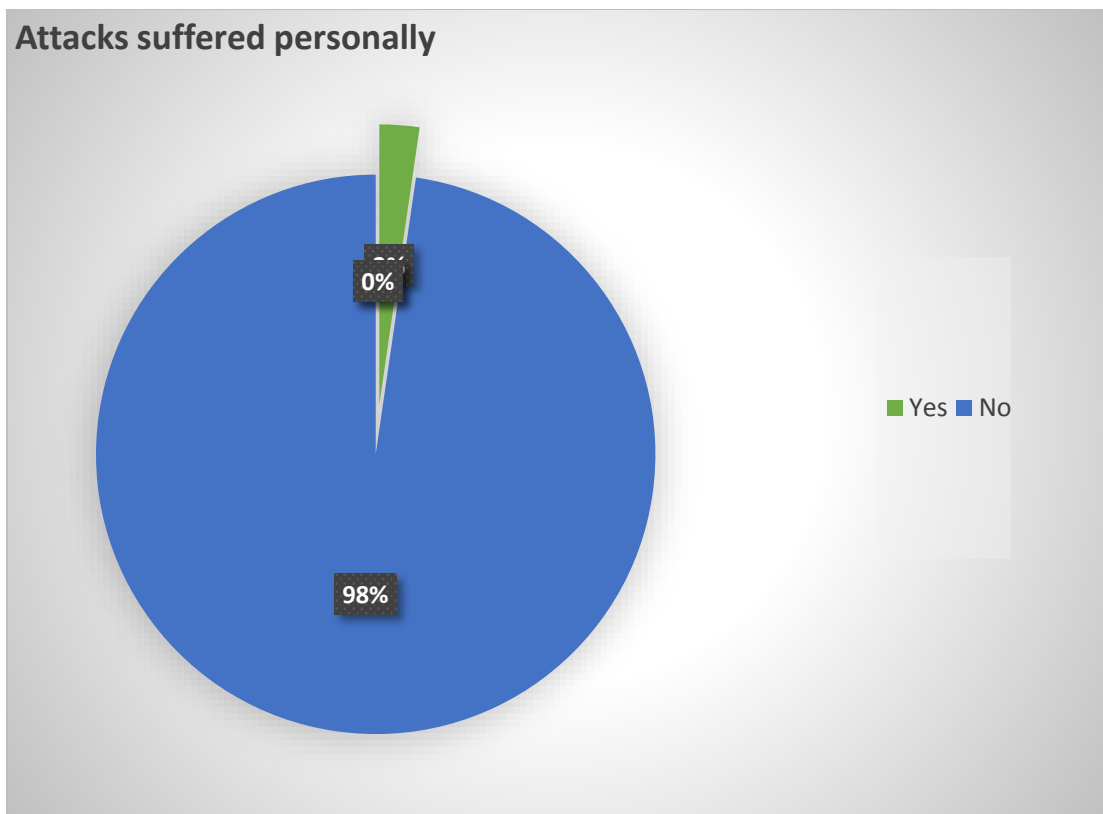


Question 5. Have you been personally suffered in such attacks?

Table 5

Effects as a consequences of terrorist attacks	Responses
Yes	2% - 7
No	98% - 293

Figure 5

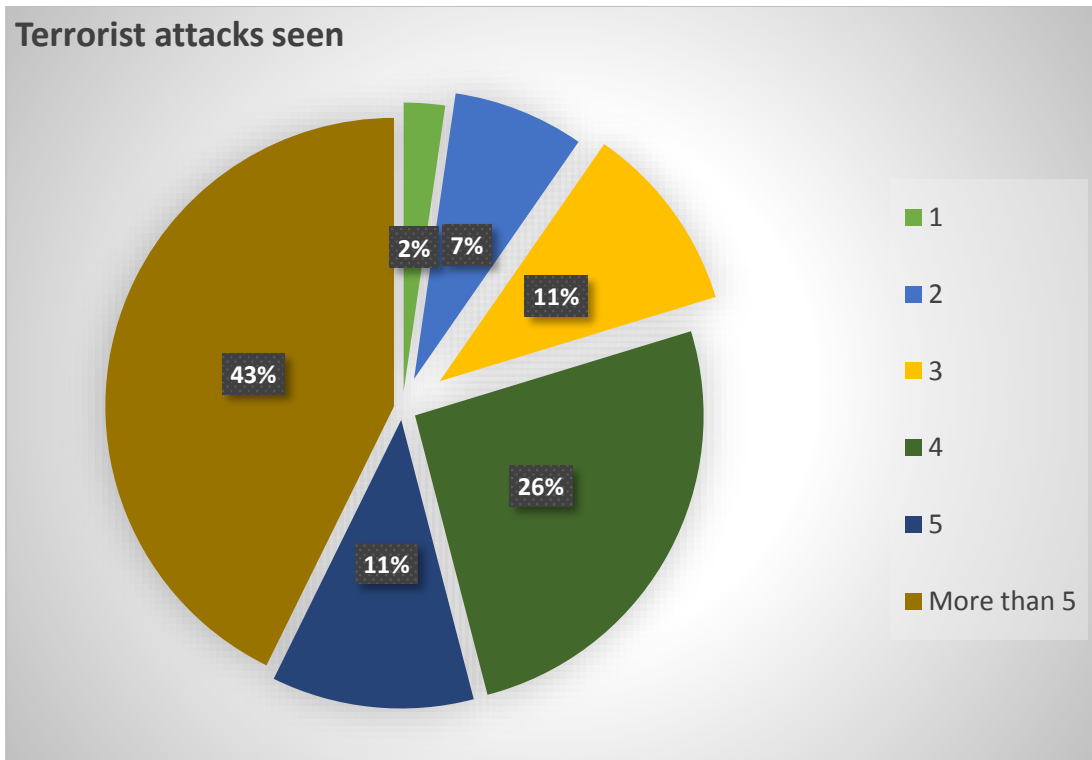


Question 6. In your lifetime how many terrorist attacks you have seen or/and faced?

Table 6

Attacks have you faced	Responses
1	2% - 7
2	7% - 22
3	11% - 32
4	26% - 77
5	11% - 34
More than 5	43% - 128

Figure 6

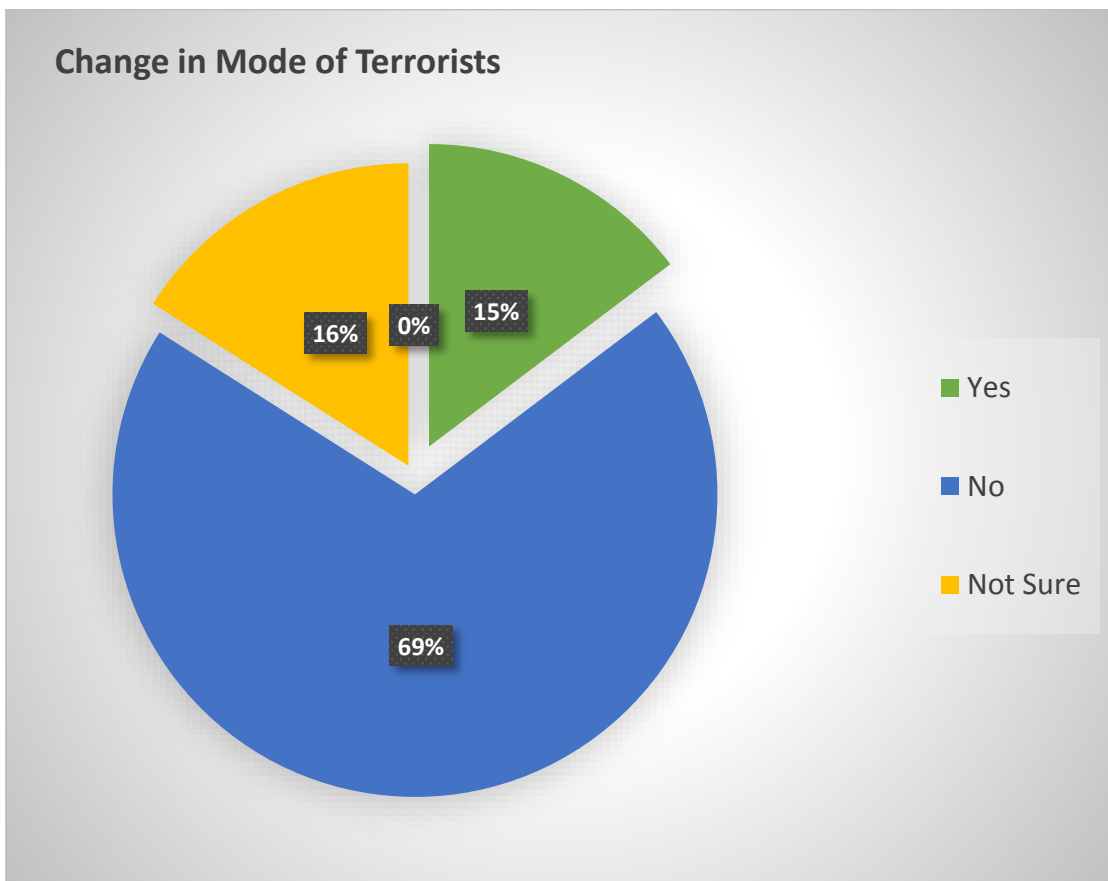


Question 7. Do you think strategies opted by the Government and its authorities are beneficial for decreasing such terrorist attacks?

Table 7

Is there any change in the mode of terrorists	Responses
Yes	15% - 44
No	69% - 208
Not Sure	16% - 48

Figure 7

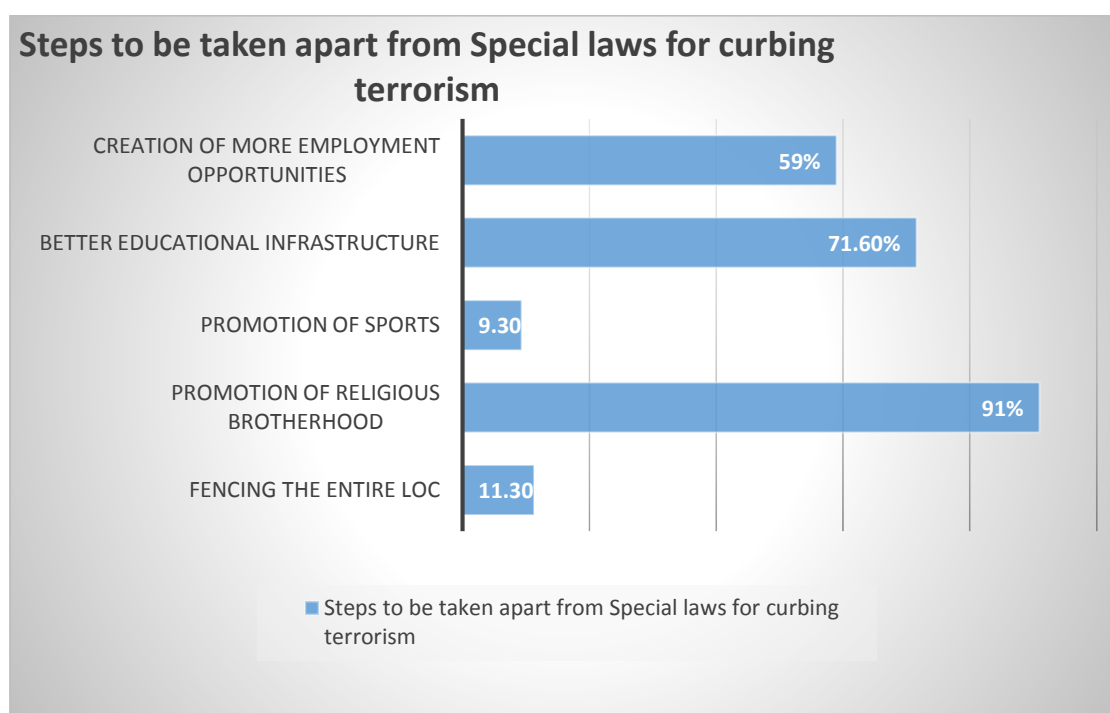


Question 8.If the special laws and strategies adopted by the Government and its authorities are not sufficient, then what steps should be taken to end terrorism?

Table 8

What should be opted apart from the special laws if those are felt insufficient	Responses
Creation of more employment opportunities	59% - 177
Better educational infrastructure	71.6% - 215
Promotion of sports	9.3% - 28
Promotion of religious brotherhood	91% - 273
Fencing the entire LOC	11.3% - 64

Figure 8

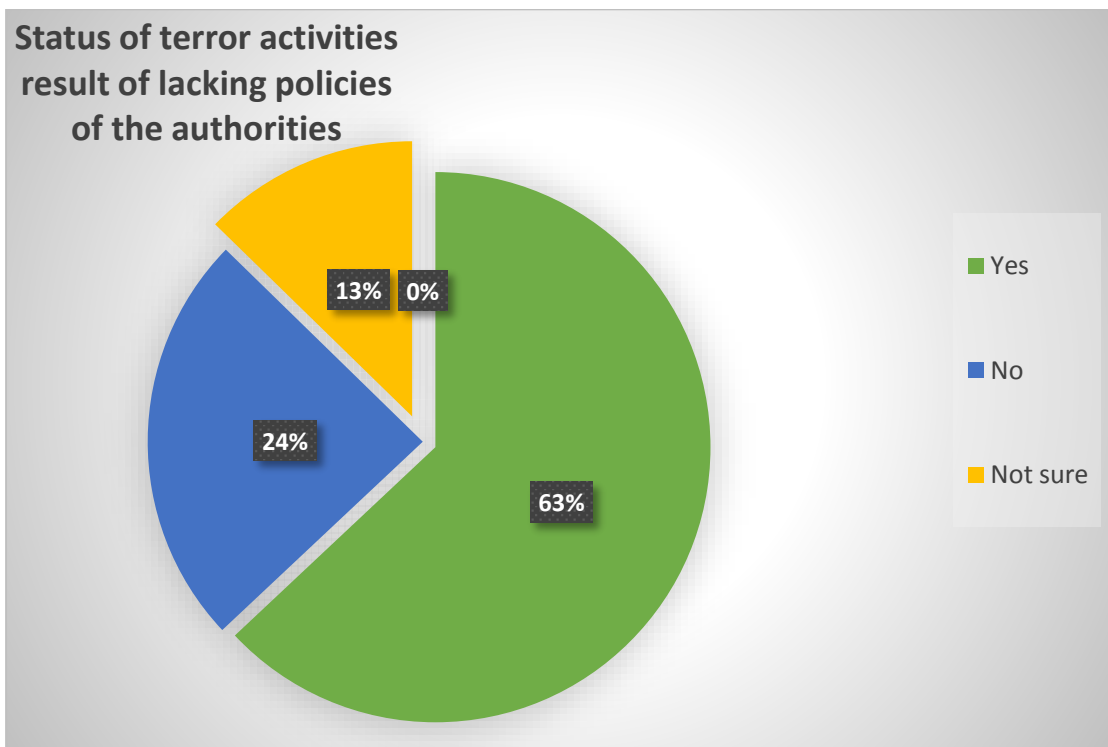


Question 9. Do you think the change in the practices or/and increase in such terror activities are the result of the lacking policies of the authorities?

Table 9

Status of terror activities result of lacking policies of the authorities	Responses
Yes	63% - 189
No	24% - 73
Not Sure	13% - 38

Figure 9

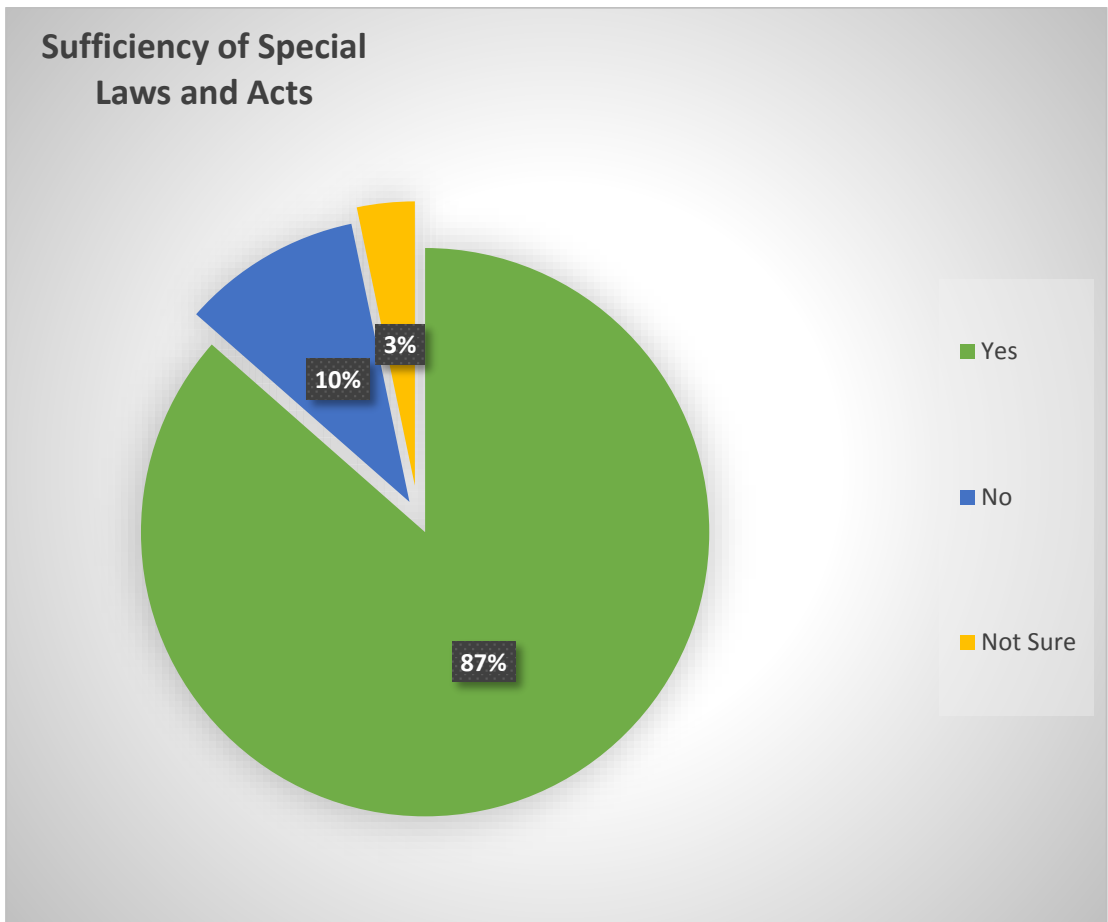


Question 10. Does the state or national politics plays any role in the inapplicability of such policies?

Table 10

Role of State or National Politics	Responses
Yes	87% - 260
No	10% - 30
Not Sure	3% - 10

Figure 10

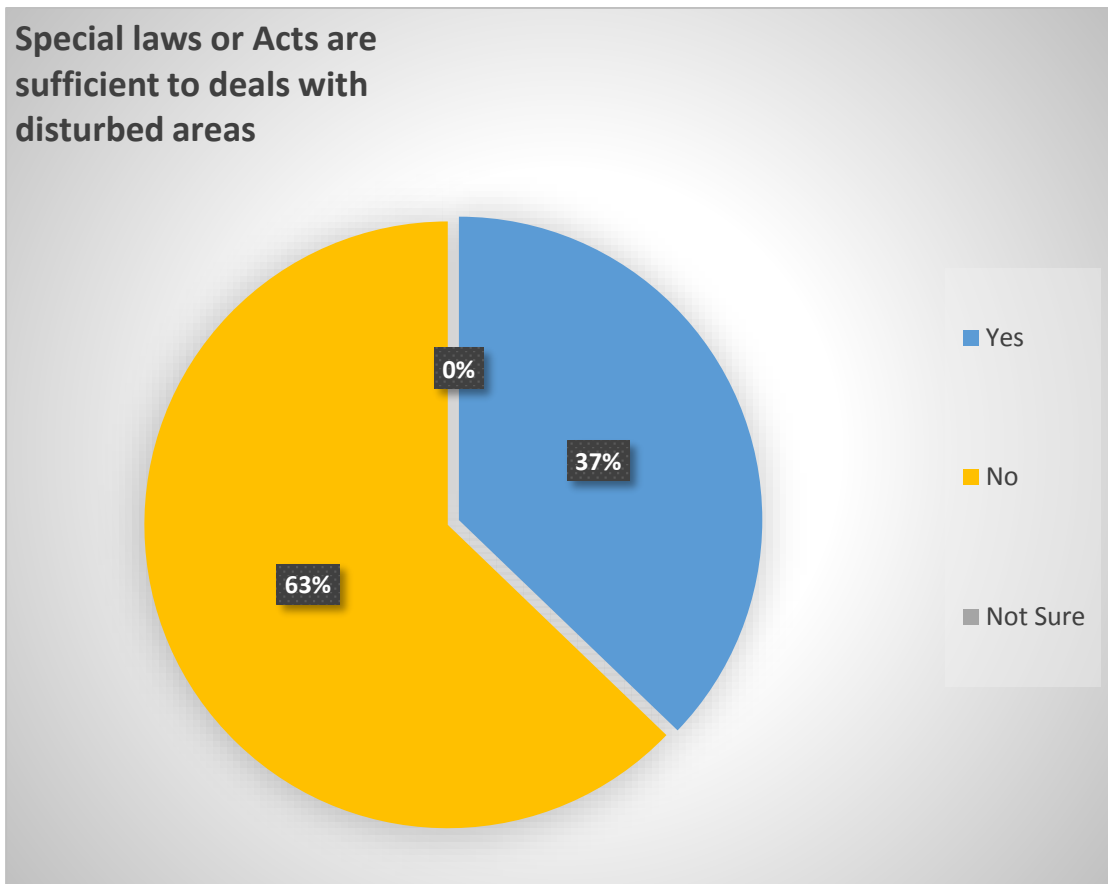


Question 11. Are the special laws or Acts formulated to deal with such disturbed areas are sufficient?

Table 11

Special laws or Acts are sufficient to deals with disturbed areas	Responses
Yes	63% - 187
No	37% - 113
Not Sure	-

Figure 11

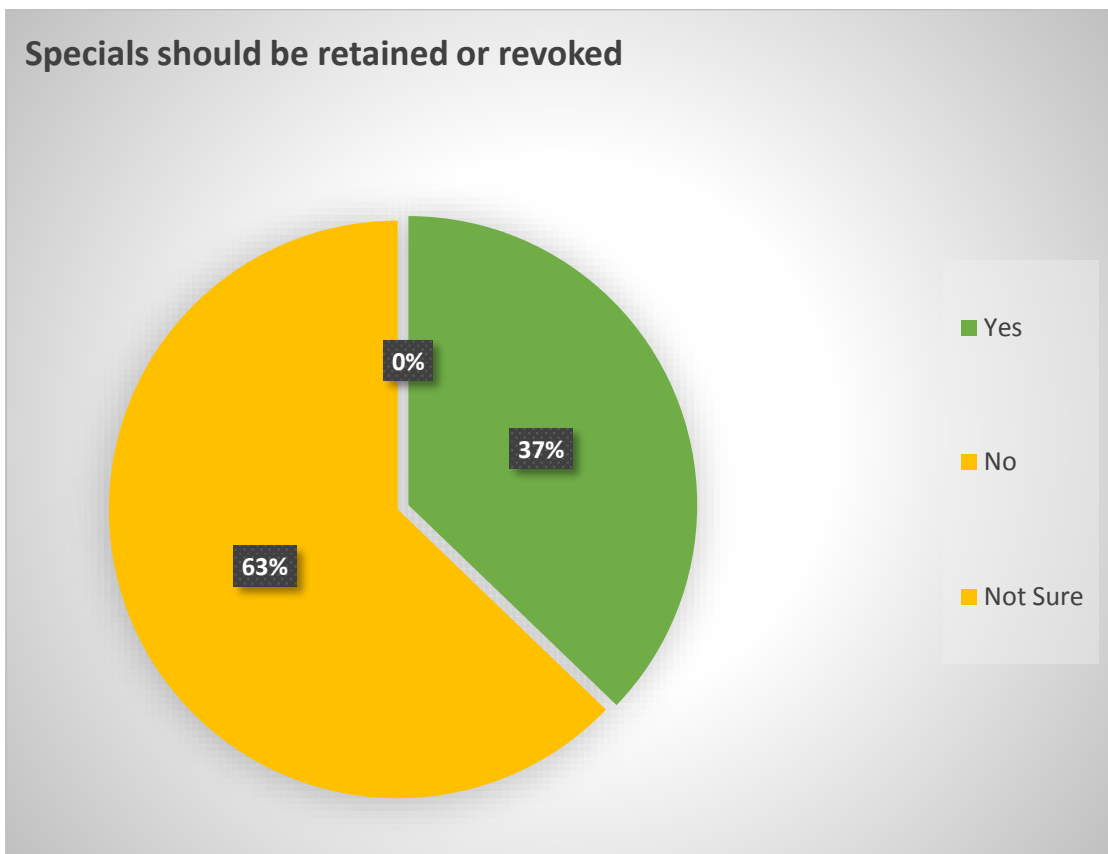


Question 12. In your opinion whether anti-terrorism laws (UAPA, AFSPA, 1990) or actions of the state to control terrorism should be retained or revoked?

Table 12

Special laws for curb terrorism sufficient	Responses
Yes	37% - 112
No	63% - 188
Not Sure	-

Figure 12

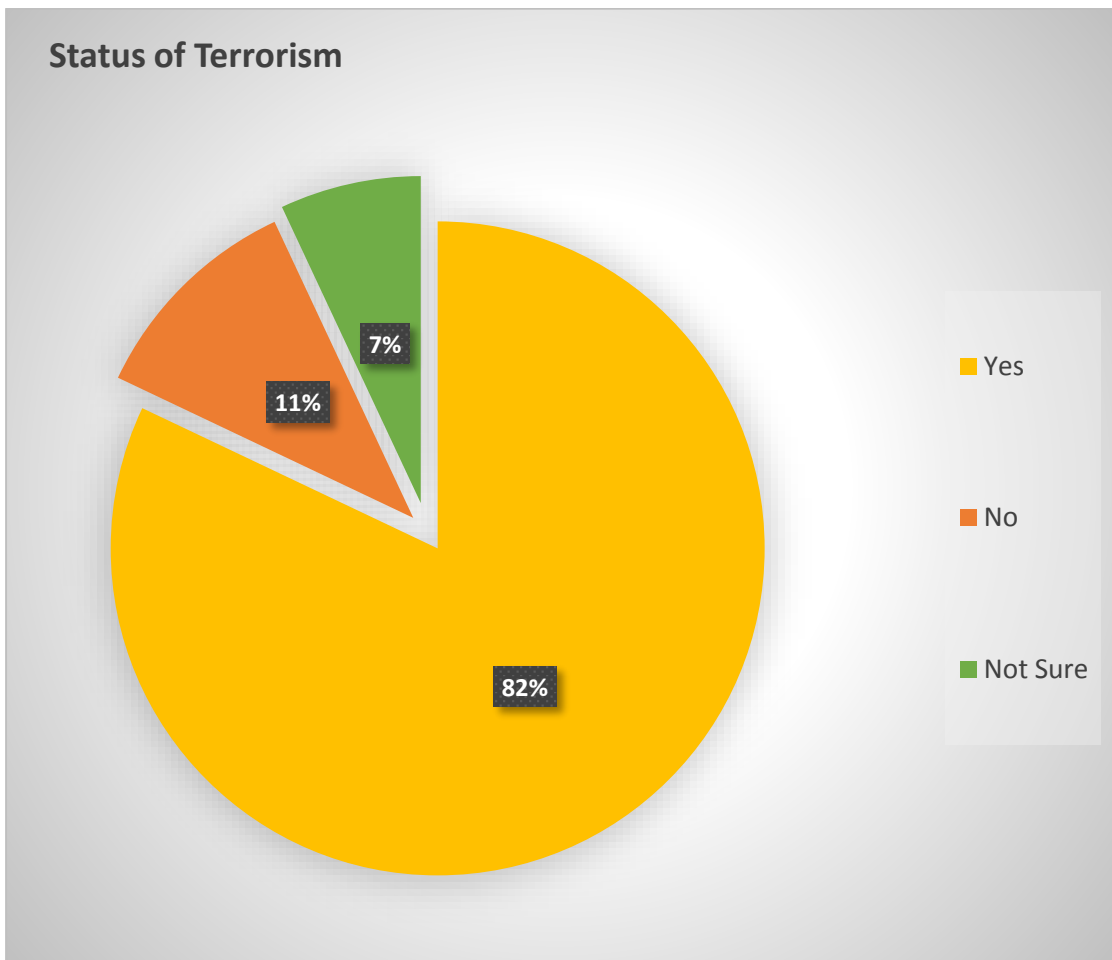


Question 13. Is terrorism increasing?

Table 13

Is terrorism increasing	Responses
Yes	82% - 247
No	11% - 33
Not Sure	7% - 18

Figure 13

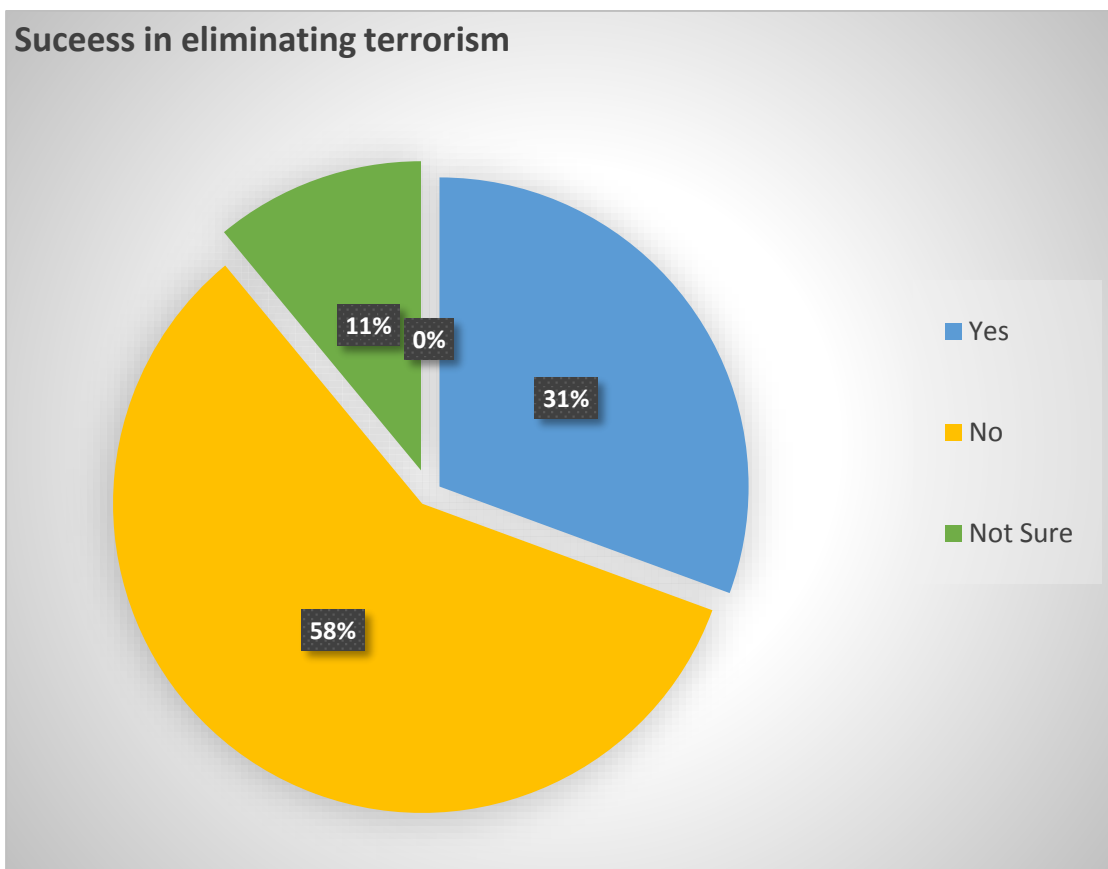


Question 14. Have India succeed in eliminating terrorism till now?

Table 14

India succeeded in elimination terrorism or now till now	Responses
Yes	31% - 92
No	58% - 175
Not Sure	11% - 33

Figure 14

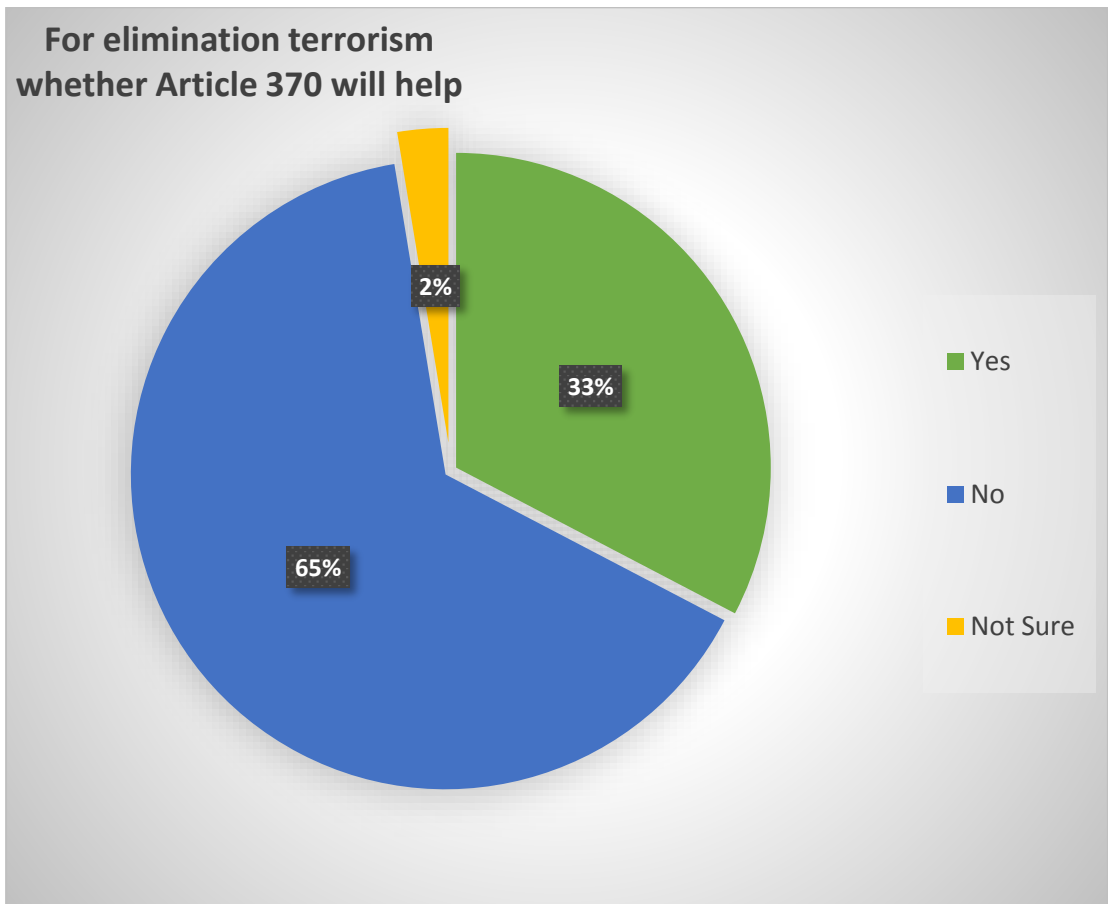


Question 15. Whether the abrogation of Article 370 will help in elimination of terrorism?

Table 15

For elimination terrorism whether Article 370 will help	Responses
Yes	33% - 98
No	65% - 194
Not Sure	2% - 8

Figure 15

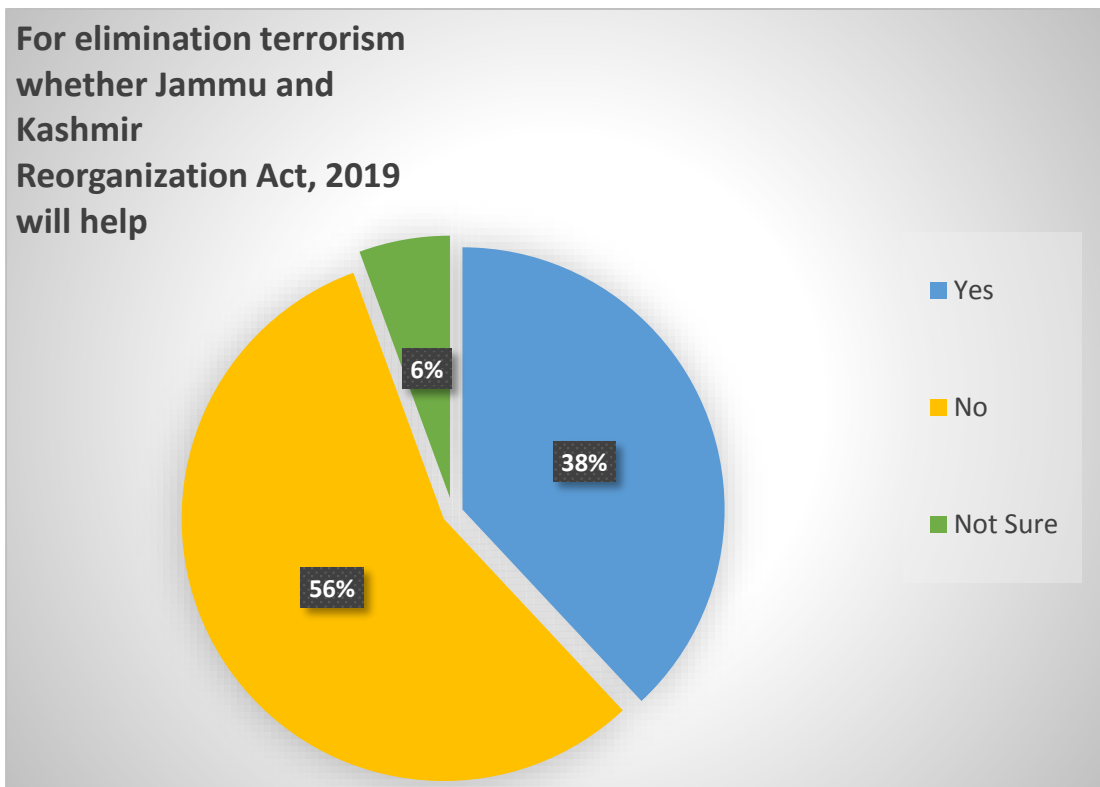


Question 16. Whether the Jammu and Kashmir Reorganization Act, 2019 will help in elimination of terrorism?

Table 16

For elimination terrorism whether Jammu and Kashmir Reorganization Act, 2019 will help	Responses
Yes	38% - 114
No	56% - 169
Not Sure	6% - 17

Figure 16

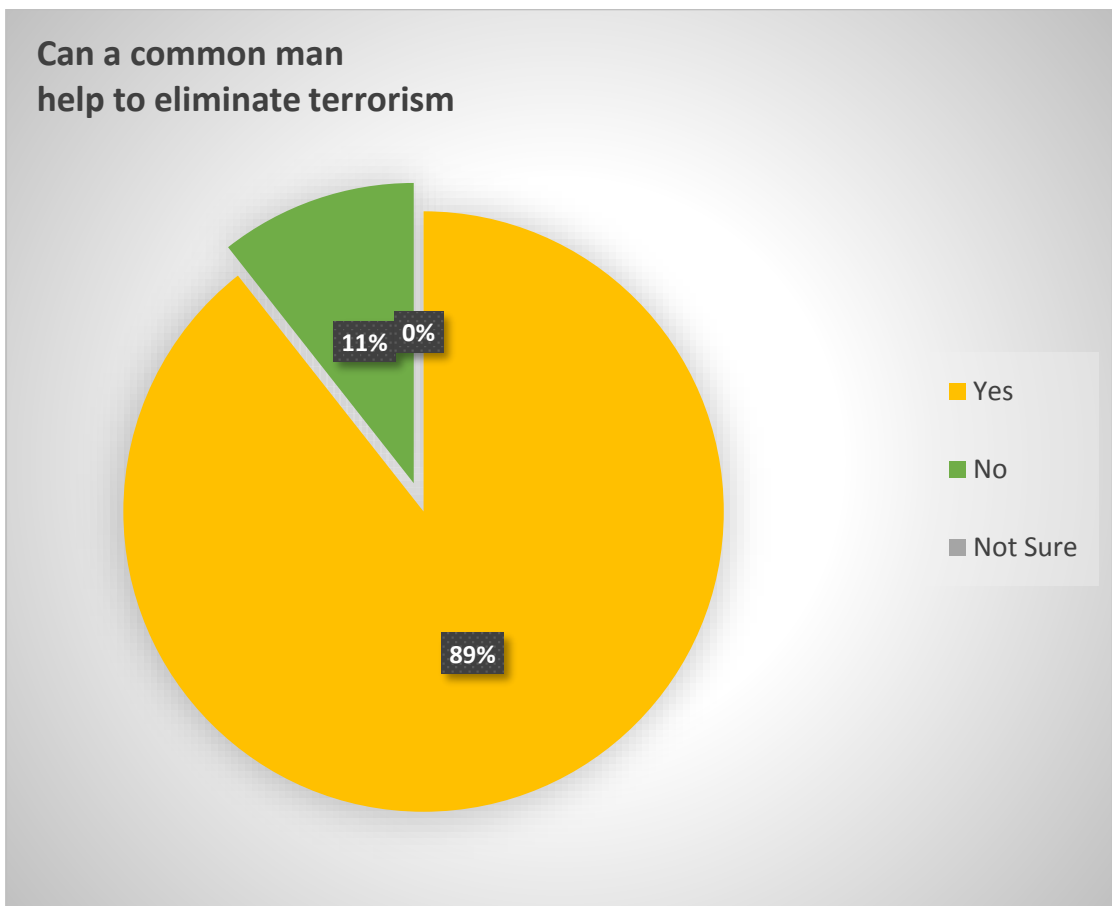


Question 17. Can a common man help the Government to combat and eliminate terrorism?

Table 17

Can a common man help to eliminate terrorism	Responses
Yes	89% - 268
No	11% - 32
Not Sure	-

Figure 17

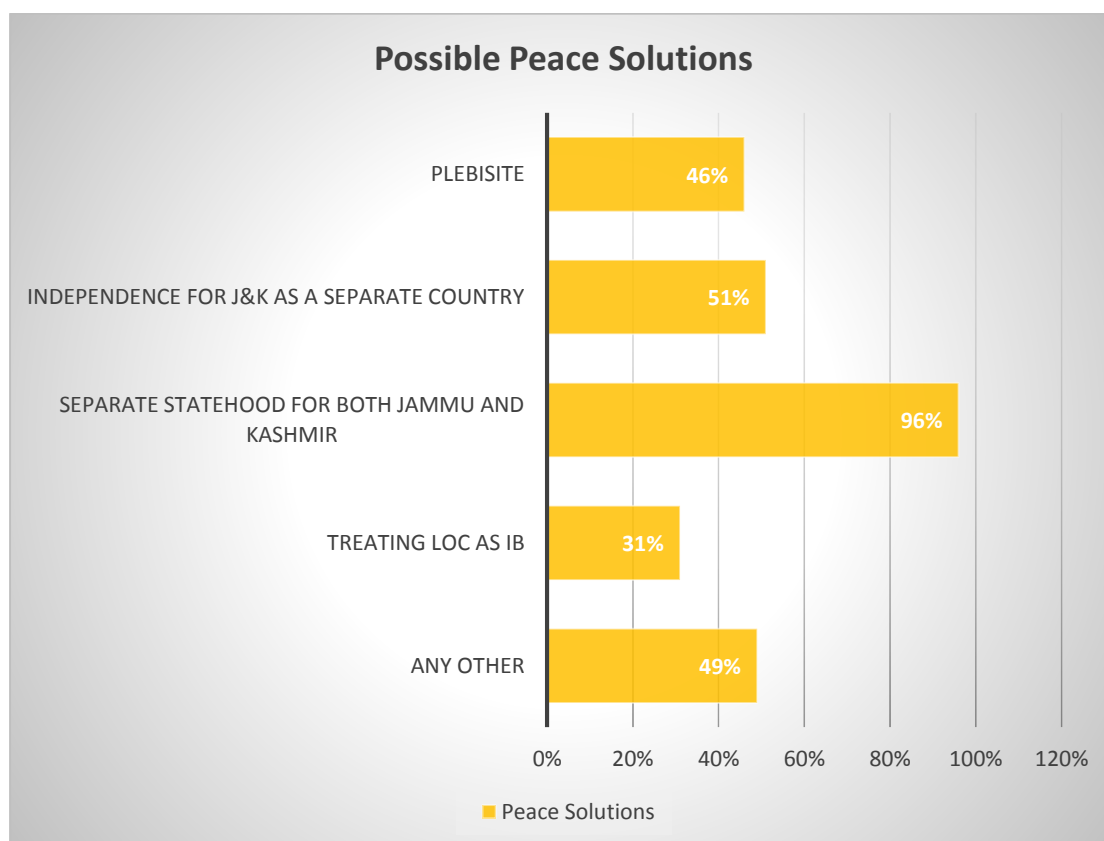


Question 18. In your opinion what can be the permanent solution to bring everlasting peace and harmony in Jammu and Kashmir?

Table 18

Peace solutions	Responses
Plebiscite	46% - 138
Independence for Jammu and Kashmir as a separate Country	51% - 153
Separate Statehood for Jammu as well as Kashmir within India	96% - 288
Treating LOC as International Border by both India and Pakistan	31% - 93
Any other	49% - 147

Figure 18



CHAPTER 6

JUDICIAL RESPONSE

AND

ACTIVISM

Mahatma Gandhi rightly said — “An eye for an eye will make the whole world blind”

6.1. Introduction

Today's era is era of terrorism. The reason may be many, it's a global menace. Terrorism includes great level of insecurity and the victims include innocent persons, women child and old aged people. This is reason that the people allow the law making bodies to enact laws including secret trials, detention and even torture. India has enacted many special anti-terrorism laws. Anti-terror laws are particularly restrained because they sidestep constitution and all the safeguards of a judicial system.

As defined by Paul Wilkinson, authority on terrorism related works, believes that the premise behind terrorism is kill one frighten ten thousand⁵¹⁷ as a Chinese proverb goes. He highlighted the fact that terrorism is pawn used throughout history by states and non-state entities for political objectives. Some of the major features of terrorism as spelt out by Wilkinson are as follows:

1. It is planned with an expect to establish an environment of outrageous dread or fear
2. It is aimed at a bigger crowd or focus than the quick casualties of savagery.
3. It basically includes assaults on arbitrary and emblematic targets, including regular folks.
4. The acts of brutality are seen by the general public where it happens as extraordinary, which means they break the accepted practices, in this way causing a feeling of shock, and
5. Terrorism impacts the political conduct here and there or the other - for instance constraining adversaries to yield a few or the entirety of the culprits requests, to incite an over-response, to fill in as an impetus for more broad clash, or to promote a political reason.⁵¹⁷

⁵¹⁷ Paul Wilkinson, *Terrorism versus Democracy: The Liberal State Response*, (Frank Cass Publishers, London, 2001).

6.2. Constitutional Mandate of Judiciary in India

The Constitution of India has laid down under “Part III the fundamental rights and under Part IV the directive principles of state policy” which is available basically for the protection and the uplifting of the public. As per the Indian constitution, “Right to life and liberty is a fundamental right”. “Article 21 of the Constitution provides that, life and liberty of the individual shall not be deprived by the state unless according to procedure established by law”.⁵¹⁸ “Article 14 of the constitution reads as, *state shall not deny any person equality before the law and the equal protection of the law*”.⁵¹⁹ “Article 19⁵²⁰ of the constitution guarantees the fundamental freedoms”. The directive principles of state policy provide for the welfare of the people and free legal aid to them. “Article 38⁵²¹ provides that state shall strive to promote the welfare of the people”. “Article 39⁵²² imposes duty on the state to provide free legal aid to those who are economically very poor”.

The constitutional mandate of judiciary is most important in times of emergency. Judiciary is one of the most important organs of the state. Its main function is interpretation of laws. While interpreting anti-terror laws, judiciary comes to the forefront as it needs to maintain balance between demands of security and protecting fundamental rights to meet the democratic obligations. Courts as providing a constitutional check on executive power and ensuring democratic accountability.⁵²³

6.3. Role of Judiciary

Judiciary is playing an important role in interpreting law to provide equity and justice. Whenever any question arises as to constitutional validity of an existing law, procedure or new law making, judiciary is establishing landmark principles.

⁵¹⁸ Constitution of India, Article 21.

⁵¹⁹ Constitution of India, Article 14.

⁵²⁰ Constitution of India, Article 19.

⁵²¹ Constitution of India, Article 38.

⁵²² Constitution of India, Article 39.

⁵²³ Clinton Rossiter, *Constitutional Dictatorship*, (2002).

Archibald Cox, who knew a thing or two about the necessity of government actors being independent – emphasized that an essential element of judicial independence is that there shall be no tampering with the organization or jurisdiction of the courts for the purposes of controlling their decisions upon constitutional questions. There is a gap in the rule legitimate issues encompassing the expressing and execution of against anti-terror enactments in India, their understanding in courts, and the issues of coordination and federalism that crop up with regards to simultaneous purview of investigative agencies under State and Central anti-terror legislations.⁵²⁴

Jonathan Swift has also stated on similar lines that "laws are like cobwebs, which may catch small flies, but let wasps and hornets break through."⁵²⁵

In order for law to be just and fair, it has to be without any blemish. For imparting justice a lack-luster attitude of indifference or of fear will not suffice in the long run. Law must seem to be pro-active rather than being flaccid whereby those who defy the law go scot free and those who seek protection lose hope.⁵²⁶ "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: The Judge was biased."⁵²⁷ This perception about judge's bias is wrong however, the judge has a duty to be careful that such an impression does not gain ground. Judges like Caesar's wife should be above suspicion.⁵²⁸

In **Zahira Habibullah Sheikh and Another vs. State of Gujarat**⁵²⁹ it was seen as follows as, "the mind boggling example of life which is never static requires a fresher viewpoint and an opportune and fiery embellishment of old statutes to some new conditions, thoughts and beliefs. In the event that the court acts in opposition to the job it is relied upon to play, it will be annihilation of the crucial structure on which the

⁵²⁴ Archibald Cox, *The Independence of the Judiciary: History and Purposes*, 21 U. DAYTON L. REV. 565, 566 (1996).

⁵²⁵ "Essay on the Faculties of the Mind".

⁵²⁶ *Jennison v. Baker*.

⁵²⁷ Per Lord Denning, M.R. in *Metropolitan Properties Co. Ltd. vs. Lannon*, All ER p. 310 A.

⁵²⁸ Per Bowen, L.J. in *Leeson vs. General Council of Medical Education*.

⁵²⁹ *ZahiraHabibullah Sheikh and Another vs. State of Gujarat*, AIR 2006 SC 1367.

equity conveyance framework stands. Individuals for whose advantage the courts exist will begin questioning the viability of the framework".⁵³⁰

One of the important aspects of the problem of terrorism is the problem relating to the system of enforcing the anti-terrorism laws. While at the state level the matters needs action of the law enforcing agencies of the State, at the international level the enforcement machinery has not yet assumed the form of a full-fled system, yet it is developing fast in regard to various crimes. Anyway, the process of enforcement of anti-terrorism laws whether at the national or international level is such that in this particular matter the sovereign governments have to cooperate with each other in several matters? Sometimes, the matter requires exchange of information about the potential terrorists, sometimes, it requires mutual assistance among the authorities of States in conducting the investigation, and sometimes the authorities have to consider the question of surrendering the fugitive offenders. Various aspects of enforcement of laws call for determination of disputes between the States. For the purpose of securing the proper implementation of the anti-terrorism legislation the international organizations have formulated a few principles which the States find to be useful for the purpose of enforcing the laws.

A unique feature of the modern international law on Terrorism is that it adopts, in regard to certain matters, an innovative approach such as the rule regarding mutual legal assistance, the rule for settlement of dispute between the States through arbitration, the procedure of extra-territorial investigation, the procedure of commission rotatory and the system of providing protection to witnesses and experts, which system was not there earlier under the rules of traditional International Law.

However, at various stages of the enforcement of relevant rules there is the role of judicial institutions which is quite important in view of the fact that these institutions at the national and international level are called upon to decide questions of great importance. Sometimes, the judicial institutions are required to determine the question whether the person against whom the allegation of terrorist act has been leveled has in fact committed the wrong and sometimes they are required to determine the question

⁵³⁰*Ibid.*

whether the alleged offender should be surrendered to the country from where he has fled or he should be punished in the jurisdiction of the State where he is found.

Customarily, terrorism was viewed as a coercive strategy, some of the time received as a component regarding a perfect and huge game plan and such activities made dangers of more awful to come if political requests were not met, and these requests would in general be outfitted to end unfamiliar practices or to get destinations of an insurgent development. The ascent of present day terror activities, in any case, are undeniably more intricate, attached to assorted philosophical and political objectives, and frequently astonishing in the size of violence and the aspirations of its experts.

The weaponry used in the high level dread based fear acts are now advancing and getting more dangerous day by day. Unquestionably much exact than the outdated weapons and knives by untimely reformist psychological militant set forth continuously diligent endeavors to secure radiological, organic and compound and weaponry of gigantic demolition, the future slants ends up being more foreboding.

It is the demonstrations of illegitimate brutality. It takes care of off the individual enduring by tricking the political institutions towards the activities that for sake hard-procured opportunities of current human advancement. All terror acts are inspired by two things such as social and political justice as well as the belief that violent means justify the ends.⁵³¹

Terrorism is the influenced, utilization of brutality to deliver dread. Terrorists understand what they are doing and their objectives are arranged ahead of time. Illegal intimidation might be roused by political, strict, or philosophical thoughts. The foundation of terrorism aims for creating fear to make an administration changing the mentality. In spite of the fact that the in newly standardized global premises, radicals are rehearsing “Terrorism” to create fear and propel an adjustment in conduct from the beginning of time. Prior to the 19th century, terrorists normally perceived honest people individuals not engaged with struggle and made a point to not hurt them. However,

⁵³¹Saji Cherian, ‘Terrorism and Legal Policy in India’, available at <http://www.satp.org/satporqtp/publication/faultiness>, (Last Viewed on November 1st, 2020).

presently oppressor don't mind who they hurt, they simply need to convey the idea like the demonstrations of "September 11, Mumbai bomb blasts" and so on.⁵³²

6.4. Judiciary and Terrorism

Terrorism is a mental component that recognizes itself from any remaining socio-polity offenses and such offences are constantly went with brutality and turmoil. Fear is incited not simply by making regular people the immediate objective of savagery yet in addition by presenting them to a feeling of weakness.

In "*Madan Singh vs. State of Bihar*", the Apex Court was of the view that finding a definition of terrorism has haunted countries for decades. It may be possible to depict it as usage of brutality when it's most critical result isn't just the physical and mental damage of the setback yet the drawn out mental effect it makes or has the capacity of following through on the overall population generally. There may be end, injury, or decimation of property or even difficulty of individual opportunity in the process yet the degree and reach of the proposed terrorist act goes past the effect of a typical bad behavior fit for being rebuked under the standard reformatory practice that must be adhered to and its fundamental goal is to overawe the Government and upset the concordance of the general public and not just those straightforwardly attacked, so as to upset the even rhythm, harmony and serenity of the general public and make a feeling of dread and instability.⁵³³

As observed and mentioned in "*Hitendra Vishnu Thakur vs. State of Maharashtra*"⁵³⁴, the most stressing highlight of present life is terrorism now. In spite of the fact that fierce conduct isn't new marvel, the current day "*Terrorism*" has opened up a heater of fury with full manifestation subsequently getting an alternate character and postures phenomenal difficulties to the cultivated world. The essential structure of a cutting edge State like - "*democracy, state security, rule of law, sovereignty and integrity, basic human rights and so on*" are under the assault because of illegal

⁵³²*Ibid.*

⁵³³ (2004(4) SCC 622).

⁵³⁴ (1994) 4 SCC 602.

intimidation. Despite the fact that the wonder of psychological oppression is unpredictable, a terror act' is effectively recognizable when it happens.⁵³⁵

In *Hyderabad vs. Devendra Gupta*,⁵³⁶ it has been observed that the terrorist strikes have certain common features. They could be very broadly grouped into three groups, namely:

- a. Attack on the democratic establishment, which is the actual premise of our country. Furthermore, the assault on monetary framework by focusing on financial operational hubs.
- b. Assault on images/symbols of public pride and on security/key establishments (for example Red Fort, army bases and camps, radio broadcasts, etc.).
- c. Attack on common people to create dread and dread psychosis among the overall people. The assault at loving spots to harm slants and to whip common interests.

These are intended to situate individuals against the Government by making a sensation of weakness.⁵³⁷

The contemplations provided in TADA are not to be considered as the disturbances in “*public order*” only but as disturbing the “*even tempo of the life and community of any specified locality*”, In the words of “Hidayathulla, C.J.” in “*Arun Ghosh v. State of West Bengal*”⁵³⁸ in any case, rather a grave rising situation made either by outside powers particularly at the backwoods of this country or by adversaries of nationals throwing a test to the very presence and influence of the country in its prominence based popularity based nation.⁵³⁹

In “*Navjot Sandhu case*”,⁵⁴⁰ on the issue of taking up arms against the Union Government has additionally been considered according to terrorist acts and in such

⁵³⁵*Ibid.*

⁵³⁶ 2013 SCC On Line AP 136

⁵³⁷*Ibid.*

⁵³⁸ (1970) 1 SCC 98

⁵³⁹*Ibid.*

manner the Court noticed and held as war, illegal intimidation and violence to overawe the set up Government share numerous things practically speaking. It isn't too simple to even think about distinctive them.

6.5. Anti-Terrorism Laws in India and Judicial Response towards Them

One of the terrifying wonders of right now is the aspects of Terrorism. The risky patterns to the direction and extension of its degree hard went in to a genuine danger to humankind concerning with subject to a colossal discussion throughout the long term. It is normal information that basic freedoms infringement for bigger time frames are frequently the underlying driver of contentions when there is oppression and boundless disregard of basic liberties, individuals are denied any desire for better future and this turned into a ripe ground for reproducing illegal intimidation.⁵⁴¹

The first Preventive Detention Act was enacted by the Parliament of India was on 26th February, 1950. The object of Act was to furnish for detainment with the end goal of *“keeping any individual from acting in a way biased to the protection of India, the connection of India with unfamiliar forces, the Security of India or a State or the upkeep of public request, the support of provisions and administrations fundamental for the regional community”*.

The strategies opted by the terror groups in their gatherings as well as affiliation misuse present day techniques for correspondence and development using forefront workplaces available as correspondence structure, transport, refined weaponry and many techniques. Such has engaged them to attack and spread fear as well as -threat willfully. The criminal equity framework was not intended to manage such sort of intolerable violations. Considering the present circumstance it was felt important to order enactment for the avoidance of and for managing terror exercises.

Terrorism has gigantically influenced India. Aside from numerous encounters in different pieces of the country, there were innumerable genuine and frightful occasions immersing numerous urban communities with slaughter, terminating,

⁵⁴¹Apparel Export Promotion Council vs. A.K. Chopra [(1999) 1 SCC 759]; Vishaka vs. State of Rajasthan [(1997) 6 SCC 241] and T.N. GodavarmanThirumalpad vs. Union of India &Ors. [(2002) 10 SCC 606].

plundering, distraught executing even without saving ladies and youngsters and diminishing those zones into a cemetery, which severe outrages have shaken and stunned the entire country Deplorably, decided adolescents tricked by in-your-face crooks and underground fanatics and pulled in by the philosophy of Terrorism are enjoying carrying out genuine wrongdoings against the mankind.⁵⁴²

“The last five decades have witnessed a number of legislations being enacted to tackle various specific contingencies:

- *Jammu and Kashmir Public Safety Act (1978);*
- *Assam Preventive Detention Act (1980);*
- *National Security Act (1980, amended 1984 and 1987);*
- *Anti-Hijacking Act (1982);*
- *Armed Forces (Punjab and Chandigarh)*
- *Special Powers Act (1983);*
- *Punjab Disturbed Areas Act (1983);*
- *Chandigarh Disturbed Areas Act (1983);*
- *Suppression of Unlawful Acts Against Safety of Civil Aviation Act (1982);*
- *Terrorist Affected Areas (Special Courts) Act (1984);*
- *National Security (Second Amendment) Ordinance (1984);*
- *Terrorist and Disruptive Activities (Prevention) Act (1985, amended 1987);*
- *National Security Guard Act (1986);*
- *Criminal Courts and Security Guard Courts Rules (1987) and*
- *The Special Protection Group Act (1988).”*

The counter terrorism legislation have been endorsed with an objective to establish goals for improvement of the worsen situation. It was not to make these excellent appraisals an enduring component of decide that everybody should follow. Be that as it may, since of continuing with dread activities, the goals have been by and by presented with fundamental changes.

⁵⁴²Kartar Singh vs. State of Punjab, (1994) 3 SCC 569.

As of now, the enactments in power control the terror acts are “National Security Act, 1980” and the “Unlawful Activities (Prevention) Act, 1967”. The “UAPA” was annexed to “manage affiliations and exercises” which are to be scrutinized at the regional trustworthiness. At the point when it was bantered in Union legislature, pioneers, and opposition party connection, demanded that its ambit be restricted to such an extent that the privilege to affiliation stayed unaffected and that the leader didn't open ideological groups to interruption.

6.6. Prime Objective of Anti-Terrorism Laws

India is at remarkable position and addresses the feasibility as well as sensible methodology while embracing harmony in public safety and common freedom of person. Clashing circumstance such are ought to be given significance and inclination or how a harmony between the two can be welcomed reliance on the scholarly expertise and activism of the legal executive. The human development acknowledged to make a harmony between the two which depends with the understanding of preferring more prominent local area interest contrast with singular interest. The type of utilitarianism, Jeremy Bentham has expressed that "a demonstration is ethically correct just on the off chance that it causes the best bliss for the best number".⁵⁴³ Following this hypothesis it implies that while authorizing the counter illegal intimidation authoritative arrangement the common freedoms of people should be forfeited to acquire more prominent security for the greater part.⁵⁴⁴ The state is legitimized in superseding the privileges of individual to ensure and protect the privileges of local community.

In “Jayant Kumar Case”,⁵⁴⁵ “Justice I.A. Ansari” was of the observation related to security within the state taking the things together condition not to be permitted for superseding the common freedom likewise dependent upon the limitation. Such limitation towards common freedom aims to hamper its utilization as a permit to do anything which will at one view of time become grievous.

⁵⁴³ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* Oxford Clarendon Press, New York, 1789.

⁵⁴⁴ Ronald Dworkin, *A Matter of Principle*, Harvard University Press, Cambridge (MASS), London, 1985, p. 73.

⁵⁴⁵ *Jayanta Kumar Ghosh vs. National Investigation Agency*, 2014(1) GLT1.

“Our Constitution at numerous crossroads has made a harmony between the security of the state and the common freedoms. Rights are guaranteed to a person and the states are empowered to make laws on the grounds of constraints referred to under the Indian Constitution. The worry for security of the State has, hence, constrained the State to make an ever increasing number of severe laws. In case the State ought not become as unfeeling as a terrorist, all the acts of the State and the laws, made by the State, should be tried and deciphered on the standard of basic freedoms and the protected standards”.

The Apex Court has, in “D.K. Basu's Case”,⁵⁴⁶ held that “state terrorism is no response to battle illegal intimidation. State terrorism would just give authenticity to illegal intimidation that would be terrible for the State, the local area or more for the rule of law. The State must, along these lines, guarantee that the different organizations sent by it for fighting terrorism act inside the limits of law and not become law unto themselves”.

But the Apex Court likewise maintained the legitimacy of hostile to anti-terrorism laws portraying them as the need of the State. These legislations are vitally needed considering the social condition inescapable in the country and thusly held significant. The judgment given by the Court for the present circumstance was mixed up. For the security of the State, institution can't deal the advantages of individuals. All over the case, the Court has zeroed in on that the condition in the Country demands the prerequisite for demanding measures and whether or not they dismiss the rights somewhat, they are upheld. We ought not to neglect to recollect that we are a greater part administers framework, without a doubt, the world's greatest mainstream government. Exactly when an organization is made for people and by people, it should get the advantages of everyone and not just a predominant part.

On account of “A.K. Gopalan case”,⁵⁴⁷ “Section 14 of the Preventive Detention Act, 1951, which was like the current Section 16 of the MISA, was struck down as

⁵⁴⁶ (1997) 1 SCC 416.

⁵⁴⁷ AIR 1950 SC27.

unlawful” on the ground that it abandoned the legal request of the legitimacy of the detention under the said Act.

There are consistently inquiries of profound quality when new laws are authorized, particularly when these identify with essential basic liberties and opportunities. Roscoe Pound explains the requirement for new laws in an extremely concise manner as far as two necessities that decide philosophical deduction regarding the matter.

From one point of view, the significant social interest in the overall security, which as an interest in congruity and sales composed the genuine beginnings of law, has driven men to look for some fixed explanation of a specific referencing of human development which should control authoritative comparably as individual objective and confirmation a firm and stable social sales. Then again, the crushing component of less concise social interests, and the need of obliging them with the exigencies of the overall security and of making new tradeoffs on account of continuing on changes in the public field have called for development at any speed of the social requesting. They have called reliably for redesigning of genuine rules and for refitting them to abrupt conditions.⁵⁴⁸

As Walter Laqueur portrays how it was extensively acknowledged that "terrorism" was a response to dishonor and that the "terrorists" are the people gone to dire exercises by intolerable conditions, be it destitution, hopelessness, or political or social abuse. Following the reasoning, the most ideal approach to dispose of or if nothing else to reduce mental abuse is to deal with its sources, to deal with the objections and dissatisfactions of the terrorists, instead of just attempting to stifle terrorism by animal power.⁵⁴⁹

This thinking is, in any case, generously defective and disregards the special social, political and philosophical variables that add to, and are abused by, the cycles of terror preparation. Another additional component of pessimism in this viewpoint, to the degree that it demands that the issues of savagery can't, or ought not, be tended to

⁵⁴⁸ Roscoe Pound, *An Introduction to the Philosophy of Law*, London: Yale University Press, 1954, p. 2.

⁵⁴⁹ Francis Fukuyama, "History and September 11," in Booth and Dunne, *World in Collision*, p. 34.

until the last conceivable complaint has been settled an undertaking, in any world external the domain of unadulterated dream, that is fundamentally endure un-endingly disappointed. Basically, the center issue of terror viciousness & culpability is, unlikely inclined to, and center has moved with implied causes that are accepted to have prompted terrorism waging war.

6.7. Judicial Temperament in evaluating of Anti-Terrorism Laws

Since the mid-1980s, in India, the process of enactment of several special laws was taken up to deal with the menace of terrorism, notables among these being TADA, POTA, and UAPA. Necessarily, the judiciary was called upon to adjudicate on some of the new and usually highly contentious issues like applicability of new enactments in anti-terror laws etc., as they kept cropping up.

As would be observed in the detailed analysis, the approach of the judiciary has remained very consistent in matters related to national security. It has, while recognising the fact that acts of terrorism constitute an '*extraordinary crime*', shown due appreciation for the laws framed by the legislatures from time to time. The courts have been carefully scrutinising the processes and procedures prescribed under the new legislations, with due consideration to protecting personal liberties and individual human rights of the citizen. The basis for this scrutiny can be in the form of an 'objective proof, relevant material in accordance with law and through a procedure which passes the muster of fairness and impartiality.

It is generally observed that during any terror incidence, terrorists commit a number of offences which are conventionally categorised under the Chapter VI of the Indian Penal Code. These offences are prosecuted by invoking supportive laws like the Indian Explosives Act, Firearms act with IPC codes. Amongst some of these laws certain offences are described as "*Offences against the State*". Sections 121-130 of the IPC primarily list offenses or actions such as '*waging war against the Government of India*'. As per Section 121 and associated Section 122 of IPC, "*whoever within [India] or without conspires to commit any of the offences punishable under the Section 121 or conspires to overawe, by means of criminal force of the show of criminal force against*

the Government of India [Both Union or State Government] shall be punished with imprisonment of life or shall also be liable to fine”.

The supporting explanation clarifies that to constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof. The following Section 122 of IPC prescribes, *“Collecting arms, etc., with intention of waging war against the Government of India, collecting Arms with intention of waging war against the Government of India. – Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India [Union or State] shall be punished with life imprisonment or as described for a term not exceeding ten years and shall also be liable for fine”.*

In *Navjot Sandhu V State*, the Supreme Court examined the question as to what constitutes the offence of “waging war” and its contemporary significance. The rationale was premised on their intent to overawe the Government of India by the means of criminal force along with activities used to bring out hatred. These criminal forces generate a sense of contempt in the people of India with the utilisation of collected materials and arms for the aforesaid offences.

While pronouncing its verdict, the Supreme Court went on to further clarify and define the phrase “*Committing a Terrorist Act*”, which will fit the classification of Section 3 (1) of the TADA and reads as, *“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 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 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 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”.

However, the question that remained un-answered was, whether an “*act of terror*” was committed or not? This happened due to the ambiguous interpretation of Section 121 of IPC and its interjection with the definition prescribed under TADA which defines the act as one that ‘overawes the Government of India’. Based on the domicile of the accused, the applicability of the law to foreign nationals also came under challenge.⁵⁵⁰ In defence, it was argued by the defence lawyers that the offence committed, did not fulfil the nature of the offences listed in Chapter VI of TADA.

While searching for answers to the above-mentioned questions, it is important to understand the meaning of the word ‘War’. In Navjot Sandhu case⁵⁵¹ the evolution and legality of this concept was deliberated in the court.

While pronouncing verdict, the Court referred to some of the judgements pronounced by the English courts in the past, stating that, “*Whether this exposition of law on the subject of levying war continues to be relevant in the present day and in the context of great socio-political developments that have taken place is a moot point*”. These guidelines by the Supreme Court have clearly conceptualised the interpretation of the clause ‘waging war’ with the support of certain colonial laws⁵⁵². These offences with the objective of subverting the authority of the Government lead to the disturbance of the public peace and order. Therefore, the Court interpreted the expression ‘War’ preceded by the verb ‘wages’ admitting various shades of its meaning. It defines with exactitude; though it appeared to be an unambiguous phraseology to the Indian Law Commissioners who examined the draft Penal Code in 1847.

⁵⁵⁰ Fawcett, James, and Janeen M. Carruthers. *Private International Law*. 14. Edited by Sir Peter North. Oxford: Oxford University Press, Oxford, 2008.

⁵⁵¹ Briefly, Navjot Sandhu was convicted of carrying out a terrorist attack and waging war. He was prosecuted under POTA. The specific act for which he was prosecuted was an attack on the Indian Parliament in 2002, where a car full of explosives was driven into the Parliament complex. The explosives however, failed to explode. During the crossfire, some security personnel were killed.

⁵⁵² In the British colonial era, war against the King or his military forces and *post 1950 where, the expression of ‘Government of India’ was substituted for the expression of ‘Queen’ by adaptation of Laws Order of 1950 making slain terrorist acts pursuant to the conspiracy amount to waging or attempting to wage war is punishable under the Section 121 of IPC and Section 121 and 121A occurs in the Chapter ‘Offences against the State’.*

The unique characteristic of the judicial interpretation and its incoherence is aptly observed in the decisions pronounced by the High Courts and the Supreme Court. This is interesting to observe that there is a relative ambiguity in the interpretation about the understanding of the 'war'; especially, when it is interpreted in the framework of International law.

The Delhi High Court while pronouncing its verdict in the instant case "*State V Mohd. Afzal*"⁵⁵³ referred to the international law under which 'War is a flexible expression' and needs to be interpreted in relevance with the inter-state as well as intra-state wars. In this light, the Court acknowledged that insurgency is to be considered as an *Act of Waging War* against the Government of India and can be committed (even) by a solitary person⁵⁵⁴. In similar instance, the Supreme Court in Navjot Sandhu case upheld the decision of the Delhi High Court. However, it did not identify the difference between international and non-international armed conflict in the frame of reference of international humanitarian law. Thus, it further could not take cognizance of the development of principles of international law and the Geneva conventions.⁵⁵⁵

The Supreme Court further considered and enumerated the offences listed in the Parliament Attack case as offences attempting to subvert the authority of the Government or an attempt to paralyse the constitutional machinery, with further disturbing the public peace as listed in Section 121 of the Chapter VI. Clarifying further, the Supreme Court differentiated on the basis of gravity of degree. However, the court could not stipulate the distinction between "*waging war*" and "*terror acts*". This is considered important especially in terrorism related cases as the difference between the two is day-by-day getting hazier.

Therefore, the Supreme Court in the Ajmal Kasab case (26/11 Mumbai carnage), rejected the submission that a "*terror act*" would automatically exclude the act from the purview of *Section 121*. The court further clarified that, *Section 121* could

⁵⁵³ State V Mohd. Afzal, (2003) 107 DLT 385

⁵⁵⁴ State V Mohd. Afzal, (2003) 107 DLT 385, Para 181-190

⁵⁵⁵ Chandrachud, Chintan. "INTERNATIONAL HUMANITARIAN LAW IN INDIAN COURTS: APPLICATION, MISAPPLICATION AND NON-APPLICATION." In *Applying international humanitarian law in judicial and quasi-judicial bodies*, by Derek Jinks, Jackson N. Maogoto and Solon Solomons, 389. The Hague: T.M.C. Asser Press, 2004.

be applied to persons of foreign nationality, who did not owe his or her allegiance to India, since the word “*whoever*” used in the section ensure that it could not be restricted only to Indian nationals. Thus, any attempt by a foreign national to enter into Indian territory stealthily with a view to disturbing public order or subverting government functions, should be held guilty under the Section 121 of Indian Penal Code.

There are certain questions raised over the ambiguous nature of IPC Section 121, which merely stipulates that the target be Government of India, without specifying, whether it be Executive or the legislature? The Judiciary sensed the limitations of this section and clarified during the trial of Mohammad Ajmal Amir Kasab Vs State of Maharashtra case in which Ajmal Kasab was convicted under Section 15 of UAPA and Section 121 of IPC. The hon’ble court rejected the argument that *the act of terror could never occur together and thus, Section 121 must be repealed. In its considered view, the expression ‘Government of India’ is used in Section 121 to imply the Indian State, the juristic embodiment of sovereignty of the country that derives its legitimacy from the collective will and consent of the people. Therefore, the use of phrase ‘Government of India’ signifies the notion of sovereignty as consistent with Public International Law, wherein sovereignty of a territorial unit is deemed to vest in the people of the territory and exercised by the representative government.*

Therefore, the conviction was duly upheld. In this matter, the court clearly demarcated boundaries between “waging war” and committing an “act of terror” which have a lot in common though.

It is observed that, globally, in both international and municipal laws along with some international conventions that,⁵⁵⁶ the act of terrorism has been defined, but most of the colloquiums do not answer the difficult question about motive and ideology.

⁵⁵⁶ *The international colloquiums or conventions means: 1) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 2) International Convention against the Taking of Hostages, 3) International Convention for Suppression of Terrorist Bombings, 4) Convention on Offences and Certain Other Acts committed on Board Aircraft, 5) International Convention for the Suppression of the Financing of Terrorism, 6) Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 7) Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 8) Convention for the Suppression of Unlawful Seizure of Aircraft, 9) Convention on the physical Protection of Nuclear Material etc. etc..*

Does this amount to only simplification in defining terrorism, especially in the contemporary era, when use of high technology has created a complex situation in adoption of a global definition of act of terror? The intertwining of the meaning of act of terror with terrorism is obvious. In a general sense, the term terrorism designates extreme fear, which is vaguely perceived, but relatively unknown from a large threat. This can be caused by man-made actions, such as the use of force or weapons; which can cause human harm or fatalities or by natural disasters like flood, volcanic eruptions etc. It is not of any concrete significance while combating terrorism if we don't define it. Thus, terrorism needs to be defined in its true scope in today's era to avoid drawbacks in legal mechanism and uncertainties.

Due to its impulsive nature, the term terrorism has emerged as a core focus of power politics and, in certain cases, even a means of propaganda. The different posturing of ideologies, frequent endorsement of the use of force to establish sense of fear, legal narratives and creating, redefining judicial realities have a reflective propensity, making terrorism a tough challenge to deal with. The situation is worrisome when there is no evolution of consensus amongst states on definition of terrorism. The absence of an internationally accepted definition of terrorism has led to a kind of international lawlessness and unilateral vigilantism. The long standing failure on the part of the international community to develop a consensus in defining terrorism has intensified the war of terror between two prominent components of global governance. These states are capable of mobilizing military might across the world on the one hand, while weak or nearly failed states like Pakistan or Somalia, in which stateless actors and state-sponsored machinery view terror as a justified tool to be utilized against the mighty states of the world.

The consequence of absence of globally accepted definition of terrorism has been felt more by states like India than others. Indian Prime Minister Narendra Modi aptly said, "*Terrorism is deadly and fearless and the world is aware of this reality*". He appealed to international organisations like the UN to develop a robust strategy to deal with terrorism. "*United Nations has documented the definition, consequences, and the ways to prevent war,*" he said, "*but when it comes to terrorism, the UN has not been to deliver a structured response.*" "In addition, rather than fulfilling its responsibility, the

peacekeeping efforts by international entities had fallen short of coming up with a suitable resolution to combat the rising danger of extremism,” he added. “If organisations like the UN don’t come up with appropriate responses soon enough, they will risk becoming irrelevant”.⁵⁵⁷

The League of Nation had defined terrorism as, ‘All criminal acts directed against a State, intended or calculated to create a statute of terror in the minds of particular persons or a group of persons or a general public’⁵⁵⁸. There was an element of subjectivity in defining the acts of terror. India also seems to have followed a similar approach, where in an ‘act of terrorism’ is very well defined; but, ‘terrorism’ per say is yet to be defined. This legal position is acknowledged by the Indian judiciary also.

In dealing with the subject of terrorism, it is important to understand the difference between ‘*act of terror*’ and ‘*terrorism*’. The unfortunate phenomenon of terrorism has remained a major cause of concern that has intensified over the last few decades. Terrorism is driven by and flourishes under different driving ideologies like Marxism, nationalism, radical Islamism, Jihadist agenda of acutely radicalised individuals or groups etc. In this backdrop, one of the primary differences between terrorism and act of terror can be defined as; act of terror being neutral; an act which is wicked act; it is randomly executed in the form of violence or robbery, rape etc. However, when an ideology such as political agenda or religious belief or moral persuasion or any such dimension is added to the act of violence, the act of terror can be classified as terrorism. Thus, systematic use of violence by organised terror groups or states against non-combatants to achieve political objective can be classified as terrorism.⁵⁵⁹

Further, based on the execution pattern and impact factor, terror attacks are relatively easy to carry out, especially when the individual adopts a suicidal route. Such individual or group of individuals, in today’s era of advanced technology, can inflict considerable damage to a large number of vulnerable targets. The terror attacks across

⁵⁵⁷ Malhotra, Aditi. “Narendra Modi Criticizes U.N. Response to Terrorism.” *The Wall Street Journal*, March 31, 2016.

⁵⁵⁸ LoN Convention of Terrorism, supra note 30, art. 1, 2.

⁵⁵⁹ Goodwin, Jeff. “Terrorism.” In *The Wiley-Blackwell Companion to Political Sociology*. Blackwell Publishing Ltd, 2012.

Europe in the year 2016, 2017 carried out by Daesh terrorists, largely endorse the above-mentioned fact that people with strong ideology commitment, succeed in executing terror attack at that scale. The evolution of ideology-based violence blurs a thin line of separation between act of terror and terrorism. This blurred line along with legal loop holes, provide manoeuvring space for terrorists, which magnify their reach and power along with its supporting network.

The Supreme Court has consistently maintained its standpoint that while using anti-terror legislation, ‘*act of terror*’ under TADA, POTA and UAPA cannot be considered as a mere law and order issue. Therefore, the jurisdiction of the ordinary law and its enforcement is inadequate to deal with the issue of terrorist acts, its nature as well as intention.

This makes it essential to differentiate between the anti-terror laws from the ordinary criminal procedural code. The legal parameters such as stringency of provisions, bail provisions, the duration of permissible police custody, clear provision of maximum and minimum sentences, time to file the charge sheet and the procedure of law adopted for the trials should differentiate special legislation like anti-terror laws from a normal criminal procedural code.

In reality, while applying these laws, it is observed that the amendments of 2008 and 2013 to UAPA have made the distinction between special laws and normal criminal procedural code ultra-thin. The fear factor is used as an element of extraordinary as well as exceptional jurisprudence and projected it as a credible rationale to expand the *actusreus and mensreus*⁵⁶⁰ as elements of the offence. This is a critical situation, where there is need for re-evaluation of these special laws which are projected as ‘*extraordinary*’ and becoming part of our ordinary criminal justice system.

The amendment made to Section 20 of the UAPA in 2008 in the aftermath of Mumbai siege, interprets *membership of any terrorist gang or organisation* as a punishable offence. Section 38 of UAPA further lists out offences related to membership such as association with or professing to associate with such terrorist

⁵⁶⁰ Guilty knowledge and wilfulness. A fundamental principle of Criminal Law is that a crime consists of both a mental and a physical element. **Mensrea**, a person’s awareness of the fact that his or her conduct is criminal, is the mental element, and **actusreus**, the act itself, is the physical element.

organisation as a punishable offence. This amendment is identical interpretation of the subsection (5) of Section 3 of the TADA, which is reintroduced in Section 20 of the UAPA in 2008.

Challenging this in the Court of law, an argument was made during the trial of *State of Kerala Vs Raneef* that, “Whether a person merely by being a part of a terrorist organisation could be prosecuted under this section even if the individual does not actually commit any terrorist or unlawful acts”. The matter was further referred to Supreme Court in an appeal against a bail plea. The accused in that case was a member of an organisation named *Popular Front of India* (PFI) which was not at that time designated as an unlawful organisation under UAPA. The Court could not penalise the accused as the PFI was not mentioned in the list. However, surprisingly, the Hon’ble Supreme Court observed that “*hypothetically even if it is presumed that PFI is an illegal organisation, they were ‘yet to consider whether all members of the organisation can be automatically held to be guilty’*” (Supreme Court of India 2011). This implied that there was no prima facie proof establishing the involvement of the accused in the crime and had not violated the proviso to Section 43D (5) of the UAPA on the bail and hence the bail was granted.

The existence of ideological motivation, terrorist infrastructure, efficient recruitment mechanism, mobility of resources within the region as well as worldwide, training and arms and ammunition are crucial components of any terrorist organisation.

Thus, for any effective anti-terror mechanism, it is extremely important to closely monitor at least two major aspects of terror financing i.e. a) generation of funds and b) its induction or distribution. It is universally felt that there cannot be a single stipulated model to fight against terrorism; therefore, India needed to develop its own model based on the peculiar within its jurisdiction with unique domestic as well as regional impact.

The amendment of 2013 in the UAPA criminalises financial activities associated with the terrorism. The amendment introduced the concept of ‘*offences threatening economic security*’ by bringing it within the ambit of a *terrorist act* under the Section 15 of UAPA. It also penalizes the smuggling of ‘high value’ counterfeit

currency, even though counterfeiting is also a punishable offence under IPC. This is another instance of multiplicity of laws for same crime but seems inescapable since all acts of counterfeiting of currency are not related to act of terror.

The second amendment came in the form of Section 17 of the UAPA which expanded the legal scope pertaining to the activities and purpose of funding.

However, the Court in *Londhoni Devi Vs NIA* indicated that all financial transactions with a terrorist gang would not fall within the ambit of this Section. However, the court did not clarify the differentiation between the money raised for legal activities and those raised for the commission of any terrorist act (N. Government of India 2012). Similarly, the new amendment of 2013 in the UAPA, did not resolve the ambiguity between legitimate and illegitimate sources of funding. Section 15 of UAPA which was amended in reference to ‘*high quality*’ counterfeiting also deemed raising funds for executing or planning the terrorism act. The quantum is also not defined while defining ‘*high quality*’.

The Court also interpreted the amendment in its deliberations in *Redaul Hussain Khan V NIA* case, where the appellant had raised funds for the procurement of arms and ammunition for the banned terror organisation *Dima Haram Daogah DHD* (J). Here the Court held that this Section encompasses the act of fund raising, collecting and providing those funds to persons or organisations involved or engaged in terrorist activities.

The issue of *support structure* was challenged, the Supreme Court brought clarity by providing guidelines that, “the provision of the UAPA would not be attracted to the facts the case. The submission is unacceptable that mere because *Dima Haram Daogah - Jewel*⁵⁶¹ *DHD* (J), had not been declared as an “unlawful association”. When the petitioner was arrested, the said organisation could not have indulged in terrorist acts or that the petitioner could not have had knowledge of such activities. Though, the ambiguity pertaining to the requirement of the likelihood that a terrorist act was committed by utilizing the funds was not present. Nevertheless, the constructive

⁵⁶¹ It is a militant organisation operating in North East region of India

utilization of the newly expanded provision entirely depended on the judicial interpretation of the provision by the Courts.

6.8. Landmark Cases

In “*Hitendra Vishu Thakur vs. State of Maharashtra*”,⁵⁶² it was held that, “*Terrorist actions don’t just emerge due to unsettling influence of peace and lawfulness or of public request. The drop out of the Intended action should be to such an extent that movements past the limit of the common law implementation offices to handle it under the normal correctional law. Events has shown us that Terrorism is for the most part an endeavor to gain or keep up force or control by terrorizing and causing apprehension and defenselessness. In the personalities of individuals everywhere or any segment thereof and IS an absolutely unusual wonder. What recognizes from different types of savagery, consequently gives off an impression of being the purposeful and deliberate utilization of coercive terrorizing. Usually a solidified criminal today exploits the circumstance and by wearing the shroud of psychological warfare, plans to accomplish for himself adequacy and decency. In the general public, in light of the fact that tragically in the States influenced by hostility, psychological oppressor, I projected as a legend by his gathering and frequently even by confused the young individuals*”.⁵⁶³

After the expiry of TADA 1995, it was necessary to enact legislation to combat and control terrorist acts.

While TADA was centered on punitive measures POTA was primarily a preventive measure.⁵⁶⁴ It deals with terrorist acts and disruptive activities. By this enhancement the Government wanted to bring about stringent rules to deal with terrorism. It sought to overcome the flaws of other enactments. This law was Intended to create a working order where the investigative agencies and other agencies in the criminal justice system could work together to secure a conviction of such persons who spread terror In society or disrupt, the peace and harmony in society Also it increased

⁵⁶² 1994 AIR 2623.

⁵⁶³ Ibid.

⁵⁶⁴ Under TADA, 75000 were arrested and 72000 were released because of lack of evidence.

the credibility and standing of the law enforcement agencies in Society. This would undoubtedly put an end to any extra-legal actions taken in many states to counter militancy and insurgency.

In the cases that have come up in the Supreme Court and other High Courts Issues pertaining to terrorism have been dealt with within the parameters of law and justice An analysis of the judgements bring to light every aspect of the law which the Courts have taken Into consideration when deciding the case. The intention of the legislature is not to try every criminal under special laws, but deal with it as any person accused of any offence. It is well known as “every terrorist may be a criminal, but every criminal cannot be given the label of a terrorist”.⁵⁶⁵

As the country faces various challenges, where terrorism has been identified globally dimension it has been imperative for state to deal with it in every manner possible. Some have considered it as a peace time equivalent of a war crime.⁵⁶⁶

In “*Usman Bhai Dawood Menon and Others vs. State of Gujarat*”,⁵⁶⁷ the Supreme Court accepted the contention that “*the State Government that the Act being a Special Act must prevail in respect of the jurisdiction and power of the High Court to entertain an application for bail under Section 430 of the Criminal Procedure Code or by recourse to its inherent powers under Section 482*”.

The Supreme Court additionally said that the assigned Courts have not deliberately viewed as current realities and conditions and have dismissed the utilizations of the ball precisely. The Apex Court maintained the judgment of the High Court and put aside the condemned orders passed by the assigned court.

In “*Niranjan Singh Karam Singh Punjab Case*”,⁵⁶⁸ the Supreme Court stated that killing a member of a rival gang is not an act of terrorism the matter was decided based upon intention of the appellant, who did not kill an innocent civilian. In such matters it was left to the Court to analyses the evidences laced before it was free to

⁵⁶⁵ AIR 1988 SC 922.

⁵⁶⁶ AP Schmid of the U.N Crime Branch.

⁵⁶⁷ 1988 AIR 922.

⁵⁶⁸ 1990 AIR 1962.

reject some contentions of the prosecution It held that there was no offence under Section 3 (1) of TADA was made out and therefore the designated court could not try the offence The other charges were left to ordinary courts to try the accused.⁵⁶⁹

*“Erram Santosh Reddy & Others vs State of Andhra Pradesh ”*⁵⁷⁰

This Appeal has tiled under Section 6 of the TADA Act 1985 to challenge the Judgment of the inferior Court. The appellants were found guilty under Section 307 read with Section 34 and sentenced to undergo rigorous imprisonment for a period for 5 years and under Section 5 and 3(2) (ii) of the TADA for a period of 5 years and also to pay a fine. They were also convicted under Section 5 of the Explosive Substances Act and sentenced to three years imprisonment. All the accused were members of the CPI (ML) group lead.

In 1986 in the early hours, the Inspector of Police received credible information that one of the accused was organizing has party to commit terrorist acts and disruptive activities a house rented by one of the accused. The premises were raided. During the raid a bomb was hurled with an intention to kill. Later several weaponry and other hazardous substances were recovered from the house

In this appeal it was argued that submitted that the appellants did not come under the meaning of “terrorist act” as defined under “Section 3 (1)”. He submitted that no section of people were terrorized nor any one of them In the locality was injured because of the hurling of the bomb and that the prosecution did not establish that the appellants acted m a manner with such intention as mentioned in Section 3 and they do not come within the meaning of the word "terrorist".

The Court was of the view that it’s a well-established by evidence that Police raided such premises of accused and that one of them hurled a bomb on them. On surrender, fire arms and explosive substance were recovered from them and hence Section2 (f) as well as Section 3 (1) are attracted. Section 3 (1) is extremely wide and covers any demonstration which strikes fear in individuals or segment of individuals would draw in the said arrangements. The way that the blamed here outfitted with the

⁵⁶⁹*Ibid.*

⁵⁷⁰AIR 1991 SC 1672.

guns just as hazardous substance and furthermore flung a bomb on the Police who were in the premises would demonstrate that the offense of the denounced was to strike fear in individuals or a part of individuals including the police.

The next submission as that hurling of the bomb did not caused any injury to any one and that being so did not bring them under the scope of the word “terrorist”.

The Court held that the meaning of the 'terrorist' has to be gathered from Section 3 (1). That being so the facts established by the prosecution show that the appellants were armed with the fire-arms as well as explosives. This was within the meaning of 'terrorist' Hurling the bomb at the Police and other literature recovered from the possession in addition how that they were indulging in 'terrorist acts' and therefore they come within the meaning of the word 'terrorist'. The appeal was dismissed.

In “*M Salim Akhtar vs. State of Uttar Pradesh*”,⁵⁷¹ once again any sentencing within the preview of section 5 of TADA was brought before the Supreme Court. The police recovered a polythene bag containing a pistol, cartridges a bomb and RDX was recovered. However the recovery was from a one place accessible to all, at the instances of the accused. The seized articles were not sealed. As the place was accessible to all it, at the instance of the accused, the seized articles were not sealed. As the place was accessible to all it, could not be accepted that the accused had an exclusive control over the weaponry and equipment. Reforming the ratio decidendi of the Sanjay Dutt case that the prosecution was required to prove that the accused was in conscious possession, unauthorized in a notified area.

This principle was also reiterated in “*Khudesar Dutta vs. State of Assam*”⁵⁷² that, “mere knowledge of the accused that incriminating articles were kept at a certain place does not amount to conscious possession and conviction Under Section 5 of TADA was set aside”. Hence the court ordered to set aside the conviction of the appellant.

⁵⁷¹Appeal (crl.) 685 of 2001.

⁵⁷² (1998) 4 SCC 492.

In a land mark case "*Kartar Singh vs. State Of Punjab*",⁵⁷³ the role of government was questioned in bringing about an enactment to deal with terrorism it was analyzed that the penal and procedural provisions of the law in order to combat terrorism and uphold the survival of democratic polity, which was decided in 1994 looked into many aspects regarding its constitutionality validity.

The Supreme Court in the course of this case decided that the TADA was within the legislative competence of India and was within the ambit of Entry 1, List I that is defense of India. The Court stated that "terrorist or disruptive activity is criminal in content, reach and effect But the Centre and State are empowered to legislate Conceptually terrorism and public order are different meaning and Intent Terrorism is a new crime for more serious In nature, more graver in Impact and highly dangerous whereas one pertains to law and order problem, the other may be political in nature coupled with the unjustifiable use of force threatening the security and integrity of the State".

In "*Paras Ram vs. State of Haryana*,"⁵⁷⁴ where the accused was found in possession of a country made Pistol it was held that Section 5 of TADA was not applicable. Further the Supreme Court stated that "*the words arms and ammunition should be read conjunctively.*"

In "*Suleman vs. State of Delhi*"⁵⁷⁵ the matter before the Court concerned the recovery of a pistol which was not in working condition and with a live cartridge. It was held that the live cartridge was an explosive within the meaning of Section 5 thereby upholding the accused's conviction.

In "*Rambhai Nath bhai Gaydhvi vs. State of Gujarat*"⁵⁷⁶ the Apex Court clearly enunciated that the designated Court had no jurisdiction to take cognizance of the offence under TADA without the procedural prior sanction having been obtained. The prosecuting agency had not obtained a valid sanction as they had not placed relevant

⁵⁷³ (1994) 3 SCC 569.

⁵⁷⁴(1993) 3 PLR 373.

⁵⁷⁵1999 CrIj 2525 Sc.

⁵⁷⁶1994 SCC (5).

factors before the Director General of Police. The prosecution proceedings were quashed by the Court.

The Apex Court has also kept the Interests of society and the security of State upper most when deciding the matters brought before it. In an earlier case, the State of Maharashtra had appealed against the grant of bail by the judge of a designated Court. It was alleged that he had behaved illegally at the proceedings. Accordingly the bail was cancelled. It held that to grant bail merely because the accused was a member of a big political organization and his freedom could not be curtailed was Incorrect and in error. The merits of the case should have been considered

The Supreme Court is the watchdog of the Indian constitution. The scope of legislation has often been laid down by the Court. When special provisions introducing stringent provisions and punishment are introduced, the efficacy of the legislations tested in Courts of Law. The appraisal of evidence and the rights of the individuals are balanced with a legal frame work and interpreted by the judiciary. In one of the most well-known cases that came up before the Court the provisions of TADA were clearly enunciated.

Rajiv Gandhi Assassination Case⁵⁷⁷

Former P M Mr. Rajiv Gandhi was killed by “Liberation Tigers of Tamil Eelam (LTTE)”. “After a meticulous investigation, the Special Investigation Team (SIT) of the Central Bureau of Investigation (CBI) headed by D.R. Karthikeyan charge-sheeted 41 people in the case”.

Among all the 41 accused, 12 individuals died, thus charges against those twelve individuals subsided. The leftover faced preliminary trial. For this situation, the leftover 26 denounced saw as blameworthy under “Section 102-B read with Section 302 of the Indian Penal Code and provisions of the Terrorist and Disruptive Activities (Prevention) Act, or TADA”.

“Justices K.T. Thomas, D.P. Wadhwa and Syed Shah Mohammed Quadri confirmed the death sentences awarded to Nalini, Murugan, Santhan and Perarivalan”

⁵⁷⁷ 1999 (5) SCC 253.

but “altered” “the death sentences awarded to Robert Payas, Jayakumar and Ravichandran to life imprisonment. Justice Thomas disagreed with Justices Wadhwa and Quadri on confirming the death sentence awarded to Nalini”. Justice Thomas also dissented that, “She became an obedient participant without doing dominant role”.

“Although the judges confirmed the sentences awarded to them by the lower court under the Arms Act, the Explosive Substances Act, the Passport Act, and so on, they were freed because they had already served out their terms. S. Shanmugavadivelu, who was charged only under TADA, was acquitted. Nalini, Murugan, Santhan and Perarivalan filed petitions in the Supreme Court, seeking a review of the death sentences awarded to them. The Supreme Court dismissed the plea of S Nalini, undergoing life imprisonment in the Rajiv Gandhi assassination case, challenging the law mandating the Centre's approval for her release and that of six other convicts”. *“Sorry, we are not interested”*, a bench comprising “Chief Justice HL Dattu and justices MB Lokur and AK Sikri said, Nalini had challenged Section 435(1) of the Criminal Procedure Code which mandates the state government to consult the Centre before premature release of a convict if the case was investigated by the CBI”.⁵⁷⁸

The arguments advanced stated that this was a terrorist act with the object to overawe the Government. However in order to prove the intention 'Mens Rea' it was necessary to prove that the act was,

- 1) To overawe the government
- 2) Smoke terror in the people or any section of society).
- 3) Alienate a section of the people,
- 4) Adversely affect the harmony of society

Further no lethal weapons, bombs, or chemicals and toxics substances were used Thus In the assassination of the former Prime Minister the charges were framed conforming. It self to the acts that were evident and not any of the above mentioned. Hence offences under Section 3, 4 and 5 of TADA were not sustainable There was no evidence to suggest that it's as a conspiracy to overawe the government.

⁵⁷⁸ <https://timesofindia.indiatimes.com/.../Rajiv-Gandhi-assassination-case.../44946> .

The act of killing and the mention to kill a former Prime minister resulted in the death of eighteen others. There was no intention strikes terror amongst any section of society. Thus on examining the entire manner no terrorist act or disruptive activity was said to have occurred Hence, due to the lack of evidence, the charges could not be sustained. In the light of the above, the Supreme Court came to a decision that the provisions of general criminal law are framed and not TADA.

As the significance of the serious nature of this crime was considered, the Government felt that fresh legislations could be enacted to cover the gravity of the offences for the future The NHRC also opined that TADA has lost its efficacy. In the light of the above, the Government later enacted the Prevention of Terrorism Act, 2002.

In “*KalpanathMi vs. State (Through CBI) With Others*”,⁵⁷⁹ “twelve persons were produced Court, and ten were convicted for different offences”. Some of them were said to be members of the Dawood Ibrahim Gang Three persons including former Minister Kalprath Rai were found to have harbored hardcore terrorists.

The background of these twelve are that they had links with three separate incidents of terrorism Vadrai incident, the Bombay blasts of 1993 where many died and others were seriously injured and the thud being the J. J. Shootout case. The Supreme Court laid own, that the accused cannot be convicted simply because he was a terrorist. For purposes of conviction under Section 3(5) of TADA he should belong to a terrorist gang, which committed terrorist acts subsequent in 1993. If they have not committed any terrorist acts after the date, then the conviction cannot be sustained.

Under Section 3 (1) observes “Harboring a terrorist without knowing that the person was a terrorist in no offence”. Thus, Kalpnath Rai was acquitted from all the charges. Conviction with regard to the others was upheld. In this case the meaning of terrorist was explained. Also other procedures were looked into. The Apex Court was of the view that the designated court had a larger dub to take care of such details

In “*Ghulam Nabi War and Another vs. State of NCT of Delhi*”,⁵⁸⁰ the Police in Delhi on receipt of secret information, that members of the Muslim Mujahideen were

⁵⁷⁹1997 (2) ALD Cri 805, 1998 CriLJ 369.

hiding somewhere in South Delhi with plans of terrorist attacks in the City, raided the house in question. The accused and another were found inside the premises. During search operation a bag containing RDX, detonators/cash, Fax receipts and three Photostat copies written in Urdu were also recovered. The prosecution claimed that this was a formula to make a bomb. Later the accused were charged with offences under TADA, IPC and the Explosive Substances Act. The accused was sentenced for 8 years of imprisonment.

Ghulam Nabi had already spent 6 and a half years in jail and taking into consideration his education, good family background, his age, etc., his sentence was reduced to that which he had already undergone.

This illustrates the view if the judiciary is giving the accused an opportunity to get back into the main stream and lead a normal life. The Supreme Court, viewed these special and stringent provisions of law, with seriousness. In order to apply these provisions of TADA, prior approval under Section 20 A is a pre-requisite where the facts clearly indicated that prior permission was not granted, the courts have carefully considered the appeal and given relief to the appellant. In *“Mohammad Yunus vs. State of Gujarat, 1997 SOL No. 203”*, the Supreme Court stated that as the mandatory provision of Section 20 A (1) of TADA has not been complied with and a charge under the provision of Section 3 and 5 cannot be sustained in the criminal case.

“Babu Kuttan R Pillai and Another vs. State Of Maharashtra”

The city of Mumbai is a commercially important city where there is substantial wealth from trade and commerce. Over the years organized crime has increased with gangs targeting developers, hoteliers and other businessmen by extorting money. They originally asked for Rs. 10 lakhs, but later settled for Rs. 5 lakhs, from M/s. Kalpataru Construction Company engaged in developing a property at Pali Hill.

Later on agreement to pay, a meeting was fixed. Meanwhile the police was informed. The accused were surrounded and the Police apprehended them. A case was filed under Section 3 of TADA. The trial judge convicted two under ordinary criminal law and acquitted the five others. The two accused who were sentenced approached the

Supreme Court in appeal. It was held that there was no illegality in the sentencing of the trial judge and dismissed the appeal.

*“San Pal Singh vs. State of Delhi”*⁵⁸¹

In 1991, two police officials and constables noticed a suspicious looking person who alighted from a vehicle. He was stopped and searched. A country made pistol was recovered from him and also two cartridges. He was later arrested and charges under TADA. The designated court sentenced him.

On appeal, it was argued that his conviction relied on the statements made by the police officials and that there were no public witness. The appellant also stated that such witness were available but no association with the search. However had no public witness been available and hence it was a different matter.

The Supreme Court maintained that it was unsafe to maintain the conviction of the appellant and acquitted him.

*“Simranjit Singh Mann vs. Union of India”*⁵⁸²

In the case the constitutionality of the Prevention of Terrorism Act was discussed. The High Court of Punjab and Haryana referred to the situation that the country was facing regarding terrorism. It observed that *“parts of the country continued to remain disturbed for a long time. This situation poses serious concern for both citizen and society. In such a situation the country requires a permanent anti-terrorism law”*.

Addressing the issue of constitutionality of POTA the Court stated that the terrorists through their activities causes psychological as well as physical trauma to the society at large. Their actions create a threat to the society. Such persons who threaten the integrity, security or sovereignty of India or strike terror in the people have to be distinguished from other criminals who commit a breach of law under totally different circumstances.

In this enactment the right and liberty of individuals are completely protected as there is a complete procedure establishes for the judicial process ensuring fairness

⁵⁸¹ AIR 1999 SC 49, 1999 CriLJ 19, (1998) 2 SCC 371

⁵⁸²2002 CriLJ 3368.

and impartiality on the part of the police. The law must protect people and property in the prevailing circumstances that pose a threat to the integrity the innocent and punish the guilty. The existing laws were incapable of handling such situations and hence this enactment.

It may be noted that various countries have gone through the same experiences and had enacted legislation to deal with combat terrorism.⁵⁸³

*“Karamjit Singh vs. State (Delhi Administration)”*⁵⁸⁴

Karamjit Singh was a driver in the Delhi Police. On reliable information that the same was doing terror acts activities and that some of them stayed at his residence. Also that he had some explosive material. In a raid conducted at his residence, explosive materials, detonators and other equipment were found charges were framed under the Explosives Act and TADA. Later, during trial he stated that neither the quarters were his nor had he made a disclosure statement. Further he stated that the testimony of the police witness should not be relied upon on account of non-examination of a public witness.

The Apex Court was of the assessment that when the occurrence occurred in 1990 terrorism was at its pinnacle and it was very normal for individuals from the general population to have a tried not to engage in a police activity for search or capture of an individual having joins with terrorists. Subsequently they dismissed the conflict that by virtue of the non-assessment of a public observer, the declaration of a prosecution witness. In this case police personnel, should not be relied upon. Accordingly the appeal was dismissed.

*“Jameel Ahmed and another Etc vs. State Of Rajasthan”*⁵⁸⁵

In an appeal to the Supreme Court the appellants alleged that “the confession recorded under Section 15 of TADA cannot be solely relied upon, and the evidence

⁵⁸³ USA enacted the Anti-Terrorism and Effective Death Penalty Act, 1996 and UK enacted the Criminal Justice (terrorism and Conspiracy) Act, 1998.

⁵⁸⁴AIR 2000 SC 3467.

⁵⁸⁵(2007) ILR 2 (RAJ) 58.

needs to be corroborated. However the provisions of TADA are different from the common criminal law of the land”.

A confession so made is admissible evidence against accused and co-accused, provided, it was voluntary and truthful Further the Supreme Court specified that “the confession is admissible of a co-accused of or offence committed and tried in the same case together with the accused who makes the confession. The recording of the confession by a Police Officer is acceptable by the Court. It should be credible in nature so as to create confidence in the mind of the court to rely on such confession”.

In “*Sukhwant Singh vs. State through CBI*”⁵⁸⁶ the same contention was raised relying on the same judgement, the Supreme Court reiterated its rationale. Further it stated “*a confession of a co-accused can be the basis of conviction of another accused so implicated in that confession.*”

In this matter the confessional statements of two other co-accused implicated the appellant, when all were tried together before the designated court. The Court felt that this was not a ground to eject the confessional statement of the co-accused, as the prosecution relied on them as evidence against designated court must find it acceptable. The prosecution had established the involvement of the appellant on the purchase of explosives and its transportation to Punjab.

In 2001, terrorist attacked the Indian Parliament in Delhi. Some died in the shootout with the police. The Supreme Court noted that despite the fact they had grown upon this land, they “has betrayed the very land which brought them up”. Further “persons who helped terrorists to enter India and carry out fidayeen attacks are as liable as the hardcore terrorists themselves”. They are enemies of mankind and they deserve no leniency”. Considering this the rarest of rare case where three accused persons should be given the death penalty instead of life imprisonment.

“*State through Special Cell, New Delhi vs. Navjot Sandhu And Others*”⁵⁸⁷

⁵⁸⁶ (2009) 7 SCC 559.

⁵⁸⁷2005 11 SCC 600.

On 13 12 2001 Five terrorists attacked the Parliament and were shot dead in the encounter During the course of investigation apart from arms and other equipment's, six SIM cards, Mobile Phone and slips of paper containing telephone numbers were recovered from the terrorists Due to the exigency of the situation, the policy were authorized to Intercept messages Later it was found on interception of conversation that the respondents were involved in the conspiracy. They were in contact with Ghazi Baba, a Pakistani National and Supreme Commander of the Jaish-e-Mohammed, which is a notified and banned terrorist organization under POTA. Later a strict regime of the POTA provisions were added to the charges. All documents were made available to the respondents.

They stated that the intercepted conversation should be excluded as evidence from the trial. The special Judge dismissed the application on approaching the High Court in appeal, the order was set aside. The State then appealed to the Supreme Court. The Supreme Court stated that Section 34 of POTA has been circumvented. These issues could have been raised during statutory appeal. The impugned order was set aside.

Godhra Train Incident Case

In Godhra Train incident case, the accused respondents were charged in respect of various offences under "Indian Penal Code", "Railway Act", and "Prevention of Damage to Public Property Act" and "Bombay Police Act". Their ball applications were rejected because "Section 3 (2)" and "Section 3 (3)" as well as "Section 4" of the "POTA" to final police report was added Before the High Court the prosecution argued that the respondents should initially move toward the Special Court for award of ball under "POTA" and they could advance toward "High Court" exclusively after the decision on the said matter It was introduced that thinking about the specific courses of action of "POTA", the Judge, who was seized of the matter had no jurisdiction to look over the application for the bail. In any case, High Court permitted all the ball applications practicing powers under area 439 read with "Section 482, Criminal Procedure Code".

It was held under Section 34 (4) of POTA, the allure can lie just against a request for Special Court Hence except if there is a request for the Special Court, declining ball,

the denounced will reserve no option to record an allure. Petitioning God for award of ball to them Existence of a request for the Special Court is in this way, Sine qua non for moving toward the High Court.

Indira Gandhi Assassination Case

“Indira Gandhi, the 4th Prime Minister of India, was assassinated at 09:20 on 31 October 1984, at her Safdarjung Road, New Delhi residence. She was killed by two of her bodyguards, Satwant Singh and Beant Singh, in the aftermath of Operation Blue Star, the Indian Army's June 1984 assault on the Golden Temple in Amritsar which left the Sikh temple heavily damaged. The Apex Court confirmed the death sentence awarded by the Trial Court and maintained by the High Court to the three Appellants, i.e., Kehar Singh, Balbir Singh and Satwant Singh, for entering into conspiracy and committing murder of Smt. Indira Gandhi”.

The Court held that the homicide of Mrs. Gandhi by the safety officers is one of the most uncommon of the uncommon cases in which outrageous punishment of death is called for professional killer and his backstabbers. It is a grim homicide submitted by charged who were utilized as safety officers to secure the Prime Minister.

Sanjay Dutt case⁵⁸⁸

The Apex Court said that the conditions and nature of offense was not kidding to such an extent that Mr. Dutt can't be delivered waiting on the post-trial process. It said proof and substances as scrutinized by court in showing in odds to Mr. Dutt were right. In July 2007, the entertainer was imprisonment for 6 years. He was seen as blameworthy of keeping the arms illegally which includes “AK-56 rifle” also. He was vindicated of graver charges under “TADA or the Terrorist and Disruptive Activities (Prevention) Act”. The articulation ownership however that of “Section 5 of TADA” has been expressed to mean a cognizant belonging presenting subsequently inclusion of a psychological component for example cognizant belonging and not simple care without attention to nature of such belonging and as respects unapproved means and respects with no authority of law. The CBI didn't tested his quittance.

⁵⁸⁸ 1994 SCC 410 Sanjay Dutt vs. State through C.B.I.

Vaiko's case⁵⁸⁹

“Vaiko has a long history of obsessive, overt support, for the LTTE, the terrorist organisation whose long list of horrendous crimes includes the killing of former Prime Minister Rajiv Gandhi at Sriperumbudur, near Chennai, in May 1991. Its leader Velupillai Prabhakaran is the first accused in the assassination case, and has been declared a proclaimed offender in India. After it assassinated Rajiv Gandhi, the LTTE was banned by the Centre under the Unlawful Activities (Prevention) Act, 1967, in May 1992. The ban has been extended every two years. The LTTE was categorised as a terrorist organisation under POTA after the legislation was passed on March 26, 2002, at a joint sitting of the Lok Sabha and the Rajya Sabha. Vaiko the chief of MDMK in Tamil Nadu was arrested under this Section on the basis of certain remarks”. He was reported to have been saying that “I was a supporter of LTTE once. I was a supporter of LTTE yesterday; I am a supporter of LTTE today and I will be a supporter of LTTE tomorrow”. Then, he asked his audience “whether the LTTE had engaged in terrorism for the sake of violence or had taken up arms to suppress a culture. Mr. Vaiko, was in detention for 17 months, did not choose to seek bail on a matter of principle. When we looked at various chapters internationally, it was found that as far as membership of a terrorist group is concerned, the British law has an exclusive chapter on banning terrorist organizations. After banning a terrorist organization, membership of a terrorist organisation, ipso facto, becomes a punishable act”.

In “*Devender Pal Singh Case*”,⁵⁹⁰ , the Union Judiciary excused death punishment holder Devender Pal Singh Bhullar's writ appeal looking for recompense of decision of extreme postponement in dismissing his “mercy petition”. The petition was dismissed and as a result, it has disillusioned the individuals who anticipated that the court should grow further the common freedoms of death-row detainees. Bhullar was reckoned and held liable for the assault on the procession of the then leader of the, “Maninderjit Singh Bitta” in 1993. The court was of view that “such terrorist who have no respect for human life and people are killed due to their mindless killing. So any compassion to such person would frustrate the purpose of enactment of Tada and would

⁵⁸⁹ <http://www.frontline.in/static/html/fl1915/19150200.htm>.

⁵⁹⁰ Devender Pal Singh vs. State of N.C.T. of Delhi 2002 (1) SC (Cr.) 209.

amount to misplaced and unwarranted sympathy. Thus they should be given death sentence”. This arrangement would imply that worker's organization movement would be influenced on the grounds that whoever disturbs fundamental necessities are governed by "POTA". Nonetheless, the restricting perspective was that worker's organization leaders are patriot pioneers. Thusly, no one has at any point proposed that when our worker's leaders sit for strike, they undermine the solidarity, uprightness, security and sway of India.

The court was of view that “it is entirely to the court trying the offence to decide the question of admissibility or reliability of a confession in its judicial wisdom strictly adhering to law it must while so deciding the question should satisfy itself that there was no trap. No track and no importance seeking evidence during the custodial interrogations and all the conditions required are fulfilled. If the court is satisfied then the confessional statement will be a part of the statement”.⁵⁹¹

“Justices Arijit Pasayat and B.N. Agrawal, constituting the majority of the Bench, found no merit in Bhullar’s plea that his confession on the basis of which he was sentenced to death by the trial court was neither voluntary nor true. The presiding judge, Justice M.B. Shah, however, dissented and said that there was nothing on record to corroborate Bhullar’s confessional statement, recorded by a police officer, and that when the co-accused who were named in the confessional statement were not convicted or tried, this would not be a fit case for conviction. Bhullar’s review petition was also dismissed by the same Bench”.⁵⁹²

“Dr. Kalam was succeeded by Pratibha Patil as President in 2007. The MHA did not review Bhullar`s case until he approached the Supreme Court in 2011 seeking relief on account of the inordinate delay in disposing of his mercy petition. On April 29, 2011, the government requested the President’s Secretariat to return Bhullar’s file. On June 13, 2011, the then President, Pratibha Patil, rejected his mercy petition accordingly. Bhullar then amended his writ petition, challenging her rejection.

⁵⁹¹ <http://indiatoday.intoday.in/story/davinder-pal-singh-bhullar-1993-car-bomb-blast-case-death-row-convicts-mercy-petition-clemency/1/262027.html>.

⁵⁹²*Ibid.*

Bhullar's counsel argued before the court that because of prolonged detention Bhullar had become mentally sick, and that the inordinate delay had rendered the death sentence cruel, inhuman and degrading, and that was nothing short of another punishment inflicted upon him".⁵⁹³

The record stayed forthcoming in the "President's Secretariat" for a very long time somewhere in the range of 2005 and 2011, mostly due to the gigantic pressing factor brought upon the public authority as portrayals by different political and non-political functionaries, associations, and people from different nations. Incidentally, arriving at this resolution, the "Singhvi Bench" didn't give Bhullar the chance to challenge this discovering, which was mistaken. The "Singhvi Bench" discovered proof that Bhullar endured genuinely and intellectually by virtue delayed detainment in the prison yet would not hold that his emotional wellness had endured so much that punishment granted couldn't be enforced. Onlookers communicated in shock that the Court was of specific thinking to dismiss help, on the grounds that his direction's contention was not that intellectually sick convicts couldn't be executed, yet whether it was reasonable for do as such.

*"Mumbai Attacks Case"*⁵⁹⁴

During the 2008 Mumbai attacks, "Mohammed Ajmal Amir Kasab (13 September 1987 – 21 November 2012)" was caught by the forces after a long gun battle between him and the forces. Kasab grasping his firearm at Mumbai rail line station turned into an image of the November 2008 assaults that frightened the world. As a response to the repercussions of the assaults, security forces battled to gather data about the youngster. Sooner or later, Indian authorities conveyed that, Kasab under impression of the "Lashkar-e-Taiba" terror group. "He was caught on camera at the Chhatrapati Shivaji Terminus, a slight figure in battle pants and a blue sweatshirt, grasping an attack rifle". This decision of hanging Kasab till death, which came nearly

⁵⁹³*Ibid.*

⁵⁹⁴Shahzad S (2008). Al-Qaeda 'hijack' led to Mumbai attack, http://www.atimes.com/atimes/South_Asia/JL02Df05.html Times of India Explosions, firing continue at Taj hotel http://timesofindia.indiatimes.com/Seven_fresh_explosions_at_Taj_hotel/articleshow/3768265.cms. Webstar F (2003).

five years after the Mumbai attacks was welcomed by all. The then “Solicitor General Gopal Subramaniam”, who had showed up, additionally hailed the decision terming it as "a triumph of equity and the Constitution of the country". In 2012, Ajmal Kasab was hanged to death.⁵⁹⁵

“Afzal Guru Case”⁵⁹⁶

The beginning of this case lies in a grim episode that occurred near the early afternoon on thirteenth December, 2001 in which five vigorously furnished people basically raged the Union Legislative House and incurred weighty losses on the deployed personnel of forces. The remarkable occasion befuddled whole country and stunned waves across the globe. “In the weapon fight that went on for 30 minutes or somewhere in the vicinity, these five psychological oppressors who attempted to acquire section into the Parliament when it was in meeting, were killed. Nine people including eight security staff and one landscaper capitulated to the slugs of the terrorists and 16 people including 13 security men got wounds. The five terrorists were at last killed and their fruitless endeavor to lay a seize of the Parliament House in this way reached a conclusion, setting off broad and compelling examinations spread over a limited capacity to focus 17 days which uncovered the conceivable inclusion of the four charged people who are either appellants or respondents thus and some other announced wrongdoers said to be the heads of the terrorist association known as Jaish-E-Mohammed”.

On the issue of waging war against the Government of India has also been considered in relation to terrorist acts and in that regard the Court observed and held as follows:

“War, terrorism and violent acts to overawe the established Government have many things in common. It is not too easy to distinguish them”

It has been aptly said by Sir J.F. Stephen:

⁵⁹⁶ (2003) 6 SCC 641

“Unlawful assemblies, riots, insurrections, rebellions, levying of war are offences which run into each other and not capable of being marked off by perfectly definite boundaries. All of them have in common one feature, namely, that the normal tranquility of a civilized society is, in each of the cases mentioned and disturbed either by actual force or at least by the show and threat of it.”

“To this list is added, ‘terrorist acts’ which are so conspicuous now-a-days. Though every terrorist act does not amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war. According to the learned Senior Counsel for the State, terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government, tantamount to waging war irrespective of the number involved or the force employed.”

The Apex Court saw that for the most part, the tricks are demonstrated by the incidental proof. It held that “the conditions definite in the judgment plainly settled that he was related to perished aggressors pretty much in every such demonstration done by them to accomplish the goal of assaulting the Parliament House. It likewise saw that there was adequate and acceptable conditional proof to build up that Guru was an accomplice in this contrived wrongdoing of gigantic gravity.” He was therefore dispensed three life sentences and a twofold capital punishment.

In October 2006, Guru's wife Tabasum Guru documented a benevolence request with the Indian Union President “A.P.J. Abdul Kalam”. The Indian Apex Court in the year 2007 excused his request looking for audit of his capital punishment, saying "there is no legitimacy" in it. In February 2013, Guru's benevolence request was dismissed by the then President of India Pranab Mukherjee. “Afzal Guru” was hanged 6 days later on “9 February 2013 at 8 AM”.

In “Jaspal Singh Case”⁵⁹⁷ “the appellant was convicted under Section 25 of the Arms Act and Section 5 of the TADA Act, 1987 as he was found in possession of one DBBL gun-12 bore and five cartridges in 1992. The Trial court relying upon the evidence of A.S.I. Balbir Singh and Man Singh who were the members of the police

⁵⁹⁷Jaspal Singh vs. State of Punjab 1999(1) Cri. LJ 600.

party held that it was proved by the prosecution that the appellant was in possession of those articles. The Supreme Court held that in absence of any incriminating evidence to the effect, the conviction of the appellant under the both sections cannot be upheld. Therefore, the appeal was allowed and the judgment and order passed by the additional judge, Designated Court, Sangrur was set aside accused was released forthwith”.

In “*Chandrakant Patil Case*”⁵⁹⁸the charged people were found in the act while making nighttime developments towards some focused on objective in a thickly jam-packed city with profoundly deadly and unstable items. The accused were imprisonment in accordance with “Section 5 of the TADA Act, 1987”. The Apex Court also were of the decision that “the sentence of rigorous imprisonment for 5 years awarded by the trial court to each of them is inadequate. Hence the punishment was enhanced to 10 years imprisonment”.

6.9. What approach has the judiciary taken in this regard?

Various petitions have been filed upon the challenging the validity of the “*Armed Forces Special Powers Act, 1958, 1983 and 1990*”. Certain provisions of certain acts prove that we need to be very careful in our anti-terrorism legislation. They lend themselves very easily to misuse. It is a fact that in times of hardship it becomes very difficult to keep a watchful and reverent eye on this document that we regard as the last word on law: the constitution. Denials of due process and invasions of privacy can take away our freedom in this era of terrorism. If the emergency measures to combat terrorism don’t have the necessary safeguards we could end up as a police state. Let us analyses how our judiciary tackle stringent laws does.

In *Lai Singh vs. State of Gujarat*,⁵⁹⁹the admissibility of a confessional statement made to a police officer under TADA was in question. Justice Shah observed that, “in some advanced countries like United Kingdom, United States of America, Australia and Canada etc. confession of an accused before the police is admissible and having regard to the legal competence of the legislature to make the law prescribing a different mode of proof, the meaningful purpose and object of the legislation, the gravity of

⁵⁹⁸ChandrakantPatil vs. State 1998(2) Cri. LJ.

⁵⁹⁹ Criminal appeal no. 171 of 2016.

terrorism unleashed by the terrorists and disruptionists endangering not only the sovereignty and integrity of the country but also the normal life of the citizens, and the reluctance of even the victims as well as the public in coming forward, at the risk of their life, to give evidence, the impugned section cannot be said to be suffering from any vice of unconstitutionality.” Why is this provision being challenged? It is so because it has lot of scope for being misused. The police almost always resorts to torture as a mode of extracting a confession. Therefore what justice Shah has said is right provided there is a way of ensuring that the accused has not been tortured to make the statement. This is important because a person who is being tortured is ready to agree to anything that he is being told. In such a case, it not a confession, but an untrue statement, which would ultimately hold little value in court.

We need to evolve with the change in society. Moreover terrorism being a tough problem needed tough laws to counter it. Therefore in the judiciary’s view, now a confession made to a police officer could be admissible in evidence to a certain extent. One might then say that although we are placing our faith in the police, what happens if they do not uphold the sanctity of the provision and misuse it? Are there any safeguards provided in this regard? Regarding the confession before a police official as provided under “Section 32 of the Prevention of Terrorism Act, 2002”, the Punjab and Haryana High Court in *Simranjit Singh Mann vs. Union of India*.⁶⁰⁰

Just an official who isn't underneath the position of a Superintendent of Police can record the statement. It has to be recorded in writing or on any mechanical or electronic device like cassette, tape or sound track. Prior to recording the statement, the accused person must be cautioned. The concerned official needs to disclose to the accused person recorded as in writing that “*he is not bound to make a confession and that if he does so it may be used against him.*” The confession has to be recorded “in an atmosphere free from threat or inducement” and has to be “*in the same language in which the person makes it.*” The matter does not end here. There is further safeguard. The person making the confession has to be “produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the

⁶⁰⁰ (2000) 124 PLR 1 639.

original statement of confession written or recorded on mechanical or electronic device within 48 hours.” The magistrate has to “*record the statement made by the person so produced and get his signature or thumb impression.*” In case of “*any complaint of torture*”, the person has to be produced “*for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon.*” The person has then to be sent to the judicial custody. It is clear that the provision provides enough protection to the person.

Undoubtedly it’s true that under the “Evidence Act, 1872”, the statement made before a police officer is not treated as substantive evidence. However, the departure from the provisions under the “Indian Evidence Act” does not vitiate the provision. In fact, the issue has to be considered in context of the problem that confronts the country. If the innocent people have to be saved from the terrible trauma caused by terrorists, a departure from the archaic rules of evidence is essential. Therefore now that the safeguards are in place, the misuse of the provision is minimized. Also under the watchful eye of the judiciary such laws can be enacted and their abuse limited. A similar provision regarding the confession made to a police officer was contained in “Section 15 of TADA”.

It was upheld in “*Devinder Pal Singh vs. State N.C.T. of Delhi*”,⁶⁰¹ wherein the death sentence based on confession before a police official was sustained by their Lordships. By majority the court had held that “*justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law.*”

On the same point in “*Nazir Khan vs. State of Delhi*”⁶⁰² held that the similarity between the “Section 27 of the Indian Evidence Act” and “Section 15 of TADA” is that the confession has to be made voluntarily. This is a very important safeguard that is provided by the law.

⁶⁰¹ AIR 2002 SC 1661, at 1663.

⁶⁰²(2003) 8 SCC 461.

In “*Lalli vs. State of Rajasthan*”,⁶⁰³ it was held that the provisions of Section 15 (2) are mandatory and must be strictly complied with. The Superintendent of Police who recorded the confessional statement, stated therein that it was explained to the accused that the statement could be used against him as evidence and that he made the statement concerning the sequence of events completely on his own free will without any pressure.

Moreover no memorandum was prepared after the confessional statement as required under “Section 15(3) (b) of the Rules”. Therefore “Section 15(2)” was not complied with and the confession recorded was inadmissible. As the conviction was solely based on that confession, it could not be sustained. Provisions like “Section 15 of TADA” and “Section 32 of POTA” lend themselves to a lot of misuse. Should such provisions be done away with? As we have seen in the cases before the courts, where there is a reasonable doubt as to the misuse of the provision, the judiciary has not sustained the conviction. This just shows that the judges are trying to curtail the misuse of the provisions of these stringent laws.

The Apex Court in “*Niranjan Singh vs. Jitendra Bhim Raj*”⁶⁰⁴ held that the courts should not allow misapplication of law by ensuring that “those whom the Legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language”. The court frowned upon invoking the deadly provision of TADA, for example in cases of gang rivalry and other crimes which can be met under the ordinary penal laws.

In the judgment of “*Hitendra Thakur vs. State of Maharashtra*”,⁶⁰⁵ calling for stricter implementation of the law, the court said: “*Every terrorist may be a criminal, but every criminal cannot be given the label of a terrorist only to set in motion the more stringent provisions of TADA. The criminal activity in order to invoke TADA must be committed with the requisite intention as contemplated under section 3(1) of the Act by*

⁶⁰³ Criminal appeal no. 1251 of 2002.

⁶⁰⁴1990 AIR 1962.

⁶⁰⁵ (1994) 4 SCC 602.

use of such weapons as have been enumerated in section 3(1) and which cause or are likely to result in the offences as mentioned in the section.”

As regards Section 30 of POTA, 2002, which was in question in “People’s Union of Civil Liberties V. Union of India”, its constitutional validity was upheld. “Section 30” of the Act presents prudence to the concerned Court to stay discreet if the existence of such observer is in harm's way. The Court held that “this provision is necessary to protect the life and liberty of a person who is able and willing to give evidence in support of the prosecution in grave criminal cases. It further held that the right of cross-examination per se is not taken away by section 30 and that it is constitutionally valid”.

On the point regarding the bail of accused under POTA, the High Court has observed in “*Simranjit Singh Mann vs. Union of India*”. It is undoubtedly true that in cases of ordinary crime, ‘bail and not jail’ is the normal rule. Liberty of the citizen is important. However, as already stated, the terrorist belongs to a totally different class. A stringent provision regarding the grant of bail is only intended to preserve public peace. It is to ensure that there is no recurrence of the crime. Thus, the court has been empowered to deny bail unless it is “satisfied that there are grounds for believing that he is not guilty.”

Grant of bail is always a matter of discretion with the Court. Guidance for the exercise of the undoubted discretion cannot be said to be arbitrary or unreasonable. This all the more so in the context of the malaise that the statute aims to check. With regard to the constitutional validity of POTA it was observed in the above case that the punishment provided under the Act has a clear rationale. The efficacy of law often lies in the penalty attached to it. The state needs to arm itself with adequate authority to protect the liberty of the law abiding. The existing laws were not enough to fulfil the desired objective. Thus, the impugned Act was made. This is a good man’s shield. Also his sword. There is a clear basis for granting protection to the witness varying the normal procedure to a limited extent: permitting the confession before the police official who is above the rank a Police Superintendent to be used against the accused and in placing a restriction on the grant of bail to a person charged with an offence under the Act. It does not violate the constitutional mandate. The Act provides many

pre-defined safeguards. The mere possibility of the power being abused is not enough to annul the Act. The door has to be kept open for trial and error. In any event, even if some authority acts arbitrarily, the law's arms are long enough to reach it. The Act provides adequate remedy against the acts of arbitrariness.

In "*Shaheen Welfare Association vs. Union of India*"⁶⁰⁶ a petition was filed under TADA wherein under-trials had been kept for an unusually long time without the trial being conducted against them. The Court for this situation held that the case accordingly represents the issue of accommodating clashing cases of individual freedom versus the privilege of the local people and the country to well-being and insurance from terrorism and disturbed acts. While it is fundamental that honest individuals ought to be shielded from terrorist and disturbed acts, it is similarly essential that terrorist are expediently attempted and rebuffed.

The contention is created because of the gross postponement in the preliminary of such people. This deferral may add to non-appearance of legitimate proof at the preliminary with the goal that the truly blameworthy may must be at last vindicated. It additionally makes hopeless harm guiltless people who may have been wrongly blamed for the wrongdoing and are eventually cleared, yet who stay in prison for an extensive stretch forthcoming preliminary on account of the severe arrangements in regards to bail under TADA.

To tackle such a situation the court said that "the proper course is 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 provisions strictly insofar as the former class is concerned and liberally in respect of the latter class." Arnab Goswami in his book *Combating Terrorism: The Legal Challenge* asks certain relevant questions. He says was the rise in incidents of terrorism really a consequence of weak laws? Or was it the ineffective implementation of existing laws? If the laws were to be strengthened, made more matter of fact, would they contravene human rights? The Peoples Union for Democratic rights argues forcefully, against bringing in a new legislation: "The premise of such a demand is that the ordinary law

⁶⁰⁶ AIR 1996 SC 2957.

and the normal criminal justice system have failed to cope with these crimes. The failure is not attributed to the law enforcing machinery - its in efficiency or corruption - but to weakness of the law based on principles of liberal jurisprudence and notions of natural justice, principles like the right to equal treatment before the law, the right to fair trial and the right to be deemed innocent until proven guilty beyond reasonable doubt. And so if the law is to be effective in dealing with terrorists it can only do so if these principles are overturned and these rights are taken away”.⁶⁰⁷

The Apex Court case of “*Saheli vs. Commissioner of Police*”, held that compensation can be ordered to be paid by the concerned government when its policemen cause bodily harm including battery, assault, false imprisonment, physical injury and death. Therefore if the police arrests a person without any justification, even while purporting to act under the National Security Act 1980 or the TADA or POTA, or if they do not produce the arrested person before a magistrate within 24hours, or if they deprive him of the opportunity to have legal advice, or if he is subjected to torture, he can approach the High Court or the Supreme Court under Article 21 of the Constitution and seek compensation from the government.

“*General Officer Commanding, Rashtriya Rifles vs. Central Bureau of Investigation and another*”⁶⁰⁸

It was observed that Section 7 of AFSPA 1990 provides for umbrella protection to the army personnel in respect of anything done or purported to be done in exercise of powers conferred by the Act. the whole issue is regarding the interpretation of Section 7 of AFSPA, 1990, as to whether the term “institution” used therein means filing/presenting/submitting the charge-sheet in the court or taking cognizance and whether the court can proceed with the trial without previous sanction of the Central Government. The analogous provision to section 7 of AFSPA 1990, exists in Section 45(1) and 197 (2) of the Code of Criminal Procedure, 1973. The provisions of Section 7 of AFSPA 1990 are mandatory and if not complied with in letter and spirit before institution of any suit, prosecution or legal proceedings against any person in respect of

⁶⁰⁷TADA: Hard Law for a Soft State, Economic and Political Weekly. Referred in: AmabGoswami, Combating Terrorism.The Legal Challenge, (Har-Anand Publications, New Delhi, 2002).

⁶⁰⁸Criminal appeal No. 257 of 2011, Criminal Appeal No. 55 of 2006.

anything done or purported to be done in exercise of the powers conferred by the 1990 Act, the same could be rendered invalid and illegal as the provisions require the previous sanction of the Central Government before institution of the prosecution.

*“Extra Judicial Execution Victim Families Association (EEVFAM) & Anr. Versus Union of India & Anr”*⁶⁰⁹

The Supreme Court in the matter dealing with extra judicial killings in Manipur gave a significant judgment. The judgment is the partial verdict in a petition challenging the alleged "fake encounters" in Manipur by state police, and armed security forces. The matter, being fought by Human Rights Law Network and Human Rights Alert, prays for a CBI enquiry into these alleged fake encounters. The court in the judgment terming the matter "maintainable" in the court asked the petitioners and amicus curiae Menaka Guruswamy to collate information regarding 62 cases of alleged fake encounters in Manipur and submit it before the Bench in a simple tabulated form. The information should include details of whether any FIR was filed in the case, the identity of the victim, whether a judicial enquiry was ever conducted or whether there was an enquiry under the Commission of Enquiry Act, etc. The court directed the National Human Rights Commission to render assistance to this exercise. Besides this, the court in its judgment, recognised that the use of excessive force by armed personnel is not permissible. The writ petition states that during the period of May 1979 to May 2102, 1,528 people were killed in Manipur in extra-judicial execution. The statement is mainly based on a memorandum prepared by 'Civil Society Coalition on Human Rights in Manipur and the UN' and submitted to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions Mission to India, in 2012. The memorandum compiles the list of 1,528 people allegedly killed unlawfully by state police or security forces. Based on these reports, the petitioner says, not even a single FIR was registered in any of these alleged killings of the innocent people with no criminal record. It also highlights that the National Human Rights Commission and the Manipur State Human Rights Commission have been infructuous in helping the citizens into the matter of extra-judicial killings, the writ petition was filed in 2012 by the Extra Judicial Execution Victim Families Association under the article 32 of the constitution. It asks

⁶⁰⁹(W.P. (CRL.) 129 OF 2012.

for justice beyond compensation for those killed in fake encounters by the state actors and their kin.

*“People’s Union for Civil Liberties (PUCL) v. Union of India”*⁶¹⁰

The Supreme Court’s 1996 judgment in *People’s Union for Civil Liberties (PUCL) v. Union of India* was a significant attempt to solve the problem of widespread telephone tapping, and its influence has been strongly felt in subsequent laws designed to balance the right to privacy against the state’s power to conduct surveillance. The safeguards against arbitrariness in the exercise of the state’s surveillance powers designed by the Court continue to apply in the Internet age. PUCL was a landmark decision for two reasons. First, the Court reflected, at some length, upon the existence of a right to privacy in Indian law. Specifically, it considered the question of whether the right to privacy was a fundamental right guaranteed by the Constitution. This was important to the outcome of the case for, if telephone tapping infringed a fundamental right, it would have to satisfy a stricter level of judicial review. Second, the Court laid down detailed guidelines for the exercise of the executive’s surveillance powers, as a temporary solution to the rampant misuse of these powers that had precipitated the case.

On the question of the existence of a right to privacy, the Court first cited its 1962 decision in *Kharak Singh v. State of U.P.*⁶¹¹(*Kharak Singh*), in which it had considered the effect of police surveillance (in the form of ‘domiciliary visits’ involving local police constables entering the petitioner’s house at night) on the petitioner’s right to privacy. The *Kharak Singh* Court recognised a ‘right to privacy’ in Indian law, albeit not one guaranteed by the Constitution. The PUCL Court also cited with approval Subba Rao, J.’s minority opinion in *Kharak Singh*, which expanded the scope of the right granted by Article 21 to include the “right of an individual to be free from restrictions or encroachments on his person”.⁶¹²

⁶¹⁰1997 SC 1203.

⁶¹¹*Kharak Singh v. state of U.P.*, AIR 1963 SC 1295.

⁶¹²*Kharak Singh v. State of Uttar Pradesh*, (1964) 1 SCR 332.

Another case cited by the PUCL Court, *Gobind v. State of M.P.*,⁶¹³ which, like *Kharak Singh*,⁶¹⁴ dealt with real-world police surveillance, established the need for laws infringing privacy claims to satisfy a heightened standard of judicial review – the “compelling State interest” test. The Court was not yet ready to elevate the right to privacy as a fundamental right.⁶¹⁵ The PUCL Court also relied on its 1994 decision in *R. Rajagopal v. State of Tamil Nadu* (‘*Rajagopal*’),⁶¹⁶ a case that elevated the right to privacy to Constitutional status by virtue of it being “implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21” – a right that may not be violated except “according to procedure established by law”.⁶¹⁷ The Court in that case also expanded the notion of the right to privacy to include a right “to be let alone”, and to “safeguard the privacy of [a person], his family, marriage, procreation, motherhood, child-bearing and education among other matters”.⁶¹⁸ The above cases, from *Kharak Singh* to *PUCL*, show the evolution of the Supreme Court’s conception of privacy. The *Kharak Singh* Court referred to the physical privacy of the person – the right to “be free from restrictions or encroachments on his person”.⁶¹⁹

This notion was expanded in *Rajagopal*, a case which concerned the publication of the autobiography of the serial killer Auto Shankar; the autobiography implicated senior police officials in acts of corruption and collusion. As the privacy right at issue here was that of the reputation of police officials, its recognition by the Court expanded the right to privacy beyond the physical realm. The PUCL Court further evolved the notion of privacy to include personal communications, holding that “the right to hold a telephone conversation in the privacy of one’s home or office without interference can certainly be claimed as ‘right to privacy’”.⁶²⁰

⁶¹³*Gobind v. State of M.P.*, (1975) 2 SCC 148.

⁶¹⁴*Kharak Singh v. state of U.P.*, AIR 1963 SC 1295.

⁶¹⁵ *Ibid.*

⁶¹⁶ *R. Rajagopal v. State of Tamil Nadu*, (1994), 6 SCC 632.

⁶¹⁷ The Constitution of India, 1950, Art. 21.

⁶¹⁸ *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

⁶¹⁹*Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295.

⁶²⁰ *People’s Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301.

Therefore we don't need more laws to curb terrorism; we need a justice system that punishes terrorists before we forget what their crimes were. We need procedures, which are simpler, improved evidence recording facilities and to make sure that the number of judicial officers should be increased so as to decrease the pending litigation. The public needs to see results. This requires revamping the whole system. Every limb of the government needs to do something. There ought to be a true separation of powers between the executive, legislative and the judicial branches of government, with each acting as a responsible check on the powers and acts of others. There must be an independent civil service and non-political security force, unsowed by political loyalties. Acts of government should be transparent and the judiciary independent and courageous under fire. A full debate should occur on the affairs of state in its representative organs and in the public for a civil society to flourish. Media must not only be vibrant and inquiring but also mature and accurate.

Another problem that is faced with regard to the judiciary in the terrorist affected areas is the low rate of conviction of the offenders. K.P.S. Gill says, "It is nigh impossible to secure a conviction in any case of terrorism in a disturbed area - and the problem here is not the absence of suitable antiterrorism legislation, but of the courage and will to implement even the ordinary laws of the land... In J&K, after ten years of terrorism and thousands of innocent lives lost, not a single conviction has as yet been secured for a terrorist crime (though some seven convictions have been passed for minor offences under the "Arms Act" and the "Explosive Substances Act". The argument that this is a consequence of the infirmity of our laws does not hold water - the same laws enabled a court in Chamba in Himachal Pradesh to convict one offender on January 20, 2000, sentencing him to life imprisonment on the charge of conspiring with Kashmir based terrorists in a massacre.

This only proves that it is not the judicial system that is flawed or lacking in the power to punish. It is the lack of will and courage within members of the judiciary that is the basic problem. Apart from outright cowardice, moreover, we appear to completely lack the will to punish crime, and a regime of unqualified license currently prevails in all theatres of strife in the country. An effective war against terrorism in the absence of effective judicial institutions - indeed, in the face of judicial officers who

are actively hostile to the agencies of the state - becomes increasingly difficult and sometimes even forces a resort to extra-constitutional measures.⁶²¹

In a way the justice system is also to blame. Omar Sheikh, the man charged with Daniel Pearl's murder, was in the judicial custody of the Indian government for five years. Along with him was Azhar Masood, who were escorted by our external affairs minister to Kandahar in exchange for the passengers of IC-814. If they had not been awaiting their trial and the judiciary had decided their fate, this would certainly not have been our fate. There are flaws in our justice system which need to be rectified. It is our system, which keeps dangerous terrorists under trial for so long. Which system takes ten years to bring terrorists to justice?

Therefore if we work in a concerted manner, wherein we give up our selfish desires, the problem can be tackled. No framework that shows up at a choice after a case interaction that can reach out over many years conveys whatever could merit the title of 'equity'. On the off chance that legal activity is to have any obstruction sway, particularly on the solidified units of psychological oppressor and coordinated wrongdoing groupings, the connection among wrongdoing and discipline should be quick and inflexible. Likewise if these laws are followed with knowledge and without partisanship, this would be altogether reliable with Constitutional arrangements and the arrangements identifying with the freedom of the legal executive. Each of the public authority needs to have its impact genuinely and with devotion to expand the degree of adequacy.

⁶²¹K.P.S. Gill, "Tackling Terrorism in Kashmir: Some Lessons from Recent History", in Prof. M.L. Sondhi, ed., *Terrorism and Political Violence: A Sourcebook*, (Har-Anand Publications Pvt., Ltd., 2000), pp.84-85.

CHAPTER 7

CONCLUSION

AND

SUGGESTIONS

7.1. Conclusion

The issue concentrated in this might be summed up by making a start with the idea of terrorism. The term terrorism prior had no exact or generally acknowledged

definition. However, later on it came to be utilized to allude to an assortment of acts, for example, terrorizing, compulsion, constraint, taking of payment, annihilation of living souls, property and so forth. What was regular in these different sorts of against social exercises was a deliberate demonstration depended on by an individual or a gathering of people to tie down the accommodation of an individual to the requests made before him. An environment of outrageous dread was made in the brain of the casualty to accomplish this item.

In meantime, terrorism is utilized against specialists in State to constrain them into tolerating an interest. It included the deliberate utilization of savagery against an instrumental objective to convey to an essential objective the danger of future brutality. However, there must be a fear result or probably the cycle could scarcely be named terrorism. As characterized in the legitimate instruments embraced in course of time, terrorism could be submitted by people, or gatherings or people yet by the Government too. Consequently, contingent on the different sorts of members in the unlawful techniques and the intentions with which the power was utilized, various types of psychological warfare had emerged.

Today the term terrorism is utilized to portray the technique or the hypothesis behind the strategy, whereby an individual or a coordinated gathering of people looks to accomplish its points predominantly through the deliberate utilization of brutality. Fear based oppressor acts are coordinated against explicit people or specialists who have the ability to tackle the issue of the people falling back on these demonstrations yet decline to take care of the issue. There must be a fear result or, in all likelihood the cycle can barely be named terrorism. .

As times have passed on the idea has grown further, and terrorism has come to allude not just the things occurring inside a specific state, yet additionally the brutal action which affected the shared relations of the States. Advancements of this sort had brought to the political and legitimate establishments of the world the idea of global terrorism. Nonetheless, numerous worldwide dealings had occurred, and numerous troubles had been looked by the countries in characterizing the boundaries of this idea.

Remotely, India needs to monitor its land line and coastline to give security from outer danger, to forestall and battle trans-line wrongdoing and inside it to ensure

the life, freedom, security and property of individual, keep up the peace, regard and guarantee all common liberties without separation. India is a country of variety of ethnic, strict, semantic, social, social qualities rehearsed by people groups who regularly associated with inward clashes. Among all the contention 'Psychological warfare is utilized as both a strategy and procedure of the more vulnerable side and unbalanced to strife. The issue of terrorism challenges the political soundness, financial development and global picture of the country. Subsequently, psychological oppression is against vote based in nature.

Here terrorism has arisen as the adversary of our age. Worldwide illegal intimidation and the probably access of the psychological oppressor gatherings to weapons of mass obliteration can possibly demolish humankind. Terrorism today isn't a disquietude that torments one country. Almost every country is hit by it. It has gotten more diffuse and undefined than prior. The scaling of terrorism in new era and the danger of weapons of mass annihilation has stirred us out of our sleep.

The current way to deal with battling terrorism resembles a specialist treating cerebrum disease with headache medicine. Utilizing lethal weapons to keep the harmony resembles utilizing anti-biotics to battle the regular cold-it simply makes the foe safer. The main drivers of terrorism are the mistreated individuals who are totally denied of opportunity or trust and have no choices should be tended to. Degenerate governments that abuse the majority are similarly liable for supporting terrorism and unrest. Tending to the underlying drivers of these manifestations appropriately would be less expensive and positively more reasonable than battling a battle against fear based oppressors.

David Charters articulated various general standards of counter terrorism initiatives, a meaning of illegal intimidation concurred as well as comprehended and its country that plainly determines that whatsoever is constantly not terror threat, refined investigation to recognize kinds and extent of fear based on such terror activities, adaptable arrangement, strategy language that matches words to deeds in a steady and sound way and an acknowledgment that there are no straightforward arrangements and ideal results. To the extent the prerequisite for a definition is concerned it can't be

underlined more. Until and except if we have a legitimate meaning of psychological warfare, we can't have a law that abridges it.⁶²²

Terrorism is definitely not a cutting edge wonder. The explanation that “*one man's terrorist is another man's patriot*” outlines verifiable idea of fear. Terrorism in the contemporary era is very unique in relation to that accomplished in the 20th century. To comprehend what Terrorism might resemble in the 21st century, it is necessary to know historical backdrop of it. It keeps on existing, however it is also evolving. Assessing present patterns based on the past can offer helpful bits of knowledge for policymakers in the coming century. The part on the historical backdrop of Terrorism has managed the changing parts.

The terrorists today have an inborn preferred position. They know precisely where we are and where we can go, while they can cover up. They can take out their weapons and shoot and afterward conceal the weapons once more. Though when the military shoots, they are blamed for shooting regular people. We are battling an unremarkable adversary. This is the most despicable aspect of our age.

Nations around the globe admire the “*United Nations*” to determine the issue worldwide. Regardless of the natural downsides, the United Nations understands the danger presented by the beast and is doing whatever it can for its benefit. The United Nations Security Council passed goal 1373⁶²³ to make an exceptional board on counter-terrorism and put forward a few explicit activities for all states to require to ease the worldwide terrorism as a grave danger. At last everything rests in our grasp.

States consistently legitimize in lessening the opportunities dependent towards the need to get general government help of their subjects. Like on account of Kashmir, there is abundant proof of help from across the line. Additionally the public authority has attempted to pulverize illegal intimidation as opposed to locate a lasting answer.

India is confronting extraordinary dread from terrorism since numerous years. Numerous enactments have been relaxed to time to counter terrorism, however those

⁶²² David A. Charters, ed., *The Deadly Sin of Terrorism: Its Effect on Democracy and Civil Liberty in Six Countries*, (Greenwood Press, London, 1994), p. 211.

⁶²³ United Nations Security Council resolution 1373 (2001).

unique anti-terrorism rules that everyone must follow have not demonstrated fruitful to counter terrorism. Terrorism has proceeded as an issue in spite of these laws, under which not many of the people charged have been sentenced. The Law authorization offices are additionally fluctuated from one state to another, encouraging subjective and particular implementation based on religion, position, and ancestral status. These offices indict of common violations as illegal intimidation related offenses, extreme police wrongdoing and misuse, including torment. In many states, drawn out confinement without charge or preliminary seems to have been the routine as opposed to the special case. Subsequently, to an impressive degree, India's enemy of anti-terrorism legislations have worked more as preventive confinement laws than as proposed to get feelings for law-breakers.

The standard contentions that emerge as an opponent of hostile to anti-terrorism enactments are that the terrorist acts couldn't be turned away even we have tough laws and the current laws are adequate to counter the same. Every one of these Acts are beguiling. Countering terrorism includes a far reaching bundle. People who are contending for the sufficiency of current enactments are *“deceiving themselves or saying so for unseemly reasons”*. Because of terror attack in USA in 2011, the then “US Government” passed the “Patriot Act”, giving broad forces to implementation the law and insight offices. It revised such techniques that ensured the privilege of secrecy of private interchanges, hardened the keeps an eye on illegal tax avoidance, turn away terrorists from entering the US and expanded the disciplines for the terrorist’s exercises. The United Kingdom likewise passed the “Anti-Terrorism Crime and Security Act, 2001”, which gives additional forces to the police as well as upgrade the security of air terminals as well as research facilities. It is permitted that the confinement of unfamiliar residents associated with terrorist exercises.

Despite the geographical partition and assorted conditions that drove the United States and Britain to sanction the counter psychological oppression enactment, there are similarities between them. In these two countries, the counter illegal intimidation enactments that were embraced, give their security workplaces extra powers for the sake of the battle on dread in the matter of examination, observation, management, confinement, and seizure and assignment of property and furthermore by developing

extraordinary offenses associated with assailant acts and phenomenally significant disciplines for them.

Finally, both in USA and in UK, the counter-terror laws that were embraced have incited vast public analysis since it every now and again denies the major securities gave by protected and criminal laws. The adversaries of the institution even case that the danger of it is more perils to the essential regards on which majority rule government is situated in those countries is undeniably more unmistakable than the risk of terrorism threatening them. This conflict should not to be messed with.⁶²⁴

7.2. Issue of Human Rights Violations

The idea of basic freedoms is firmly associated with psychological oppression as it relates with both of its casualties and offenders. Because of immense infringement of common freedoms, the United Nations, in 1948 embraced the “*Universal Declaration of Human Rights*”, which pronounced acknowledging the natural nobility with basic privileges of all individuals from the human family. Derogation from certain basic liberties set out in worldwide common freedoms settlements is disallowed, even in a highly sensitive situation. “*The Covenant on Civil and Political Rights*” was embraced by “General Assembly of United Nations on nineteenth December, 1966” which proclaims non-derogable essential basic liberties like “*right to life, independence from torment, pitiless, cruel or embarrassing treatment or discipline, the forbiddance against subjugation and bondage, independence from detainment for inability to satisfy an agreement, independence from review punishments, the right to speak freely of discourse, thought and religion*”. The point of the illegal intimidation is to destruct vote based system, basic freedoms and the standard of law. The terror act directly affects the quantity of essential basic freedoms, similar to one side to life, right to freedom and actual respectability. The terrorist exercises can debilitate Governments, harm common society and imperil harmony and security, misfortune to social and financial improvement which eventually put negative impact on the key basic freedoms.

⁶²⁴Gurcharan Singh, “State Terrorism and Human Rights”, in B.P. Singh Sehgal, *Global Terrorism: Socio-Politico and Legal Dimensions*, 1995, pp. 192-193.

The Laws outlined on common freedoms by International associations and Nations force the obligation upon the other Nations to ensure the guiltless people groups under their domain from terror exercises. The State has commitments to ensure the essential right to life and security. India has likewise fused the idea of common freedoms as also given in the “*United Declaration of Human Rights*”, “*Indian Constitution*” in part III and IV and furthermore passed the “*Protection of Human Rights Act, 1993*” and setting up “*National and State Human Rights Commissions*” for the assurance of basic liberties and to arraign because of infringement of common freedoms.

Many conventions, strategies and enactments have been made to control the psychological warfare yet we have not accomplished the objective. There are parcel of infringement of basic liberties everywhere on the world due the religion, ethnicity, shading and root and so forth. The primary explanation of infringement of common liberties is terrorism which numerous Nations are confronting. It is expected to change the examination and insight organizations and criminal equity framework all the more adequately to secure basic liberties. In addition, it is important to determine the marvels of terrorism, politically by destroying the destitution, joblessness, ignorance and so on

The expense of the battle against terrorism, whenever did by each state alone, could be very high. Besides its adequacy is restricted. Subsequently the requirement for more prominent co-activity. Moreover, it is important to adjust the estimation of a technique for annihilating terrorism against the really regularly attending loss of other majority rule esteems and common freedoms when a country chooses to take up arms against terrorism. Psychological militants can be said to have won in certain regards when crisis measures are ordered. As this prompts the public authority being compelled to rake disagreeable measures, which could serve to diminish the two its authenticity and its dependability.

To address the issue of terrorism, nations on the planet should make aggregate moves to address the underlying drivers of terrorism. A far reaching approach is needed to change financial and social holes between the created and the immature world. This would help the immature nations and social orders set up solid and stable governments permitting those nations to handle their own social and financial issues autonomously.

Moreover, the global community should improve the values of human security and raise the resilience level of various religions with the goal that various religions and qualities can exist together similarly, and not prompt war and clashes. Battle against terrorism ought to be directed distinctly in a restricted manner to forestall chain-responses related with rebuffing terrorism. Reprisal can fill in as a hindrance against additional dread assaults, yet can't recuperate the main drivers of terrorism.

Terrorists realize that security powers in a democratic government are compelled to work with their hands bound behind their back. Legal restrictions and common control and responsibility forestall the security powers from sending their original capacity and capability. This implies that the assignment of terrorism in a democracy particularly under the consistent investigation of the media is requesting and troublesome. In any case this ought to reinforce our purpose to vanquish terrorism inside the structure of the standard of law and the vote based interaction.

To battle terrorism in the genuine sense, the systems embraced should not be bound simply to recognizable proof of terrorists and their end by vengeance, not equity, but rather should stretch out to analysis of the disease and finding a lasting fix. Fighting it under the standard of law should essentially have this significance. A restricted methodology may help dispense for certain current fear terrorists however not the causes terrorism, which produces terrorists or militants; and that too at the expense of infringement of common freedoms of numerous honest people. A legitimate harmony between the need and the cure requires regard for the standards of need and proportionality. Execution of this adjusting stunt is the mission of the standard of law to which our country is submitted. Let us not be diverted by conceivable momentary increases at the expense of long haul interests. The battle against terrorism should be won under the standard of law.

The essential goals of a compelling counter-terrorism warfare exertion are to protect basic freedoms, reinforce popular government and maintain the Rule of Law. The reaction to it can now be specific or lead to releasing a flood of unbridled restraint, which would, as an outcome, hugely encroach upon the privileges of the residents. Hence, it is basic to find some kind of harmony between guaranteeing the security and honesty of the country and defending the basic liberties of individuals.

For sure, there can't be any trade off in the work to uncover terrorism from the country. The state is required to, and ought to, take all conceivable legitimate, security, social and financial measures to killings by terrorists. Notwithstanding, should be remembered is that in India, the biggest majority rule government of the world, basic freedoms of residents, which are non-alienable and are ensured by the Constitution, can't be permitted to be forfeited. Critically, "Article 20 and Article 21 of the Indian Constitution of India" can't be suspended in any event, during an Emergency.

Thusly, counter-terrorism warfare endeavors of the State ought to, under any conditions, maintain the Rule of Law, notice basic freedoms and follow due cycles. Disappointment with respect to the State to do so would just estrange enormous areas of the populace and accidentally help the terrorist. It is similarly critical to remember that it is the terrorists or militants bunches which are, no doubt, consistently liable of gross denials of basic freedoms, and not the security powers which are regularly insulted by the guileless media and roused activists. The infringement by the psychological oppressor, anyway get little consideration particularly in light of the human dread of savage retaliation and exploitation.

7.3. Hypothesis result

It becomes imperative now to conclude this chapter with special reference to the fulfillment of the objectives undertaken at the outset of the study. The conclusion with regard to hypotheses can be incorporated as:

- a) The crime of terrorism differs from the conventional type of crime in several respects*

The study conducted lightened the various difference between the meaning, definition, concept and legislations differentiating the terrorism and crimes. The terrorism includes the acts against the whole community or society where as the conventional crime is an act against a person only defining the hypothesis to be proved.

- b) The act of terrorism has hampered the growth of Jammu and Kashmir*

The research conducted clearly shown the hampered growth of the Jammu and Kashmir. Comparing to the neighbouring states, the developmental aspects of Jammu

and Kashmir is far flung behind. As being divided into 2 regions after the Jammu and Kashmir Reorganisation Act, 2019, comparatively the development aspect in Kashmir Region to Jammu Region varies. Here the terrorism plays a partially crucial role. In addition to that the implementation of the anti-terrorism laws in the field have slowed the growth of the Kashmir region. Moreover the Geographical conditions partially impacts the growth rate of the Kashmir Region. Hence, the Hypothesis stands proved.

c) The techniques adopted to overcome terrorism have failed and the ideology of many people in Kashmir valley has become anti-India

The study conducted for the completion of this research work have gone through the analysis of the legislation to curb the terrorism along with the field impact of the ideologies of the people of Jammu and Kashmir. It is studied that the techniques opted to overcome terrorism have failed but the ideology of the significantly major portion of the population of Jammu and Kashmir is pro-Indian. Thus proving the Hypothesis not to be proved.

d) The steps taken by the Government to control terrorism are insufficient

The analysis of the data collected through the questionnaires as well as the doctrinal research done provides for the real time impact and result of the steps which are taken by the appropriate governments time to time to curb the problem of terrorism. The increase in the number of attacks of terrorists and the increase in the number of terrorists either through cross border instigation or due to the extremist ideology indicates for the failure of the steps taken by the Government to control the increasing terrorism. Hence, the Hypothesis stands proved.

e) The implementation and practice of the laws to curb terrorism is ineffective, amounting to disturbing the contemporary situation even more badly

The study indicates that the practical implementation and practice of the laws somehow is not disturbing the peace of the Jammu and Kashmir. There is no question in doubt that the terrorism is decreasing, indeed it is increasing with a steady pace but with the stringent laws the forces are facing it with more strictness. Amendments are to be made to make such laws more effective. Few areas are there which are badly affected due to

such actions of the state as well as the terrorists. Like a regular routine the activities are taking place and the people as well as the forces are getting used to such. Considering the situation in a worsen state would not be appropriate. Hence the Hypothesis stands not proved.

f) The strategy to control the conflicting situation in the valley has resulted in the human rights violation, torture, sexual abuse, etc., directly or indirectly impacting the people of Jammu and Kashmir

With the implementation of the laws and policies towards curbing the problem of terrorism strict measures have been opted by the authorities. Such measures provides for the arrests, custody, detention or encounters of the violators but such often many times result into the abuse of the power also. The research conducted here provided for the ineffectiveness of the policies or techniques adopted to curb the problem of terrorism. But adjacent to it abuse of such power and privilege is also observed on various occasions. Keeping a note to it, the Apex court of India has also taken such abusing into consideration in 2016 providing for the accountability of the authorities. The abuse against the common people by the powered authorities certainly aiming towards the violations of the fundamental rights even which comes out of the preview of Article 19 (2) of the Constitution of India. On the concluding of the data by both doctrinal and non-doctrinal approach, it was observed that violations, abuses, etc. are done during the implementation of the strategies to curb the terrorism aiming towards the proving the Hypothesis.

7.4. Suggestions

Terrorism is not, at this point a hypothetical issue. It influences all of us. We need to adjust our reasoning and figure out how to arrive at the right harmony between securing common liberties, ensuring regular folks, and permitting governments the opportunity to manage those psychological oppressors, since individuals who are battling without reference to the guidelines don't merit any assurance.

Accomplishment in the battle against terrorism will generally rely upon proceeded with worldwide co-activity. We need to concoct innovative arrangements that one might say will decrease the impacts of terrorism in our lives.

The dread of the probable utilization of the chemical and biological weapons has made an extraordinary frenzy among the countries of the world. In the event that the atomic weapons fall in the possession of the fear mongers it would be a debacle for the world. We need some type of security against the abuse, which is normal out of this beast. To battle psychological oppression in the genuine sense, the techniques embraced should not be bound only to ID of fear based oppressors and their end by vengeance, not equity, but rather should stretch out to determination of the disease and finding a lasting fix. Fighting illegal intimidation under the standard of law should fundamentally have this importance. A restricted methodology may help wipe out some current fear based oppressors however not the causes or the marvel of psychological warfare, which produces fear mongers; and that too at the expense of infringement of common liberties of numerous blameless people. A legitimate harmony between the need and the cure requires regard for the standards of need and proportionality. Execution of this adjusting stunt is the mission of the standard of law to which our country is submitted. Let us not be diverted by conceivable momentary increases at the expense of long haul interests. The battle against terrorism should be won under the standard of law.

To handle the hazard of terrorism, we need to handle those essential issues, which offer ascent to this wickedness. Also, this must be done on the off chance that we are unadulterated and are resolved entire heartedly to do it by fortifying our foundations, arrangements and swearing off intrigue, contraption and pietism. Terrorism is a marvel which imparts dread for political closures. It ought to be crushed by fortitude and compelling incorporated approach. To nip evil in the transport, successful measures will be taken from the actual beginning of illegal intimidation. Collaboration of like-minded offices and state should be tried to end this threat. The purposeful endeavors of the legislatures can go long approach to counter this issue. There should be extensive evaluation of the issue. Contributions from all the pertinent organisation, at public and global level, in collaboration with each other, are to be placed into administration. The public authority ought not to receive a similar system of illegal intimidation which is never contained by anti-terrorism warfare. At the point when such a technique is received the states powers become at standard with the terrorists and other lawbreakers breed further disdain which estranges individuals.

- Taking all things together Nations which are influenced by terrorism, confronting debate between the local forces and the specialized state security organizations qua the brutality directed by terrorism. The police treat it as a law requirement issue and state security offices have the view that the terrorism is battle against the set up state. To dodge these questions, a basic need is to have and coordinated arrangement to assemble both the law authorization and state security association.
- An investigation of revolts in India bring out brutality, mass help, outer help and wide exposure, as the normal components for their development and absence of schooling, impression of disregard, a work in progress, joblessness and strict bigotry brought dissatisfaction and a sensation of a distance among the nearby populace. The danger to the country has extremely profound established ramifications, which can be effectively battled if government tends to these issues adequately and mutually. Besides, security powers are no response to uprising however they are equipped for managing the security circumstance. Political processes must be started to annihilate the issue from the root. To bring regularly, it could be made compulsory with respect to the common organization, especially at the grass root level, to visit such disturbed zones with at least fixed number of times to interact with the local people and listen the grievances with an intent to resolve them. Improvement of the influenced zones is the foundation of any counter fear based oppressor methodology.
- Intelligence assumes the most significant part in activities of “countering terrorism”. Terrorists plans their tasks in India or may be outside India and directs their psychologically hypnotized agents globally so as that the correspondence diverts to our nation. The local state forces (Police) manages general society, its ground level insight in regards to the psychological militants spot of stay, allies, harbourers, and so forth is very acceptable and significant in counter illegal intimidation tasks. In any case, significant insight stays a fantasy for the vast majority of the commandants are working. The methods of surveillance in tackling are dreary as well as tedious, when data arrives at the

powers on the ground to make an important move, it is short of what was needed, and is ordinarily contorted and endures. There is need to rebuild the intelligence apparatus.

- Under International law, country states have a commitment to deal with culprits of genuine criminal offenses. The state isn't defended in either approving or turning a blind eye to torment, extra-legal killings and unlawfully kidnapping residents under any conditions. Culprits of violence are regularly state entertainers. The Indian Government should find a way to indict people answerable for outrages submitted against Indian residents. This will send an unmistakable message that torment, extra-legal murdering and constrained vanishings won't go on without serious consequences in a liberal majority rule society.
- Incidents of fake encounter killings have expanded over late years. This is an inadmissible situation, and those dependable ought to be dealt with to flagging that Encounter Killings are murders dedicated without blinking and won't go on without serious consequences in a majority rule society. On the whole the instances of fake encounter killings, a FIR ought to be enlisted by the police against the officials answerable for the demise. A charge sheet should be recorded against them, and after a reasonable and formal review wherein the onus is on the blamed to be proved that he acted in self-defence, the competent courts should make of seeing on if the blamed is as blameworthy for killer. The Union Government should also put forward the central investigative agencies like e CBI for examinations concerning each claim of experience.
- The State and Union Territories of India should excuse all cops who have been sentenced by the court for any criminal offense and suspend all such police and armed officials who are confronting indictment in criminal cases. Examinations concerning occurrences of supposed phony experience killing should be arranged off expeditiously inside a predefined time period.
- As Justice Jeevan Reddy Committee have put forward, *“Over the years many people from the region have been complaining that among the most difficult issues is the problem faced by those who seek information about family members*

and friends who have been picked up and detained by armed forces or security forces. There have been a large number of cases where those taken away without warrants have 'disappeared', or ended up dead or badly injured. Suspicion and bitterness have grown as a result. There is need for a mechanism which is transparent, quick and involves authorities from concerned agencies as well as civil society groups to provide information on the whereabouts of missing persons within 24 hours."

- As suggested by Justice Jeevan Reddy Committee, *"it is important that the public authority should first settled a Complaint Cell in the area where the armed forces are depolyed for the need. These cells will get grumblings in regards to charges of missing individuals or maltreatment of law by such outfitted or security powers, make brief enquiries and outfit data to the protests. The calls ought to have the full position to investigate and require each record kept up purchase the powers or any the neighborhood specialists"*. These cell ought to be straightforwardly managed by the Union Minister of Home Affairs. The cell ought to have a couple of senior individuals from the nearby organization and a couple of free senior residents who don't have a place with any ideological groups. There is no uncertainty that the military work in troublesome and erratic conditions in these territories and the supremacy of the standard of law should be maintained.
- Curb this threat is the appropriate and bother question before the advanced civilization of the world. Each disease whether human and others has certain side effects and causes. Similarly illness of terrorism has indications and causes. Media won't resolve this issue in light of the fact that the world isn't earnest about it and furthermore what we say, we don't rehearse that in the genuine feelings of obligation. New vision, new personalities, is the need of great importance to rediscover the lost soul of the world. The learned people need to understand their part in the general public to reproduce it. As the assignment of the savvy people in their individual social orders is obligation to the public duties and to maintain the moral norms and standards inside the social orders. Yet, shockingly the educated people of today`s world have failed to remember

this touchy job of theirs and are enjoyed their own stories of crime and personal stakes, which is sorry to situation on their part.

- The frustration and anger explodes in the form of a violence to show resentment against these oppressions and repressions. The major task is to alleviate the widespread of poverty and also to eliminate the other contributory factors of terrorism. But this is not happening because the resources allocated for these programs are not reaching the poor masses but are being mis-utilised and defalcated by the elites with the connivance of the authorities. In India government has allocated the funds for various such programs of poverty alleviation but all these funds are being squandered by authorities like a gambler. This larceny is widening the gap between “the poor and the rich”. The primary concern is that continuation of such disparity will undoubtedly unleash more “Global Terrorism” all over each society at the end of the day.
- The act of terrorism is more or less linked with the game of politics. The politicians used this lethal weapon to achieve their political ends. This is a very sensitive and debatable issue. The politics is a field of human activities where we need the persons who are wise and has a very high personal morale. A great thinker like Plato once said that all the philosophers should be kings means by is that the field of politics is highly sensitive on which depends the fate of the nations. The people have to choose wise rulers for the nation to progress.
- Criminal terrorism requires investigative skills of law enforcement agencies, political terrorism would need psychological and sociological inputs. Psychological warfare has to be waged to win over hearts and minds of the people of the area where terrorists operate. Above all the Population must be given greater confidence about the state`s ability to give them protection. Sociologically, profile of different terrorists groups have to be compiled and appropriate strategy has to be devised to hasten the process of splintering. It will result in inter-group rivalries and ultimately their mutual annihilations.
- In countering terrorism, the authorities are the major player to curb it. They are obligated to eliminate it and save the society. The need of the hour is to have a

well-established and well matured socio-political sphere for building the foundations of the surrendering and lessening the tensions in the society. Such curbing can be possible only with the help of society (common man) by ensuring the awareness in the society.. General public ought to be told about the authentic thought of illicit terrorizing. The experts ought to explain to it that unlawful terrorizing isn't good faith yet unadulterated bad behavior.

- In democratic constitutionality government where each activity must be covered under some arrangement of law, self-assertive and unpredictable corrective activity isn't just inappropriate yet profoundly unlawful. The hardened lawfulness measure ordinarily crossing the boundaries of rule of law may accomplish brief harmony in a contained way however infact it might demonstrate misdirecting and now and again counterproductive. The merciless concealment of a terrorists is required and important yet the counter-hostile by the state powers in aimless, decimating the differentiation between a terrorism and a guiltless non-military personnel populace isn't just illicit yet counter-beneficial.
- As in political system a state functionary without accountability is worse than a terrorist, all of them be made accountable for any of the terrorist activity. All the state organs should function honestly, efficiently and without partiality.
- The efforts should be done to eliminate anti-national and pro-terrorist factors from the state administration is most important otherwise these elements will encourage the terrorism in a state.
- Efforts should be made to be normalise the relations between civilian and the police forces. It will generate confidence among the people. They will not only repose trust on the local police but also help the authorities to counter-terrorists. Even the constitutional authority cannot defeat the terrorist movement without the popular support.
- Conscious and concerted efforts should be made by the state officials at all levels to redress the public grievances. State officials have to work as to resolve the problem of the locals in terrorist affected areas.

- More employment opportunity be provided to check the unemployed and the mislead youth to join the terrorist groups due to economic contingencies. There should also be a major boost to developmental works for which special grants be provided. There should also be revival of literary and cultural activities to educate the masses about the horrors impacts of terrorism on the mankind.
- In a democratic nation specifically the fundamental core values of administrative activities are their effect on observed possibilities. That is the reason the democratic governments by and large experience the ill effects of inactivity and don't take firm, solid and suitable activities against the terrorist. Such a weak policy and lack of stern actions to counter terrorism provides the conducive environment for terrorists to flourish. For this reason the political interest should be suppressed and the society interest be given priority.
- Local or regional police force, being poorly framed and having local relations and due to political interference are not effective to deter terrorism. Rather, usually it helps the terrorists in different ways.
- Differences in perception between local-regional, state and central authorities, top leadership and governmental levels vis-à-vis the situation also weaken the overall strategy to counter terrorism.
- Important and insufficient insight network likewise hamper to counter-terrorist acts. It is for the most part because of the clandestine association of the terrorist, dread of responses against sources and absence of co-appointment and collaboration among the different knowledge organizations working at the different levels of the territories. There must be well-built and effectual network in intelligence.
- Many people think that there should be more effective legislations to suppress such anti-social events, instead many special Acts have been already enacted for prevention of such acts also apart from the usual general laws such as IPC, UAPA, NIA Act, etc. Particularly in J&K, to deter the terrorism such as “*AFSPA, 1990*” and “*Jammu and Kashmir Public Safety Act, 1978*” are there and they are sufficient Acts to deal with the problem of terrorism but the just

need is to actualize these enactments all the more viably and deductively to control the terrorism.

- Role of judiciary is very significant in curbing the aspect of terrorism. Judiciary in various landmark judgments laid down certain important principles to tackle with the terrorism. It is the need of the time, that judiciary shall take the stringent view on matters of terrorism, considering the human rights of citizens. Judiciary shall strictly interpret the provisions of anti-terrorism laws, so that the terrorist shall not get any opportunity of release.
- Violence for one is surely not the appropriate response. Annihilating a couple of terrorists won't uncover the organization of terrorist who are covering up all over the place. Also the killing of terrorists also results in the killing of innocent civilians which in turn invites the wrath of the general public. We need to address the main drivers of terrorism. Without tending to the states of wretchedness and unfairness that support and irritate terrorism, we can't stop it.
- Penalty provisions must be commensurate with the offence. Punishment for terrorist activity should be made more stringent so that the person committing the act at least thinks twice before doing so. Harsh punishment may bring down the rate of terrorism.
- Today detainment facilities in many nations have the errand of education and rehabilitation. We should ensure that this framework works appropriately. There is no motivation behind why we ought not to put forth more attempt to teach and restore the wrongdoers. We ought to infuse more ability in the detainment facilities to adapt to the unique issues of the terrorists. This would help in preventing the terrorists from getting back to their professions of savagery when eventually delivered.

Hence successful authorization of laws and great administration are both basic for the counter action and control of terrorism activities. Taking into account the way that the issue is definitely not a basic issue however a complex issue having numerous aspects and each having its own repercussions in global relations, the analyst holds the view that:

1. The hardware for the authorization of peace must be made more powerful.
2. Organization at all levels should turn out to be more centered around evenhanded also, individuals focused turn of events and great administration.
3. Equivalent consideration ought to be paid to the improvement measurement and common liberties concerns.
4. To contain penetration, carrying and other terrorist's exercises across the line, the Government should accord main concern to fencing its borders.
5. Government should make quick strides for improving the insight assortment framework and knowledge sharing to counter-terrorism. Steps likewise should be taken for smoothing out the examination and indictment hardware in an expert and logical way.
6. Legal executive at various levels have an essential part in guaranteeing that terrorism cases are attempted quickly and guilty parties are dealt with immediately. Certain and quick discipline is regularly successful obstacle to expected miscreants.

7.5. Need of the Hour

Strong and strict Legislative Policy and Effective Implementation

India witnessed number of legislations on terrorism since independence, but the terrorist activities are increased day by day. To deal with the terrorism, we need strong legislative policy. It is not sufficient to enact the stringent laws but the effective implementations of those laws are very much necessary. Due to the lack of effective implementation we witnessed number of antiterrorism laws like The Terrorist and Disruptive Activities (Prevention) Act, 284 1985, The Prevention of Terrorism Act, 2002 have been repealed. It is necessary to make a comprehensive policy involving the police, the executive and the judiciary to deter the terrorism. If these agencies work collectively, the terrorism can be controlled.

Separate Procedure for Terrorism in Substantive Law is necessary

Under The Indian Penal Code, 1860 Chapter V deals with Criminal Conspiracy, Chapter VI deals with offences against state. Offences enumerated in these chapters

214 also concern with the terrorist activities, for example, offence of Sedition under section 124-A. To punish the offenders the procedure is laid down in The Code of Criminal Procedure, 1973, here the problem arises that the offender who involved in the terrorist activities tried as per the general procedure and sometimes they get the benefit of the lacunas in the charge sheet by the investigation team. Considering the seriousness of the offence of terrorism there shall be the separate procedure to the offenders who involve in the terrorist activities. That procedure must be expeditious, so that they shall punish to avoid the further acts

Special Force are needed to tackle with terrorists

Special Forces shall be established to treat the terrorist; generally they are subject of the regular forces like Central Bureau of Investigation, Anti-Terrorist Squad, or other similar agencies. But to treat the terrorist special force shall be established and these Special Forces should be independent from other forces. There should be special procedure in case of a terrorist attack. If a terrorist attack occurred then all resources civil, military or private must come under the predetermined Officer. All agencies must obey his orders. For example, due lack of unified command on 26/11 attack, the terrorists hold out for over 72 hours.

Expansion of International Instruments

Existing international conventions and treaties must be expanded, international jurisdiction must be further developed with the aim to strengthen the rule of law procedures for peaceful dispute settlement as an important aspect of sustainable conflict prevention and counter terrorism policy.

Tackling Terrorism Finance

Terrorism finance should be tackled globally and for that all states must work together, determine measures to detect and suppress funds used to support terrorist activities and see that such measures are consistently and universally enforced.

There will be no exaggeration to say whenever a society has come into existence, problems have arisen. They should be tackled at the right stage and the delaying policies should be done away with. Their needs and demands should be understood in the right light and only then they should be treated. In the schools and

colleges, the more emphasis should be given to moral values, patriotism and national spirit and the education should not be based on religion, region or caste. Now the quality of tolerance and understanding is missing in the present societies which plays the important role to unite the social fabric politics has penetrated educational institutions and even religious places are not free from them. These were the avenues where moral and good values could have been learnt. Every person has grown suspicious and untrustworthy of the other because of the absence of the national spirit within the masses due to which they are exploited for petty benefit. Society has become so hypocritical, materialistic, self-centered, emphatically bringing to the forefront that it has alienated one individual from another. The need of the hour is to strive to remove all these deficiencies in society and knit the loosened fabric of society intricately.

Let us take a resolve that we shall not tolerate terrorism of any kind-be it state terrorism, international terrorism or national terrorism because we believe in the philosophy of Gautam Budha, Lord Mahavir, Guru Nanak and Mahatma Gandhi to live and let live. We have been taught that truth, non-violence, tolerance, mutual respect, contentment and adherence to one's duty are the cardinal principles of life and we have to strive hard to make them the part and parcel of our lives. Then and only can dream of having a society free terrorism in its various forms.

7.4. Limitation of the Study

It is the 'great right of self defence' from which the moral justification to all anti-terrorism laws is derived. The term "terrorism" comes from the French word "terrorisme" which is based on the Latin verb *terrere*(to cause to tremble).It was used to describe the actions of Jacobin Club in their rule of post revolutionary France ,the so called 'Reign of Terror'. Terrorism is defined in the U.S. by the code of Federal Bureau of Investigation as the unlawful use of force and violence against person or property to intimidate coerce a government, the civilian population or any segment thereof, in furtherance of political or social objectives.

Terrorism has immensely affected India. Anti-terrorism laws in India have always been a subject of much controversy. One of the arguments is that these laws stand in the way of fundamental rights of citizens guaranteed by part III of the Constitution. Anti-terrorism laws are laws made by the government which guides the

practices, tactics, techniques and strategies that government, militaries, police departments and corporations adapt in response to terrorist threats and acts both real and implied.

The need of anti-terror laws in the present scenario .Under Article 355 of the Indian Constitution the central government has a duty to protect states from internal disturbances. The dramatics of the December 13th attacks on the parliament building combined with the September 11th atrocities in the United States, gave rise to need of increasing power of security forces despite long history of past abuses. The United Kingdom adoption of the Prevention of Terror Act and United States PATRIOT Act strengthened the notion that other countries had acknowledged the need to move beyond traditional domestic criminal procedure in order to properly battle terrorism. In one of the Indian cases in which the Supreme Court took note of it in *Kartar Singh V. State of Punjab*, where it observed that country had been in the firm grip of spiraling terrorist violence and it's caught between deadly pangs of disruptive activities.

Apparently there exist more than 16 international conventions which directly or indirectly deal with international terrorism. However, many of these conventions focus on specific problems such as hi-jacking, safety of civil aviation, safety of nuclear weapons etc.¹⁵³⁷ Thus, many of the times these conventions seek to avoid the direct confrontation with problems of terrorism such as problems pertaining to definitions, designation of terrorist organizations etc. These limitations put invisibly on the international law are often source of problems. It is also apparent from the present research that in spite of many countries trying to solve the problem of terrorism, there exist a number of other obstacles which often comes in way before the countries to deal with the problems of terrorism. There exists a lack of extradition treaties between many states to effectively tackle the situations. Some countries such as Pakistan and Afghanistan remains safe haven for many terrorists who commits crime in one country and hide in these countries in order to avoid any prosecution or punishment.

Similarly if we consider the national legislations to combat the problem of terrorism, the failure of such enactments in providing fruitful solutions is still in vain. While enacting and implementing the anti-terrorism laws, it has widely been observed that there exist a tussle between national security at one hand and the promotion and protection of human rights of individuals at the other. It is very difficult to satisfy the

needs and demands of human rights defenders while enacting such laws. Thus, the choice is often been left to the people to choose either national security or human rights principles.

Furthermore the limitation of the research is towards the collection of the data from the respondent. As the research is on the Anti-Terrorism Laws, the representatives who are selected are those who are having the knowledge of those laws and/or who are practically implementing those laws to the field. The limitation can be seen here as the data could not be collected from other or generalized respondents for such research. The common people of the society might be the victim of such terrorism and the aftereffect of the applicability of Anti terrorism laws which the researcher is unable to cover.

Apart from that the representatives chosen also be seen as uninterested or were in hesitant state to answer the questions in detail. They were not promising in sharing the exact lace of deployment as well as the ranks, acting as a barrier to the researcher while conducting the research.

Another limitation which the researcher have faced is that it was almost impossible to have the interview schedule with the persons on whom the Anti-Terrorism laws are charged. With such firsthand interaction, the much deeper data could have been gathered.

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ANNEXURE I

QUESTIONNAIRE (Forces and Police)

I am a Ph.D. Research Scholar at School of Law, **Lovely Professional University, Punjab** and presently working on my Thesis topic **“ENFORCEMENT OF ANTI-TERRORISM LAWS IN JAMMU AND KASHMIR”**.

I request you to kindly fill the questionnaire below and assure you that data generated shall be kept confidential.

Name:

Age:

Designation:

Area of the deployment:

Questions

- Kindly answer the question as mentioned i.e., tick mark or state reasons as appropriate.
1. How many years you have served in your service?
 - a. 1-2 years
 - b. 2-5 years
 - c. 5-10 years
 - d. More than 10 years
 2. How many years you have served in your service along LOC or/and LAC?
 - a. 1-2 years
 - b. 2-3 years
 - c. 3-4 years
 - d. More than 4 years
 3. Have you faced any terrorist attack or attacks during service along LOC or/and LAC?
 - a. YES
 - b. NO
 4. Have you faced any terrorist attack during your service along LOC or/and LAC?

- a. YES
- b. NO

5. What is your experience of such attacks till present?

6. What causes terrorism in Jammu and Kashmir?

- a. Poverty
- b. Illiteracy
- c. Unemployment
- d. Religion and caste
- e. Cross border instigation by Pakistan
- f. Ineffective policies of the Indian Government
- g. All of the above
- h. Any other,

7. Do you think foreign countries have any effect in cause or emerging or evolution or development of terrorism?

- a. YES
- b. NO
- c. Not Sure

8. Do you think that the strategies you have adopted or are adopting are beneficial for decreasing such terrorist attacks?
- a. YES
 - b. NO
 - c. Not Sure
9. Do you think the terrorist attacks affect the personnel deployed in terrorism affected areas?
- a. YES
 - b. NO
 - c. Not Sure
10. If your answer is 'YES' for the above question, what are the affects you have experienced by such attacks?
- a. Physical
 - b. Psychological
 - c. Social
 - d. Breakdown in Family
 - e. Monetary/Financial
 - f. Demoralization
 - g. Any Other,
-
-
-
11. Do you think such terrorist attacks can result in a war between India and Pakistan?
- a. YES
 - b. NO
 - c. Not Sure
12. According to you From the day you are deployed in this area, terrorism or terrorist activities are-
- a. Increasing
 - b. Decreasing
 - c. Stable (no change)

13. Do you think there is any change in the mode of operation of terrorists?
- YES
 - NO
 - Not Sure
14. Do you think the change in the practices or/and increase in such terror activities are the result of the lacking policies of the authorities?
- YES
 - NO
 - Not sure
15. Does the state or national politics plays any role in the inapplicability of such policies?
- YES
 - NO
 - Not sure
16. Do you think that more operational powers should be given to the armed forces to deal with the changing practices of terrorists?
- YES
 - NO
 - Not sure
17. Do you think internet, social media and digital connectivity plays an important factor in aid to terrorist to plan their acts?
- YES
 - NO
 - Not sure
18. Do you think internet, social media and digital connectivity plays an important factor in aiding the armed forces to tackle the terrorist activities?
- YES
 - NO
 - Not sure

19. Whether the special laws or Acts formulated to deal with the disturbed areas are sufficient?
- YES
 - NO
 - Not sure
20. If the special laws and strategies adopted by the Government and its authorities are not sufficient, then what steps should be taken to end terrorism?
- Creation of more employment opportunities
 - Better educational and infrastructure
 - Promotion of sports
 - Promotion of religious brotherhood
 - Fencing the entire LOC
21. Have armed forces succeed in eliminating terrorism till now?
- YES
 - NO
 - Not sure
22. Whether the abrogation of Article 370 will help in elimination of terrorism?
- YES
 - NO
 - Not sure
23. Whether the Jammu and Kashmir Reorganization Act, 2019 will help in elimination of terrorism?
- YES
 - NO
 - Not sure
24. State your reasons for your response for Question no. 22 and 23 (optional)

25. Can a common man help the Government to combat and eliminate terrorism?
- a. YES
 - b. NO
 - c. Not sure
26. In your opinion what can be the permanent solution to bring everlasting peace and harmony in Jammu and Kashmir?
- a. Plebiscite
 - b. Independence for Jammu and Kashmir as a separate country
 - c. Separate Statehood for Jammu as well as Kashmir within India
 - d. Treating LOC as International Border by both India and Pakistan
 - e. Any other (please specify)

ANNEXURE II

QUESTIONNAIRE (Civilians)

I am a student of School of Law, **Lovely Professional University, Punjab** and presently working on my Thesis topic **“ENFORCEMENT OF ANTI-TERRORISM LAWS IN JAMMU AND KASHMIR”**.

I request you to kindly fill the questionnaire below and assure you that data generated shall be kept confidential.

Name:

Age:

Designation/ profession:

Area and District:

Questions

- Kindly answer the question as mentioned i.e., tick mark or state reasons as appropriate.

1. From how many years you are living in this area?

- 1-2 years
- 2-5 years
- 5-10 years
- More than 10 years

2. According to you what is terrorism?

3. What causes terrorism in Jammu and Kashmir?

- Poverty
- Illiteracy
- Unemployment

- d. Religion and caste
 - e. Cross border instigation by Pakistan
 - f. Ineffective policies of the Indian Government
4. Do you think foreign countries have any effect in cause or emerging or evolution or development of terrorism?
- a. YES
 - b. NO
 - c. Not Sure
5. How terrorism and terrorist activities affect the common people?
- a. Loss of family members/friends/relatives/colleagues
 - b. Psychological trauma
 - c. Loss of employment opportunities
 - d. Lack of educational opportunities
 - e. Loss of Tourism and Trade revenue
 - f. Lack of security
 - g. Violation of Human rights
 - h. All of the above
6. Have you been personally suffered in such attack or attacks?
- a. YES
 - b. NO
7. In your lifetime how many terrorist attacks you have seen or/and faced?
- a. 1
 - b. 2
 - c. 3
 - d. 4
 - e. 5
 - f. More than 5
8. Do you think the strategies opted by the Government and its authorities are beneficial for decreasing such terrorist attacks?
- a. YES
 - b. NO
 - c. Not Sure

9. If the special laws and strategies adopted by the Government and its authorities are not sufficient, then what steps should be taken to end terrorism?
 - a. Creation of more employment opportunities
 - b. Better educational and infrastructure
 - c. Promotion of sports
 - d. Promotion of religious brotherhood
 - e. Fencing the entire LOC
10. Do you think the change in the practices or/and increase in such terror activities are the result of the lacking policies of the authorities?
 - a. YES
 - b. NO
 - c. Not sure
11. Does the state or national politics plays any role in the inapplicability of such policies?
 - a. YES
 - b. NO
 - c. Not sure
12. Are the special laws or Acts formulated to deal with such disturbed areas are sufficient?
 - a. YES
 - b. NO
 - c. Not sure
13. In your opinion whether anti-terrorism laws (UAPA, AFSPA, 1990) or actions of the state to control terrorism should be retained or revoked?
 - a. YES
 - b. NO
 - c. Not sure
14. Is terrorism increasing?
 - a. YES
 - b. NO
 - c. Not sure
15. Have India succeed in eliminating terrorism till now?

- a. YES
- b. NO
- c. Not sure

16. Whether the abrogation of Article 370 will help in elimination of terrorism?

- a. YES
- b. NO
- c. Not sure

17. Whether the Jammu and Kashmir Reorganization Act, 2019 will help in elimination of terrorism?

- a. YES
- b. NO
- c. Not sure

18. State your reasons for your response for Question no. 16 and 17 (optional)

19. Can a common man help the Government to combat and eliminate terrorism?

- a. YES
- b. NO
- c. Not sure

20. In your opinion what can be the permanent solution to bring everlasting peace and harmony in Jammu and Kashmir?

- a. Plebiscite
- b. Independence for Jammu and Kashmir as a separate country
- c. Separate Statehood for Jammu as well as Kashmir within India
- d. Treating LOC as International Border by both India and Pakistan

e. Any other (please specify)

LIST OF PUBLICATIONS

S.no.	Title of paper with author names	Name of journal / conference	Published date	Issn no/ vol no, issue no	Indexing in Scopus/ Web of Science/UGC -CARE list
1.	Enforcement of Anti Terrorism Laws in Jammu of Kashmir (J&K) : A Socio-Economic Study. Authors 1.Chander Parkash Singh 2. Dr. Ajaymeet Singh	Elementary Education Online, ISSN: 1305-3515	5-03-2021	Issn- 1305-3515, Vol. No. 20, Issue no. 5, Page no. 2367-2373	SCOPUS
2.	Impact of Terrorism in J&K : A Socio-Legal Study Author 1.Chander Parkash Singh	45 th All India Sociological Conference (INSOSO)	28-12-2019	R.C. 23	-
3.	Impact of Anti-Terrorism Laws in J&K : A Socio-Economic Study Author 1.Chander Parkash Singh	International Conference on Management, Economics & Social Sciences	29-01-2020	Paper ID- RF- ICMESSNE WD- 290120-7225	-

4.	<p>The Public Safety Act, 1978: Bane or Boon.</p> <p>Author 1. ChanderParkash Singh</p>	<p>Anti Terrorism and National Security Laws : Legal Issues and Challenges</p> <p>(Edited book)</p> <p>Dr. Ajaymeet Singh (Editor)</p>	<p>March, 2020</p>	<p>Edition 1st, Page No. 267.</p>	<p>-</p>
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