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**COMBATING TERRORISM:  
PROTECTING  
BY RIGHTEOUSNESS**

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**COMBATING TERRORISM: PROTECTING  
BY RIGHTEOUSNESS**

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## **COMBATING TERRORISM: PROTECTING BY RIGHTEOUSNESS**

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*“A spring at its source can be turned with a twig, but when grown into a river, not even an Elephant can cross it”*

### **Introduction**

Terrorism today has transcended pure crisis management or public order issues and is enmeshed in an intricate web of organized crime, illegal financial transfers and trafficking in arms and drugs, which poses a grave threat to national security. The existence of sleeper cells, the spread of modern communications and the increasing use of modern weapons, technology and tactics have enabled the merchants of terror to spread their tentacles far and wide subjecting the entire country to their nefarious designs. A multi-cultural, liberal and democratic country like India, given its geopolitical situation, is particularly vulnerable to acts of terror with statistics showing that Indians have suffered the maximum casualties at the hands of terrorists. The menace of terrorism is thus an unprecedented threat which requires extraordinary and multi-pronged action by all organs of government and society.

### **OBJECTIVE OF THE REPORT:**

The two major aspects of the India’s counter terrorism framework viz., the legislative mechanism and the administrative framework; and made detailed recommendations on how these can be upgraded, strengthened, reformed and restructured in order to fight terrorism in an effective manner.

### **What is Terrorism?**

**As per the UN Guidelines-** terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought”.

- **Definition of the terrorist act:**

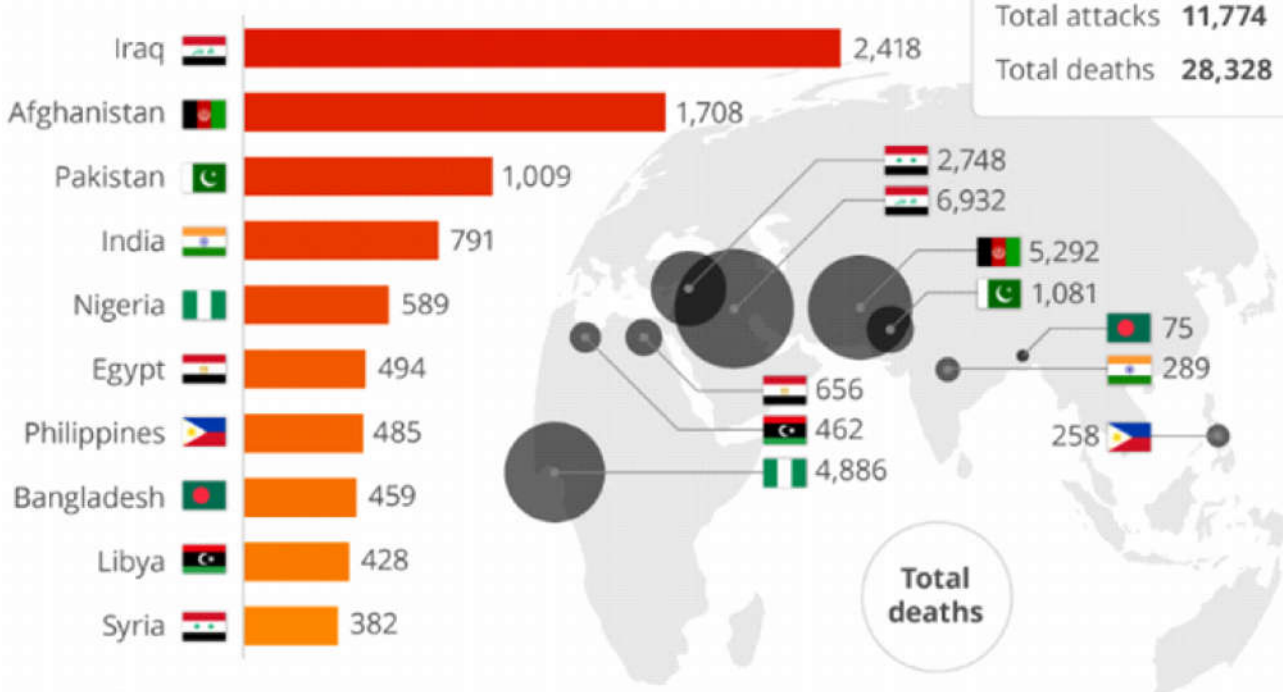
Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

ARC has mentioned different direction and definition of Terrorism, given by the European Union, Un general assembly, the USA department of defence, UK, Canada and Australia,- for example UN assembly-France in 2005 thoroughly consider as, *“any act meant to injure or kill the civilians and the non-combatants, in order to intimidate a population, a government, or an organization and incite them to commit an act against the perpetrators or on the contrary stop them from doing so”*.

## The Countries With The Most Terrorist Attacks

Terrorist attacks and total deaths worldwide in 2015

### Total attacks



### History of Terrorism

- Terrorism has found its root in 11th to 13th century in form of the Zealots in Judea or the Assassins. Religion being a strong motivating factor behind terrorist activities until the French Revolution, in fact, the term “terrorism” originated from the Reign of Terror (Regime de la Terreur) of 1793-94.
- The first major act of terror, considered as the most deadly and spectacular terrorist operation till then, was carried out by the Jewish Irgun (then led by Menachem Begin) when the King David Hotel in Jerusalem was bombed in July 1946, killing nearly a hundred people.
- Following the Second World War, there was a shift in the nature and locale of terrorist activities around the world. The focus of terrorist activities shifted from Europe to the Middle East, Africa and Asia with the emergence of various nationalistic and anti-colonial groups in these regions, notably in Israel, Kenya, Cyprus, Algeria, Palestine and Malaya.
- Left wing extremism, based on their belief that terrorism is the only strategy of revolutionary movement for the weak in the Third World (e.g. in Malaysia, Vietnam etc.), surfaced in Europe and elsewhere as well, especially since the late 1950s. The Red Army Faction in West Germany (also known as the Baader-Meinhof Group), the Red Army Faction of Japan, the Weathermen and Black Panthers in the USA, the Tupamaros of Uruguay and several other left-extremist terrorist groups sprang up during

the 1960s in different parts of the world, including Naxalites and Maoists in India, The Irish Republican Army along with transnational terrorist groups which are motivated by the Islamic fundamentalist ideology are Al-Qaeda, Taliban in Afghanistan, Pakistan's ISI, BOKO- Haram from Nigeria and ISIS from Middle East. Taliban has emerged as the serious security implication to Afghanistan, Pakistan as well as India.

## Types of Terrorism

Depending on the objectives of the group/groups, the nature of terrorism also differs.

- **Ethno-Nationalist Terrorism-**

This becomes prominent only after the II World War which dominated the terrorist agenda around the world for more than 50 years until the emergence of the religious terrorism. It is a deliberate violence by a subnational ethnic group to advance its cause. Such violence usually focuses either on the creation of a separate State or on the elevation of the status of one ethnic group over others. Tamil Nationalist groups in Sri Lanka and insurgent groups in North East India are examples of ethnonationalist terrorist activities.

- **Religious Terrorism-**

The practitioners of terrorism motivated either in whole or in part by a religious imperative consider violence as a divine duty or a sacramental act. It embraces different means of legitimisation and justification compared to other terrorist groups, and these distinguishing factors make religious terrorism more destructive in nature.

- **Ideology Oriented Terrorism-**

The left wing and the Right wing Terrorism consists of an ideology can be used to support the use of violence and the terrorism. Leftist ideologies believe that all the existing social relations and state structures in the capitalist society are exploitative in character and a revolutionary change through violent means is essential. Examples of leftist ideologies that have resorted to the use of terror are numerous. For examples the Red Army Factions in former west Germany, Red Brigades in Italy, Peoples Revolutions Army in Argentina, the, moist groups in India and Nepal.

Right-wing groups generally seek to maintain the status-quo or to return to some past situation that they feel should have been conserved. Sometimes, groups espousing rightist ideologies might assume ethnic/racist character too. They may force the government to acquire a territory or to intervene to protect the rights of an 'oppressed' minority in a neighboring country. For e.g. the Nazi party in Germany, violence against the migrant communities and religion can play the important role. For e.g. Nazism in Germany, Fascists in Italy, white supremacy movements in the US known as Ku Klux Klan (KKK).

- **State Sponsored Terrorism-**

It is initiated to obtain certain clearly defined foreign policy objectives rather than grabbing media attention or targeting the potential audience. Given this character, it operates under fewer constraints and causes greater casualty on the target. In a cost benefit analysis, state-sponsored terrorism is the most effective means of terrorism from the perspective of the perpetrator. Countries like Iran, Iraq, Sudan, and Libya North Korea have been engaged in sponsorship of political violence of different nature in their 'enemy' countries. India has been facing this problem from Pakistan since Independence.

- **Narco Terrorism-**

The attempt by narcotics traffickers to influence the policies of the Government by systematic threat or use by violence'. Narco-terrorism combines two criminal activities; drug trafficking and terrorist violence.

Narco terrorism is motivated mainly by economic reasons as it helps the terrorist organizations raise huge sums of money with minimum cost for their activities. These types of the activities are more in the Central and the south East Asia. As per the UN survey, links between drug traffickers and terrorist groups were observed in 19 out of 38 countries and India is one of them. Islamist terrorist groups in India supported by the Pakistan ISI are active in drug trafficking along the Kashmir valley and also in other parts of the country.

Criticisms Related to the Issue- a 'terrorist' in one country may be viewed as a 'freedom fighter' in another and similarly it is known that some States resort to or encourage various kinds of criminal acts, clandestinely, through their own agencies or hired agents to subvert or to otherwise destabilize another lawfully established government or in extreme cases get important political or government personalities of another State assassinated.

### Terrorism and its Position in India

Terrorism as an offence does not figure in the Indian Penal Code of 1860 as amended from time to time. Terrorist and disruptive activities (prevention) Act, 1987, Prevention of terrorism Act 2002(POTA) Unlawful Activities Prevention Act, 1967 are the special laws which are dealt with the term terrorism.

The laws of some countries (e.g. the USA, Canada, the UK and Australia) speak of the intention behind the terrorist act being for the purpose of advancing a 'political, religious or ideological cause', the Indian laws have avoided any such intention or purpose being incorporated to define or describe a terrorist act. The definition of terrorism is an important aspect of the legal framework to deal with terrorism.

### What are the means of the Terrorism?

- **Convictional mean of the terrorism-** the traditional tactics used by terrorists are attacks on persons and property using weapons, bombs, IEDS, grenades, landmines etc. apart from hostage taking, hijacking and forcible takeover of buildings, especially government/ public buildings, suicide attacks and kidnapping terrorists acquiring Weapons of Mass Destruction (nuclear, chemical or biological) and of cyber terrorism as well as environmental terrorism.
- **Environmental Terrorism-** The eco-terrorism is in protest against the destruction of the natural environment, environmental terrorism is the premeditated damage caused to the natural world for example during the Gulf War of 1991 when Saddam Hussein ordered the detonation of more than 1000 oil wells which engulfed Kuwait in smoke.
- **Weapons of Mass Destruction (WMD)-** it inflict heavy and indiscriminate damage on a given target. Nuclear, chemical and biological weapons are the commonly identified weapons of mass destruction. The possibility of acquisition of such weapons by terrorist organizations, the perceived Iraqi possession of it and the US led war on Iraq brought WMD into focus. It is capable of a high order of destruction and of being used in such a manner as to destroy people, infrastructure, or other resources on a large scale.
- **Chemical weapons-** Release of toxic gas caused by attacking an industrial facility, or releasing a chemical that has been stolen from its legitimate users to inflict heavy damage on the enemy. There is a difference between the chemical weapons and the conventional weapons. Any toxic chemical, regardless of its origin, is considered as a chemical weapon if it is used for purposes that are prohibited. For e.g. - Toxins like, ricin, botulinum toxin, nerve agents, lewisite, sarin.
- **Nuclear Weapon-** the well skilled engineering equipment which resemble to the gun shaped bomb using highly enriched uranium (HEU).



- **Bio Terrorism-** is a relatively new form of terrorist activity that has emerged as a result of the advancements in biotechnology being accessible to terrorist groups. The deliberate release of viruses, bacteria, or other germs (agents) used to cause illness or death in people, animals, or plants". These natural agents are changed to "increase their ability to cause disease, make them resistant to current medicines, or to increase their ability to be spread into the environment." These are spread through air, water or food. Terrorists use biological agents "because they can be extremely difficult to detect and do not cause illness for several hours to several days.
- **Cyber Terrorism-** cyber-terrorism is the convergence of terrorism and cyberspace. It is generally understood to mean unlawful attacks and threats of attacks against computers, networks, and the information stored therein when done to intimidate or coerce a government or its people in furtherance of political or social objectives. Cyber terrorism pointed out in form of the Loss of integrity, loss of availability, loss of confidentiality, and physical destruction.
- **Suicide Terrorism-** the *Fedayeen* have taken on the Armed Forces against almost impossible odds knowing well that they had little chance of returning alive. A majority of the *Fedayeen* who have operated in Jammu & Kashmir have been Pakistanis several of whom had fought in Afghanistan against the Soviets in the 1980's. Many Kashmiris argue that the reason why very few local people volunteer for suicide attacks is because of the Sufi Islamic traditions of this region which embody peace and tolerance. For eg. Rajiv Gandhi assassination in India.

## Terrorism in India

### A. Jammu & Kashmir

The root of the insurgency in J&K traced long back at the time of Pakistan attack in 1940S, India- Pakistan war 1971, 1990. Resulted into the rise of the Islamic fundamentalism, with an emergence of Al-Qaeda, Taliban, Jihadi propaganda, Lashkar-e-Tayyaba (LeT), sharing the former philosophy and outlook. It has known to develop the cells not only in India but also in about 18 countries including USA, U.K., France, Singapore and Australia.

Jaish-e-Mohammed (JeM), HUM, HUJI AND Al-Badr are affiliates to Al-Qaeda are continuously pose a serious threat to the security in India in the form of the exchange of the hijacking, objective to unite Kashmir with Pakistan, suicide attack in J&K, as attack on the J&K Legislative assembly, attack on Indian parliament. Despite the fact that this organization was believed to have been implicated in two attacks on President Musharraf and was banned in Pakistan in 2002, it continues to operate fairly openly in parts of Pakistan.

In later period, nature of terrorist threat has changed, its presence felt just in the Jammu region as special target there has been a change in the violence profile after April 2006 with soft targets like minority groups, tourists and migrant labourers - all innocent citizens - being targeted by the militants, with grenade attacks having increased by more than 49%.the threat from the terrorist groups have increased with the formation of United Jihad Council, as an umbrella organization of 14 militant group led by Hizbul Mujahideen along with the Lashkar-e-Tayyaba and the Jaish-e-Mohammed acquiring the most modern and sophisticated weapons and known support from international terrorist groups.

Government of India is implementing the multi-pronged strategy with the holistic approach calculated to address the political, security, developmental and administrative fronts concerns. On the political aspect primacy has been given to political dialogue with emphasis on political-democratic processes and emphasis on the rule of law. In specific terms, the following steps may be mentioned:

- Emphasis on comprehensive confidence building measures not only within Jammu & Kashmir but also with Pakistan;

- Facilitating people-to-people contact between residents of Jammu & Kashmir and those of POK;
- Initiatives taken to reunite separated families from both sides of the border by opening the Srinagar-Muzaffarabad and Poonch-Rawalakot bus services; considerable relaxation in movements across the LOC in the immediate aftermath of the devastating earthquake in the POK region;
- Government of India initiative in holding periodic dialogues with groups representing different shades of opinion, including the separatists.

***Some internal security related measures:***

- Revitalizing the Unified Command mechanism (introduced first during 1997) under the chairmanship of the State's Chief Minister and having senior representatives of the Army, Central Police Organisations stationed in the State and senior officers of the State's civil and police administration;
- Banning nine terrorist organisations reported to be operating in Jammu & Kashmir under the Unlawful Activities (Prevention) Act, 2004 including JeM, LeT, HM and HuM;
- Setting up Village Defence Committees and appointment of Special Police Officers in selected areas after careful screening; and
- Providing for reimbursement of the State's security related expenditure.

***On The Administrative Front:***

- Relief measures for victims of militancy;
- Encouraging and facilitating return of Kashmiri migrants; and
- Special facilities and concessions provided to Central Government employees posted in the Kashmir valley.

On the developmental front, the main initiative has been the Prime Minister's Reconstruction Plan for Jammu & Kashmir, as announced in November 2004, with an outlay of a substantial amount of Rs.24,000 crores.

India has been fighting the menace of cross-border terrorism in the State of Jammu & Kashmir for over 16 years. The security situation in the State has evolved positively since 1989 on account of the sincere efforts of the SFs and institutions of governance and above all, the people's yearning for peace and normalcy. The efforts of the Union Government and the State Government and especially those of the security forces have helped in controlling the militant activities. The successful conduct of general elections as well as elections to local bodies is a positive indicator of the people's faith in the Indian democracy. Another positive development has been the increasing influx of tourists in the valley.

**B. North Eastern state**

The States in India's North East region have a long history of conflict and violence among the tribal groups within the same State, and also neighboring States. A major part of the geographical area of this region was initially within the ambit of the State of Assam but the manifestation of ethno-nationalism quite often expressed through violence leads to formation of some of the present states.

Indian Constitution had taken into account the special nature of the problems in this region and had provided for innovative models of Autonomous Councils and other measures, the complex pattern of conflicts in the North-Eastern States still continues like, insurgency and illegal immigration in the North East.

### C. Punjab

Partition leads to the formation of Sikh identity state Punjab some related issues remained unsolved as Chandigarh as the state capital, sharing of the river waters etc. DEMAND OF TERRORIST FOR THE Khalistan put the situation more aggravated. Rajiv Gandhi- Longowal accord and other disputes are makes the environment more turbulence. Government following the policy which has based on four parameters-security action to contain and eliminate terrorism; sub-terranean contacts with militants to persuade them to give up violence and come to the negotiating table; over-the-table discussions with dissident elements who were prepared to eschew violence and accept the basic tenets of the Constitution in exchange for full integration into the country's democratic process, and sensitivity to religious, cultural and ethnic sentiments of the affected population. There are isolated embers even now and the problem mainly emanates from sections living abroad.

### D. Ideology – oriented terrorism: (Left wing Extremism-LWE)

This concept is known for the resorting to violence in the pursuance of their ideology of people's revolutionary movement. In west Bengal 1967, extremists' break-away faction of the CPM, good following among the tea garden labourers further commenced agrarian revolution. The highlights of subsequent developments of left extremist movement, known since then as the Naxalite movement and its later reincarnation as the Maoist movement since 2004.

In May 1968- formation of the All India Co-ordination committee of communist revolutionaries- (AICCCR), In 22 April 19690 formation of new Marxist- Leninist party to known as the CPI (ML), violence in the name of the 'annihilation of class enemies' started surfacing thereafter in parts of the different states like, West Bengal, Andhra Pradesh, Kerala, Bihar, UP besides Orissa, Madhya Pradesh and Punjab by CPI (ML) leaders.

In May 1971, when the leaders of the extremist faction were known to be supportive of Pakistan during the Bangladesh liberation struggle of 1970-71, the defiance against Charu Majumdar gathered momentum.

Various splinter groups of Naxalites started resurfacing in various parts of India during the early 1980s. Thus, the Naxalites of Andhra Pradesh regrouped as the CPI-ML (Peoples'

War Group/ PWG); likewise the Bihar Naxalites rechristened themselves as the Maoist

Communist Centre (MCC), the CPI-ML (PWG) turned out to be the most active not only in Andhra Pradesh but also in Orissa, in the tribal belt (Bastar-Dandakaranya) of Madhya Pradesh (now mostly in the State of Chhattisgarh) and Maharashtra, causing considerable violence in these States.

In Andhra Pradesh the PWG succeeded in mobilizing a large section of the rural population as well as some urban area. With the help of the vocal civil society leaders openly start holding the 'praja courts' (people's court) where, land-owners, money-lenders and even against Government officials were being entertained and 'swift justice' meted out. People in these areas of PWG influence could witness the utter lack of good and effective administration. At the same time, reckless and indiscriminate actions of the PWG squads ('dalams') in the shape of forcible collection of funds from land-owners, businessmen and others alienated a section of the people who started mounting pressure on the State Government for firm action against the PWG.

Maoist cadres which prompted them to resort to brutal murders and tortures of villagers on the slightest suspicion of being police informers making the hub in Nallamalla forest and nearby areas. This created further alienation among the local villagers when they saw that those who claimed to be their saviours could be so ruthless and indiscriminate in their conduct. The Andhra Pradesh state government commenced large scale police operations this forced the Andhra Maoists to vacate these areas and get dispersed in adjacent pockets in the Dandakaranya belt of Chhattisgarh and in some of the adjacent districts of Orissa.

Meanwhile the Maoists developed some expertise in the use of landmines and IEDs which caused very significant casualties among police and other security personnel operating in Chhattisgarh. Another significant development in this State has been the creation of resistance groups from amongst the tribal people known as the **Salwa Judum**.

In the Bihar Naxalites namely the Maoist Communist Centre/ MCC founded the command over the armed gangs (senas) of the landloard clases, the Ranbir sena, the Bhumihar sena etc. A few massacres of the Dalits make a strong appeal. Instead of assuming the characteristics of class struggle as propagated by Maoist ideologues, the skirmishes took the shape of caste warfare. With the creation of Jharkhand with the tribal majority districts of erstwhile Bihar, the Maoists naturally emerged as a strong ally of the exploited tribal poor and MLAs, MPs were becoming the targets of the Maoists violence.

In West Bengal, the Naxalites repeating some of their tactics of the 1969-72 period and started targeting the CPM party functionaries at local levels where such local leaders were mobilising support against the Naxalites.

Naxalites have been regrouping in some of their earlier areas of influence of the 1969-72 phase. This trend is likely to extend to some other areas during 2005-08 and further on. Barring a few splinter groups; Naxalites have largely completed their process of merger and consolidation with the formation of the CPI (Maoist) on 21 September 2004. This was followed by their increasing militarisation and simultaneous acquisition of sophisticated firearms and ammunitions. It is believed that currently the

Maoists have also gained access to the technology of fabricating rockets and rocket launchers.

The Naxalites have so far been causing nearly 100 landmine explosions every year with considerable loss of lives of security personnel of state and central police, quite a disturbing phenomenon. Foreg. In J&K use of landmines are detonated with remote-controlled device, the Naxalites so far have been using

Wire-controlled detonations which cannot be neutralized electronically, attack on the a Mine-protected Vehicle in Dantewada district of Chhattisgarh, killing 24 policemen (CRPF), police chief in Bihar KC Surendra Babu was killed in the IED attack. CM of Andra Pradesh Chandrababu Naidu and Jananrdhan Reddy had a providential escape from an IED attack.

*Some example of the heightening naxalite's militarization phase and their attacks:*

- On 6 February 2004, a few hundred Naxalites laid siege to the district headquarters town of Koraput (Orissa),
- On 13th November, 2005, there was a massive, well organized and audacious Naxalite onslaughts on a number of government buildings in Jehanabad (Bihar) known as the 'Jehanabad (Bihar) Raid' or 'Operation Jail Break',
- 11 November 2006: Armed Naxalites and members of their peoples' militia numbering a few hundred raided the Home Guards Training Centre in Giridih (Jharkhand), looted 185 rifles and 25,000 rounds of ammunition,
- 15 March 2007: 55 policemen were killed in Rani Bodli (Chhattisgarh),
- 7 July 2007: 24 policemen were slaughtered in the forests of Dantewada district (Chhattisgarh),
- 16 December 2007: A well-planned jail break was organized by the Maoist inmates who were lodged in the district jail of Dantewada (Chhattisgarh).

**E. Terrorism based on Religious Fundamentalism**

There have been several terrorist incidents in India which were motivated by religious fundamentalism. Some of these activities overlap with political ambitions – like separatist elements in Jammu & Kashmir. Some of these incidents have been aided and abetted by external forces inimical to India.

The ISI launched an initiative in 1991, even before the Babri Masjid demolition to forge an alliance between Khalistani terrorism that prevailed in Punjab and the terrorist groups in Jammu & Kashmir. In January, 1994, Mohammed Masood Azhar Alvi arrived in India with the task of working out the reconciliation of the cadre of Harkat Mujahiddin and Harkat-ul Jihad Islami whose parent organizations had merged to form the Harkat-ul-Ansar. His organisation's main objective was to liberate Kashmir from Indian rule and to establish Islamic rule in Kashmir and interacted with the leading figures of the Deoband Ulema.

The Pakistani Intelligence was the setting up of the Jammu & Kashmir Islamic Front leading to the Islamic Terrorism. Its task was to work together with the mafia figures who had executed the Mumbai serial bombing of 1993. JKIF was responsible for the Lajpat Nagar blasts in New Delhi in 1996.

In 2001, several Islamic terrorist attacks took place in New Delhi, the most important being the attack on the Parliament House in December 2001. The attack on Akshardham temple and the killing of Haren Pandya, the former Home Minister of Gujarat State, were the major operations of Islamist terrorists in 2002 and 2003. In July 2005, there was an attack at Ayodhya which the Security Forces succeeded in repulsing. This was followed by the Sarojini Nagar market blast in November, at New Delhi. The heinous serial bomb blasts in Mumbai took place in July 2006. A suicide attack (in which only the Bangladeshi suicide killer died) near the Office of the Commissioner of Police, Hyderabad; an attack on the

Indian Institute of Science in Bangalore in which an eminent scientist was killed and the Aurangabad arms seizure case were the other major terrorist incidents of 2006. The latest in the spate of such terrorist attacks has been the serial bomb blasts in Jaipur on 13th May, 2008 in which a number of innocent lives were lost.

It is important to take a look at the role played by the Students' Islamic Movement of India (SIMI) in the promotion of Islamist extremism in India. Funded generously by various Islamist charities, but particularly the World Assembly of Muslim Youth with its headquarters in Riyadh, SIMI spread its activities to various States in India. SIMI was banned by the Government of India under the Unlawful Activities (Prevention) Act, 1967, in September, 2001.

### Emerging Threats

In today's world terrorist networks have taken advantage of the communications revolution to develop transnational links, making terrorism a global threat. Thus, Al-Qaeda is a global terror network which is a loose federation of terror-cells spread across the world but operating autonomously with very little operational linkages among them other than adherence to a particular form of extremist ideology.

Another feature of the spread of terrorism is the ability of many terrorist outfits to cooperate with each other and build operational links in the form of supply of arms, logistical and even operational support without necessarily sharing ideological bonds. Such networks are also able to obtain support from organized crime outfits to further their destructive objective.

The impact of modern technology, particularly communication technology combined with increasing globalization, rapidly increasing trade in goods and services as well as faster movement of people across borders means that terrorism in the 21st century has acquired newer and deadlier dimensions.

The existence of a large migrant population and porous borders in an increasingly multi-cultural world means that sleeper cells spawned through propagation of terrorist ideology, often by using the internet, can become the fifth column threatening the national fabric of democratic countries. Integration of national economies, banking and financial systems coupled with faster movement of money across national borders also make it easier to fund terrorist activities around the globe.

## Strategy to Counter Terrorism

National security, in its broadest sense, means security of life and property of every citizen in the country, as well as the common wealth of the nation, which belongs to all. The objective of the national security strategy has to be the creation and maintenance of a security environment which would enable the nation to provide opportunities to all individuals to develop to their fullest potential. Much of the discourse on national security strategy has been based on the premise that national security can be achieved by ensuring protection of life and property for all. However, it needs to be clearly understood that socio-economic development and providing a secure environment have to go hand-in hand as one cannot survive without the other.

### Development and Extremism

In many ways, development and internal security are two sides of the same coin. Each is critically dependent on the other. Often, the lack of development and the lack of any prospects for improving one's lot provide a fertile ground for extremist ideologies to flourish. A large proportion of the recruits to extremist groups come from deprived or marginalized backgrounds or from regions which somehow seem disaffected by the vibrant growth in many other parts of the country. I had mentioned yesterday that I am concerned about the unevenness of our development process and the various development divides that are opening up in the country — the inter-regional divide, the rural-urban divide and the inter-sectoral divide. These divides and disparities lead to disaffection, large-scale migration, and also to discord. I notice that in many cases, internal security problems arise out of the uneven development and we also need to address this issue if we are to make any long-term headway in combating extremist ideologies and extremist elements.

Any threat which could slow down this process has to be considered a threat to national security. Among other causes, such threats could emanate from war, terrorism, organized crime, shortage of energy, shortage of water and food, internal conflict which may be armed or not or from natural or man-made disasters.

To tackle the menace of the terrorism, socio-economic development is a Priority, particularly the service delivery mechanisms need to be responsive to the legitimate and long standing grievances of people, Strong measures are required to deal with criminal elements but with respect for human rights. To ensure this, the law enforcement agencies have to be supported with an appropriate legal framework, adequate training infrastructure, equipment and intelligence. The Government, political parties, security agencies, civil society and media – would have an important role to play. This strategy should amalgamate political, social, economic, administrative, police and other measures.

The necessary element of a strategy includes- Political consensus, good governance and the socio- economic development, respect for rule of law, countering the subversive activities of terrorists, providing the appropriate legal framework and the capacity building.

### Global counter-terrorism strategy adopted by the UN general assembly in September- 2006

The United Nations Global Counter-Terrorism Strategy was adopted by Member States on 8 September 2006. The strategy, in the form of a resolution and an annexed Plan of action, is a unique global instrument that will enhance national, regional and international efforts to counter terrorism. This is the first time that all Member States have agreed to a common strategic approach to fight terrorism, not only sending a clear message that terrorism is unacceptable in all its forms and manifestation but also resolving to take practical steps individually and collectively to prevent and combat it. Those practical steps include a wide array of measures ranging from strengthening state capacity to counter terrorist threats to better coordinating United Nations system's counter-terrorism activities.

The adoption of the strategy fulfils the commitment made by world leaders at the 2005 September Summit and builds on many of the elements proposed by the Secretary-General in his 2 May 2006 report, entitled 'Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy'.

The plan of action includes the following four measures:

- i) Measures to address the conditions conducive to the spread of terrorism, including but not limited to prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization, and lack of good governance.
- ii) Measures to prevent and combat terrorism, in particular by denying terrorists access to the means to carry out their attacks, to their targets and to the desired impact of their attacks.
- iii) Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard.
- iv) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism, reaffirming that the promotion and protection of human rights for all and the rule of law is essential to all components of the strategy, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism.

### Dealing with the Terrorism: Legal Framework

India too has had various enactments for dealing with terrorism in the past – (i) The Terrorist and Disruptive Activities (Prevention) Act, 1987 (allowed to lapse in 1995), and (ii) The Prevention of Terrorism Act, 2002 (repealed in 2004), Unlawful Activities (Prevention) Act, 1967 {as amended by the Unlawful Activities (Prevention) Amendment Act, {2004} and the National Security Act, 1980.

The Law Commission in its 173rd Report (2000) examined this issue and highlighted the need for a law to deal firmly and effectively with terrorists. There is a felt need to strengthen the hands of security forces in the fight against terror, even as human rights and constitutional values are protected.

*Following are the legislative measures adopted in India:*

#### A. The National Security Act, 1980

The National Security Act, 1980 empowers the Union Government or the State Governments to detain a person to prevent him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or with respect to any foreigner with a view to regulating his continued presence in India.

#### B. The Terrorist and Disruptive Activities (Prevention) Act, 1985 and 1987

It was expected then that this Act would be possible to control this menace within a period of two years and, therefore, the life of the said Act was restricted to a period of two years. However, it was subsequently realized that on account of various factors, what were stray incidents in the beginning, had become a continuing menace especially in States like Punjab. Its provisions needed further strengthening in order to cope up with the menace of terrorism and the Terrorist and Disruptive Activities (Prevention) Act, 1987 (commonly known as TADA) was enacted.

### C. Terrorist Act and Disruptive Activity (TADA), 1985

Established a system of special courts (“*Designated Courts*”), the Law placed restrictions on the grant of bail by stipulating that unless the Court recorded the existence of “*reasonable grounds for believing*” that the accused was “*not guilty*”, bail should not be given. The police were given enhanced powers for detention of suspects; for protection of witnesses and at the same times it was provided that trials under the law should be accorded precedence over other cases. Certain offences were re-defined (e.g. harbouring or concealing terrorists; being a member of a terrorist gang or terrorist organization; holding of property derived as a result of terrorist acts etc.).

It provided for a new offence of “possession of unauthorized arms in notified areas”. It provided for enhanced penalty for certain specified offences. The police officers were given more powers in the matter of seizure of property regarding which it was believed that it had been derived as a result of terrorist acts, besides provision for attachment and forfeiture of such property was also made. It extended the possible period of detention of a suspect in police custody pending investigation.

It made confession before a police officer admissible. Executive Magistrates were granted powers under Section 167 CrPC. the “First Information Report” (FIR) cannot be registered except after “prior approval of the District Superintendent of Police”. The Courts were empowered to make certain presumptions (Section 21).

In 1987, the provision regarding the admissibility of evidence adduced before police officers was tempered and it was laid down that immediately after any such admission the accused should be produced before a Judicial Magistrate. The Supreme Court also directed that, the Government to constitute Review Committees for periodical “scrutiny” of the cases registered and also to review the prevailing situation in the areas notified as ones affected by terrorist activities. The validity of TADA, 1987 was extended in 1989, 1991 and 1993. However, after a series of complaints about its abuse, TADA, 1987, was allowed to lapse in 1995.

Subsequently, the country witnessed several terrorist incidents –including hijacking of the Indian Airlines flight IC-814 to Kandahar in 1999 and the assault on Parliament on December 13, 2001.

### D. Prevention of Terrorism Act, 2002

The object to frame this law - The country faces multifarious challenges in the management of its internal security. There is an upsurge of terrorist activities, intensification of cross-border terrorist activities and insurgent groups in different parts of the country. Very often, organized crime and terrorist activities are closely inter-linked. Terrorism has now acquired global dimensions and has become a challenge for the entire world.

The salient features of the Prevention of Terrorism Act, 2002 (POTA) includes-

Definition of ‘Terrorist act’; Arrest Provisions; Seizure and Forfeiture of Proceeds of Terrorism; Interception of Communication; Unauthorised Possession of Firearms; Enhanced powers to Investigating Officers; Increased Period of Police Custody; Constitution of Special Courts; Chapter on Dealing with Terrorist Organizations; Constitution of Review Committee.

The Supreme Court upheld the Constitutional validity of the law while stipulating some restrictions on the arbitrary use of certain powers. Government repealed POTA as it felt that its provisions were misused by some State Governments and also that the Act had failed to serve its intended purpose. This was done through the Prevention of Terrorism (Repeal) Act, 2004. After repeal of POTA, 2002, some provisions to deal with terrorism were incorporated in the Unlawful Activities (Prevention) Act, 1967 as amended by the Unlawful Activities (Prevention) Amendment Act, 2004.



### E. The Unlawful Activities (Prevention) Act, 1967

This law was enacted to provide for more effective prevention of certain unlawful activities of individuals and associations and for matters connected with it. It empowered appropriate authorities to declare any association as 'unlawful' if it is carrying out 'unlawful activities' terrorist activities. Like POTA, it defines a 'terrorist act' and also defines a "terrorist organisation" as an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed. It further provides a mechanism for forfeiture of the proceeds of terrorism apart from providing stringent punishments for terrorism related offences. Although ULPA incorporates provisions regarding seizure and forfeiture of property, enhanced punishments and listing of terrorist organizations, it does not provide for special courts or enhanced powers of investigation and provisions regarding confessions made before police officers.

#### Need for a Comprehensive Anti Terrorist Legislation

The draft bill as recommended by the Law Commission of India included provisions such as definition of terrorist acts, enhanced punishment for such acts, possession of certain unauthorized arms, special powers of investigating officers regarding seizure and attachment of property representing proceeds of terrorism, constitution of special courts, protection of witnesses, confessions made to police officers to be taken into consideration, enhanced police custody, constitution of review committees, protection of action taken in good faith etc. (for e.g. Rajiv Gandhi Assassination).

A comprehensive and effective legal framework to deal with all aspects of terrorism needs to be enacted. The law should have adequate safeguards to prevent its misuse. The legal provisions to deal with terrorism could be incorporated in a separate chapter in the National Security Act, 1980.

The extradition of accused persons assumes significance in case of terrorism related offences; as such persons often either flee from India or conspire from their bases in other countries. The Extradition Act, 1962 governs the extradition of such accused persons. Apart from this law, extradition is also governed by bilateral treaties between countries. Extraditions are generally governed by the 'principle of double criminality'- which stipulates that the alleged crime for which extradition is being sought must be criminal in both the demanding and the requested countries.

*There is need to define more clearly those criminal acts which can be construed as being terrorist in nature. The salient features of this definition should inter alia include the following:*

- Use of firearms, explosives or any other lethal substance to cause or likely to cause damage to life and property and essential infrastructure including installations/establishments having military significance.
- Assassination of (including attempt thereof) public functionaries. The intent should be to threaten the integrity, security and sovereignty of India or overawe public functionaries or to terrorize people or sections of people.
- Detention of any person or threat to kill or injure any person to force the government to act or abstain from acting in a particular manner.
- Providing/facilitating material support, including finances, for the aforesaid activities.
- Commission of certain acts or possession of certain arms etc. by members or supporters of terrorist organizations which cause or are likely to cause loss of life, injury to a person or damage to any property.

*Recommendation regarding grant of bail, the law should provide that,*

- Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard;

- Where the Public Prosecutor opposes the bail application of accused to release on bail, no person accused of an offence punishable under this Act or any rule made there under shall be released on bail until the Court is satisfied that there are grounds for believing that the accused is not guilty of committing such offence. Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-section (i) of this section shall apply.
- A Review Committee should review the case of all detenues periodically and advise the prosecution about the release of the accused on bail and the prosecution shall be bound by such advice.

#### *Period of Detention (Remand) during Investigation*

- Section 167 of the CrPC provides that whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within a period of 24 hours and there are grounds for believing that the FIR is well founded, the officer incharge of the police station shall produce the accused before the nearest Magistrate. On production of such accused, it has been stipulated that such Magistrate may authorize the detention of the accused in such custody for a term not exceeding 15 days.
- The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding –
  - a) 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years;
  - b) 60 days, where the investigation relates to any other offence, and, on the expiry of the said period of 90 days, or 60 days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that chapter.
- No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;
- No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.
- For terrorist and other related offences, it should be provided that Section 167 of the CrPC shall apply subject to the modification that in sub-section (2), the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively.

#### *Confession before a Police Officer*

- Protection against self incrimination is a basic principle of the Constitution and our criminal justice system. This has been enshrined in Article 20 (3) which provides: “No person accused of any offence shall be compelled to be a witness against himself”.
- POTA also had provisions similar to TADA for dealing with the admissibility of confessions made before the police. It also incorporated the salient features of the guidelines laid down by the Supreme Court in the case Kartar Singh v/s State of Punjab.

*(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound tracks from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act or the rules made there under.*

*(2) A police officer shall, before recording any confession made by a person under sub-section (1), explain to such person in writing that he is not bound to make a confession and that if he does so, it may be used against him:*

*Provided that where such person prefers to remain silent, the police officer shall not compel or induce him to make any confession.*

*(3) The confession shall be recorded in an atmosphere free from threat or inducement and shall be in the same language in which the person makes it.*

*(4) The person from whom a confession has been recorded under sub-section (1), shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty-eight hours.*

*(5) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate, shall, record the statement, if any, made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon and thereafter, he shall be sent to judicial custody.*

- The Committee on Reforms of the Criminal Justice System, 2003 recommended that Section 25 of the Indian Evidence Act should be amended to render confessions made before a police officer, admissible as evidence. Those opposing the admissibility of confessions before the police have argued that if an accused is willing to make a voluntary confession, then he could easily be produced before a Magistrate rather than being produced before a senior police officer. It is also argued that police may resort to coercive methods in order to extract confessions. The amended UAPA, therefore did not provide for making confessions before the police as admissible evidence.
- The Commission has examined this issue in its report on 'Public Order' and has suggested wide ranging reforms in the structure and functioning of the police. It has recommended that the investigation agency should be supervised by an autonomous Board of Investigation. This would ensure that the Investigation Agency is insulated against any extraneous influences and would function in a professional manner. It has also recommended that the staff of the investigation agency should be specially trained for their job with emphasis on collecting evidence through use of forensic tools and eschewing coercive methods moreover, the setting up of a District Complaints Authority and also a State Police Complaints Authority which would effectively deal with cases of any misconduct by the police. With these elaborate safeguards there should be no reason to continue to distrust the police with regard to admissibility of statements made before them. However it also stipulated that the person, from whom a confession has been recorded, shall be produced before the Court of a Chief Metropolitan Magistrate or the Court of a Chief Judicial Magistrate along with the original statement of confession, written or recorded on mechanical or electronic device within forty-eight hours. Under the circumstances it would be better if the accused is produced directly before the judicial magistrate as criminal courts/magistrates are normally available at the taluka levels.
- Confession before the police should be made admissible as recommended in the Report on Public Order. But this should be done only if comprehensive police reforms as suggested by the Commission are carried out. Till such time confessions should continue to be made before judicial magistrates under Section 164 CrPC.

### *Presumption under the Law*

The following legal provisions should be included regarding presumptions:

If it is proved –

- That the arms or explosives or any other dangerous substance were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of similar nature, were used in the commission of such offence; or that by the evidence of an expert the fingerprints of the accused, or any other definitive evidence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence the Court shall draw adverse inference against the accused.
- If it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, an offence of terrorism, the Court shall draw adverse inference against the accused.

### *Review committee*

Laws dealing with extraordinary and complex crimes like terrorism require extraordinary provisions which place special tools in the hands of the concerned agencies to successfully investigate and prosecute such crimes. This underscores the need to provide adequate safeguards and checks and balances in the concerned legislation to prevent misuse/abuse of the stringent provisions contained in these Acts. It is also for this reason that the National Security Act which provides for preventive detention has a provision for an Advisory Board as an institutional safeguard to prevent /stop misuse of the detention provisions. COFEPOSA also has similar provisions to check wrongful detention/misuse.

The Law Commission which recommended the 'Prevention of Terrorism Bill, 2000' proposed constitution of a review committee headed by the Chief Secretary, to review all cases at the end of each quarter and give directions as appropriate. After the repeal of POTA, the Unlawful Activities (Prevention) Amendment Act, 2004 provides for constitution of review committees headed by a person who is or has been a Judge of the High Court. The role of the review committees is however limited to Section 36 which provides for notification/denotification of a terrorist organization.

A statutory Review Committee should be constituted to examine each case registered, within 30 days of its registration. The Review Committee should satisfy itself that a prima facie case has been made out by the investigation agency. This Committee should review each case every quarter.

### *Witness Protection*

No law has yet been enacted for giving protection to witnesses.

**The Court which stated on the need for the legislation on the issue:** "Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society."

Consequently, witness protection programs of that type and scale may not be feasible except in a small number of very rare cases. Nevertheless, there is need for a statutorily backed witness protection provision.

The Supreme Court of India in Sakshi v/s Union of India, 2004 observed -

*The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment... The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them*

*in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice.*

*Therefore, a screen or some such arrangement can be made where the victim or witness do not have to undergo the trauma of seeing the body or face of the accused”*

**Recording of statement through video conferencing** – This is another method by which a victim may avoid direct confrontation with the accused while adducing evidence.

**Providing physical protection to the witnesses/victim:** The Courts often direct the police to provide adequate protection to the witnesses/victims. Changing the “identity” of the witness, this option should be kept open and be exercised if the witness requests and the court is convinced of the need for such a move. Another way of protecting the identity of a witness may be by disallowing the accused to see the witness or conceal the witness’s identity.

### *Special Courts*

The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.”

Provisions for constitution of Special Fast Track Courts exclusively for trial of terrorism related cases may be incorporated in the law on terrorism. Other specific provisions related to such Special Courts may also be incorporated. Such Courts may be set up as and when required.

### *Possession of Arms*

(a) Applied to persons in unauthorized possession of certain arms and ammunition specified in Arms Rules, 1962, in a notified area, paragraph (b) on the other hand was applicable in case of persons in unauthorized possession of not only bombs and dynamite but also hazardous explosive substances, weapons of mass destruction or biological or chemical substances of warfare in any area, whether notified or not.

Under POTA, a person having unauthorized possession of these objects in both the cases was guilty of terrorist act punishable with a term extending to life imprisonment. The State

Government was empowered to specify ‘notified areas’ by way of notification in the Official Gazette. Such a provision is not present in the ULPAA.

Provision for penalizing unauthorized possession of certain specified arms and ammunition in notified areas and unauthorized explosive substances, weapons of mass destruction and biological or chemical substances of warfare in notified as well as non-notified areas, may be incorporated in the law on terrorism.

### *Federal Agency to Investigate Terrorist Offences*

All the offences proposed to be included in the category of so called ‘Federal Crimes’ are already included as offences under the Indian penal laws. However, as the gravity and complexity of such offences have increased, it would be necessary to put in place appropriate procedures for dealing with such offences. This would necessitate the enactment of a new law to deal with a category of offences which have inter-state and national ramifications. This would also facilitate their investigation by specialized State or Central agency. The following offences may be included in the proposed new law: The law should also prescribe the procedure for investigation and trials of such offences

- Organized Crime
- Terrorism
- Acts threatening national security
- Trafficking in arms and human beings
- Sedition
- Major crimes with inter-state ramifications
- Assassination (including attempts) of major public figures
- Serious economic offences

A new law should be enacted to govern the working of the CBI. This law should also stipulate its jurisdiction including the power to investigate the new category of crimes. It should be ensured that this Division of the CBI is staffed by personnel of proven integrity and who are professionally competent and have developed the required expertise in investigation of terrorism related offences. The autonomy and independence of this agency may be ensured through a laid down procedure of appointment and assured fixed tenure for its personnel.

Committee recommended on Federal Agency for Combating Terrorism. The Committee is of the view that the internal threats posed by divisive forces are equally important as external aggressions and that technology has facilitated the exponential escalation of the danger and threat levels posed by organized crimes and terrorism. Therefore, they should be dealt with very stringently and while doing so, prevention of incidents which threaten the security of our nation should be given prime thrust and priority. In this regard, the Committee strongly feels that the Central Government should be given adequate powers to take prompt and effective action on the intelligence available to them. The Committee is of the opinion that in order to ensure proper management and prevention of such incidents which threaten the security of the nation, the CBI should be envisaged as an enforcement agency also which would mean that apart from investigation and prosecution, CBI should be given mandate to ensure prevention of crimes. The Committee recommends that a separate Anti-Terrorism Division should be created in the CBI.

### **Measures Against Financing Terrorism**

Terrorist activities in most cases require substantial financial support. Such activities generally involve the propagation of an ideology advocating militant action to achieve their goals, increasing the number of devoted followers willing to carry out militant action in furtherance of such goals, acquisition of and training in use of arms and explosives, planning and execution of such militant action etc. All these necessarily require significant funding. Apart from the proceeds of illegal operations, such funding could be sourced even from the proceeds of lawful activities.

In fact, terrorist organizations could also finance their activities by either resorting to or working in concert with cartels involved in drug trafficking, smuggling etc. – without having to resort to money-laundering per se. Funding could also involve counterfeiting of currency. Apart from using the facilities provided by international trade, such organizations also take recourse to bulk cash smuggling and use of informal channels of transfer of money (like hawala). This is the reason that internationally, there has been a tendency to merge the anti-money laundering and counter-terrorist finance (AML/CTF) regimes.

**However, two features distinguish the activities related to money laundering operations with those related to financing of terrorist activities, which have a bearing on the nature of strategy to be adopted in a counter-terrorist finance regime. These are:**

- 1) In case of money laundering, the activity begins with the generation of proceeds from unlawful activities/crime and ends with their conversion into legal assets (movable or immovable). On the other hand, financing of terrorist activities could be from legal or illegal funds and it culminates when it reaches the perpetrators of a terrorist act. Even if it involves money laundering activity in between, the money trail has to continue to its final destination. This widens the scope of investigation in cases involving terrorist finance.
- 2) In the case of money laundering, even if the proceeds of unlawful activities/ crime get 'laundered', enforcement authorities could undo the effect on the basis of post-facto investigation. In case of terrorist finance, once the finance chain is completed and an act of terrorism has taken place, post facto investigation is limited to generating evidence leading to conviction of the perpetrators; loss of life and damage to property and public confidence is already done.

The success and failure of a counter-terrorist finance regime would thus depend on the manner in which these two elements are incorporated in its strategy. The main planks of a strategy to deal with the financial aspects of terrorist activities tend to involve:

- Asset recovery and obstruction powers
- Legal penalties against persons/organizations involved in financing terrorism
- Adoption of diligent customer identification programmes and standard record
- keeping procedures by financial institutions/agencies
- Reporting of suspicious financial activity by individuals and institutions
- Anti-money laundering measures
- Capacity building and coordination mechanisms between agencies involved
- International cooperation

### **Measures in India**

The provisions related to money laundering are contained in the Prevention of Money-Laundering Act, 2002 (PMLA) as amended by the Prevention of Money-Laundering (Amendment) Act, 2005.

As per Section 2(p) of the PMLA, money-laundering has the meaning assigned to it in Section 3 of the Act which defines the offence of money-laundering as follows:

***“Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-launder.”***

Thus, money-laundering is confined to activities/offences connected with 'proceeds of crime'. 'Proceeds of crime' has been defined in Section 2(u) of the Act to mean any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a 'scheduled offence' or the value of any such property. Scheduled offence specified as, if the total value involved in such offences is thirty lakh rupees or more.

The offences listed in the Schedule reveals that offences related to organised crime and racketeering; terrorism, including terrorist financing; trafficking in human beings; illicit trafficking in stolen and other goods; fraud, especially financial frauds; counterfeiting and piracy of goods; smuggling and insider trading and capital market manipulations etc. are not listed therein.

This limits the effectiveness of the Act as far as dealing with complex money laundering and terrorist financing operations is concerned. Act which relate to keeping a brothel and living on the earnings of prostitution is omitted from the money laundering virtue. The omission of this section from the purview of the PMLA removes the proceeds of crime related to this area from the pale of money-laundering legislation. The PMLA would be attracted only if the nexus between a laundered property and any particular predicate offence is established.

The Prevention of Money Laundering Act incorporates two sets of measures to counter money laundering: (i) it describes the power and authority available with the officers enforcing the law; and (ii) it also provides for a transaction reporting regime which is administered by a separate financial intelligence unit.

### *Financial Intelligence Unit*

The regulations include maintenance of record of prescribed transactions, furnishing information to FIU-IND in the prescribed format, and verification of clients in the prescribed manner. Every reporting entity is required to furnish to FIU-IND, inter alia, monthly information relating to cash transactions of value of rupees 10 lakhs or its equivalent in foreign currency, series of integrated cash transactions valued below rupees 10 lakhs or equivalent foreign currency taking place in a month; information on transactions which appear to be complex or which raise the suspicion of involving proceeds of crime, within seven days of being satisfied regarding this, etc.

FIU-IND analyses these reports and disseminates the information to appropriate enforcement/intelligence agencies. The recipients of such information are the Ministry of Home Affairs, Research & Analysis Wing, Intelligence Bureau, National Security Council Secretariat, Central Board of Direct Taxes, Central Board of Excise & Customs, Directorate of Enforcement, Narcotics Control Bureau, Central Bureau of Investigation, Reserve Bank of India, Securities and Exchange Board of India and Insurance Regulatory Development Authority. Presently, all banking companies including private foreign banks, co-operative banks, RRBs, financial institutions including insurance companies, hire-purchase companies, chit funds, non-banking financial companies and intermediaries mentioned in Section 12 of SEBI Act constitute a reporting entity.

- The Prevention of Money-laundering Act (PMLA) may be suitably amended at an early date to expand the list of predicate offences to widen its scope and outreach.
- The stage at which search and seizure action may be taken under the PMLA may be advanced in cases involving wider ramifications. Adequate safeguards may also be put in place in such cases.
- It may be examined whether institutional coordination mechanisms between the Directorate of Enforcement and other intelligence collecting and investigating agencies, could be strengthened and some provisions of the PMLA delegated to them by the Enforcement Directorate.
- The financial transaction reporting regime under the Financial Intelligence Unit (FIU-IND) may be extended to cover high risk sectors such as real-estate. There is also need to strengthen the capacity of FIU-IND to enable it to meet future challenges.
- It would be useful to utilize the platform provided by the Regional Economic Intelligence Councils (REICs) for increased coordination among various investigation agencies in cases which are suspected to be linked with money laundering. Further, owing to the complexity of cases involved, the FIU-IND, apart from disseminating agency specific information, should furnish overall region-centric information to the Central Economic Intelligence Bureau (CEIB) for disseminating it to the respective REICs with a view to expanding the information regime.



### *Measures to Block the Flow of Funds for Financing Terrorist Activities*

Anti-terrorist legislations in India always contained provisions pertaining to financing of terrorist activities and proceeds of terrorist acts.

- **Making terrorist finance an offence:**

Under TADA holding property derived or obtained from any terrorist activity or acquiring them through terrorist funds was an offence. The Act also provided for seizure of such property.

Under POTA also, holding property derived or obtained from any terrorist activity or acquiring them through terrorist funds was an offence. As mentioned earlier in this Report, the Prevention of Terrorism Act, 2002 (POTA) also included the phrase ‘act of raising funds intended for the purpose of terrorism’ in the definition of the term ‘a terrorist act’ itself.

POTA also made the holding of proceeds of terrorism illegal {Section 6(1)} and provided that such proceeds *“whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act, shall be liable to be forfeited to the Central Government or the State Government, as the case may be...”*

The Unlawful Activities (Prevention) Amendment Act, 2004 also provides for punishment for knowingly holding a property derived or obtained from the commission of a terrorist act or acquired through terrorist funds (Section 21). The Investigating Officer is also authorized to seize and detain any cash to which the Chapter on ‘Forfeiture of Proceeds of Crime’ applies including traveller’s cheques and banker’s drafts etc. if they are related to terrorism or a terrorist organization.

- **Blocking the channels of financing terrorist activities:**

Carrying out of any terrorist act would necessarily involve financial backing; any strategy to counter financing of terrorism should not only contain measures regarding investigation and prosecution of the offence after the commission of any terrorist act.

Apart from making the raising of funds for terrorism an offence, focus has to be on prevention of such acts also. For example, in the US, one important development in the aftermath of the events of September 11, 2001 was the operationalisation of a Terrorism Financing Operations Section (TFOS) by the FBI which *“works not only to identify and track financial transactions and links after a terrorist act has occurred; it exploits financial information to identify previously unknown terrorist cells, to recognize potential terrorist activity or planning, and to predict and prevent potential terrorist acts”*.

All kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such

Proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organization”.

- **Financing of terrorist activities can be done through a multitude of modes, like:**

- a) Value transfers through trading transactions,
- b) Hawala transactions,
- c) Currency smuggling,
- d) Counterfeiting,
- e) Defrauding financial institutions and the public at large,

- f) False claim of exemptions,
- g) False claim of refunds,
- h) Using nonprofit organizations and charities as a vehicle
- i) Drug trafficking and narcotics trade,
- j) Investments and trading in capital and commodities markets (including foreign investments),
- k) Transactions in real estate etc.

### Recommendations

- The new legal framework on terrorism may incorporate provisions regarding freezing of assets, funds, bank accounts, deposits, cash etc. when there is reasonable suspicion of their intended use in terrorist activities. Such actions may be undertaken by the investigating officer with the prior approval of a designated authority, subject to adequate safeguards. These provisions may be incorporated in a separate chapter in the National Security Act, 1980.
- A specialized cell may be created in the proposed National Counterterrorism Centre drawing upon expertise from the Union Ministries of Finance and Home Affairs and the Cabinet Secretariat for taking concerted action on the financial leads provided from information gathered by various sources. Further, different investigation agencies dealing with financial transactions may set up anti-terrorist finance cells within their organizations to augment the efforts of intelligence agencies involved in counter-terrorism activities.
- For speedy investigation into the financial aspects of specific cases/group of cases related to terrorist activities, dedicated teams may be formed within the agencies charged with the responsibility of investigating into offences related to terrorism. This may be accomplished by inducting officers having specialization in different aspects of financial investigation for short periods, say three to six months. A protocol for achieving this may be arrived at between the concerned Union and State Ministries/ Departments to facilitate such capacity building and strengthening the effectiveness of the counter-terrorist measures.

### Institutional and Administrative Measure

Public Order' had emphasized the important role played by the civil society, media and political parties in maintaining public order. A multidimensional response to combat terrorism would require well coordinated action on all fronts and each of these agencies/institutions has an important role to play.

#### • Education:

The National Focus Group on Education for Peace set up by the NCERT has stated that the fundamental principles underlying the initiatives are:

- a) schools are potential nurseries for peace since school education involves the formative years in a person's life during which children can be oriented to peace rather than towards violence;
- b) Teachers can be social healers by going beyond the academic syllabi to focus on pupil centred education in order to inculcate human values in the students;
- c) Peace skills promote academic excellence because the capacity to listen, to cooperate with each other and to develop a positive attitude is the hallmarks of a good student as well of a peace oriented person.

Education also has a role in creating the proper environment for peace. Educational Institutions like madrasah as well as other social institutions could play a major role in this regard. In fact, it is important to have a holistic strategy for promotion of Education for Peace, covering secular as well as religious schools.

- **The Civil Society:**

Civil Society could also be of immense help in the prevention of terrorist acts. They could play an advisory and educative role in making the community at large aware of the basic precautions to be taken because in most terrorist strikes, the common citizens are the target. It is therefore necessary that the citizens are themselves well equipped and trained to handle any such incident, as apart from being the victims they are also often the first responders in any crisis.

The importance of involving civil society in a comprehensive and multi-dimensional response to the threat of terrorism had been recognized by the United Nations General Assembly which, while adopting the UN Global Counter Terrorism Strategy. In recent years, there has been a substantial increase in the involvement of civil society groups in public affairs. They have been instrumental in drawing the attention of government towards the grievances of the citizens and have also been active in highlighting the 'human rights violations' by the security forces while dealing with terrorists.

Given the proximity of these groups to the grassroots their potential could also be used in several ways which would help in the State's fight against terrorism including information of a "local" intelligence type. Civil societies and NGOs can partner with law enforcement agencies to develop targeted programmes for cooperation focusing, for example, on spreading awareness and understanding of the diversity of local cultures, religious customs and traditions of certain communities and in developing outreach activities for healing community rifts and tensions. An alert citizenry is perhaps the best way to ward off terrorist strikes. Civil society in conjunction with the agencies of the State can help in developing this capability among the citizens.

- **Media:**

Media is a generic term used to denote all channels of mass information and communication including newspapers, publications, electronic media and internet. The Fourth Estate – the media- has always played a major role in public life. It has been a formulator as well as a reflection of public opinion. With the advent of the electronic media and modernization of the print media, the coverage, influence and reaction time of the media has improved substantially. There have also been instances where media reports have stoked conflicts; though on several occasions they have been instrumental in prevention of outbreak of violence. A terrorist act affects each of the three – the media, government and terrorists – differently. The conflicting perspectives arising out of their mutually exclusive concerns and the urge, of both the terrorists and the government, to bend the media to serve their respective agendas, could widen the distance between government and the media.

Terrorism in democratic countries shows that terrorists thrive on publicity. Thus, regardless of the media's intentions, the news coverage may serve the expectations of the terrorists. Government therefore wants the media to be cooperative and keep the national interests or security concerns uppermost. In fact, when it comes to acts of terrorism, both the media and the government have a common interest in protecting people and democracy. Therefore, it is necessary that government should work towards harnessing the power of the mass media as a part of its strategy to defeat terrorism.

*It would be necessary to have an affirmative media policy based on:*

- 1) Transparency in governance.
- 2) Easy access to information and sources.

- 3) Advancing the media's role as an instrument of vigilance to scrutinize and check administrative, legal and judicial violations and excesses that endanger civil and democratic rights in situations of conflict and terrorism.
- 4) Engaging, enabling, encouraging and assisting the media to fulfil its role of informed, fair and balanced coverage of crisis, particularly terrorism.

Media policy should include principles of self restraint. Publishers, editors and reporters need to be sensitized to avoid and exclude those elements of media coverage that may unwittingly advance the agenda of terrorists. All forms of media should be encouraged to evolve a self regulating code of conduct to ensure that publicity arising out of terrorist attacks does not help the terrorist with their nefarious intentions.

The administration needs the support of the media and information professionals who are schooled and steeped in media values and have acceptance in today's highly competitive media world. At present, the availability of professional media officers is limited particularly at the field levels.

Given the administration's need and the importance of crisis-preparedness, it is essential that officials from other all branches of the administration such as general administration, security forces, forest services, information technology, intelligence and police, are schooled to become media-savvy. An informed and engaged media that is not restricted, manipulated or overly regulated can better appreciate the imperatives of the administration in its fight against terrorism. Greater transparency would make the media a purposeful partner in the larger cause of the fight against terrorism. The potential of media in spreading education and awareness needs to be tapped to build the capacity of citizens in dealing with any public disorder and particularly terrorist violence.

### **Organized Violence, Terrorism & Extremism: Role of the State and Reforms**

- A national forum should be set up for formulation of policy and strategy for dealing with terrorism.
- A stable, comprehensive, all India anti-terrorist legislation, having adequate safeguards against abuse, must be put in place.
- While terrorist violence has to be effectively dealt with by the security forces, people's grievances – genuine and perceived – which get exploited, have to be redressed by concerned agencies with a sense of urgency.
- A stable, effective and responsive administration is an antidote to terrorism.
- For effectively dealing with violence, outdated laws (eg., The Explosive Act), containing irrelevant provisions resulting in delay in investigation and prosecution of offenders, must be amended.
- Developmental activities should be planned and executed with due regard to problems of displacement of people, resettlement etc., so that violent eruption of conflicts on such issues can be avoided.
- For tackling the root causes of Left Wing Extremism, relevant socio-economic issues such as land reforms, alienation of tribals from forest land etc. should be addressed and relevant laws must be strictly enforced.
- An All-India legislation should be enacted for tackling the growing menace of organised crime.
- Terrorism has to be fought by the security forces with the cooperation of the people. Appropriate sensitisation training should be given to security forces for avoiding alienation of the people and for enlisting their cooperation.

## Conclusion

Development, stability, good governance and the rule of law are inextricably linked and any threat to peace poses an obstacle to the objective of sustainable development of the country. Terrorism not only subverts the political and social climate but also threatens the economic stability of the country, undermines democracy and even deprives ordinary citizens of their fundamental rights, including their right to life. Terrorists do not belong to any religion or faith or community. Terrorism is an attack on democracy and the civilized society by a violent few who resort to targeted killing of innocent citizens in pursuit of their evil designs.

Furthermore, terrorism today has acquired newer and more dangerous dimensions threatening international peace and stability worldwide with the use by terrorist groups of modern communication systems, and state-of-the-art technology combined with global linkages with organized crime, drug trafficking, counterfeit currency and money laundering. That is why international cooperation is essential in the fight against terror. India has been one of the worst victims of terrorism but our society has shown tremendous spirit and resilience in the wake of repeated and wanton terrorist attacks by maintaining communal harmony and social amity. It is time however for the nation to gear itself to counter terror in a more coherent and proactive manner and not rely on the patience of its citizens to outlast and defeat terrorists and their supporters.

The anti-terrorism strategy must recognise that terrorist acts not only ruin innocent lives, but also divide our society, create discord among people and cause lasting damage to the fabric of the society. A multi-pronged approach encompassing legal and administrative measures combined with good governance, inclusive development, a vigilant media and an alert citizenry can defeat terrorism in any form.

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