



LASD EDUCATIONAL SOCIETY

LASDES E-JOURNAL
(Volume II ISSUES I)

ISSN: 2455-3832

August 2024

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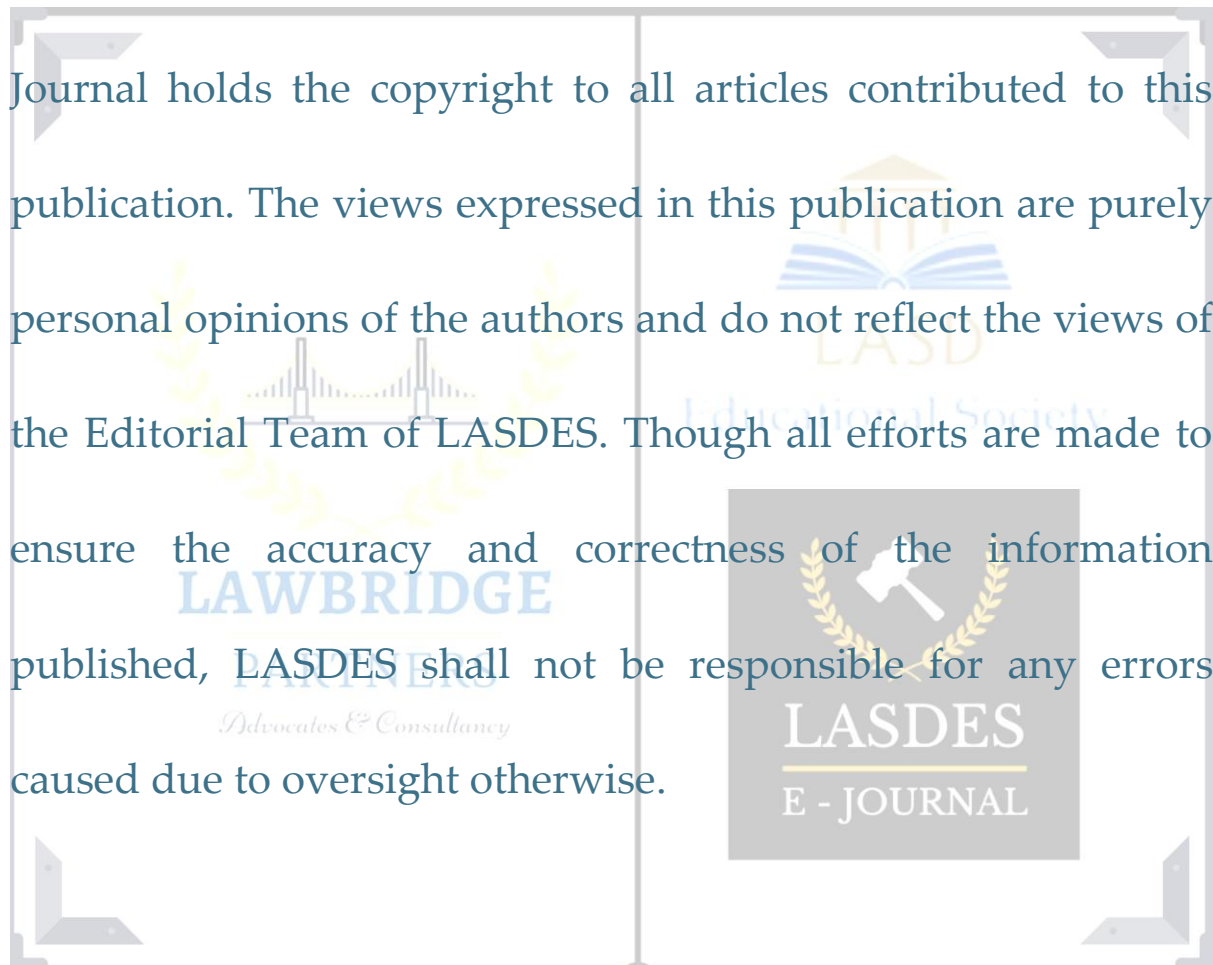
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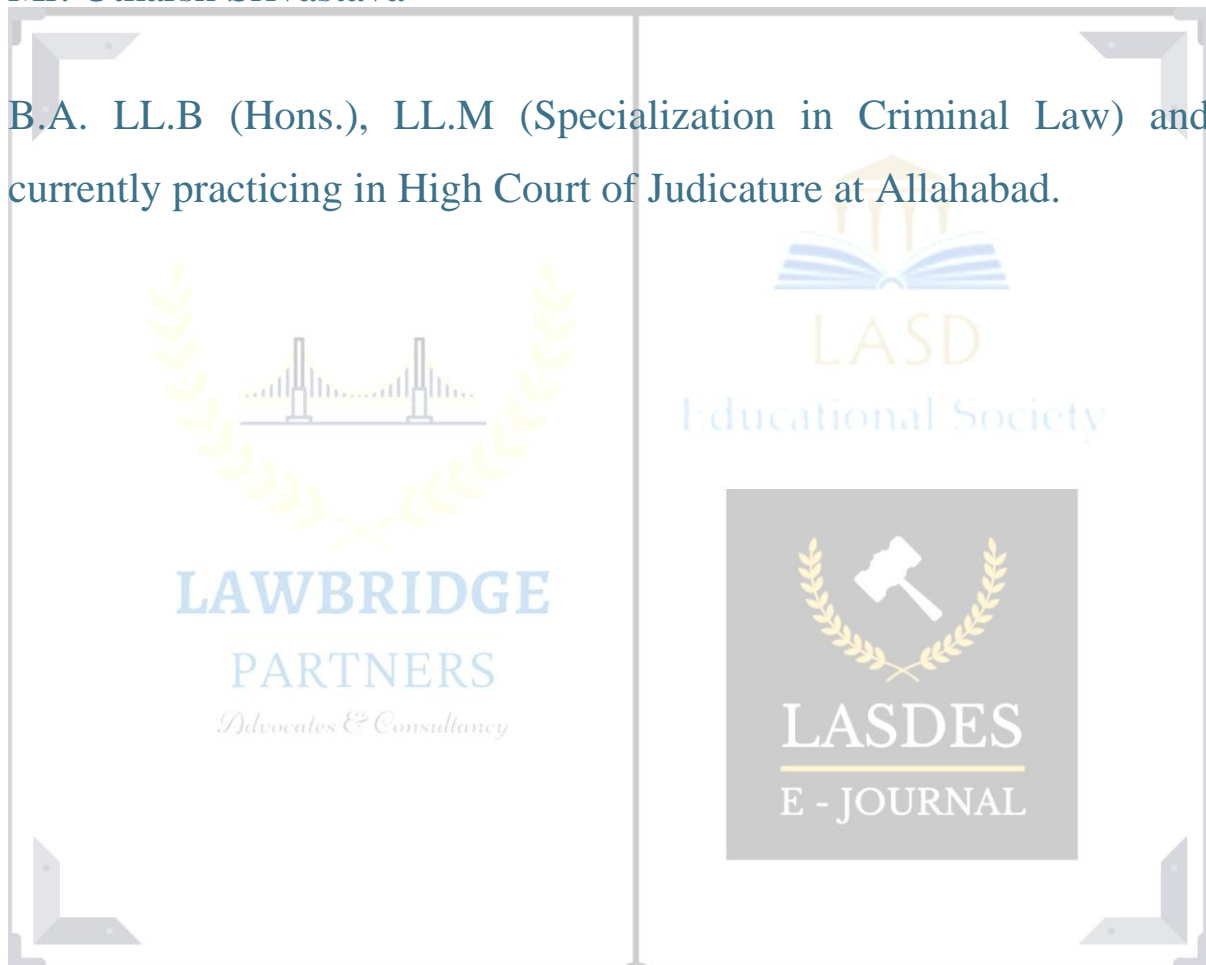
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LAW RELATEING TO TERRORISM IN INDIA: AN
OVERVIEW – AVANISH PANDEY & PRINCE NISHAD

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1. INTRODUCTION

The greatest threat facing the twenty-first century is terrorism. The nightmare has caused serious ethical problems for humanity. It now symbolizes the scourge of modern civilization. Due to its links both internal and external, it poses a serious threat to basic existence, international peace, and the advancement of civilization. Worldwide, it is referred to by a variety of names, including insurgency, militancy, state terrorism, domestic terrorism, and cross-border terrorism.

The definition of terrorism is the use of force against a human or non-human object, either legally or via threats of it. There is usually violence involved in terrorist acts, or the prospect of violence. French terrorism is the source of the English word terrorism, which itself comes from the Latin word "terror," which meaning "great fear dread" and is connected to the Latin verb "terrere", which means "to scare."

When warriors from the Cimbra tribe arrived in Rome in 105 BC, it caused a panic and a state of urgency known as the Cambric's Terror. A prominent figure in the French Revolution, Maxilien Robespierre, said in 1794 that terror is just harsh, uncompromising justice.

With a strong foundation in social, political, and historical settings, terrorism poses a complicated and diverse issue in India. The main causes of terrorism in India are separatist movements, especially those that take place in the Kashmir area. Insurgent groups that want to be free of Indian authority have characterized the protracted war in

Kashmir; some of these groups have even turned to violence and terrorism to achieve their goals.

Moreover, India has sought to enhance cooperation with other countries, both bilaterally and through multilateral forums, to combat terrorism and disrupt transnational networks. Despite these efforts, the threat of terrorism persists, evolving in response to changing geopolitical dynamics, technological advancements, and ideological shifts.

2. MEANING, CAUSES AND KINDS OF TERRORISM

2.1. JUDICIAL DICTIONARY MEANING

The Judicial Dictionary defines terrorism as the use of violence or threat of violence to incite fear or terror, particularly with the intention of influencing political action.¹

2.2. JUDICIAL DEFINITION

In case of **Hitendra Vishnu Thakur v. State of Maharashtra**², It was said that, The Terrorist and Disruptive Activities (Prevention) Act (TADA) does not define terrorism, and it is impossible to provide a precise definition or list of characteristics that make up terrorism. When the primary outcome is not only the victim's physical and mental injury but also the long-term psychological impact it has on society as a whole, it could be

¹Black's Law Dictionary, 9th ed.

²(1994) 4 SCC 602.

appropriate to characterize it as the use of violence. Beyond the scope of a typical court, there may be death, injury, property destruction, or even denial of travel. The court found that what sets terrorism apart from other types of violence is the deliberate and organised use of violent intimidation.

2.3. CAUSES OF TERRORISM

It is challenging to identify the specific causes of terrorism because its components are interconnected and entwined. Consequently, every inquiry into the causes of terrorism needs to be carried out within a wide macro framework of social, political, and economic variables.

1. Social Causes - This fragmented, disorganised, hierarchically-centred society causes certain groups to feel marginalised, prejudiced against, and unsatisfied. Their will to rise in social status is stoked by this, and they become determined to exact revenge; but, the existing social structure and order hinders them from doing so. This causes an interest conflict that, once ignited, explodes typically violently with far-reaching consequences. Social disintegration alone is the cause of this finding of terrorism.³

2. Economic Causes - Terrorist proliferation is significantly influenced by a nation's economic situation. Urbanisation of the population and migration from rural to urban areas are major pressures on the nation's economic structure. Dissatisfaction and

³J.K. Mohanty, *Terrorism and Militancy in Central Asia*, 45-46 (Kalpaz Publication ,Delhi , 2006).

feelings of neglect among those who do not receive a fair share of the economy lead to hostility. Terrorists consider all the luxuries and needs that other people take for granted to be theirs.⁴

3. Political Causes - The terrorism epidemic has also been influenced by political variables. Mankind's psychological makeup also has an impact on terrorism, as it is a tool for power acquisition. A secret motive of terrorism is to overthrow existing governments through revolution or secession. To win over people to their cause, terrorists politicise acts of violence.⁵

So, in addition to economic and political difficulties, social injustice, psychological melancholy, a lack of creativity, and a misinterpretation of different religious regulations all contribute to the emergence of terrorism.

LAWBRIDGE

3. KINDS OF TERRORISM

Advocates & Consultancy

There are different kinds of terrorism which are as follows;

3.1. Nationalist Terrorism - Nationalist terrorists emphasize a struggle for national freedom in an attempt to establish a separate state for themselves. This particular form of terrorism has shown to be highly effective in garnering

⁴Ted Robert Guerr, *Why Men Rebel*, 203,1970.

⁵ Richard Clutterback, *Living with terrorism* 42 (Arlingdom House Publishers New York, 1975).

support and acquiescence from the international community.

3.2. **Religious terrorism** - Religious terrorism often targets a broad range of opponents in an effort to bring about significant changes, using violence to further what it perceives to be divinely mandated goals.

3.3. **State Sponsored Terrorism** - According to Hoffman, radical governments deliberately use state-sponsored terrorist organizations as foreign policy weapons as a low-cost means of waging covert war by deploying mercenaries or hired guns.

3.4. **Revolutionary Terrorism** - Revolutionary terrorism refers to acts of terrorism that are organised and carried out without the state's ability to directly control the suspects. The decision of how, when, and where to strike rests solely with terrorists.

3.5. **False Flag Terrorism** - A charade using false flags When the government decides to launch an attack on its own without the help of terrorists and then claims that the attack was carried out by a real or made-up terror group, that is considered terrorism.

3.6. **Physical Terrorism** - It involves destruction of property or taking of human life.

3.7. **Domestic Terrorism**⁶ - Terrorism carried out by private individuals, either alone or as part of a structured group, aims to terrorize a certain social class, a country, or any person in order to overthrow an established regime that is targeting a particular state or states.

3.8. **International Terrorism** - The term "international terrorism" refers to any act of terror-violence that has an international component, such as when the victim and the perpetrator are from different countries or when the terrorist act takes place in a foreign jurisdiction.⁷ When a violent crime that violates local ordinances is committed in a way that jeopardizes the interests of numerous states, it is considered terrorism.

3.9. **Cyber Terrorism**⁸ - Any planned attack against information systems, programs, and data with political motivation that

⁶Noami Gal, *International Cooperation to Suppress Terrorism*, 1 (Crom Helm, London, 1985)

⁷R.A. Fried Lander. "Terrorism and Self-determination: The Fatal Nexus", 265, 7 Syn J. Int. Law and Commerce (1979).

⁸ IT Act,2000- Section 66F. Punishment for cyber terrorism.–(1) Whoever,— (A) 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 by— (i) denying or cause the denial of access to any person authorised to access computer resource; or

(ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or

(iii) introducing or causing to introduce any computer contaminant, and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure specified under section 70; or

(B) knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to

either incites or results in violence is sometimes referred to as cyber terrorism. That could include any cyber attack that targets a nation, state, or city and instills fear or intimidation in its citizens; typically, this is done by causing harm to or interfering with key infrastructure that is essential to political, social, economic, and commercial activities.

Since terrorism removes fundamental liberties and freedoms that we take for granted every day and instills dread in others, it has an effect on people's psychological well-being. Terrorism can result in long-term ramifications and affect individuals differently.

4. INTERNATIONAL LEGAL MEASURES RELATING TO CONTROL ON TERRORISM

4.1. **Board Aircraft (Tokyo Convention) 1963⁹** - A convention against terrorism was first imposed internationally in 1963 and is known as the Tokyo Convention on Offences and Other Acts Committed on Board Aircraft. Even though it doesn't say exactly which violations state parties must

information, data or computer data base that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer data base, with reasons to believe that such information, data or computer data base so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism.

(2) Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life.

⁹ Signed at Tokyo on 14 September 1963 in force on 4 December 1969.

prosecute, it also mandates that a contracting state establish its jurisdiction in order to pursue criminal charges for offences committed on board aircraft registered in that state Art. (3.2).¹⁰

4.2. 1971 Convention for the Suppression of Unlawful Act against the safety of Civil Aviation - On September 23,

1971, this convention was signed in Montreal, and on January 26, 1973, it came into force. It was written as a reaction to the September 23, 1971, destruction of four civilian aircraft that were downed in the Middle East. Attacks on aircraft "in service," which are defined as "from the beginning of the aircraft's pre-flight preparation by ground staff or the crew for a specific flight until twenty-four hours after any landing" (Article 2(b)), are to be made illegal.¹¹

4.3. 1999 International Convention for the Suppression of Financing of Terrorism¹² - Article 2.1(a) lists the offences mentioned in nine instruments relating to universal terrorism that existed before the financial treaty and for which it is forbidden to distribute or collect money. A self-contained concept of violent terrorist acts

¹⁰ Legislative Guide to Universal Legal Regime Against Terrorism prepared by United Nations

Office on Drugs and Crime, at p. 13. United Nation, New York, 2008.

¹¹ Legislative Guide to Universal Legal Regime Against Terrorism prepared by United Nations Office on Drugs and Crime, at p. 14, UN. New York, 2008,

¹² Adopted by the General Assembly of United Nations on 9 December 1999 in force on 10 April 2002.

that are prohibited from receiving support is established in 2.1(b).

4.4. 2007 Association of South East Asian Nations (hereinafter ASEAN) Convention on Counter Terrorism¹³ - The Convention reiterates that terrorism

should not be associated with any religion, nationality, civilization, or ethnic group. It also expresses great concern about the serious threat that terrorism poses to innocent lives, the environment, infrastructure, and regional and global peace and stability as well as economic development. In the battle against terrorism in all of its manifestations, this convention will create a foundation for regional collaboration.¹⁴

5. ANTI-TERRORISM LAWS; POSITION IN INDIA

India has been greatly impacted by terrorism. Differences in ideology and religion, together with calls for autonomy, have all contributed to terrorism.¹⁵ The Indian Supreme Court observed in the **Kartar Singh v. State of Punjab**¹⁶ case that the nation is experiencing a death gripe due to terrorist violence and that extremists who are drawn to the ideology of terrorism are engaging in grave human rights violations underground.

¹³ Signed in Cebu on 13 January 2007.

¹⁴ ASEAN Convention on Counter Terrorism, Article 1

¹⁵ V.D. Chopra *Global Challenge of Terrorism*, 3(Gyan Publishing House, New Delhi, 2002).

¹⁶ (1994) 3 SCC 569

6. LEGAL CONTROL OF TERRORIST ACTIVITIES: PRE-INDEPENDENCE POSITIONS IN INDIA- In 1932, the Bengal Suppression of Terrorist Outrages (Supplementary Act) was enacted; it did not specifically address terrorist activities. The act consisted of only five portions, and another act was added afterwards. 1947 saw the passage of the Bombay Public Security Measures Act.¹⁷

7. LEGAL CONTROL OF TERRORIST ACTIVITIES: POST INDEPENDENCE POSITION IN INDIA - In the years after India gained independence in 1947, several statutes were modified and approved. The Preventive Detention Act was passed in 1950, following the creation of the Indian constitution, in an effort to keep social unrest and sectarian riots from taking over the nation.

The first law was passed in independent India to address criminal activity. India's territorial integrity was threatened by some organizations and activities, which led to the enactment of the Unlawful Actions (Prevention) Act of 1967 (UAPA). The UAPA-1967 did not have a specific section on terrorist acts; however, following an amendment in 2008, a section on terrorism was inserted. The first law to define a terrorist was the Terrorist Afflicted Area (Special Courts) Act of 1984, also

¹⁷ Act No. 6 of 1947

known as the TAA special court Act of 1984. This Act was designed to facilitate the prompt trial of specific acts in places impacted by terrorism, as well as matters associated with them.

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

To safeguard India's sovereignty and integrity in the wake of the intensifying terrorist activities within the country, the Terrorist and Disruptive Activities (Prevention) Act 1985 was enacted. This legislation was the country's first significant effort to fight terrorism. With the implementation of this legislation, terrorist actions would carry heavier penalties.

Terrorist act is defined under section 2(h) of the Act as - "terrorist act" has the meaning assigned to it in sub-section (1) of Section 3, and the expression "terrorist" shall be construed accordingly. The more detailed definition of a terrorist was found in Section 3(1) of The Terrorist and Disruptive Activities (Prevention) Act 1987.¹⁸

¹⁸ Section 3. Punishment for terrorist acts. – (1) 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.

(2) Whoever commits a terrorist act, shall, -

The petitioner in **Sanjay Dutt v. State**¹⁹ was declared not guilty despite possessing only a pistol manufactured in the nation and no ammunition, as the court determined that the words "weapons and ammunition" must be read together.

9. Right to Speedy Trial

A prompt trial is a basic requirement of any criminal justice system, even though it isn't expressly guaranteed by the constitution. The Supreme Court ruled in **Kadra Pahadiya v. State of Bihar**²⁰ that confining inmates for extended periods of time without a trial is an embarrassment to our legal system.

(i) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(ii) in any other case, 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.

(3) Whoever conspires or attempts to commit, or 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.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist 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.

5) Any person who is a member of a terrorists gang or a terrorist organisation, which is involved in terrorist acts, 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.

(6) Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds 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.]

¹⁹ Sanjay Dutt v. State (CBI, Bombay), (1994) 5 SCC 410.

²⁰ 1981 CrLJ 481.

Judge Bhagwati held in the **Hussainara Khatoon v. State of Bihar**²¹ case that an inability to guarantee a fair and expeditious trial might render a system unreasonable, unjust, and in violation of Article 21 of the Indian constitution.

A confession made in front of a police officer not less senior than a superintendent of police and documented by that officer in writing or on a mechanical device may be used as evidence in court under the TADA Act.²² Police must inform the subject that making a confession is not required of him and that if he does, it could be used against him before recording any confession under subsection (1).²³

The case of **Jameel Ahmad and Others v. Rajasthan State**²⁴ In this instance, the court decided that a confession is sufficient to prove the maker's guilt if it is properly recorded, meets the requirements of section 15 of the TADA Act and its rules, and is judged to have been made voluntarily and truthfully.

In **Kartar Singh v. State of Punjab**²⁵, the Supreme Court upheld TADA 1987's validity in spite of the authorities' extensive powers. Even while the offence was not covered by TADA, the Supreme Court did observe that this regulation was being used to circumvent standard criminal law and criminal procedure.

²¹ AIR 1979 SC 1360.

²² TADA, sec. 15(1).

²³ Ibid. sec. 15(2).

²⁴ AIR 2003, 9 SCC 673.

²⁵ 1994 (2) JT (SC) 423.

The legality of TADA was contested once more in **R.M. Tiwari v. State**²⁶. In that case, the court maintained the constitutionality of TADA, 1987 based on the facts of the case, but despite closely monitoring its application, complaints of its egregious abuse persisted.

10. **Prevention of Terrorism Ordinance 2001**

Within hours after the attacks on Parliament on December 13, 2001, the entire globe was working nonstop to create anti-terrorism laws. With all of the post-13th December 2001 bluster and jingoism, the Indian government came up with an opportunistic justification to push the Prevention of Terrorism Ordinance (POTO).

POTO is not only an exact replica of the TADA's regulations, but it also goes much farther, potentially making it even more harmful. Whereas POTO was applicable across the nation, TADA was limited to areas of conflict.

In order for an accused person to be prosecuted under POTO for a terrorist act, the accused must have committed an act with the intent to threaten India's unity, security, or sovereignty, or to use a deadly weapon to terrorize the populace as a whole. Fund raising for terrorist purposes is deemed to be an act of terrorism; this provision was absent from the prior Act (TADA).²⁷ Terrorist offences carry a

²⁶ AIR 2003, 9 SCC 673.

²⁷POTO, Explanation of sec. 3(1)

minimum five-year prison sentence and a death penalty. This provision is analogous to the TADA.²⁸

10.1. Prevention of Terrorism Act 2002

Following the attacks on September 11, 2001, and the parliament on December 13, 2001, which placed the nation on high alert, the government determined that a different kind of law was necessary to effectively fight terrorism. Consequently, the government enacted the Prevention of Terrorism Act (POTA) in 2002.²⁹

The terrorist act is defined under section 2(g) of the Act as- "terrorist act" has the meaning assigned to it in sub-section (1) of section 3, and the expression "terrorist" shall be construed accordingly.³⁰

²⁸Ibid., sec. 3(2).

²⁹Came into force on 26 March, 2002

³⁰Section 3. Punishment for terrorist acts.- (1) Whoever,—

(a) 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 does any act or thing 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 or by any other means whatsoever, 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 or causes damage or destruction of any property or equipment used or intended to be used for the defense 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 or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.

10.2. Safeguards under the POTA

The Supreme Court may hear appeals from authorized courts under the TADA. It was suggested that people find it challenging to directly approach the Supreme Court in the setting of India, where poverty is pervasive. As recommended by the Supreme Court, investigations into incidents involving terrorism and disruptive activities should be conducted by an officer with a degree of expertise equivalent to that

Explanation.—For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism.

(2) Whoever commits a terrorist act, shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine;

(b) in any other case, 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.

(3) 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.

(4) Whoever voluntarily harbors or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine: Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender.

(5) Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

Explanation.—For the purposes of this sub-section, "terrorist organisation" means an organisation which is concerned with or involved in terrorism.

(6) Whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.

(7) Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with the said intent, shall be punishable with imprisonment which may extend to three years and fine.

of an Assistant Superintendent of Police or a comparable position. This would greatly reduce the likelihood of abuse.

This weakness in the state's defence against terrorism was supposed to be filled by the anti-terrorist law that India passed, but its effects have been criticised for a number of reasons, including the Act's provisions being draconian, oppressive, unconstitutional, and at odds with the natural justice principle.³¹

In the **Navjot Sandhu & Mohd. Arif v. State of Delhi**³² case, the term "terrorist act" was defined. The court determined that not all terrorist acts, which are quite widespread these days, are the same as waging war. The crime of waging war and some types of terrorism are not mutually exclusive. The possibility exists for terrorist attacks to turn into acts of war. The extent of the act's execution or attempted execution, along with its degree of animus or intent, would be important considerations in determining whether the Terrorist Act creates a state of war.

The Supreme Court ruled in **State (NCT) of Delhi v. Mohd. Afzal & Others**³³ that Afzal, who was found guilty of a number of Terrorist Act offences, would be subject to punishment under section 3 of the POTA due to the seriousness and potential of the Terrorist Act.

³¹ V. P. Srivastava, *Prevention of Terrorism Act: Myth and Reality*, 24 (Indian Publishers Distributors, New Delhi, 2005).

³² AIR 2005 SC 3820.

³³ 2003 SCC Online Del 935.

The Supreme Court further referenced a previous ruling in **State of Bombay v. Kathi Kalu Oghad**³⁴, wherein an eleven-judge bench held that compelling an accused individual to provide such samples does not entail the accused individual must testify as a witness in his own trial.

10.3. Unlawful Activities (Prevention) Act, 1967

The prevalent Act dealing with the terrorist act is the UAPA, 1967. It deals with the acts constituting the terrorist act and its punishment. Any person committing the terrorist activities are dealt under this Act. The terrorist activities are defined under Section 2 (k) of the Act. It provides that “terrorist act” has the meaning assigned to it in section 15, and the expressions “terrorism” and “terrorist” shall be construed accordingly;

Section 15 of Terrorist Act.— (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a

³⁴ 1961 AIR 1808, 1962 SCR (3) 10

hazardous nature or by any other means of whatever nature to cause or likely to cause— (i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[~~(iii) (a) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]~~

~~(iv) damage or destruction of any property in India or in a foreign country 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~~

~~(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or~~

~~(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.~~

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

11. INDIAN PENAL CODE, 1860

There was no express provision relating to terrorism under the IPC. So, such activities were considered as waging war against the State which was provided under section 121 of the code.

Section 121. Waging or attempting to wage war or abetting waging of war against the Government of India.—Whoever wages war against the [Government of India], or attempts to wage such war, or abets the waging of such war, shall be punished with death, or [imprisonment for life] [and shall also be liable to fine].

Waging war is the endeavour to use violence to achieve any kind of public goal. A war of this kind breaks out when a number of individuals rebel and band together against the government with the intention of achieving any kind of public goal by coercion and violence. The goal and intention rather than the use of force or murder are what determine whether an act qualifies as a crime against the State.³⁵

12. BHARATIYA NYAYA SANHITA, 2023

³⁵ Section 121 under IPC, available at; <https://blog.ipleaders.in/offences-against-the-state-all-you-need-to-know-about-it/> (last visited on May 19,2024)

Since the IPC lacked a provision to this effect, Section 113 of the BNS aims to create a new offence known as the "terrorist act." There is cause for concern because the Unlawful Activities (Prevention Act) already defines the charges associated with "terrorist acts" (UAPA).

The UAPA's definition of a "terrorist act" and the BNS's definition of the same are identical. This leaves the statute open to abuse, since a superintendent of police will now have the authority to book someone under the BNS or the UAPA.

Section 113 provides- (1) Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substance or inflammable substance or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause,—

(i) death of, or injury to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage to, the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material; or

(v) damage or destruction of any property in India or in a foreign country 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

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatening to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act, commit a terrorist act.

Explanation.—For the purpose of this sub-section,—

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) “counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified

forensic authority that such currency imitates or compromises with the key security features of Indian currency.

(2) Whoever commits a terrorist act shall,—

(a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of a terrorist act or any act preparatory to the commission of a terrorist act, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Whoever organises or causes to be organised any camp or camps for imparting training in terrorist act, or recruits or causes to be recruited any person or persons for commission of a terrorist act, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Any person who is a member of an organisation which is involved in terrorist act, shall be punished with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

(6) Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person has committed a terrorist act shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine: Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(7) Whoever knowingly possesses any property derived or obtained from commission of any terrorist act or acquired through the commission of any terrorist act shall be punished with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine. Explanation.—For the removal of doubts, it is hereby declared that the officer not below the rank of Superintendent of Police shall decide whether to register the case under this section or under the Unlawful Activities (Prevention) Act, 1967.

In the past, offences pertaining to terrorism were categorised under the "offences against the state" chapter. It is interesting to note that the BNS's chapter on "offences affecting the human body" contains the introduction of the "terrorist act" as a new offence. Acts that pose greater risks to public order, national security, and social stability than simple physical injury to people are frequently included in acts of

terrorism. Actually, the BNS automatically uses the UAPA definition of "terrorism," which does not limit the offence to the body alone.³⁶

Conflicts between the general and special provisions of "conflicting" laws have always been resolved by the courts using the "rule of harmonious construction." According to this legal precept, the special law's provision must take precedence over the general law's where there appears to be a disagreement between two independent legal provisions.

A broad statute that addresses transgressions in general is the BNS, while the UAPA is a particular law that deals with terrorism.

As per established precedent, the rule of harmonious construction is applied and the special law takes precedence over the general law.

Thus, the addition of Section 113 of the BNS defies logic, as the UAPA will apply instead of it.

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³⁶ Terrorism under BNS, *available at*; <https://thewire.in/law/duplication-or-duplicity> (last visited on May 19,2024)

CONCLUSION AND SUGGESTIONS

Conclusion

The prior talks have underscored the necessity of utilizing a public health strategy to prevent and treat psychological reactions and symptoms associated with terrorism. The broader public will be impacted by terrorist incidents and persistent terrorist threats.

India's mainstream nationalist politicians consistently criticized the colonial state for its extraordinary legal measures taken to quell "terrorist" attacks in the 1920s and 1930s, but these actions persisted even after India attained independence on August 15, 1947, at midnight.

Since terrorism has grown to be a worldwide concern, it must be stopped right away. Law enforcement organizations cannot prevent terrorism on their own. To combat the growing menace of terrorism, all people on the planet will need to come together.

Global approaches are necessary to combat the persistent problem of terrorism. Addressing the underlying socio-economic, political, and ideological elements that contribute to radicalization is imperative, even as military and law enforcement activities play a critical role.

Furthermore, successful counterterrorism requires international collaboration, information exchange, and diplomacy.

Additionally, the prevention of extremism's spread depends on upholding human rights and fostering inclusive society. To minimize its effects and maintain international security, the war against terrorism is ultimately difficult and calls for consistent operations on several fronts.

Suggestions

1. Financing of terrorism and money laundering- The Committee is aware of the terrorists' and terrorist groups' rapid advancement in financial technology innovation, and it is their desire that the Government collaborate closely with the Financial Action Task Force (FATF) and other organizations to enhance the quality of the regulatory framework and prevent terrorist organizations and terrorists from being presented with new opportunities to finance terrorism and related activities.

2. Best way to stop terrorist attacks in the nation is to destroy all terrorist networks and safe havens, and it has been suggested that a framework or action plan be developed at the Support for efficient resource sharing, capacity building, and expert pooling of the Central agencies available, in addition to worldwide efforts to eradicate terrorist networks and safe havens in surrounding countries.

3. Government has established a legal framework to prevent terrorists from using drones, virtual currency, and encrypted communications,

but they also want cooperative to ensure that laws are implemented effectively. Additionally, efforts may be made in a number of bilateral, regional, and multilateral fora to develop a Joint Action Plan aimed at reducing terrorists' use of drones, virtual currency, and encrypted communications.

4. Government's should take efforts to modernize its counterterrorism apparatus in order to stay up to date with new and emerging threats in the field, encrypted messaging services, aerial terrorism, digital financing of terrorism, etc.

5. Government should take into consideration proposing a standard Convention on Extradition to the United Nations, even in light of the difficulties in reaching a consensus. An additional legal tool in the fight against terrorism and transnational crimes is the extradition treaty.

6. International Criminal Court (ICC) legislation ought to be amended to include specific language about terrorism,

7. A thorough definition is desperately needed to provide an international legal framework for the successful prosecution of foreign terrorists as well as for the prevention of international terrorism.