COMBATING TERRORISM TO PROTECT INDIA'S INTERNAL SECURITY: A LOOK AT CHANGING PARADIGM

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Abstract:

India if not the study of contradictions, is a study of contrasts. Lack of the very opportunities and the poverty at extreme which co-exist along with the obscene wealth and rapid economic growth ultimately creating the impact on the commentators which often then conceptualize this as 'two India's', created by the destabilizers both internal and external. The growing crisis of the capacities, infirmities in structure & high incoherence are few responses by the state to the existing emerging challenges of internal security. Though we cannot deny the fact that the India despite having some vulnerabilities, have experience in bravely defeating the most of the terrorist movements and virulent insurgent. But, unfortunately this consistency of successfully taking actions against counter-terrorism campaigns have not able to transfer itself to other areas of issue.

The biggest obstacle after India is to protect it's citizen's cultural, political & physical identity. Non-state actors and also state actors are in contemporary time the actual threat to Internal Security of India. But now by changing paradigm of nation's internal security this threat also include threat from the cyber world, corona-virus and technology which are acting as black swan events these days. Therefore, the internal security focus should also be the society in maintaining the communal harmony, hence people and society both are the focal point in dealing with internal security of the nation; along with the issue of terrorism[2]. Because it is the undeniable fact that the now state are not safe anymore, as India remains the target of terrorist and also not prone to cyber activity against citizens. Thus, these are the significant issues and problems that are being taken into account while determining the paper's current subject matter.

Keywords: Counter-Terrorism, Internal Security, Cyber Warfare, Communal Harmony, Terrorist Movements.

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[2] Hamid Ansari, 'For Internal Security, the State Must Be Accountable and True to Its Principles', The Wire, 15 February 2017.https://thewire.in/government/internal-security-state-must-accountable-true-principles

1. **INTRODUCTION**

■ **What is Security?**

At it's very basic, security can be defined as a *freedom; **freedom from threats.*** The very existence and the life of human & country are full of threats. Does this implies that each and every threat is a 'security threat' ? Each-time whenever the person steps out of his home to some extent there is always an some degree of threat to their very existence/life. And that is why if we take this broad view our world it would always be saturated with the security issues. One who studies security, for this very reason states their views that only such things that threatens **'core values'** should be therefore be considered as being of interest in discussions related to security. Now the question is *core values* of whose though? Also how severe/intense the threat should be to effect the core values, can all of these threats be fall upon the list of under which the security as such could be understood[3]. When another country does some act to another country or either even if they fails in such act they kind of disturbs the core values of one's country[4]. It is just like when someone walking on the streets get's robbed, security of other such ordinary people gets harmed as they live their daily life. Taking such an extensive way would eventually make it paralyzed as then everywhere we look the world would seems to be in full of dangers[5].

So accordingly it can be concluded here that ***only extremely dangerous threats relates to security -*** threats which can ultimately endanger the *core values,* in a way that these values can't be repaired, if we didn't do anything to deal with any such situation. But surprisingly having said that, the very fact can't be ignored that conception of security differs from country to country, it would be wrong to say that these number of population around the world would have the same conception of security. **The same could be understood in a better way by putting them under the two different notion which are: 'Traditional' and 'Non- Traditional' Notion's :-**

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[3] "National Security Still a Priority," 29 May 2003,

http://www.evote.com/index.asp?Page=/polls_section/2003-05/05292003polls.asp

[4] Prasad, Manoj. "A 14-year-old tells you what POTA means to the poor," The Indian Express, 28 March 2003

[5] Gill, KPS and Ajay Sahni (eds.), The Global Threat of Terror: Ideological, Material, and Political Linkages (New Delhi: Bulwark Books, 2002).

◆ **Traditional Notion's:-**

a) **Traditional Notion's: External Factor's :-**

Most of the time when we talk about the security we are actually tend to talk mostly about conceptions of traditional security i.e national security. In the traditional set up of security the utmost danger to the country is from the threats from military. Military action of the other country is the source of danger who threatens the security, the core values of the country 'sovereignty' and 'territorial integrity' gets endangers. Ordinary citizens of the country also gets effected, that why it is very unlikely that in any war only soldiers would be effected, hurt or killed. In some case these ordinary citizens are made the target so that it can't help or provide support their soldiers.

In this traditional view of the security most threats to the country comes from it's borders. I t is so because in the country for any type of violence there is an central authority to deal with all these and which stands above all. But in the International arena there is no as such central authority to deal with or to control the violent behaviour of the countries. I t would be quite wrong to say that United Nation is one such institution because UN is created of it's members and has authority only to some extent which is according to the membership which allows to have authority, so in such case still each country has to be anyway be responsible for it's own security.

b) **Traditional Notion's: Internal Factor's:-**

But now the question is how would or can we protect the country at it's borders if such country is not secured at all inside it's borders? In short how the society be secured if there is threat inside the borders. ***Therefore emphasis should also be upon maintaining the 'internal security'.*** The very reason of not giving much importance to ensure the internal security was because after the '**World War II',** it seemed that for the powerful countries around the globe more or less the internal security was assured. Overall, traditional conceptions related to security are more or less principally concerned with the use, or the threat of use, of military

force. In both traditional security, force is both the principal threat to security and the principal means of achieving security[6].

◆ **Non - Traditional Notion's** :-

Under the '**Non - Traditional Notion's**' threats are the one which are '*beyond the military threats'* and which can still effect or create the wide range of danger or threat and can effect the conditions of human existence, falls under the category of Non-Traditional Notion's. Under Non - Traditional Notion's security conceptions when we ask '**for who'?,** it is not limited to the just '*state'* but also the '*individuals'* and '*communities';* in short the whole '*mankind'.* **Non - Traditional Notion's** of security are also being called as **'Human Security' or 'Global Security'.**

'Human Security' talks about the protection of citizen's or people of the country. Though the 'secure state' and 'secure human' one or the other are the same thing but that *doesn't implies that 'secure state' means the 'secure people's' or 'citizen's'*. And that is why more than the war's the people are being killed mostly by their own governments. The '*narrow concept'* comprises the views on human security like that of the **former UN Security General - Kofi Annan** states in a way, - "*the protection of communities and individuals form the internal violence".* Whereas the proponents of the *'broader concept'* of the human security conception states that the threat should involve areas like '*hunger', 'natural disasters' & 'disease',* because them it is believed that these above stated areas kill more people as compared to '*terrorism' and 'genocide'* combined. **Policy makers** of Human Security states that both the above stated areas should be dealt i.e. **threat** and the **violence.**

'Global Security' on the other hand talks about the global nature of the threat that can be **health epidemic's like 'AIDS', 'COVID -19' or 'Bird Flu'** or either environmental issues like **'Global Warming'.**

1.1 NATIONAL SECURITY : BASIC PARADIGM

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[6] NCERT, Chapter 7 - Security in the Contemporary World

As discussed above traditionally the concept of **National Security** was always being used by associating it with the **Protection of Territorial Integrity** against any *aggression externally.* From the period immediately after the passing of the **Treaty of Westphalia(1648)** there has been a change in the concept of National Security. It bought the two important aspects related to sovereignty- *first* being the *absolute sovereignty* and *second* being **legal rights** to these sovereign states.

But now at present time the following concept of National Security has been topic for discussion at different forums and is being acknowledged widely after the **Cold War** for the purpose of also including the different dimensions of the **Non - Traditional Aspect of Security -** like threat that impacts the **Human Security.** Which includes security areas from different areas which varies from '**Energy Security'**, **'Food Security'**, **'Economic Security'**, **'Water Security'** to the security related to the areas like '**Cyber Security'**, **'Technology Security'**, **'Information Security'** and as such **Security from the 'Natural Disasters' and 'Pollution',** and hence in away Human Security complements the State Security in a very different number of ways. After the **World War - II,** conflicts which were within the territorial boundary of the country were referred as "small wars". In fact at most of the times as stated earlier it is internal conflicts which kills more people than the external aggression because of the different reasons like religious fundamentalism, increasing um-employment within the youth, and therefore the internal aggression has been multi-faceted, which also includes **terrorism,** acts of terrorism thus *causing the instability* and most of the time all these threats are being interlinked to each other **for example-** like funding to the terrorist's organisation by the way of money laundering.

As it has been discussed above about the **'Traditional' and 'Non- Traditional Notion's'** of security threat already, the same was also being discussed at the time of **Kautilya (321-296 BC),** that being at the time of **Chandragupta Maurya,** has been discussed in the *Arthashastra.* Where he talked about the threats of internal or external origin, and about the role of the king's in protecting it's people. Kautilya describes the internal threats of much more of danger in nature as **"…the fear of snakes lurking in the grass[7]."**

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[7] https://www.claws.in/publication/indias-national-security-challenges-and-priorities-short-and-long-term-perspectives/

1.2 <u>National Security - Scope</u>

The above discussed **Non - Traditional Notion's** *of threats* have put focus upon the *changing nature of the threat's,* likewise **Terrorism, Human Rights, Global Poverty** and **Health Epidemic's.** The scope of the '**Traditional'** as well as '**Non - Traditional'** security threats is so vast. Therefore for the purpose of this paper the focus of the author would remain only upon how T**errorism** or T**errorist activities**, now that it *doesn't have any boundary left in order* *to disturb the 'internal security of the country'* **because of the sudden growth in technological advancements and social media access** to know the happening's within the target country from where-ever they want; is now *able to disturb* the **Law & Order and** has been able to effect the **Peace & Harmony** within the people of the country.

And Hence the aim of the paper would be to find out and provide with suggestions; if or whether it finds of a*ny need in upgrading the current available law(act)* to tackle with the **terrorist agencies;** or with context to various **steps that can be taken to ensure the harmony within the people of the country** or is there any **need to have any changes in our administration in the way of their tackling the issues** stated earlier in the paper above. And also whether or not **do our country need to upgrade their present '***Cyber Defence System'* **in order to tackle with the 'Cyber Attacks'** which can lead to the riots within the country in just a matter of a tweet, if not dealt and would transform itself into the form of '**Cyber - Terrorism'**.

Terrorism means or refers to such violence that deliberately targets the civilians. Terrorism at global level means citizens or the people of more than one country. Political condition which is not liked by the terrorist groups are the one who set to challenge those conditions rather by force or by *threat of force.* Mostly civilian's are being targeted in order to get the attention of worldwide governments attention by terrorizing the public. One of the best example to this can be the **Airplane 'Hijacking'** or planting **bombs** in **'railway station'** or **'shopping'** complexes or any such crowded areas where people at large could be hampered. The worldwide steps at major level against terrorist act's where taken after the incident of **11 September, 2001 when the World Trade Centre was being attacked by the terrorist's,** though itself the terrorism is not new thing and had occurred already in the past before.

2. INDIA'S INTERNAL SECURITY ISSUES & CHALLENGES: LEGAL FRAMEWORK

The Internal Security concept would or has already been changed with the changing nature of the warfare. As discussed earlier in the paper till now the that national security has no longer remains the concept of protecting the nations and preventing it by defending the borders, the paradigm has shifted and now the national security is assumed because of the significance of the *internal security challenges.* Today both of these concepts have been overlapped of external and internal security. Today data protection is much more important to be protected and the technology misuse has now been the emerging threat not just to the citizen's but also the government. These cyber threats are emerging as an severe threats to the internal security of the nation. Thus in this 21st century the concept security required to be dynamic in nature and broad in order to cover all concerned areas. Because for the developing country like India the notion of internal security should be to create peaceful condition's, and harmony.

■ **Need & Importance of Maintaining Nation's Internal Security**

For a nation like India which is developing to compete with modern global world rapidly, the line between the external and internal security has not been much visible now and has now on the verge of becoming completely blurred. To elaborate terrorism has been threat to internal security but can too have the external links[8]. To combat terrorism mere external invention would not be fruitful it requires internal administration law agencies too to deal with it properly. Now the need for the security on the internal front is more needed because now terrorism has no boundaries left because of the present technology driven world, new technologies like internet and all though being the important powerful tool for the nation has now have also the risk in it in creating serious security risks to the nation.

Not just this even proper legislation is needed to maintain internal security which presently in order to deal with terrorism seems quite vague, same would be discussed in this paper afterwards. And if the same not addressed now can result into things like **Radicalisation** that

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[8] Available at https://www.thehindu.com/news/cities/Tiruchirapalli/india-needs-to-guard-against-threats-to-internal-security/article26717644.ece

can lead to **Polarisation** further, or **Communal Divide** (can become major Internal Security Threat, if ignored), etc[9].

2.1 <u>LEGAL BACKGROUND</u>

To understand the India's position in legal framework that where it stand it is important to first know the legal background of the same to pinpoint the areas in legal framework which may require some legislative changes; and to understand this we need to consider the narrative of Indian history. To begin with first such narrative is of about the India the power of law in India. As earlier mentioned **Chandragupta,** first such ruler which talked about the importance of the national security. And during the Maurya Empire, means to achieve any such security could be possible by relying upon the various hidden networks of spies and the team of loyal ministries, from time then till the period when India ruled by British; there was no such uniform legal mechanism to deal with such conflict's. And by that time all laws under British period to deal with the national security were kind of undemocratic, the reason for the same can that the Britishers themselves were not under any threat or faced any terrorist threat[10] and that is why the only laws by that time was the *power of preventive detention in 1793.* Politicians of the time of new sovereign India discussed and debated about the importance and necessity of maintaining the colonial laws, but the same couldn't be possible because of the events of Independence and partition and hence taking some protective measure were being justified. New democratic India came up with the power of preventing and detaining, which was being sanctioned by the '**Article 22' of our Constitution**. And also armed itself with the '**Preventive Detention Act'** of **1950[11].** List of different legislation being passed with context to security and preventive measures gained more speed after the Independence by the passing of the laws like **Armed Forces Special Power's Act**, **Disturbed Areas Act** which were more of *draconian* in nature.

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[9] Status Paper on Internal Security Situation as on 1st September, 2008, MHA (Government of India).

[10] Kalyan K. Mitra, personal interview, 21 July 2003.

[11] The act was repealed in 1970, but the Maintenance of Internal Security Act of 1971 re instituted preventive detention. Vinay Lal, "Normalization of Anti-terrorist Legislation in Democracies: Comparative Notes on India, Northern Ireland, and Sri Lanka," 1 July 1994.

To Parliamentarians laws like '**Indian Penal Code'** and '**Criminal Procedure Code'** seemed very much appropriate and sufficient even when it comes to handling of terrorist's. But this notion was no longer existed after the year of **1971,** when Prime Minister Indira Gandhi came up with the severe counter-insurgency law which is '**Maintenance of Internal Security Act[12]'.** This is because at that time insurgency was something which was being widely considered as the biggest problem as compared to terrorism, but the same act became of draconian in nature as during the period of emergency it was being amended with provisions of arrest without any charge of specific kind. Few years down the line at the time of rise of **Khalistan Movement**, again parliament came up with the new enacted act that allows the *full 1 year detention period*, which was '**National Security Amendment Act'.** Thought it was the first act; for the purpose of dealing with the handling of terrorist's in India but it was not as such considered as the one ever, act also no longer define terrorism specifically.

Later from the period; beginning from the year 1995 to 2001 there was severe need of the counter-terrorism legislation nationwide which was not present at this time. The only thing that triggered the legislative body to take action against the '**Terrorist and Disruptive Activities Act', 1984** was when the Airline flight IC-814 took over by the armed hijackers[13]. And that's when attempt of government failed to negotiate and which further resulted in releasing of the terrorists from the jail[14]. Even after number of bilateral, regional and international efforts politicians of India has continued to present the lament and soft image of the India state, and demanded to replace the Terrorist and Disruptive Activities, 1984 with the wide range of counter-terrorism law.

And also conventions like that of **US Conventions** were left with no power of enforcement, it was just that few signatory countries made and enacted the law to support the provisions that hey had made. Even for *Suppression of the Terrorism* the **Regional Convention by the SAARC** just came up with the **UN Principles** dealing with the matter of *extradition* between the states or for other different crimes like conspiracy, kidnapping etc. Though the scope

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[12] Arnab Goswami, Combating Terrorism: The Legal Challenge (New Delhi: Har-anand Publications, 2002) 24

[13] Another hostage incident had caused a smaller uproar in 1989, when the daughter of the then Home Minister Mufti Mohammed Saeed was abducted by terrorists who also demanded the release of prisoners. Prafulla Ketkar, personal interview, 25 July 2003.

[14] "Information on Hijacked Indian Airlines Flight IC-814," 27 June 2003, www.indianembassy.org

under the regions of bilateral treaties were widened but also it has slipped in providing with the provisions where if the state can backs out of extradition if it is to be found that the requesting state is acting with mala-fide intention[15]. Ultimately these laws didn't extend to entire landmasses and remains severe as the existing laws, and remains incapable of addressing the trans-border terrorism and also it's financing.

2.2 POSITION OF INDIA : ISSUES & CHALLENGES

■ LAWS WHICH DEALS WITH TERRORISM

With the sudden increase in the terrorist activities worldwide many countries took the step by enforcing several different types of counter-terrorism laws. Accordingly India also put forward itself by enacting various national security related laws to handle the terrorist activities which are as follows -

(i) The Terrorist and Disruptive Activities (Prevention) Act, 1987;
(ii) The Prevention of Terrorism Act, 2002;
(iii) Unlawful Activities (Prevention) Act, 1967; and
(iv) National Security Act, 1980.

From the above mentioned legislations there were few which were allowed to be lapsed as the power which was conferred to the agencies under these legislation were tend to misused and hence they no longer serve the purpose for which hey were enacted and therefore these legislations by time became obsolete. Not just that they were being misused but by the time the **validity was also tend to questioned several times by the *Supreme Court of India.*** And that is why there is greater need to come up with proper legal framework so to deal with the terrorism.

Finding Different Issues If There Is Any; In The Following Below Stated Areas 'In Presently Available Legislation For Countering - Terrorism' :-

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[15] SAARC Regional Convention on the Suppression of Terrorism UN Treaty Collection. 27 June 2003, http://untreaty.un.org/English/Terrorism/Conv18.pdf

2.2.1 NO PROPER LEGISLATION ?

2.2.1.1 From long back there was the need of proper anti-terrorism legislation and the importance of the same was also being highlighted in the **Supreme Court** Case i.e. *State vs. Nalini and ors.[16]* **(Rajiv Gandhi Assassination Case),** court was of the view that the few sections of the (TADA)**Terrorist and Disruptive Activities (Prevention) Act, 1987** couldn't be applied upon the perpetrators of such act it was so because such act wasn't a terrorist act according to '**Section 3(1)'** of the act and neither such activities of the perpetrators were regarded as the '**disruptive**' according to '**Section 4'** of the act. And that brings us to conclude that even the very act that was enacted and supposed to fight against the terrorist activities and to deal with it became ineffective even in the case which involves Prime Minister of our Country. It is important to maintain the pace in making the anti-terrorism legislations as the terrorist activities. And for the same reason now every other understands now the importance of having separate specific legislation to deal with the terrorists activities or even the provisions to deal with such activities along with different set of procedures and also having proper mechanism to deal with such nature of activities for the *speedy criminal justice*.

2.2.2 DEFINITION OF TERRORISM ?

2.2.2.1 Though definition of '**terrorism'** has not been defined by the **Terrorist and Disruptive Activities Act**, 1987, but it has defined the term '**terrorist act'** as follows:-

Punishment for terrorist acts. – (1) *This provision of the Terrorist & Disruptive Activities states that anyone who with the intention of disturbing the government established there by law by the means of striking the terror among the citizens of the nation or to the certain group of people in order to to alienate such group of people and also effect them by disturbing the harmony between the different sections of the people if such acts are being done by using the bombs, dynamite or any such other explosive substances, or any substances which inflammable or gases which can be very noxious in nature or nay such other chemical substances which can create or harm the public at large by causing death, or likely to cause the death or destruction to any person or group of persons ,community at*

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[16] (1999) 5 SCC 253

large, or property and also if they detains any such person or threatening of killing any person or to kill any such other person so that such act can ultimately compel or force the government to listen to the them in order to to avoid them from doing something or in order to force them to do something results in committing the terrorist act[17]."

Whereas **Prevention of Terrorism Act, 2002** has followed little bit different definition which is as follows:-

Punishment for the terrorist acts -

(1) Whoever,—

(a) Whereas on the other hand the Prevention of Terrorist Act states that where there is a intent to disturb the unity, or either sovereignty and integrity of the nation and with the intention of building terror among the people of India or to any other section of people with the use of the bombs, dynamite or any such other explosive substances, or any substances which inflammable or gases which can be very noxious in nature or nay such other chemical substances which can create or harm the public at large by causing death, o likely to cause the death or destruction to any person or group of persons ,community at large or property and also if they detains any such person or threatening of killing any person or to kill any such other person so that such act can ultimately compel or force the government to listen to the them in order to to avoid them from doing something or in order to force them to do something results in committing the terrorist act;

(b) Or if such are the part or member of or still continues to be part or member of any such association which continues or has been declared as an unlawful under the Act of Unlawful Activities (Prevention) Act, 1967; or is involve in voluntarily aiding or also in any type of promoting in a way that the objects of such association or in the case of either the possession of any such type of unlicensed firearms, explosive or any such substance which causes and capable of causing the mass destruction along with the acts which can

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[17] Part II, Section - 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987

be resulted in the injury to the person and causing the loss of life and thus results also in the damage of the property then such acts constitutes to be the terrorist's act[18].

Explanation- Under the explanation of this section it has been stated that for the purpose or need of this sub - section raising of funds as an act with the intention of funding the terrorism shall also be included .

2.2.2.2 By Examining the definition of the **Terrorist Acts** that has been defined under both these acts mentioned above we can observe the quite difference in definition under both these separate acts differs to each other as the phrase '*with the very intention of threatening the unity, integrity, or also the sovereignty of India'* has substituted the phrase *'with intent to oveawe the government'* from the **Terrorist and Disruptive Activities (Prevention) Act, 1987.** This helped in making the definition more precise here after the following amendment. Not just this one more thing that was being made cleared and was earlier in stipulation was that of **Section 3(1)(b)** which states that such members would to be be responsible who would be found to be in association with such terrorist activities which can result in mass destruction or can lead into disrupting the communal harmony, the same would be regarded as the 'terrorist act'.

2.2.2.3 After, when the **Prevention of Terrorism Act, 2002** got repealed, **Unlawful Activities (Prevention) Amendment Act, 2004** in it's Section - 15 included the part (a) of the definition mentioned above[19]:-

Section 15: Terrorist Act -Whoever, with a intent to disturb the unity, or either sovereignty and integrity of the nation and with the intention of building terror among the people of India or to any other section of people with the use of the bombs, dynamite or any such other explosive substances, or any substances which inflammable or gases which can be very noxious in nature or nay such other chemical substances which can create or harm the public at large by causing death, o likely to cause the death or destruction to any person or group of persons ,community at large or property and also if they detains any such person or either is threatening of killing any person or equipment used or intended to

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[18] The Prevention of Terrorism Act, 2002

[19] Kavita Chowdhury, "Vague Law Full of Holes," The Indian Express 4 April 2003.

be used for the defence of India or in connection with any other purposes of the Government of India, or either any State Government or any of their agencies, or to detains any person and also 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 to either abstain from doing any act, commits a terrorist act or to kill any such other person so that such act can ultimately compel or force the government to listen to the them in order to to avoid them from doing something or in order to force them to do something results in committing the terrorist act.

It was the *Kartar Singh Case* where Supreme court has scrutinized the definition and therefore upheld it. Never the less as mentioned earlier in the case of **Rajiv Gandhi Assassination**, court was of the view that the act *doesn't amount to terrorist act* and therefore the accused was at that time sentenced according to the **Section 120B** of the **Indian Penal Code**. There are 3 conditions being mentioned under the Terrorism and Disruptive Activities (Prevention) Act, 1987 that has to be fulfilled in order to fall under the 'act of terrorism*',* which according to the court who agreed with counsel of the accused that no such conditions were fulfilled and there was too not any such intention being found to commit such act.

2.2.3 INCLUDING FINANCING OF TERROR IN 'TERRORIST ACT' DEFINITION

2.2.3.1 Terror Financing and it's movement from different sources includes a process which is very complex and hence that's what makes the tracking and controlling of financing of terror one among many tough challenges in handling terrorism. **Global Index Report on Terrorism of 2014** shows that at least there are 43 terrorist groups which are still in operation in anti - national activities all across India. Any type of counter terrorism mechanism can only be combat if we can succeed in knowing from where these funding is coming from which if blocked what act as major success in handling with terrorist activities, and for this reason only now this aspect is also being included globally by different nation's in their legislative policy to overcome the menace of terrorism. And thus India also made few legislation to deal with terror financing activities.

2.2.3.2 The phrase *'raising of funds with the intent for the purpose of terrorism'* was inserted in the **Prevention of Terrorism Act, 2002** under it's definition of '**terrorist act'.** And by the inclusion of this the penalty bar for such financing of terror raised to maximum penalty with death or either imprisonment. Also afterwards separate section to deal with raising of funds for such terrorist organization was enforced and was made offence under **Section - 22,** which includes the following things:-

i. Inviting of others to provide them with the money or property with the purpose or the intention of using it or having reasonable cause to suspect that it may be used, for the purposes of terrorism[20]

ii. Receiving money or property with the intention of using it or having reasonable cause to suspect that it may be used, for the purposes of terrorism[21]

iii. Providing money or property knowing or having reasonable cause to suspect that it may be used, for the purposes of terrorism[22]

iv. The provision of money or property in the above mentioned situations referred to its being given, lent or otherwise made available, whether or not for consideration.[23]

2.2.4 <u>PROVISIONS OF BAIL</u>

2.2.4.1 According to '**Section 167**' of the '**Criminal Procedure Code'**, the person who has been arrested, should within the period of 24 hours be presented to the nearest magistrate under the **24 hours** of the arrest. And if the investigation within the 24 hours cannot be completed then the magistrate is authorized to extend the said period upto for 15 days. After which person arrested has to be presented again before the magistrate who after the justification can further extend the detention of such person for *next 15 days*. But such detention *cannot be more than 60 days*. CrPC provisions which deals with the bail are '**Section 436 - 450'.** So in order to deal with terrorist activities it must be ensured that the

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[20] Prevention of Terrorism Act, 2002; Section 22 of the Act.
[21] Prevention of Terrorism Act, 2002; Section 22 of the Act.
[22] Prevention of Terrorism Act, 2002; Section 22 of the Act.
[23] Prevention of Terrorism Act, 2002; Section 22 of the Act.

provisions related to the bail of the arrested person should be made stringent and not provide bail easily to the person who get arrested for some terrorist activity. Hence that is why the **Terrorist and Disruptive Activities (Prevention) Act, 1987** under it's **Section 20(8)** deals with bail provisions with context to those arrest that have some connection with the terrorist act to disturb the harmony within the country, and that such arrested person cannot get bail easily and can only get bail if he doesn't fulfills the following conditions or requirements:-

a. Opportunity was being provided to oppose such release on the basis of application.
b. An where the Public Prosecutor, opposes an application, such court is satisfies then on the reasonable grounds the such person is not guilty and cannot commit any such offence when such he/she is likely to be out on bail.

2.2.4.2 Such provisions didn't find it's place in the **Unlawful Activities (Prevention) Amendment Act, 2004.** Those who opposes these provisions tend to argue that usually or mostly even the person gets arrested the general option is to get the 'bail' and that is something that should also be there in the case of matters related to terrorism. Moreover the stipulation has been upon the what court perceives and it is the court who has to be satisfied that there was no offence being committed by the accused, court perceives this very strictly. And this is why among many reasons the Prevention of Terrorism Act got repealed was the periods of detention being prolonged as there was no bail at all for the accused.

2.2.5 <u>DETENTION PERIOD AT THE TIME OF INVESTIGATION (REMAND)</u>

2.2.5.1 **Criminal Procedure Code** under it's **Section 167** states that whenever after the arrest of the person it seems that the investigation can't be completed within the period of the **24 hours** and such person is being detained in custody, then if the grounds for such arrest under the FIR founds to be fair. Then the Officer In Charge of that police station should present such arrested person before the nearest Magistrate. Magistrate who may have the authority to provide accused with the custody which **didn't exceed the term of 15 days**.

2.2.5.2 The above mentioned provisions of the said section(mentioned above) of CrPC, makes it quite clear that the magistrate has the power to order accused for detention period of upto **15 days**. After this period depending upon the very nature of the crime the accused may

for the period of either **90 or 60 days** be kept for judicial custody. In the case of **Terrorism and Disruptive Activities (Prevention) Act, 1987** this time period of '**15 days**', '**90 days**' and '**60 days**' has been replaced by the time period of '**60 days**', '**180 days**' and '**180 days**' accordingly. And hence '**Remand Period**' has been extended beyond the time that was being stipulated under the **Criminal Procedure Code**. Also just like in the case of TADA, similarly under the '**Section 49**' of the '**Prevention of Terrorist Activities Act**', this act provided the time period reference of '**30 days**', '**90 days**' and '**90 days**'. So on the basis of report of the Public Prosecutor mentioning the non completion of the investigation under the 90 days the Special Court then if wanted can increase the period of detention to the accused to the **180 days**, by showing the the progress report of the investigation. Similar provisions like this have not been incorporated or inserted in the '**Unlawful Activities Prevention Act**' after the **'Prevention of Terrorist Activities Act'** got repealed.

2.2.5.3 So hence, both the act's **Terrorism and Disruptive Activities (Prevention) Act** and the **Prevention of Terrorist Activities Act** both tend to provide for the extend *Remand Period*. From time to time it's been a debatable topic that such a long period of detention under these acts are completely unnecessary and therefore only the CrPC provisions are enough to deal with such activities.

2.2.6 CONFESSION

2.2.6.1 Both our '*Criminal Justice System*' & also our '*Constitution*' talks about the one very basic principle i.e. the Principle of '**Protection against Self-Incrimination'**; this has been stated in the '**Article 20(3)'** of our Constitution. Confessions made to the Officer (Police Officer) under the '**Section 25**' of the '**Indian Evidence Act**' are considered as '*inadmissible'.* The reason that why the confession by the accused in front of the Police Officer is regarded as inadmissible is because it is being felt and happened also time to time that their is possibility of the torture and use of force by the police in order to extract the confessions. May this be happening in dealing with some ordinary crimes but to deal with issue of terrorism there has to be reconsideration of the same. '**Section -15**' of **Terrorism and Disruptive Activities (Prevention) Act, 1987** provides with provision where the confession before the Police Officer too would be considered as **admissible.** As we already had discussed that from time to time the validity of the Section 15 has been upheld by the

Supreme Court like it happened in the case of **Kartar Singh vs State of Punjab.** So in order to ensure that there should be no such violation of the Constitutional provisions Supreme Court came up with certain guidelines for the purpose of safeguarding the provisions of the constitution. **Prevention of Terrorist Activities Act** just like these provisions of **Terrorism and Disruptive Activities(Prevention) Act, 1987** had the provisions related to the admissibility before the police officer regarding the confessions. The guidelines laid down under the *Kartar Singh vs State of Punjab* by the **Supreme Court of India** were also being incorporated under the provisions of this act.

2.2.6.2 Admissibility issue has always been a hot topic of discussion, **Law Commission of India** has favoured the confession if did before the police in it's **48th Report**. But again in it's **185th Report** after several examinations was of the view that no confession should be made before the police, if made the same would be inadmissible under ordinary laws but be made admissible in cases involving grave offences like that of terrorism. The one who are of against of the admissibility of confessions in front of police officer, upon what if the accused just want voluntary confession for which he can do that to magistrate rather to police officer and also as mentioned above there possibility of using coercive ways for extracting the confessions. Hence that is why **Unlawful Activities Prevention Act** don't allow to make confession to be made before the police officer.

2.2.7 <u>REVIEW COMMITTEE</u>

2.2.7.1 As we have already discussed above that the issues related to in dealing with the menace lie terrorism, which is complex an requires some out of the box steps to tackle the same. Similarly it shows that there is need of separate agencies to work properly in order to successfully investigate the accused persons of such crimes. Therefore the fact that there is need for the separate provisions to deal with the these activities can not be doubted just like POTA, there can some kind of possibility of propensity as happened in some states with context to **Prevention of Terrorist Activities Act (POTA).** So it quite clear from here that there is need to take adequate measures in order to to safeguard the legislation and also in order to prevent the stringent sections and other such provisions in these acts. And because of the same reason there is **Advisory Board** instituted as in order to prevent the misuse of detention provisions under the **National Security Act**, and thus all such detention of the

accused and it's release totally depends upon such Advisory Board that has been instituted under this act. The mechanism like in the National Security Act was not there in the **Terrorism and Disruptive Activities (Prevention) Act,** and therefore the constitutional validity of TADA was upheld and then accordingly Supreme Court ordered for the setting up of '**Screening Committee'**. Though the provisions related to *Review Committee* were present in the **Prevention of Terrorism Act** in '**Section 60'** of the Act. From the provisions of the POTA it was quite clear and evident that **Section 60** of the act does not talk about the powers of the **Review Committee** with context to either '**Prosecution'** or either '**Investigation**' under the 'P**revention of Terrorist Activities' Act.**

2.2.7.2 So in order to make the **Prevention of Terrorist Activities Act** more precise or to say provide the act with more teeth, for the same the amendment was done and by amendment the new act namely - **Prevention of Terrorism (Amendment) Act, 2003** was being constituted and required provisions were added. After POTA Act got repealed, and the **Unlawful Activities (Prevention) Amendment Act** of **2004** came up with provisions related to the review committee's which would be headed by the **Judge** of the **High Court**, though such *powers of review committee's were limited* to provide just notification under the '**Section 36'** of a terrorist organization.

2.2.8 IS THERE NEED OF ANY SPECIAL COURT?

2.2.8.1 '**Terrorism and Disruptive Activities' Act** in it's '**Section 9'** of the act provides for the Court's that has to be constituted to deal with the cases related to terrorist activities. '**Section 17'** of the same act talks about the trial of cases under this court and such trial under this court would have the precedence over the other cases in the trial against accused an hence would be used in concluding in preference in or to other cases. **Constitution of Special Courts** has also been mentioned in the '**Law Commission Report'** in it's **173rd Report**. Also '**Prevention of Terrorist Activities' Act** provides for Special Court's constitution through the '**Section 23'** of the Act. Nevertheless at present time Unlawful Activities Prevention Amendment Act is in picture and it has done away with the Special Court's and hence at present any trial that takes place like as in any such other criminal cases.

2.2.9 NEED OF AGENCY FOR INVESTIGATION ?

2.2.9.1 In it's **24th Report** the **Parliamentary Standing Committee for Personnel**, is of the view that with context to Agency for Investigation of the Terrorist Activities, reconstitution of the CBI by having a separate Division under it to deal with Terrorism namely - **'Anti - Terrorism Division'**.

3. <u>ROLE OF DIFFERENT GROUPS & SOCIETY IN MAINTAINING THE INTERNAL SECURITY</u>

On the very first hand, we should understand it is just not the duty of government, policymakers or different organizations of government to overcome this menace of terrorism, in fact every citizen has the responsibility to ensure that there should not be any such incident's to be happening within the nation. Nevertheless still on individual basis maybe the impact would not show on the very next day, but the society and groups/agencies by providing a helping hand can also makes a great impact. And thus this what we are going to discuss under this head, cause to combat the menace of terrorism it is important to have altogether the response which has to be the multi-dimensional.

<u>Let's Have A Look On The Possible Areas Which Can Make Deep Impact In Combating The Terrorism:-</u>

3.1 <u>EDUCATION</u>*:*

3.1.1 Social groups on the basis of religious, ideological and sometimes political account gets alienated to each other and this what sometimes give rise to the violence, so it can be said that violence gets it roots from these *alienated social groups*. It has been watched many a times that violent outbreaks that happens usually are the result of the societal tensions which result into the latent conflicts., it becomes important to stop this at the very first instance cause these are the one such form of violence that if not stopped can result into a form of terrorism and can become another anti-national elements. A need of change in the mentality is required and the same can only be *achieved by the way of education* which in long run be result in harmonious nature of the society and would then not be influenced by the terrorists ideology. With context to same issue in year **2005 National Curriculum Framework** has made few

recommendations, these recommendations talked about the inclusion of 'Education for Peace' in education of the students; so to achieve the same **NCERT (National Council of Educational Research and Training)** took some initiatives in order to provide with some training to the teachers and for teacher education for peace to provide with related resource material. To this context, also **Ministry of Human Resource Development (MHRD)** provided the NCERT with the 'Human Values Scheme' for the purpose that same could be re-conceptualized by NCERT.

Below stated are the few recommendations that were being made for '*Education for Peace*' which was suggested by the '*National Focus Group*':-

- ✓ To set the peace libraries in each school that would help in promotion of peace skills and the values.
- ✓ Co-operate along with Media houses for the promotion of 'Education for Peace'.
- ✓ To come up with different event celebration like 'Human Rights Day', 'Girl Child Day' or 'Environment Day'.
- ✓ To engage in organizing different district level festivals related to peace for the students of the school.
- ✓ Helping in the facilitation of the exchanges between the students for short term of different streams, such exchanges between the students help in overcoming the different type of barriers.

3.1.2 There is a strong need to have approach which should be holistic for the proper promotion of the '**Education for Peace'** in schools of both type i.e secular as well as religious. As we already discussed of how to promote Education for Peace in Secular schools, similarly the attempt in order to promote it in religious schools could also be a great option.

3.2 <u>CIVIL SOCIETY</u>:

3.2.1 To adopt a multi-dimensional approach involving the civil society as a matter of response to the terrorism threat was 1st time being recognized at the **General Assembly** of the **United Nation's** which affirmed and put *'the focus upon encouragement of civil society along with the other governmental organizations'*. In the **UN Global Counter Terrorism**

Strategy, 2006.[24] There has been drastically a rapid increase of civil society involvement in the matters of public affairs. Civil Society has been a huge success in a way that they have gathered the government attention towards the issues faced by the citizen's of the nation and also been active in finding if there is any human right violations at the tie when dealing with the terrorists. Civil society can also makes a great impact by making people aware of how the different precautions that can be taken when such terrorists activities took place because more then anything else it is the normal citizens of the nations who are the target of such activities and can also helps the government to tackle with or to address with the socio-economic deprivation.

3.2.2 And hence therefore it is very important to for the citizens to make themselves ready with all such precautions so that that they can handle if any such incident took place in near future. These NGOs and Civil Society can also be made to tie up the government authorities to have a set plan in order to cooperate them in any government oriented target oriented programme and also the civil society by engaging themselves with the government can help with developing of citizens capability.

3.3 <u>MEDIA</u>:

3.3.1 All types of media related channels like newspaper, electronic media, publications etc fall under the generic term use to denote all the i.e. 'Media'. The reaction time on media has improved or had grown substantially because of the ***electronic media*** and also because of the with the ***print media modernization.*** Though there are instances which states reports of the media having the conflicts, but the same has been many a time proven to very instrumental. It shows that terrorist look for publicity mostly in a democratic countries. Media as sch never promotes such acts of terrorism but because of the very nature of the media houses to deal and report the events around it's environment but same is what being misused by the terrorists. So it is important for media houses to understand and look & took some steps with context to news reporting cause even terrorists for such type of publicity. Therefore media should be alert in their design reporting so that it doesn't result in helping the bad intentions of the terrorists. An that is why there need of an hour now that media should understand government roles in maintaining the internal security and peace by co-operating. Anyway the

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[24] http://www.un.org/terrorism/strategy-counter-terrorism.shtml

awareness and steps at the time of such terrorist attack or to be ready for that is something that both government and media houses understand. But it is there different type of function and the responsibilities which define their perspectives and positions. It is very important to come up with the good media related policy which can be based on the following areas:-

A. Transparency

B. Ease of information access

C. Media should try to do it's role in covering balanced crisis coverage, especially terrorism.

3.3.2 All different types of media houses should have in themself certain kind of media code of conduct, to which they have to follow it ethically that no such reporting of the the terrorist activities be done which in one way or the other is going to make benefit to the nefarious intention of the terrorist. Induction of training and bringing best media education also for the other branches like the branch of security forces, police and intelligence, and Information technology branches to; and not just the branches of public information etc. Other than this one more thing that can help is the greater transparency, it would help in the media with the our fight against the terrorism.

4. <u>PARADIGM SHIFT : ROLE OF INTERNET AND THINGS IN UPLIFTING THE TERRORISM</u>

It is not the first time that technology is being seized as upon creating a strategic vulnerability. Agencies in India that looks for maintaining internal security and peace has now being facing challenges that are unprecedented in nature. There is a need to tackle such acts, they (agencies) should now make effort to meet expectations of the citizen's for the purpose of greater accountability of public and also because of the community oriented enforcement of law. Moreover the agencies should work on the above states area with the view of also increasing the efficiency. From the past few decades our country has seen a drastic change in the landscape of internal security. So because of such type changes in the environment of security and dealing with the such complex environment of security, already the **Ministry of Home Affairs** has dealt in security with the forefront to strengthen it. An to do the same some initiatives like that of **NSG Hubs** & the establishment of the **National Intelligence**

Grid (NATGRID) are few among other initiatives that has been taken already.[25] Now at the contemporary time there is a need of the **intelligent information management,** which can be very effective in minimizing the duplication and by making efficient in information gathering resources.[26] Management of information is something which helps in increasing of the effectiveness along with the performance in a very different number of ways in the public safety related services, it also makes a great deal in the sharing of the security information among the different security agencies.

The demand of the security now lead by technologically enhancement has never been greater. There are so many agencies that are engaged in activities of intelligence with respect to national security. Agencies like this involve the **Wing** which are engaged in **Research and Analysis**, **Intelligence Bureau**, **All India Radio Monitoring Service.** But also these same agencies have some separate functions and the missions, and they altogether lacked in coordination but at present they all are working together and also now not just within themselves but also these agencies now has to work with the central and the state level agencies dealing in prevention of the crime and law enforcement.[27] There is very huge possibility as mentioned earlier that such efforts can be duplicated under this type of large agencies which has been set-up with the large and diverse intelligence. There is a need of establishing the **integrated communication network** with help of efficient intelligence structure for effective functioning of the agencies with help of latest technology and expertise too. And it is then, investigators would easily be able to connect to each other which would make them take any precaution and to respond towards the upcoming threats more efficiently.[28]

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[25] NATGRID Project Gets in Principle Approval – NATGRID (National Intelligence Grid), http://pib.nic.in/ newsite/erelease.aspx?relid=72527

[26] http://www.dfs.gov.in/Tenders/lims. pdf - discusses Forensic Laboratory Information Management System (FLIMS)

[27] Chief Ministers' Conference on Internal Security to be Held Tomorrow – discusses Crime and Criminal Tracking Network & Systems (CCTNS); http://pib.nic.in/newsite/erelease. aspx?relid=69443

[28] "Information Management in Policing Improving efficiency and performance by unlocking the value of information" published by Accenture Institute for Health & Public Services Value; http://www.accenture.com/ SiteCollectionDocuments/PDF/ Accenture_Information_Management_ in_Policing.pdf

Apart from loss of human life, breach into the internal security makes the huge impact on a image of the nation. It is very important to make the India's internal security agencies; to provide them from the latest technology so that they can take proper action before hand and get themselves prepare for any such threat against the security of the nation and also to ensure that the agencies are well-equipped with the policies too. There is absolutely no a single doubt that how huge the importance of information is in the world of security as it helps in providing the right information to the right people at the right time. The advancement in the technology is truly set higher benchmark in terms of developing tool which would helps in analyzing the data and further to sent it in a much more efficient and effective way. Therefore it is the agencies who should to come up in developing the consolidated management system with regards to the information; means **information management architecture** should be developed.[29] *There are few suggested areas states below where there can be possible actions be taken in order to protect the internal security from the threats:-*

1. Firstly there is need of bringing an effective information management system or architecture.
2. Need of involvement of different stakeholders.
3. Need of establishing the Central Governance in order to ensure that there are set standards for the common information management.

It is the time that now we should review that how our policies being structured means whether they are efficient enough or effective enough or do they provide the agencies with the bit of agility in order to act against the people who try to mess with our nation's internal security. And also to make the agencies equipped with right technological tools. Information has been now the heart of current day internal security, prevention of crime, enforcement of law and the agencies in these areas have to revert back with effective information management. So therefore the effectiveness of the agencies can be achieved by way of strengthening the information management system; this would result in providing with appropriate information to the security agencies in order to make the proper decision making which eventually would helps in the improvement of operational performance.

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[29] "Accenture Border Management and Public Safety - Protecting Public Safety" published by Accenture; http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture_Protecting_Public_Safety.pdf

5. MEASURES TO BE TAKEN IN COMBATING TERRORISM TO MAINTAIN INDIA'S INTERNAL SECURITY

5.1 REQUIRED LEGAL FRAMEWORK IN DEALING WITH TERRORISM

5.1.1 NEED OF HAVING PROPER LEGISLATION

5.1.1.1 As from the discussion we had till now in this paper, it shows that there is no doubt in acknowledging the fact that there is a serious threat to our nation's security from the terrorists. The existing law's which are there in India to deal with such terrorist's activities are not adequate and also there are no such penal laws too in force to deal with such activities, and may be this is the reason that why terrorists group are easily able to pass safe from these loopholes in the law. Hence there is no deny that stringent laws are the need of an hour to deal with this menace of terrorism. A for the the extra-ordinary threats extra-ordinary steps has to be taken to with respect to either making the bail provisions with respect terrorist activities very stringent or either by providing the such safeguards which can prevent the misuse of the legal provisions.

5.1.1.2 The confusion that remains is after the repeal of the **POTA (Prevention of Terrorist Activities) Ac**t, and it's provisions which are now being incorporated in the **Unlawful Activities Prevention Act** not totally but in somewhat modified form; whether to take as prime consideration the Unlawful Activities Prevention Act or either the **National Security Act, 1980,** it is because the Unlawful Activities Prevention Act mostly deals with combating the unlawful activities of not just the individuals but also of those associations who are engaged in these activities on the other side National Security Act deals with those provisions which provide not just for the prejudicial activities with respect to security and integrity of the nation but also provide for the laws which are not usually found in the normal laws i.e. provisions related to the **Preventive Detention**. And therefore according this aspect the incorporation of the National Security Act with respect to dealing with the growing threat to integrity and security of the nation. And may the same is the reason because of which the **Official Secrets Act** has been included under the National Security Act.

5.1.2 DEFINITION OF TERRORISM

5.1.2.1 Any way the author is of the opinion that merely the act of assassinating the former Prime Minister of our nation in itself is self sufficient in acknowledging that the act is heinous in nature and which has been acted with intention causing terror within the people. Sometimes terrorist group's in order to get successful in their terror attacks try to destroy the personnel belonging of the agencies in order that non action can be taken in order to stop their terror acts. An therefore such destroying of the public functionaries should also be considered as the terrorist acts[30].

5.1.3 <u>MEASURES TO STOP FINANCING THE TERRORISM</u>

5.1.3.1 The use of funds for the purpose in order to commit terrorist act Under the current law of anti-terrorism that is the **Unlawful Activities (Prevention) Amendment Act, 2004** provides with the imprisonment which can be extend to the imprisonment to life under **section - 17** of it. And also **section - 40** of the same act make organisation liable for raising of funds in order to commit terrorist act. But it doesn't talk about or have any provisions relating to deal with financing of these terrorist activities and to stop such funding and hence the author thinks of that the raising of the fund in order to commit the terrorist act **should also be included under the definition of 'terrorist act'** so that the events of even channelizing the funds in helping out their intention of terror attacks could be combat.(4.2.9)

5.1.4 <u>BAIL PROVISIONS</u>

5.1.4.1 It has been observed dad the person who are we accused of doing a terror act are not just an another ordinary criminal and therefore the witnesses in these cases afraid in giving the statement to the authorities And hence search accused persons get bill easily which can possibly again on bail influence the whole investigation process as the gathering of evidence becomes difficult. And therefore author is of the view that there is a need of stringent bill provisions under the law with respect to such terrorist acts.

5.1.4.2 And therefore it doesn't seem that there is any need of any kind of modifications with context to bail provisions provided under the law because both terrorist and disruptive activities act and also the prevention of terrorist activities act provide for the **stringent bail**

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[30] Prabha, Kshitij (2000). "Defining Terrorism", Strategic Analysis, Vol. XXIV, No.1.

provision itself. If we have a closer look towards the provisions provided it would show dad the grounds in order to believe that the accused is innocent or not would only be applied when the prosecutor would oppose or a poses the release of an such accused on bail. And hence as there is a tendency of the investigate agencies to oppose the bail, Then in such case such responsibility would be casted out both from the investigation and also from the prosecution that the application of the bail should not on a routine manner be opposed and there has to be the mind application that whether such detention of the accused is even required or not.

5.1.5 DETENTION PERIOD

5.1.5.1 The author is of the view that there is no doubt in acknowledging the fact that yes the witness under these cases related to the terrorists acts are afraid of in disposing their statement to the authorities and also because of the very severeness of such cases it requires more time then the usual time by the investigation agency in order to investigate the case properly and hence the **time limits which are been provided currently in the code of criminal procedure seems to be inadequate** and therefore be acknowledged for the change. Also the provisions with respect to the same are also been provided under **Prevention of Terrorist Activities Act** and which have the fine balance of the provisions with respect to detention and therefore the same provisions could be restored under the new law.

5.1.6 CONFESSION

5.1.6.1 Author is of the view that there is a need of supervising the investigation agency so that it can be ensured that the investigation agency is not involved in the extraneous influences and the same could be ensured bye bringing in board of investigation which would be autonomous by which the investigation agency could function in a more professional manner. Moreover also the staff of the investigation agency has to be be trained with the usage of **forensic tools** so that their job becomes easy in a way that the collection of evidence would become easy. ***And separately different authorities 'district wise' or 'state wise' can be made with context to any complaint relating to the misconduct of police.***

5.1.6.2 However till the time the above stated reforms could come into a picture it is been stated that whenever there is a requirement of a confession the same could be made before the **judicial magistrate**. Though there was a provision under the **Prevention of Terrorist Activities Act** which stated that confession before the police can made admissible; however the person who has confessed should be presented before the chief Metropolitan magistrate within the 48 hours. Anyway no matter what circumstances are present it would be a better option to directly produce the cues to the digital magistrate because normally the judicial magistrate are available at the taluka levels.

5.1.7 REVIEW COMMITTEE

5.1.7.1 It's been observed that there is a requirement of **Institutional Mechanism** same as there was a requirement of the stringent legal provisions for the purpose of prosecuting the accused who committed terrorist acts; *for the purpose of checking any abuse of these provisions*. And same could be done under the **National Security Act** by the inclusion of a new chapter or provision comprising of the **Review Committee** which would ensured the review of the cases within the time period of *30 to 40 days* after filing of the case and would state that weather there's any case made out towards the accused or not and and if it is found by the review committee at any stage that that no such case exists against the accused then the other party which is prosecution would be bounded by that decision. Chairman of such committee could be any senior member like Director General of Police or even the Law Secretary.

5.1.8 SPECIAL COURTS

5.1.8.1 It has also been observed that there is a requirement of **special courts** in order to narrow down only those cases which are related to terrorist activities so that the trial of same can be made separately in the special court so that the the proper attention while dealing the cases related to security of the nation can be taken. These Courts can have the staff which includes the officers who are being trained and who can address such cases which are related to terrorism. In order for the speedy trial of the security related cases inspite of setting the special court in every state there can be set up of fast - track court for the trial of such

offences. And also as per the requirements the other provisions can also be included related to special courst as when required.

5.1.9 <u>INVESTIGATIVE AGENCY</u>

5.1.9.1 Also the mere setting up of the investigation agencies is not going to fulfill the purpose. The staff which is going to be included under such agencies should also be looked upon whether they have such integrity; which cannot be doubted and also the professionals who are competent and have the acquired expertise knowledge in dealing with the cases related to terrorism. And also there can be set procedure for the appointment of such professionals so that the '*independence' and the 'autonomy' of such agency can be ensured.*

5.2 <u>NEED OF UPGRADING THE CRIMINAL JUSTICE SYSTEM</u>

Because of the different types of strategic unfavourable conditions and environment India has not been fully been able to explain it's the poor situation of it's internal security. The reason for the same lies in it's weak Internal Security Mechanism, which is non other than it's own criminal justice system. The very purpose of any criminal justice system has to or should be to provide it's citizens with the maximum sense of security. But in India it's criminal justice system has not been in the good shape because of various reasons among which one is strain. It's not like there is need of change in just one area but there is need of improvement in all the three components which are as follows:- '**Law Enforcement'**, '**Adjudication'** & '**Correction'** and obviously reforms time to time some of what we have discussed already earlier in this paper with context to legal framework.

◼ **Law Enforcement** :-

As we discussed above that some of the laws made for the purpose of countering terrorism have been redundant now; became old or out-dated. But still mostly it is not the the redundancy of the laws and regulation's which is being hurdle but it's the enforcement of these laws that is what makes it more challenging. Police also do suffer with different variety of procedural, personal sometimes also the behavioural ailments and paradoxes; that what **Bureau of Police Research and Development (BPRD, 2006)**. Few major challenges has

also been identified with context to the police organization by the **'Draft National Policy on Police Training'** like: increase in organised and white collar crimes with the sociopolitical instability that have hugely resulted in the protests, also resulted in the rapidly increasing rate of juvenile delinquency, disparities in the society etc, which has or in near future can result more in increase of burden on the shoulders of the police force and hence leads to decline in respect towards the law and many more daily increasing different types of issues. Nevertheless, the total number of policemen were unable to be consistent with the challenges that were mounting daily. If we go in statics, we'll found that number's of policemen in India are not in justified numbers and are not in consonance with the norms set by the *UN of at least 220 police force* as it is just 137.8 against this norm in India. This results in workload over the police force and had effected their efficiency and quality. Bureau of Police Research and Development, 2006 stated about quality that, the image of the police means the functional image of the police is not at all satisfactory, about in general police community's image is kind of negative in nature. The quality of police force is bad because of the improper training of police men. It is because and as core committee has stated that there is neglect in most of the police organizations in police training except the few which are Central Police Organisations. State are not able to provide up with the proper training of the police.[31] Though for IPS officers there are training institutions with best facility but there no as such training institute for constables & sub-inspectors.[32] All this is because of 'Lack of infrastructure for training most of the states.[33]

Padmanabhaiah Committee stated that the requirement of India is a fully professionally skilled and utmost motivated police force which should be provided with the best training institute.[34] In order to build up the overall professionalism and strength of the police force there is a need of some continuous steps and consistent efforts for the same. There is a need that now the police aspects related to the penal or procedural areas has to be reconstructed or reshaped according to the democratic and secular need of the Indian people, and to grow

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[31] Ministry of Home Affairs, 'Gore Committee Report on Police Training', chap. 1, para 2,

[32] Interview with G.K. Pillai

[33] Finance Commission of India, 13th Report, p. 222, para 12.90

[34] Second Administrative Reforms Commission, 5th Report (Public Order), June 2007,para 1.8.

professionally an individual change is required in behavioural aspects[35]. That is how we would be able to build the professionally sound police force which can function in a progressive way being a democratic in their behaviour being on duty (Bureau of Police Research & Development 2006). Not having the proper protective gears and the weapons, absence of any devices of communication things like this has become yet another big issue for police personnel's, these personnel's mus be upgraded with the world class standard equipments, with the help of fund that are being allocated by the centre to the state government has to be used in a economical way in this gear area. All these things can be more of help when the target would be kept of a better police station which should equipped with all such amenities that has to be there in the police station, which is connected to database system of records having the database of all criminals. The **Bureau of Police Research and Development, 2009** had statistics that showed that there are at least 107 such police stations which doesn't posses the wireless sets, and about 38 police stations are such which posses neither the telephones nor the wireless sets. Now it has become important to solve this gap of communication as it has now become very. Every police station is needed now to be technologically updated it is not that all this is luxury but because all this has now became an imperative.

In a process of 'Reforming the National Security System' which has been recommended by the Group of Ministers has came up with that the CRPF would be the one which would be acting as **counter-insurgency force in the nation**, but even 10 years down the line after the recommendation CRPF is yet not geared up themself for this duty. *Cobweb of whether who is responsible to deal with internal security should be made clear by the constitution, till this date constitution talks nothing of internal security; there is no mention of it in our constitution.* As we have already discussed earlier in this paper that Supreme Court of India has already mentioned everything about who is responsible for what in the *Kartar Singh vs State of Punjab.*[36] The court has distinguished between the 'law and order' as one thing,'public order' as other, and acts of terrorism another; in the saying language of **Chief Justice Hidayatullah,** as the 3 concentric circle, in which the security of the nation is the innermost circle and which is completely the responsibility of the Centre. It was easily

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[35] "Internal Security & Policing: Need for a Strategic Perspective", 'The Indian Police Journal', October – December 2006.

[36] Kartar Singh vs State of Punjab, Writ Petition No. 1833 of 1984 and Writ Petition No. 194 of 1989, decided on 11th March 1994(1994(3)SCC 569, 1994 Cri L J 3139

observed by the court that the public order under the state list do not encompasses the terrorism.; therefore there is **need of inclusion of Internal Security as subject either under 'Centre' List(List -I) or either the 'Concurrent List'(List III).** It is important hat centre should take action in relation to pertaining issues of internal security along with the State, on spirit of federalism.

■ **Adjudication:-**

The other major problem under our **Criminal Justice System** because of the constraints of '*manpower' and 'resource'* is that there are very huge number of backlogs of the court cases. If we considered the cases which were pending just in the the supreme court were about 61,876 by the period of mid - 2012 in last decade out which the case that were unresolved were 40,658.[37] With context to High Court's and other Subordinate courts this numbers of pending cases rises upto 3.2 crore in year 2011 out of which 85 lakh cases were older than 5 years. According to the **PRS Legislative Research** these numbers has gone up to 148 percent in Supreme Court and simultaneously 55 percent in High Court's. These Backlogs further results in delays in number of cases and adjudication, also by the time of trial the evidence gets diminished and it's reliability decreases by the time, and hence because of large number of under trial cases the accused spent uncertain amount of time in jail waiting just for trial to commence; ***Justice delayed is no doubt justice denied.*** And if the same issue not being addressed then the faith on the judicial system of the people would not longer be exist. I*n order to deal with these issues 2 possible measure are being suggested:-*

1. First step that can be taken is to increase the number of judges in the court premise. As itself being suggested by the Supreme Court, existing ratio of 13 judges per million people should at least be raised to the limit of 50 judges to per million not immediately but in a phased manner.[38]

2. The Current system i.e. Adversarial System is quite insensitive when it comes to victim's right's; therefore as the Criminal Justice Commission has suggested that few of the useful and good features of the Inquisitorial system can be used in order to strengthen the present system of adversarial that can help in increasing due conviction rate.

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[37] Ganz, 2012

[38] This was stated by the then Indian Chief of the Army Staff during a media interaction the day after assuming the office on April 1, 2010

Simultaneously, higher cost of filling the case could be instituted in order to discourage the *frivolous* litigation. Special Courts should now be opened up so that to replace the civil court's, the purpose to this is that it would eventually help to get only judges who are trained in specific law area would be in better condition to deal with such cases rather than the case being dealt in the court where all types of cases do come and judge has to deal with each new case everyday with separate domain.

■ **Correctional System:-**

Indian prisons are just overcrowded, Total capacity of Indian prisons all over the country touch the numbers nearby to 332,782 against the total inmates of the jail i.e 372,926. According to **NCRB Report** the most number of inmates that constitute the place in the prison are the under-trial prisoners. The state with the most number of convicts(23,910) as per the IPC Crimes is Uttar Pradesh which is being followed by the Madhya Pradesh (14,434) respectively. And the highest number of under-trials were reported under the NDPS Act which was accountable for 24.2 % of the total under trial prisoners. Correction strategy should work towards changing the attitude of the criminal's. But what could be done with context to same, to begin with just start from the ability of the criminal to rehabilitate and once to make him go with process of re-adaptation to get back to his normal behaviour. But the barrier here is our prison cell whether it's environment is good enough for the correction of such criminal.

So in order to deal with this there are two aspects to imprisonment which are- '**Imprisonment as Punishment'** and **'Imprisonment for Punishment'.** under the first head mentioned it involves the solitary confinement or other things like denial of the contacts from the society. Whereas in second aspect f the imprisonment other than what mentioned in the 1st aspect things like physical and mental humiliation is considered as a part of the punishment. Although because of not better conditions of the prisons the punishment of second aspect seems to be in force upon the prisoners and this can result in the counter productiveness of our Indian Correctional System; this is something which should surely be looked upon because prisons are primarily be looked or meant upon as the rehabilitation.

6. **WAY FORWARD**
   CONCLUSION

At present time it is very essential to consider the nation related political, social cultural and diplomatic national objectives. The very thing is we would be unable to protect our nation from external challenges if we're not up to mark in protecting our internal security. Also the internal security in its absence would provide to non effectiveness of the governance. From now 20 years later our nation would be most populated country and also would stand largest in the economy with the estimated workforce of one billion. And to say it won't be wrong that in the upcoming few years nation like India could act as the significant player not just in a regional but also in a global arena. But this threat which are affecting the internal security would affect India to become the global power. In order to deal with the entire gamut of the internal security threats it is very essential to deal with the legitimate crises to make sure that the criminal justice system. In order to improve the very law and order It is very important that there is a corporation in **Rule of law** across each & every institution. The reforms in the police administration is just not sufficient alone in order to deal with such menace, If even after the arrest or capturing of these criminals and presenting them before the court and then the judges who are corrupt ultimately release them or when they are sent to prisons they still able to broaden up there criminal acts; even when they are they're behind the bars[39]. The biggest obstacle after India is to protect it's citizen's cultural, political & physical identity. Non-state actors and also state actors are in contemporary time the actual threat to Internal Security of India. But now by changing paradigm of nation's internal security this threat also include threat from the cyber world, corona-virus and technology which are acting as black swan events these days. Therefore the internal security focus should also be the society in maintaining the communal harmony, hence people and society both are the focal point in dealing with internal security of the nation; along with the issue of terrorism[40]. Because it is the undeniable fact that the now state are not safe anymore, as India remains the target of terrorist and also not prone to cyber activity against citizens.

Among all areas that we have discussed; the most important area of countering this very complex internal security threat is none other than dealing with the common public. Where

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[39] "Policing India in 2025: Challenges & Issues Ahead", 'The Indian Police Journal', January - March 2003.

[40] Hamid Ansari, 'For Internal Security, the State Must Be Accountable and True to Its Principles', The Wire, 15 February 2017.
https://thewire.in/government/internal-security-state-must-accountable-true-principles

the very common public acting as a vigilance then such public along with the involvement of civil society can help the government for the purpose of countering not just the internal but also the external threat. Hence, there is a need to create strong consciousness regarding the national security. And it's not just about does role of civil society but also the public sector can contribute in the internal security matters do it is not clear how the private sector directly benefit the internal security of the nation but the international collaboration's in the field of armed technology and bringing the same within the territories could also make our defence forces equipped with latest technology to deal with at which can harm the internal security of the nation. And also by doing this they would also generate number of employment which ultimately help search private sector to evolve itself in the community service by being a part of corporate social responsibility. But now when the world has been taken away by the cyberspace it is not just government not just civil society not just an individual person but all who has to work together in order to track the intrusion in order to investigate the same and to ensure and come up with the strong regime not just with the proper standard legislation but also with the new legislation or the provisions dealing with the cyber intrusion of the terrorist's which can harm the internal security of the nation[41]. India's step in order to build up the strong international partnership to discuss the issues and to come up with strong norms to tackle the cyber space and to provide with the proper code of conduct for it do it is a challenge for the agencies like law enforcement for the purpose of monitoring the cyberspace therefore the audits like cyberspace audits on the regular basis the purpose of collecting or gathering the evidences ought to look for the criminal use of cyber space could play a very important role. So in order to deal with the misuse of the cyberspace in order to make intrusion and affect the internal security of the nation there is a demand of changes in in our policy and also the legislation which can ensure the very compliance. In contemporary time where there is nation-state concept, the actual challenge lies in changing the very concept that has been followed from long way back of national security, which now has to be understood not just in the the military terms but also also now in a very comprehensive way.

There has to be the **feeling of 'Nation's First'** and if it is not present; then in it's absence it is quite a far goal to achieve all objectives of the threats related to internal security[42]. Internal

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[41] Lewis, James "Cyber Terror: Missing in Action", in David Clarke (ed), Technology and Terrorism, London, Transaction Publishers, 2004.

[42] https://www.dailypioneer.com/2019/state-editions/india---s-internal-security-challenges---solutions.html

security in itself amounts to the 5 trillion economy (*in dollars*). The onus of maintaing internal security lies on Police they are the one who should be facilitated with the best of the equipments from proper vehicles to the proper armed equipments; as also while stating the BPRD (Bureau of Police Research and Development) on it's very 49th Foundation Day our Home Minister Amit Shah mentioned the importance of Police personnel stating that - 'at least more than the Thirty Four Thousand Police men are the reason behind the supreme sacrifice towards maintaing the nation's internal security and maintaining peace in complete nation. Therefore police personnel has to make ensure that by the ever changing pattern of the security challenges within the nation they also have to mould them accordingly from time to time in order to deal with such challenges and that can be done by the way of making them equipped with all necessary equipments not just with the proper armed equipments but also with the technological lead equipments and for the the BPRD plays a very vital role in dealing with these challenges and also with the strengthening of the police force. Also there is a need of the initiating the process of examining and analyzing the the need to to amend with necessary changes in the **CrPC and IPC** (Code of Criminal Procedure & Indian Penal Code) said by - 'Amit Shah' (Home Minister). To maintain the internal security in India it is important to keep the focus no other than on the people along with the society as these are the very set parameters for the making of the proper policy framework and the management. The pattern of and the nature of activities of terrorism are too becoming more suave and changing as mentioned earlier in this paper, and therefore the scope of these terror activities are changing and increasing, now the one do terror activities are equipped with better equipment cause now they have more funding then before; therefore the need of an hour is to make the reformation in the present administration dealing with the internal security and for the the same author of this paper makes an attempt by providing the recommendations (suggestions).

7. <u>Suggestion's</u>

<u>*Summary of Suggestions*</u>:

1. <u>**(Para Reference 2.2.1.1, 5.1.1) Need of Having Proper Legislation**</u>
a. There is a need to deal with the terrorism with all the dimensions possible and the same could be achieved with the help of enacting a comprehensive and effective legal framework. Different safeguards should also be considered so that it can be effective in

preventing the misuse of the provisions of the law made for the security of the nation. Separate chapter can be inserted under the **National Security Act** to combat terrorist activities effectively.

2. **(Para Reference 2.2.2.2, 5.1.2) Definition of Terrorism**

a. Most importantly there is a immediate need of defining weather what constitute the '**terrorist act**' the following below stated points can help in coming up with the effective definition:-

• Public functionaries being assassinated.

• Using different types of things like the explosives or the firearms which can cause loss to not just

property but also life.

• Providing with the funds in order of helping search aforesaid activities.

• People who are the members of such terrorist organization; because from the acts of terrorism and

with the possession of certain arms likely which can result in causing loss of life or any injury to the

person.

3. **(Para Reference 2.2.3.1, 5.1.3) Measures To Stop Financing The Terrorism**

a. *The following below stated points can be undertaken in order to combat the financing of the terrorism:-*

✓ The list of offenses can we widen or expended in order to outreach it, in the **Prevention of Money Laundering Act.**

✓ Also There can be a why didn't approach for analyzing in order to know weather the institutional coordination can be helpful or not.

✓ The platform by the regional economic intelligence council in this area can be very helpful in order to increase the co-ordination within various investigation agencies.

✓ Provisions like freezing of assets or the bank account can be brought up or incorporated under the new legal framework to stop such financing of terrorism.

- ✓ Also different investigation agencies with respect to dealing with the terrorism can within the premises build the anti terrorist finance cell.
- ✓ Where there are cases related to terrorism the different groups can be made in order to ensure or investigate into the financial aspects of the act.

4.   (Para Reference 2.2.4.2, 5.1.4) Bail Provisions

a.   With context to Bail, Following below stated actions can be taken:-

- no such person should be released on bail who has committed the act of terrorism until unless the code

  provides public prosecutor with an opportunity so that he can be heard.

- If public prosecutor states or refuses the bail application of accused committed an act of terrorism then

  such accused would not be released on bail till the time the court is been satisfied that there are no grounds

  for which it can be believed that the accused is not guilty.

- And if the time of the detention of the accused has been over **one year** then the review committee on

  regular basis can provide with the advise to the prosecution with respect to the release of the accused one

  Bail and search prosecution would be bound by such advice.

5.   (Para Reference 2.2.5.1, 5.1.5) Detention Period

The reason need of modification when it comes to the detention **(Remand)** during the investigation under the **section - 167 of the CrPC** it can be modify modified from the time. Of **'15 days', '90 days' and '60 days'** to the **'30 days', '90 days' and '90 days' accordingly.**

6.   (Para Reference 2.2.6.1, 5.1.6) Confession

With respect to the confession before the police officer the author is of the view that until there is no constituted committee to deal with this area till such time confession should

remain be continued to be made before **judicial magistrate** as it was before under the **section - 164 of the Code of Criminal Procedure Code**.

7. (Para Reference 2.2.7.1, 5.1.7) Review Committee

The committee could also be constituted in order to examine the case for the purpose of satisfying itself that the case that has been taken up by the investigation agency is prima facie being seen; such committee should be constituted within the time frame of from the day of filing the case **within 30 days** of the case registration.

8. (Para Reference 2.2.8.1, 5.1.8) Special Court's

There can also be the incorporation of **special fast-track court's** in order to deal just with the cases which involved the element of terrorism and also the provisions with relation to 'special court' can also be inserted within the law, and can be used as and when required.

9. (Para Reference 2.2.9.1, 5.1.9) Investigation Agency

Incorporation of the **specialized division** can be made under the **Central Bureau of Investigation** to deal with the terror offenses. This particular division should be competent and have the acquired specialized knowledge to deal with the matters related to terrorism. This Department should have an proven integrity.

10. (Para Reference 3.1.1) Role of Education In Combating Terrorism

Various number of schemes have been incorporated by the **NCERT** for the purpose of encouraging and engaging with the education at the school level through the 'Education For Peace' agenda within the country and in order to boost this 'Education Through Peace'.

11. (Para Reference 3.3.1) Role of Media In Combating Terrorism

For the purpose of education and for the purpose of awareness the potential of media should be used in order to build up the citizens capacity to deal with any public chaos or disorder. And as stated earlier in this paper they should be a self regulating code within the media so that indirectly it doesn't help the very intention of the terrorist group's in conducting terrorist activities.

12. Need of Reforms & Role of State

- ✓ There is a need of a national forum and the same could be very helpful in the formulation of the policy; and the same can put an positive impact dealing with terrorism.

- ✓ Also there can be a great difference if can come up with a proper effective and responsive administration to deal with this menace of terrorism.

- ✓ Such acts which have become outdated and contain provisions to deal with the terrorism should be amended.

- ✓ In a very planned manner there should be a exercise of activities related to development which should take place with regards to displacement problem of people so that the violent conflict's could effectively be avoided on such matters related to terrorism.

The growth of organised crime are at peak and to combat the same there is a need to come up with the All India legislation for this purpose.

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