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Article

Anti-Terror Laws in India: An Appraisal

Ramanand Garge

Abstract

India has been facing the problem of terrorism for many years and has a vast experience in countering the threats and challenges posed by terror groups of different hues. However, speedy investigations, trials and cases to convict terrorists have faced many hurdles from the existing legal mechanisms and processes. Laws and procedures that were enacted to deal with normal crime and are entirely unsuitable for dealing with acts of terror are a major hurdle. As a result, enormous delays take place in completing investigations and trials often spanning more than ten years. The paper examines a number of recent cases of terror and the experience of the established democracies. It argues that there is an urgent need to reform the anti-terror legislations, the investigative mechanism and judicial processes in India. Terrorism poses a global security challenge and is a major threat to India, yet it is still treated as a law and order issue in the country. This needs to change.

Among the leading democracies India has been the most troubled by recurrent acts of terrorism over the past four decades –-mostly organised and armed from across both the western and eastern borders but some also by extremist groups pursuing their violent political agenda within India. Yet, ironically investigative

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agencies and the courts in India encounter a variety of challenges and hurdles in pursuing terrorism-related cases. Convoluted legal processes cause inordinate delay in investigation, prosecution and sentencing in terrorism-related cases. Some of the most prominent challenges emerge from lack of clarity on investigative jurisdiction. Whether terrorism is a mere law and order issue or a special case, keeps cropping up on account of multiplicity of legislations, procedures and provisions used in the course of the investigation of a terrorism-related case, along with the liberal provision of bail jurisprudence.

The recent judgement of the Supreme Court of India in the Malegaon Blast case of 2007 in which in a twin blast in the vicinity of the local mosque 40 people were killed and 125 injured, is a classic example of delays caused at every stage of investigation and prosecution on account of multiple investigating agencies, application of multiple laws and procedures coupled with frequent judicial interventions.

Malegaon Case

Initial investigation into the case was taken over by the Maharashtra Anti-Terror Squad (ATS) which identified SIMI and LeT activists as the accused persons. Charges were filed in the MCOCA court against 9 (Muslim) persons by the ATS. Subsequently, another blast took place on September 29, 2008. This too was investigated by the Maharashtra ATS. Herein, a conspiracy by a right wing Hindu group was detected. Two militant activists of the group, Sadhvi Pragya Singh Thakur and Lt. Col. Purohit, were arrested.

In light of these arrests, Maharashtra ATS filed charge sheets against 14 accused in 2008 in the Special MCOCA Court, Mumbai on January 20, 2009.[1] Later, on April 04, 2011, Union Home Ministry handed over the 2008 Malegaon Blast case to the newly constituted National Investigation Agency (NIA), along with two other prominent terrorism related cases, i.e., the Mecca Masjid Case and Ajmer Dargah blast case. In its investigation, NIA held activists of a militant group known as 'Abhinav Bharat' responsible for the incidents. Consequently, the MCOCA court dismissed the cases against all the SIMI accused. The case against some of the Hindu activists continued.

The Malegaon Blast case came under intense judicial scrutiny. The Bombay High Court challenged the constitutional validity of the NIA Act and also questioned the 'arbitrary and unbridled' power vested in Union Government to transfer cases to

the NIA. The NIA on May 13, 2016 filed a final report U/Sec 173(8) of Cr. P.C. against 10 accused persons. However, the Special NIA Court held that sufficient evidences have not been found against six of the accused, including Pragya Singh Thakur, and their prosecution was not maintainable.[2] However, it ordered Purohit to be prosecuted for terror charges under Unlawful Activities (Prevention) Act (UAPA). During trial the Bombay High Court rejected the plea to withdraw charges of carrying out the bomb blast. The Bombay High Court order and that of the NIA Special Court were challenged in the Supreme Court by Purhoit. The plea filed by Lt Col Purohit seeking cancellation of the charges framed against him under UAPA in the Malegaon blast case came up before the Supreme Court on January 29, 2018. The Supreme Court granted bail to Purohit on April 20, 2018[i] but refused to stay the proceedings and reiterated its direction to the NIA Special Court to expedite the hearing which has been going on since 2008.[3] The NIA Special Court, on February 11, 2019, dismissed the plea of Purohit to stay the trial under UAPA, and observed that Purohit was at liberty to file a fresh and separate writ petition to challenge his prosecution under the anti-terror law (Bombay High Court 2019). And thus the case goes on.

India has the unique experience of dealing with the most complex challenges of terrorism on a continuous basis in different forms for the past four decades.

These developments highlight the fact that investigation and prosecution of terror cases in India is characterised by delays at every step for various reasons, including frequent change of investigation agency, transfer of investigating officers, lack of co-ordination between multiple investigation agencies, frequent appeals seeking judicial interventions, etc. The tortuous and prolonged judicial process involved in the Malegaon blast case of 2008,[4] and the Akshardham temple attack case of 2002 in which the Supreme Court pronounced its verdict in 2014[5] are classic examples in this regard.

India's response to Terrorism

India has the unique experience of dealing with the most complex challenges of terrorism on a continuous basis in different forms for the past four decades. The challenges faced by the state in countering terrorism flow from the diverse origins and expanse of the networks, as well as the ideologies and motivations of terror groups. It gets more complicated when some of the external backers use terrorism as

i. Supreme Court judgment states - However, keeping in view the fact that NIA has submitted the supplementary charge-sheet which is at variance with the charge-sheet filed by the ATS and that the trial is likely to take a long time and the appellant has been in prison for about 8 years and 8 months, we are of the considered view that the appellant has made out a prima facie case for release on bail and we deem it appropriate to enlarge the appellant herein on bail.

a policy tool for achieving their political and strategic objectives. Due to the ideology based cooperation amongst terror organisations globally, the impact and reach of terrorism has risen multi-fold. The rapid speed of communication and travel along with rising interdependence among states have facilitated the operations of terrorist and extremist groups.

India lives next to a region which is the '*epicentre of global terrorism.*[6] The threats posed by terrorism is therefore unlikely to abate in the foreseeable future. Yet, it is difficult to get official data on all the terrorist groups operating in the country. Some analysts and think tanks tracking terror have listed out around 39 terror outfits currently operating in different parts of the country, including groups operating from Pakistan and Bangladesh.[7] Besides this, major external groups such as the Daesh and Al Qaeda claim to have independent operational cells for the Indian sub-continent. . Majority of the terrorist threats emanate from a variety of externally sponsored terror groups that enter India through its porous borders as well as internally established terror modules that take advantage of governance deficiency of both the Central and the State governments.

In India's complex system of governance, most of the responsibilities pertaining to law and order are with the States, which possess their own counter-terrorism and intelligence units. However, these forces are often inadequately trained and ill-equipped to effectively deal with the security challenges of the twenty-first century. Similar observations were also made by the Ram Pradhan Committee established immediately after the Mumbai terror strike of November 26, 2008. The Committee mentioned that India's police and internal security infrastructure is highly fragmented and often poorly coordinated.[8] In such circumstances, foreign-backed terror and extremist groups take advantage of a troubled internal security environment and some level of domestic radicalization, to create many vulnerabilities. The fact that 27 youth from the state of Kerala had gone to fight with Daesh in Syria and Iraq underlines the challenges facing India.[9]

Evolution of Anti-Terror Laws in India

In this backdrop, an analysis of India's counter-terror mechanisms and its legal framework reveals that over the years adequate attention has not been paid towards enactment of enabling domestic legislations that would effectively deny the space for manipulations of legal provisions and procedures to terrorist groups and delay in the delivery of justice. The repeal of major anti-terror laws such as TADA and

POTA and prolonged duration of terrorism-related cases mark the disappointing history of anti-terrorism legislation and trials in India. This has weakened the efforts to deal with the threats faced. The reactive approach to counter-terrorism has led to India being characterized as a '*soft*' state. While analysing the jurisprudence of anti-terror laws in India it is observed that apart from media highlighted cases such as the *Ajmal Kasab Vs State* of *Maharashtra*, *Afzal Guru Vs State* (Parliament Attack Case), most of the terrorism-related cases did not figure much in the public discourse.[10]

The history of evolution of anti-terrorism legislations in India started in 1967 with the enactment of *Unlawful Activities (Prevention) Act (UAPA).* Before that, the two basic laws namely Indian Penal Code (IPC) and the Code of Criminal Procedure (Cr.PC) formed the backbone of investigation and prosecution of terrorism-related cases. Though considered a bit mild and general in character, UAPA still remains the only legislation with pan-India (excluding Jammu & Kashmir) applicability. In historical terms, *Terrorism and Disruption Activity (Prevention) Act* (TADA) was hurriedly enacted in 1985 after the assassination of Prime Minister Indira Gandhi in October 1984. However, it was repealed in 1995 due to the grave and widespread allegations of misuse. It was followed by the *Prevention of Terrorism Act (2002) (POTA),* which was similarly enacted soon after the Parliament attack of December 2001. It remained a political punching bag and lived a very short span of legal existence. POTA was repealed in 2004.[11]

The history of evolution of anti-terrorism legislations in India started in 1967 with the enactment of Unlawful Activities (Prevention) Act (UAPA).

After the repeal of POTA, the country was once again without a specific anti-terror law. It was in 2008 that through an amendment in UAPA a definition of 'Terrorist Act' was incorporated, listing out specific offences to be prosecuted as terror offences under UAPA.[12] This law too was enacted in a hurry in the wake of 26/11 Mumbai terror siege. The controversial provision of the presumption of innocence was changed to guilt.[13] After that, in 2013 economic and financial offences, which are decisive components of terrorism, were included[14] to enable agencies to prosecute offences committed outside India. This has strengthened the legal framework to deal with transnational acts of using foreign territory and resources for planning and funding terror activities challenging the unity, integrity and security of India.

Apart from Centrally enacted legislations, different States have enacted anti-terror legislation such as the Maharashtra Control of Organised Crime Act (MCOCA), Chhattisgarh Special Public Safety Act (CVJSA), etc.[15,16] are examples of state-enacted anti-terror legislations. However, the detailed study of these legislations reveals that these laws are enacted for dealing with organised crimes and gang violence and are not sufficient to effectively deal with 21st-century terrorism. These laws are invoked or read in conjunction with relevant provisions of various centrally enacted laws like Arms Act 1956, Explosives Substance Act, etc. 1908, Explosives Act 1884, etc.

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Despite dedicated special laws like UAPA with its various amendments and the special legislations of some of the State governments, provisions of IPC and Cr. PC are still invoked in dealing with terror cases. In the Parliament Attack Case of 2001,[17] Mumbai Terror attack of November 2008 (The Supreme Court of India 2012) or Malegaon Blast case,[ii] charge sheets were filed under common IPC. Thus, till date, there is no single omnibus legislation that serves as the legal basis, covering all aspects of terrorism. The trial of lone captured terrorist Ajmal Kasab during Mumbai terror attack of 2008 is archetypal in this regard where Kasab was charged under various laws for illegal possession, manufacture of arms and explosives, etc.,[18] similar to that of Parliament attack case.[19] Eventually Kasab was prosecuted under nine sections of three centrally enacted laws namely four IPC Sections of 302 for murder, Section 120B Criminal Conspiracy, Section 121 waging war against Union of India, Section 122 (Collecting Arms), Section 13 of UAPA and even Railways Act of 1989 for causing severe damage to railway property.[20]

International Experience

Before proceeding further to examine what a country like India needs to do to effectively meet the challenges of dealing with terrorism of different types, it would be useful to have a brief look at what other democracies have done in this regard.

Serious attempts to understand and analyse the concept of terrorism started in 1990s but intensified on the global platform after the massive terror attack in USA on September 11, 2001(9/11). This became the defining moment of the international security discourse which resulted in coinage of terms like '*War against Global*

ii. Pragyasingh Chandrapalsingh Thakur V State of Maharashtra at Special MCOCA court, 2014 (1) Bom Cr (Cri) 135 (Bombay High Court).

Terrorism' or '*Global War against Terrorism'*. The campaign identified various threats and challenges posed by terror to the security of local, regional as well as global communities.[21] The phenomenon of 'Daesh' that evolved in the post-Al-Qaeda era, is a classic case of ideology-based terrorism gaining traction across the world, encouraging many foreign fighters to participate in military campaigns in Syria and Iraq.

The United States of America

After 26/11, a paradigm shift was observed in the US approach in dealing with terrorism. The policy makers (1) recognised the failure of various US departments to combine and integrate individual bits of intelligence which would have prevented the attack and put together corrective measures by 2006-07, (2) *stopped considering the threat of terrorism from Al-Qaeda and its declaration of war against the US as mere law and order issue or police matter, (3) considered utilising all elements of national power to strike back to prevent an attack on the American soil, (4) developed credible mechanism for proactive planning and coordinated operations, (5) focused on civilian agencies with emphasis on capacity building.*[22]

The National Counter Terrorism Centre (NCTC) evolved out of these efforts. Today, NCTC collates inputs from more than 30 intelligence agencies, military, law enforcement and homeland security networks under one roof to facilitate robust information sharing. NCTC is a model of inter-agency information sharing. It is well supported by all federal agencies and state agencies[23].Post 9/11 terror strikes, US has established a robust network of *Fusion centres* throughout the country which serves as focal point for receiving, analysing, gathering and sharing of threat and vulnerability-related information. Today these Fusion Centres have become information-sharing hubs that also provide comprehensive and appropriate analysis that no other agency can offer single-handedly.[24]

For effective execution of these security reforms on credible legal basis, US enacted the *Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act,* P.L. 107-56.[25] This comprehensive piece of legislation is considered to be the most significant Congressional response to the 9/11 terror strikes. While enacting legal measures, the House informally resolved existing differences and enacted these measures in its final form on October 24, 2001, which were passed by the Senate on October 25, 2001.[26] All this was done within a period of just over a month.

In addition, the government introduced three major initiatives: official designation of Foreign Terrorist Organisations [Prescription], listing of Organisations and individuals linked to terrorism [asset freezing, designation] and a Terrorist Exclusion List of aliens associated with "terrorist" entities. These initiatives became the legal basis for prosecution of anti-terror trial in the US, and are prescribed under Section 219 of the *Immigration and National Act* (INA), which is amended by the *Antiterrorism and Effective Death Penalty Act of 1996* and the *USA PATRIOT ACT of 2001*. The legal reforms were followed by the preparation of a "*Comparative List of Terrorists and Groups*". Federal agencies froze the assets of listed terrorists and their groups. This was supported by *Executive Order 13224*,[27] designated in accordance with the UN resolution 1267.[28] The legal effect of these judicial reforms was to make it unlawful for any person in the US to knowingly provide "*material Support*" such as "*currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe house, false documentation, communication equipment, facilities, weapons, lethal substances, explosives, personnel transportation, and other physical assets, except medicine or religious materials*".

Another major step was to define terrorism, as *"Criminal acts dangerous to human life and apparently intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by mass destruction, assassination or kidnapping"*. The Office of the Coordinator for Counterterrorism in the State Department has been made responsible to identify and designate individuals and groups to be included in the list of Foreign Terrorist Organisations (FTO). In consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State notifies individuals and organisations of their designation as FTO.

The Obama administration in 2016, passed the "**Justice Against Sponsors of Terrorism Act**" (JASTA) that amends *the Foreign Sovereign Immunities and Anti-Terrorism and Effective Death Penalty Act* in regard to the civil claims against a foreign state for injuries, death or damages from an act of international terrorism. Prior to JASTA – 2016, US nationals were permitted to sue a foreign state if such state was designated as a state sponsor terrorism by the United States Department of State and if they were harmed by that State's aid for international terrorism.[29]

After the Congressional baseball game shooting case on June 14, 2017, Trump administration, passed the Department of Homeland Security Authorization

Act of 2017,[30] authorising the Department of Homeland Security (DHS) to prepare mandatory threat assessments, strengthen information and intelligence sharing among Federal, State and Local authorities, provide support to the first line of defenders and first responders, bolster Cyber Security, enhance cargo security at Ports, bring cost-effective means of security.[31] In light of rising lone wolf and Daesh inspired attacks across the US involving car rampage, mass shooting and stabbing, the Congress passed the reauthorization to establish a robust oversight and enable speedy operational authorization of the US DHS. It also reasserts Congress' authorities listed in Article 1 of the US constitution i.e. *All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*[32] These will make DHS efficient by consolidating and eliminating the unnecessary programs and offices.[33]

Despite 15 years of establishments of the DHS by the US Congress, the authorization reflects the realignment of DHS with an eye towards increasing operational effectiveness and efficiency of the DHS in a rapidly changing threat profile. This reauthorization is also considered as a major bipartisan accomplishment of the US administration in regard to national security.

United Kingdom

The counter-terrorism strategy of the United Kingdom is considered to be one of the most successful in the world. Known for its evolution since the 19th century, at present, the strategy remained unscathed despite various terror strikes in the bad year of 2015, 2016, and 2017 in the UK as well as in Western Europe. Despite these terror attacks, one must also consider the fact that in post 9/11 period, British agencies remained proactive and disrupted several attacks and plots in an around the UK. It stands testimony to the commendable operational readiness and executive capabilities of MI-5 and UK Police and highlights their intense commitment to learn and improve as quickly as possible in any challenging situation and meet the threat. It makes MI-5 and UK Police one of the major counter-terrorist forces in the world.[34]

The overall counter-terrorism response of the UK consists of coordinated efforts amongst various agencies, departments and bodies of the British government like Border Force, Ministries of Defence, Home, Justice, various intelligence agencies and the Armed Police. UK has also established a Counter-Terrorism Command (CTC), which is popularly known as a Special Operations (SO-15) branch of London's Metropolitan Police Service, in October 2006. This merger has strengthened British

Counter-terrorism capabilities by bringing together intelligence, operations and investigative functionaries under the command of CTC. It is part of *National Counter Terrorism Network*, which consists of 5 prominent Counter Terrorism Units (CTUs) and Smaller Regional units under the monitoring of the Counter-Terrorism Coordination Committee. As part of its role in the *National Counter Terrorism Network*, SO15 deals with the threat of terrorism at a local, national, and international level and engages with a range of partners to prevent terrorist-related activities, including the Security Service, i.e. Military Intelligence Section - 5 (MI5) and Secret Intelligence Service (MI6).[35]

History of counter-terrorism in the UK dates back to the Irish national movement and Northern Ireland terrorism since 1921 and continues till date as Britain grapples with jihadi terrorism inspired by Islamic radical ideology. Thus, British agencies have vast experiences of handling terrorist activities in and around the UK. However, as terrorist activities began to intensify in the UK since early 1970's with incidents such as the Birmingham Pub Bombing of November 21, 1974, it responded with the enactment of *Prevention of Terrorism (Temporary Provisions) Act 1974*. This act empowered law enforcing agencies to detain a suspect for 48 hours, extendable up to five days, before taking it to the court of law. It was subsequently amended in 1976, 1984 and 1989 to keep it in tune with the security environment of the UK.[36]

In the wake of international terrorist attacks and the Belfast Agreement, the British Government appointed a team led by Lord Lloyd of Berwick to produce a comprehensive legislation that effectively combined two separate statutes namely Prevention of Terrorism (Temporary Provision) Act of 1989 and Northern Ireland (Emergency Provisions) Act 1996. The Lloyd Committee report stated that "*Although the current counter-terrorist legislation was designed initially to deal with the threat from Irish terrorism, much of it has been extended so that it now applies equally to international terrorism*".[37] Based on the recommendations of the Lloyd committee the Terrorism Act, 2000 was enacted, keeping in view EU's concerns pertaining to human rights.[38] The Act enables British authorities to proscribe acts under Part 2 of the Act, including membership of a proscribed organisation, inviting support, including fundraising for the proscribed organisation, managing or assisting in the arranging of meeting to support or further the activities, or to be addressed by a member of a proscribed organisation and addressing meeting encouraging support for a proscribed organisation. Terrorism is defined in the UK as, "the use of threat of action

designed to influence the government or to intimidate the public or a section of the public, for the purpose of advancing a political, religious or ideological cause".

Post terror strike on the London Transport System i.e. 7/1 attacks, Prevention of Terrorism Act, 2005 was enacted which was quickly followed by *Prevention of Terrorism Act 2006*[39] and post Operation Gamble[iii] in 2007, the government once again passed the *Counter-Terrorism Act 2008.*[40] Subsequently, with the rise of Daesh in Syria and Iraq and participation of militants of British descent, the government came up with Counter-Terrorism and Security Act 2015. The core objective of these measures was to prevent anyone preaching extremist views in the British society.[41]

Since 2015 series of terror strikes hit Britain such as Manchester Arena Bombings of May 2017 and Parsons Green Tube Bomb Attack of September 2017 and led to more assertive posture by the British agencies.[42] British government recognised that Islamic radicalisation had spread with a global agenda. In a statement by then British Home Secretary, Amber Rudd it was mentioned that the proactive approach of British agencies had helped foil 22 Islamic terror plots in the period 2013 to March 2017.[43]

In addition, the government passed a comprehensive legislation called "Investigatory Powers Act 2016" in November 2016 that granted certain additional powers to Intelligence agencies as well as the Police that are considered timely reform in counter-terrorism legislation of UK. Through a combination of these, UK agencies enjoy a wide range of policy options from soft end to kinetic options under its Counter-Terrorism Strategy (CONTEST). British National Security Strategy 2015 has identified terrorism emanating from extremism as a threat affecting the stability of the UK.[44] Cyber-attack has emerged as a threat to be addressed at all levels.[45]

It is, however, assessed that Brexit will enhance British vulnerabilities and end British leadership in the formulation of the EU security policy and laws. It will deprive UK of use of certain security mechanisms under EU such as *European Arrest Warrant*, *Second Generation Schengen Information System* (SIS II), Europol, and Eurojust. The overall analysis of British Counterterrorism strategy suggests that the UK has significantly achieved a complex and delicate balance while framing and implementing the counter-terrorism strategy. Hence, the *Brexit referendum* by no means to be considered to have isolated UK. The access to the transnational mechanism is a significant loss to EU but, EU might end up losing its most important member in counter-terrorism efforts since the British efficiency and it's intelligence

iii. Operation Gamble was the codename given to a counter-terrorism operation undertaken on 1 February 2007 in which nine Muslim men were arrested in dawn raids in Sparkhill, Washwood Heath, Kingstanding and Edgbaston – all areas of Birmingham. The operation was headed by the regional anti-terrorism command - the West-Midlands Counter-Terrorism Unit and MI5. Before being arrested, the suspected individuals were placed under 24 hour surveillance for 6 months, in an operation involved over 700 officers.

mechanism is better organised compared to EU's counter-terrorism system. European states suffer from a number of weaknesses which include lack of languages expertise, engagement with Islamic communities, ability to develop human-intelligence sources. A comparative analysis of the conduct of counter-terrorism operations reveals many EU countries are relatively reluctant to integrate the work of their intelligence and security agencies with that of the Police.[46]

European Union

Europe Union, despite its collective commitment to security, has failed to deal with terrorism as an international issue, with most EU states treating this as nationa/regional problem. The reactive response of EU states post- 9/11 comprised enactment of legal instruments such as Counter-Terrorism Legal Framework, CT Action Plan of 2001, 2002 CT Framework replacing the complex extradition procedures of the European states.[47] Simultaneously, the European Commission began to introduce several institutional measures to deal with home-grown terrorism.

EU states established institutional set-up for Counterterrorism cooperation amongst member states. Establishment *of Police Chief Operational Task Force*[48] and expanded role of EUROPOL in counter-terrorism followed.[49] Madrid Bombings of 2004 highlighted need for effective counterterrorism measures supported by effective legal support. EC's *Declaration on Combating Terrorism 2004* strongly emphasised urgent need for member states to execute the measures approved collectively. For speedy coordination, EU appointed its first Counter-terrorism Coordinator and also enunciated their Counter-Terrorism Strategy relying on four pillars – Prevent, Protect, Pursue and Respond. This is in line with the relevant UN Resolutions. The terrorist list is drawn up under the *EU Common Position* 2001/931[50] which specifies measures to combat terrorism including mechanism enabling EU to freeze assets and resources of persons and groups of foreign origin.[51]

While developing capabilities on these lines, information gathering mechanisms and exchange of evidence between member states were simplified resulting in expeditious conclusion of terrorism-related trials.[52] Simultaneously, establishment of *EUROPOL* and *EUROJUST* too have contributed significantly to the Counterterrorism strategy of Europe. Their record of cooperation in data sharing, training support and joint operations/investigation is commendable.

One of the major successes of EUCT's legal machinery was the consensus achieved in defining terrorism and adopting it in 2002. The recent brazen terror

strikes across major EU states underscores the need for the EU countries to have a fresh look at their collective security architecture which revolves around EU's Security Strategy – Shared Vision, Common Action of June 2016[53] and its defence '*white paper*' of June 2016.[54] EU also need to revitalise its political solidarity by strengthening its collective security mechanism that will enable EU agencies to effectively deal with the security challenges due to strong linkages of an external and internal factor. Homeland security has emerged as an indispensable area of cooperation for Europe. There is need for EU to strengthen European Counter Terrorism Centre (ECTC) by expanding its reach across the continent. At present ECTC is manned by 39 staff members and 5 national experts.[55]

Despite these, UAPA could not become a complete code to address the issue of cross-border terrorism which is the need of the hour.

Jurisprudence of anti-terror laws in India

Given the experience of democracies around the world, including the Indian experience as briefly narrated in the opening paragraphs of this paper, it is clear that a national consensus is required on the very basic concept of isolating the jurisprudence of terrorism from the general criminal jurisprudence designed to deal with offences other than terrorism. Why India has not been able to address this issue of terrorism – internal as well as cross-border- despite three legislative attempts, needs to be understood. As stated earlier: -

I. India first enacted the Unlawful Activities (Prevention) Act, 1967 [UAPA] followed by TADA in 1985;
II. Subsequently, TADA was allowed to lapse and, in its place, POTA was promulgated. This too was allowed to lapse;
III. The UAPA was sought to be turned into a special enactment to deal with terrorism, through three successive amendments in 2004, 2008 and 2012 to make the laws more stringent and terrorism specific and also to place investigation, trials etc. in terror cases on a different footing than normal crimes by making certain deviations from the general provisions of the Cr.PC;

Despite these, UAPA could not become a complete code to address the issue of cross-border terrorism which is the need of the hour. State legislations of Maharashtra and Karnataka were an improvement but even they are only

effective for dealing with 'organized crimes' and are not the all-inclusive omnibus anti-terror legislation that the country needs. Based on the various cases of terrorism investigated and prosecuted, some of the glaring lapses, inadequacies and glitches can be identified as:

(i) **Investigation Agency**: For decades the country lacks a dedicated, specialized, well trained central agency to deal with investigation of cases of terrorism. This was being done on a case by case basis, by either the CBI or Special Investigation Teams (SIT). This has since been sought to be addressed with the establishment of the National Investigation Agency (NIA) after the 26/11 Mumbai carnage in 2008. The discretion to assign cases to the NIA for investigation vests with the Central Government.

(ii) **Investigation and Evidence procedures**: Special provisions and procedures are needed for investigation of terrorism cases, mode, method of collection of evidence, admissibility of evidence at variance with the provisions of the vintage Evidence Act. Special provisions are required for evidence gathered/ located/found abroad in cases of cross-border terrorism, and admissibility of evidence based on interception of electronic communications.

(iii) **Trial procedure and the Prosecuting Agency:** It is essential to designate sufficient number of specially empowered Courts to ensure expeditious trial of terror related cases. Magistrates may also be notified to exercise powers to record confessional statements *pari passu* with the statement under section 164 of Cr.PC, Special Public Prosecutors with specialisation in terror case may also be designated accordingly. Provisions of pardon may also be incorporated in the new legislation along with provisions to grant immunity from prosecution in certain special situations. Stringent provisions as regards search and seizure also need to be enacted.

(iv) **Other miscellaneous provisions:** Apart from the above-mentioned major heads, any exercise to review the existing laws and procedures with a view to evolving a comprehensive legal and security architecture for the nation as a whole to deal with terrorism related issues must also include (a) A clear sentencing policy that effectively deters terror crimes,

(b) protection of whistleblowers, (c) rewards for reporting suspicions/ terrorist activities, (d) witness protection, (e) defining "terrorism"/"terrorist act"; discrete distinction being drawn between internal insurgency and cross-border terrorism, (f) stringent provisions for grant of bail, (g) limitation on repeated appeals and adjournments at every stage of investigation and trial with the intent of delaying the process, (h) special provisions relating to procedure, investigation, admissibility of cyber/electronically generated evidence that are increasingly going to play a greater role in terror-related incidents.

(v) **Reforms in Intelligence:** It has been more than a decade and half since the Kargil Review Committee examined the different aspects of the intelligence infrastructure in the country. Since then, much water has flown down the proverbial bridge. It's time that the entire intelligence system, structure, manpower policy to attract and retain the best brains, tasking and monitoring, and the growing fragmentation leading to creation of excessive redundancy are taken up for comprehensive review. What is needed is a National Commission to look into all aspects of National Security including review of the working of existing premier institutions such as the Intelligence Bureau (IB), Research and Analysis Wing (R&AW).

(vi) **Do we need NCTC**: India is, perhaps, be the only country facing multiplicity of threats to its national security and yet not have a National Counter Terrorism Centre (NCTC). This matter has been under examination for decades and still no national consensus has evolved on this issue. Measures proposed earlier met with serious opposition from some of the States, on account of valid concerns of denting the established federal structure of governance. Regrettably, instead of working out a viable compromise, the government seems to have given up entirely. There is need to revive the proposal now.

Conclusions

The concept of Jurisprudence literally means the study of law or development of skillset and knowledge which defines the law and further provides an established framework of reference for its application. It can also be described as an evolution of law to constitute and elucidate concepts serving to concentrate the complexities of

law in a manageable and cogent order. These thoughts were mentioned by the former Chief Justice of India Y. K. Sabharwal. While deliberating India's initial response to curb terrorism with general law,[56] he observed that consistent and effective anti-terror policies and counter-terror mechanism demand strong consensus and committed political will.

Terrorism is undoubtedly an extremely complex issue due to its diverse origin and expanse, ideology and motivation. It gets further complicated as some organizations and countries use terror as a policy tool for achieving their political and strategic objectives. The impact and reach of terror activities have increased multifold in the contemporary era of globalisation where the speed of communication is extremely rapid. The various approaches for understanding terrorism have suffered from a dearth of literature on causes of terrorism, nature of counter-terrorism measures and absence of quantitative data-oriented research. However, post 9/11 terror strike, the situation has seen gradual improvement and some progress has been made in qualitative research about the causes of terrorism.[57] This newly evolving approach to study terrorism strongly establishes the relation between socio-economic and political factors with terrorism.[58] Today the global security situation is confronted with the problem of radicalisation, especially in the aftermath of the spread of Daesh ideology and inspired terror attacks that affects the security and stability of states. It is therefore essential to study the process of by which radicalisation occurs, especially the socialising patterns of an individual and why and how he readily agrees to execute or propagate political violence without any moral restraint or guilt.[59]

The issues are many; the challenges complex, and options are limited. India has to take the proverbial bull by its horns by devising a new and robust security architecture covering every aspect of its fight against terror. The time for half-measures is over. Collaborative efforts are the need of the hour. For effective coordination and execution, an efficient agency needs to be created, with the Centre and the States working together and readjusting their domains of sovereignty.

References

1. Government of India, National Investigation Agency Ministry of Home Affairs. 2018. "Case No RC-05/2011/NIA/DLI - Present Status." *www.nia.gov.in.* January 12. Accessed February 21, 2018. http://www.nia.gov.in/case-detail.htm?25/MALEGAON+II+BOMB+BLAST.
2. Government of India, National Investigation Agency Ministry of Home Affairs. 2016. "Supplementary charge-sheet filed in Malegaon blast case of 2008." *www.nia.gov.in.* May 13. Accessed September 12, 2018. http://www.nia.gov.in/writereaddata/Portal/News/65_1_PressRelease13052016.pdf.
3. The High Court of Judicature at Bombay . 2018. "CRIMINAL APPEAL NO.1289 and 112 OF 2018." *http://bombayhighcourt.nic.in/.* October 29. Accessed November 13, 2018. http://bombayhighcourt.nic.in/generatenewauth.php?auth=cGFoaDouL2RhdGEvY3JpbWluYWwvMjAxOC8mZm5hbWU9QVBFQUwxMjg2MTgyOTEwMTgucGRmJnNtZmxhZz1OJnJqdWRkYXRlPSZ1cGxvYWRkdDozMC8xMC8yMDE4JnNwYXNzcGhyYXNlPTEyMTIxODE1MjAxNg==.
4. Ibid 2
5. The Supreme Court of India. 2014. "Criminal Appeal No - 2295-2296 of 2010, Adambhai Sulemanbhai Ajmeri and Ors V State of Gujarat." *http://supremecourtofindia.nic.in.* May 16. Accessed September 21, 2016. http://supremecourtofindia.nic.in/jonew/judis/41558.pdf.
6. Roy, Shubhajit. 2017. "Pakistan is Terroristan: India at UN." *The Indian Express*, September 23. Accessed March 12, 2018. http://indianexpress.com/article/india/pakistan-is-terroristan-land-of-pure-terror-india-tells-un-4856522/.
7. Sharma, S. K., and Behra Anshuman. 2014. *Militant Groups in South Asia.* New Delhi: Institute for Defence Studies and Analyses and Pentagon Press.
8. Pradhan, Ram, and V. Balchandran. 2008. *High Level Enquiry report on 26/11. .* High Level enquiry report, Government of Maharashtra, Mumbai: Government of Maharashtra.
9. Philip, Shaju . 2016. "21 missing in Kerala in a month: CM Pinarayi Vijayan in Assembly." *The Indian Express*, July 12. Accessed March 12, 2017. http://indianexpress.com/article/india/india-news-india/kerala-missing-muslim-youth-join-islamic-state-pinarayi-vijayan-cm-2908173/.
10. Singh, Ujjwal Kumar. 2007. *The State Democracy and Anti-Terror Laws in India.* New Delhi: Springer. Accessed January 18, 2016.

11. Ministry of Law, Government of India. 2004. "THE PREVENTION OF TERRORISM (REPEAL) ORDINANCE, 2004." *http://lawmin.nic.in.* September 17. Accessed February 10, 2016. http://lawmin.nic.in/legislative/THE%20%20POTA%20Ordinance%20%28latest%29.htm.

12. The Parliament of India. 2008. "The Unlawfull Activities (Prevention) Amendment Bill, 2008 passed by Loksabha ." *The United Nations Office on Drugs and Crime.* December 17. Accessed February 11, 2016. https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf.

13. Ginestein, Mark H. 2009. "Nine Democracies and the Problem of Detention, Surveillance, and Interrogation." In *Legislating the War on Terror: An Agenda for Reform*, edited by Benjamin Wittes, 11-12. Brookings institution.

14. Ministry of Law and Justice, Government of India. 2013. "The Gazette of India - The Unlawfull Activities (Prevention) Amendment Act 2012." *www.indiacode.nic.in.* January 03. Accessed March 01, 2016. http://indiacode.nic.in/acts-in-pdf/032013.pdf.

15. Pandey, Devesh K. 2002. "Some bad news for criminals." *The Hindu*, January 08. Accessed March 01, 2016. http://www.thehindu.com/2002/01/08/stories/2002010803220300.htm.

16. Government of Chattisgarh. 2007. "Notification of the Chattisgarh Special Public Safety Act 2005." *https://cpjc.files.wordpress.com.* Accessed February 08, 2016. https://cpjc.files.wordpress.com/2007/07/cspsa_english.pdf.

17. The Supreme Court of India. 2005. "Page No: 3, Criminal Appelate Jurisdiction, 2005, Appeal (crl.) 373-375 of 2004." *http://www.judis.nic.in.* August 04. Accessed February 12, 2016. http://www.judis.nic.in/supremecourt/imgs1.aspx?filename=27092.

18. The Supreme Court of India . 2012. "Page No: 130, CRIMINAL APPELLATE JURISDICTION ." *http://supremecourtofindia.nic.in.* August 29. Accessed February 21, 2016. http://supremecourtofindia.nic.in/outtoday/39511.pdf.

19. The Supreme Court of India. 2005. "Page No: 3, Criminal Appelate Jurisdiction, 2005, Appeal (crl.) 373-375 of 2004." *http://www.judis.nic.in.* August 04. Accessed February 12, 2016. http://www.judis.nic.in/supremecourt/imgs1.aspx?filename=27092.

20. Justice Chandramauli , Prasad K R. 2012. "The Verdict pronounced by the Supreme Court." *http://supremecourtofindia.nic.in.* August 29. Accessed February 19, 2016. http://supremecourtofindia.nic.in/outtoday/39511.pdf.

21. United States of America, Department of State . 2001. "Executive Order 13224 - Office of the Coordinator for Counterterrorism." September 23. Accessed February 12, 2018. https://www.state.gov/j/ct/rls/other/des/122570.htm.

22. Chertoff, Michael. 2009. "talk delivered by Michael Chertoff on the global security challenges." *http://www.vifindia.org.* December 07. Accessed September 11, 2016. http://www.vifindia.org/node/212.

23. Director of National Intelligence. 2003. "NCTC - Who We are." May 1. Accessed May 12, 2018. https://www.dni.gov/index.php/nctc-who-we-are/history.

24. Department of Homeland Security. June 2017. "State and Major Urban Area Fusion Centers." *https://www.dhs.gov/.* June 26. Accessed November 12, 2017. https://www.dhs.gov/state-and-major-urban-area-fusion-centers#_ftn1.

25. US Government Publishing Office . 2001. "UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT ACT) ACT OF 2001." October 26. Accessed May 12, 2018. https://www.gpo.gov/fdsys/pkg/STATUTE-115/pdf/STATUTE-115-Pg272.pdf.

26. Doyle, Charles. 2001. *Terrorism: Section by Section Analysis of the USA PATRIOT Act.* CRS Report for Congress, Congressional Research Service,, The Library of Congress, Washington D.C: The Library of Congress. Accessed September 12, 2016. http://www.au.af.mil/au/awc/awcgate/crs/rl31200.pdf.

27. United States of America, Department of State . 2001. "Executive Order 13224 - Office of the Coordinator for Counterterrorism." September 23. Accessed February 12, 2018. https://www.state.gov/j/ct/rls/other/des/122570.htm.

28. UN Security Council. 1999. "Security Council Committee pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh) Al-Qaida and associated individuals groups undertakings and entities." October 15. Accessed May 12, 2018. https://www.un.org/sc/suborg/en/sanctions/1267.

29. United States of America, Congressional Bills 114th Congress. 2016. "JUSTICE AGAINST SPONSORS OF TERRORISM ACT ." *https://www.congress.gov.* September 28. Accessed October 02, 2016. https://www.congress.gov/114/plaws/publ222/PLAW-114publ222.pdf.

30. United States of America, Homeland Security Committee. 2017. "H.R. 2825: The Department of Homeland Security Authorization Act of 2017." *https://homeland.house.gov.* June 14. Accessed September 12, 2017. https://homeland.house.gov/press/house-passes-landmark-department-homeland-security-authorization/.

31. The U.S. House Committee on Homeland Security . 2017. "https://homeland.house.gov." *Markup of H.R. 2825, the Department of Homeland Security Authorization Act of 2017.* June 14. Accessed September 12, 2017. https://homeland.house.gov/markup/markup-h-r-2825-department-homeland-security-authorization-act-2017/.

32. United States of America, Legislative Department . 1789. "Article 1 - US Constitution." *https://www.law.cornell.edu.* March 04. Accessed September 12, 2017. https://www.law.cornell.edu/anncon/html/art1frag1_user.html#art1_hd4.

33. Chairman Michael McCaul . 2017. "Opening Statement -Markup of H.R. 2825: The Department of Homeland Security Authorization Act of 2017." *https://homeland.house.gov.* June 13. Accessed September 30, 2017. https://homeland.house.gov/wp-content/uploads/2017/06/06-14-17-McCaul-Open.pdf.

34. The Metropolitan Police Service. 2017. "Response to David Anderson QC's Report." http://news.met.police.uk. December 05. Accessed December 06, 2017. http://news.met.police.uk/news/response-to-david-anderson-qcs-report-283422.

35. Smith, Paul Jonathan. 2006. "Counterterrorism in the United Kingdom." *https://www.chds.us.* October. Accessed March 12, 2017. https://www.chds.us/coursefiles/comp/lectures/comp_CT_in_the_UK_mod03_ss_stryln/script.pdf.

36. Blackbourn, Jessie. 2000. "The evolving definition of terrorism in UK law." *Behavioral Sciences of Terrorism and Political Aggression* (Routledge) 3 (2): 131-149. Accessed May 1, 2018.

37. Lord Lloyd of Berwick. December. *Legislation Against Terrorism - A consultation paper.* A consultation paper, Department of Home, Government of UK, London: The Stationery Office, 61. Accessed November 12, 2017. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265689/4178.pdf.

38. Setty, Sudha. 2011. "WHAT'S IN A NAME? HOW NATIONS DEFINE TERRORISM TEN YEARS AFTER 9/11." *University of Pennsylvania Journal of International Law* 33 (1): 1-64. Accessed January 21, 2017. https://www.law.upenn.edu/live/files/139-setty33upajintll12011pdf.

39. The British Parliament. 2006. "Terrorism Act 2006." *http://www.legislation.gov.uk/.* March 30. Accessed January 12, 2017. http://www.legislation.gov.uk/ukpga/2006/11/pdfs/ukpga_20060011_en.pdf .

40. Her Majesty's Government. 2008. "Counter-Terrorism Act 2008." *https://www.legislation.gov.uk.* November 26. Accessed November 12, 2017. https://www.legislation.gov.uk/ukpga/2008/28/pdfs/ukpga_20080028_en.pdf.

41. Her Majesty's Government. 2015. "Counter-Terrorism and Security Act." *https://www.gov.uk.* February 12. Accessed November 12, 2017. https://www.gov.uk/government/collections/counter-terrorism-and-security-bill.

42. Mortimer, Caroline. 2017. "London attack: Terror threat level upgraded to 'critical' as Theresa May deploys soldiers to key sites." *The Independent*, September 15. Accessed November 30, 2017. http://www.independent.co.uk/news/uk/home-news/london-attack-terror-threat-level-upgraded-critical-theresa-may-soldiers-streets-latest-news-updates-a7949701.html.

43. Rudd, Amber. 2017. "Statement on reviews into the attacks in Manchester and London ." *https://www.gov.uk.* December 05. Accessed December 06, 2017. https://www.gov.uk/government/speeches/statement-on-reviews-into-the-attacks-in-manchester-and-london.

44. Her Majesty's Government, UK. 2015. *National Security Strategy and Strategic Defence and Security Review 2015 : A Secure and Prosperous United Kingdom.* National Security Strategy, Department of Home, Controller of Her Majesty's Stationery Office, London: Williams Lea Group, 96. Accessed November 21, 2017.

45. Ibid 43

46. Inkster, Nigel . 2016. "Brexit, Intelligence and Terrorism." *IISS Article* 25-26. Accessed January 12, 2017. https://www.iiss.org/-/media//silos/survival/2016/survival-58-3/58-3-04-inkster-cm/58-3-04-inkster-cm.pdf.

47. Argomaniz,, Javier. 2011. *The EU and Counter-Terrorism.* New York: Routledge.

48. Gregory, Frank . 2007. "The EU's Response to 9/11: A Case Study of Institutional Roles and Policy Processes with Special Reference to Issues of Accountability and Human Rights." *Terrorism and Political Violence* (Routledge) 17 (1): 105-123. Accessed March 1, 2017. doi:10.1080/09546550590520618.

49. European Union Agency for Law Enforcing Training. 2012. "Common Curricula - Counter Terrorism." *https://www.cepol.europa.eu.* May 26. Accessed March 01, 2017. https://www.cepol.europa.eu/education-training/trainers/common-curricula/counter-terrorism.

50. The Council of the European Union. 2001. "on specific restrictive measures directed against certain persons and entities with a view to combating terrorism." *http://eur-lex.europa.eu.* December 27. Accessed September 9, 2016. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0070:0075:EN:PDF.

51. Ibid 49

52. European Parliament, Committee on Civil Liberties, Justice and Home Aff. 2011. *Report on the EU Counter-Terrorism Policy: main achievements and future challenges.* Plenary Sittings, Committee on Civil Liberties, Justice and Home Affairs , Brussels : European Parliament. Accessed March 11, 2017. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0286+0+DOC+PDF+V0//EN.

53. European Union. 2016. "Shared Vision, Common Action: A Stronger Europe A Global Strategy for the European Union's Foreign And Security Policy." *http://www.eeas.europa.eu.* June. Accessed September 12, 2017. http://www.eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf.

54. European Parliament, Director General For External Policies Policy Department. 2016. "On the way towards a European Defence Union - A White Book as a first step." *http://www.europarl.europa.eu.* April. Accessed September 12, 2017. http://www.europarl.europa.eu/RegData/etudes/STUD/2016/535011/EXPO_STU%282016%29535011_EN.pdf.

55. EUROPOL. 2016. "About European Counter Terrorism Centre - ECTC." *https://www.europol.europa.eu.* January. Accessed September 05, 2017. https://www.europol.europa.eu/about-europol/european-counter-terrorism-centre-ectc.

56. Sabharwal, Y. K. 2006. "Meeting the Challenge of terrorism- The Indian Model." *http://www.supremecourtofindia.nic.in.* Accessed May 12, 2016. http://www.supremecourtofindia.nic.in/speeches/speeches_2006/terrorism%20paper.pdf.

57. Silke, Andrew. 2004. "An Introduction to Terrorism Research." In *Research on Terrorism: Trends, Achievements and Failures*, by Andrew Silke, edited by Andrew Silke. London: Frank Cass.

58. Quan, Li, and Drew Schaub. 2004. "Economic globalisation and transnational terrorism: A pooled time series analysis." *Journal of Conflict Resolution* 48 (2): 230-258.

59. Schmid, Alex P. . 2011. *The Routledge Handbook of Terrorism Research.* Oxon: Routledge, Taylor and Francis . Accessed September 12, 2016.